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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/17

SPONSOR Ferrary LAST UPDATED _____ HB 446

SHORT TITLE Wild Horses in Statute SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0-340.0	\$0-2,180.0	\$0-2,180.0	\$0-4,700.0	Recurring	Game Protection Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with CS/SB 126, HB 390 and SB 284
Relates to HJM 17

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game & Fish (DGF)
New Mexico Livestock Board (NMLB)
Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

House Bill 446 expands the jurisdiction of DGF under the Wildlife Conservation Act to include wild horses, without defining the term. It also amends the definition of “livestock” in the Livestock Code to include a definition of “wild horse”, meaning “an unbranded and unclaimed horse that is not livestock”. It provides another definition of “wild horse” (“a horse that shows no indicia of ownership”) in an existing law governing the disposition of wild horses captured on public land, including descendants of Spanish colonial horses, and transfers jurisdiction of those horses from NMLB to DGF. DFG is tasked with determining when preservation of the genetic stock and range conditions require use of birth control to limit a wild horse herd population.

The bill extends the existing duty of private landowners to fence their properties from trespassing horses to include wild horses.

FISCAL IMPLICATIONS

DGF estimates \$340 thousand in start-up costs for FY 17, including hiring a wild horse biologist, conducting a survey of the state to determine locations of wild horse herds, and building or leasing facilities to temporarily house horses while DNA testing is being conducted. Since the bill, if enacted, would not be effective until mid-June, the amounts actually incurred in FY 17 could be less, as reflected in the range provided in the operating budget table. DGF's numbers for FY 18 and 19 reflect the continuation of some or all of these costs, as well as genetics testing costs, fencing costs related to private property interventions under Section 17-2-7.2 NMSA 1978 at \$100 thousand a year, as well as housing and maintaining Spanish colonial horses in perpetuity, if no one adopts them and no public land or wild horse preserves will take them, at an annual cost of more than \$50 thousand per horse and assuming 40 to 50 horses a year. Again, actual costs are indeterminable at this time, so the impact is reflected as a range.

SIGNIFICANT ISSUES

DGF first explains issues relating to including wild horses within the scope of the Wildlife Conservation Act (WCA):

Adding wild horse to the definition of “wildlife” under the WCA is contrary to the procedures laid out in statute under the Act. Per the WCA, in order to protect a species the listing process as defined under 17-2-40 NMSA 1978 must be followed. The listing process takes a minimum of nine months to a year and is only applicable to species of wildlife indigenous to the state; wild horses are not indigenous to the state of New Mexico. Adding an individual species to the definition of wildlife undermines the purpose and intent of the WCA.

More generally, it argues against the transfer of jurisdiction from NMLB to DGF:

Under current state law, the New Mexico Livestock Board has jurisdiction for managing wild horses. Because they work with these animals, expertise with wild horses lies within this agency. The Department does not have any employees, expertise, wild horse refuges, or other infrastructure to dedicate to wild horse management. Not only would this reassignment of authority take resources away from managing native wildlife species and transfer it to conserving wild horses, it would also result in conflicting management goals because wild horse ecological requirements compete with requirements of many native species.

NMLB calls attention to two provisions in Section 2 that may cause issues in implementation. First, subject to the provisions of law governing Spanish colonial descendants, any wild horse is to be released “at the place of capture”, without any allowance for whether that place is on private property, in a ditch or in the middle of the highway. In addition, OAG notes this provision conflicts with language in Section 5 that DGF humanely capture and relocate the horse to other public land, or to a public or private wild horse preserve, or adopt the horse out to a qualified person for private maintenance. Second, NMLB states that Section 2 provides no opportunity for the horse's owner to reclaim an animal that has not been branded, tattooed, microchipped or showing other indicia of ownership. The board reports that “This is contrary to over a century's history of allowing horse owners to reclaim their animals when they stray.”

