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FISCAL IMPACT REPORT

SPONSOR SCONC ORIGINAL DATE 02/20/17
 LAST UPDATED 02/24/17 HB _____

SHORT TITLE Change Livestock & Animal Definitions SB 126/SCONCS/aSJC

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	NMLB Operating Funds

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 284, HB 390 and HB 446
Relates to HJM 17

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Livestock Board (NMLB)
 Department of Game & Fish (DGF)
 New Mexico Department of Agriculture (NMDA)
 Office of the Attorney General (OAG)
 State Land Office (SLO)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Conervation Committee Substitute for Senate Bill 126 adds on pages 9 and 10 the placement in a horse rescue or retirement facility.

Synopsis of Original Substitute Bill

The Senate Conservation Committee Substitute for Senate Bill 126 amends the definition of “livestock” in two existing statutes: (1) a section concerning the disposition of animals seized on suspicion that it is endangered due to cruel treatment (Section 30-18-1.2 NMS 1978); and (2) as used in the Livestock Code, which gives the livestock board responsibility to administer laws relating to the livestock industry (Section 77-2-1.1NMSA 1978).

In each of these sections, “livestock” is defined identically. The new definition:

- Removes the qualification that animals must be domesticated and raised or used on a farm or ranch;
- Adds exotic animals in captivity;
- Includes the carcasses of animals within the definition;
- Exempts horses and asses currently managed pursuant to The Wild Free-Roaming Horses and Burros Act of 1971 and “wild horses” as defined in Section 77-18-5 NMSA 1978; and
- Also exempts feral hogs and