This bill appears to attempt to address the issue concerning wild horses that has arisen since the New Mexico Court of Appeals' decision in *Wild Horse Observers Association, Inc. v. New Mexico Livestock Board* (No. 34,097, filed August 4, 2015), wherein the court held that wild horses were not "livestock" under the Livestock Code, and NMLB had no jurisdiction over them as they were not estray. NMLB notes, however, that rather than resolving the current ambiguity in existing statutory language, the different definitions of "wild horse" contained in the bill may add more uncertainty to the discussion and application of current law surrounding horses in New Mexico.

The disposition of wild horses after capture under this bill and existing law also gives rise to concern. DGF reports that although it would be required to manage some wild horse populations through the use of birth control, the National Academy of Sciences found that no highly effective, easily delivered, and affordable fertility-control methods are currently available. Injectable birth control agents are only effective for a maximum of one year, and thus would need to be repeatedly re-administered. Additionally, NMLB calls attention to the existing provisions of Section 77-18-5(C) NMSA 1978, which describes the conditions under which a wild horse herd can be put into balance with the capacity of its range. It points out:

Proper balance between a herd and its range environment is necessary to ensure appropriate health of the animals. Under current law, when adoption is not available and adequate forage is not accessible to support the current number of horses, further action to balance the herd's environment, such as humane euthanasia, is not even an option until the horses are actually starving.

Finally, OAG calls attention to what is likely an unintended consequence arising from inclusion of wild horses in the Wildlife Conservation Act. It notes that, although HB 466:

...creates an elaborate set of requirements for the disposition of horses that are "captured" and that have no indicia of ownership, it does not appear to prevent a private landowner who finds a stray horse on his or her land from killing the horse. See Section 17-2-7.2 NMSA 1978. By bringing "wild horse" within the definition of "wildlife" in the Wildlife Conservation Act, *see* HB 446, Section 1, but not offering any particular protections from "taking" (i.e. hunting or killing), the bill opens the door to the possibility that Game and Fish could create a permitting system for horse hunting. See Sections 17-2-38(L) and 17-2-42 NMSA 1978. The bill does not appear to manifest an awareness of those possible outcomes, which would likely be at odds with the purpose of the bill.

PERFORMANCE IMPLICATIONS

DFG reports HB 466 would require it divert substantial financial and human resources from planning and implementing actions that it currently relies on to meet many performance measures, including those relating to providing hunting, fishing, and trapping opportunities, improving habitat, and restoring endangered species. According to DGF, assuming jurisdiction over a new category of depredation complaints may diminish its ability to meet the performance measure of 95 percent of depredation complaints resolved within the mandated one-year timeframe.

ADMINISTRATIVE IMPLICATIONS

DFG notes it currently does not have the expertise to manage wild horses. Department staff would require a significant amount of training and education to implement the bill.

CONFLICT, RELATIONSHIP

HB 446 conflicts with CS/SB 126, HB 390 and SB 284, all of which retain NMLB's jurisdiction over wild horses. It relates to HJM 17, which requests the Conservation Services Division of DGF conduct an interim study and provide recommendations to protect, maintain and enhance wild horse herds and habitats in New Mexico to the legislature by December 2017.

TECHNICAL ISSUES

“Descendants” is misspelled on page 5, line 4.

OTHER SUBSTANTIVE ISSUES

According to the factual recitations in HJM 17:

- there are fewer than three hundred wild horses on federal and state grazing lands in New Mexico and approximately five hundred thousand cattle on public lands;
- the actual population of wild horses in the state is unknown on and off sovereign lands, but the number of horses handled as estrays by the New Mexico livestock board averaged only seventy-one horses per year, of which approximately fifty percent may be wild horses;
- two non-governmental organizations and a number of pueblos and tribes in New Mexico are trained to administer immunocontraception by darting; and
- the immunocontraceptive porcine zona pellucid has a ninety-five percent efficacy and no behavioral impacts, as it is not hormonal.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Confusion over the capture and disposition of wild horses may continue.

MD/jle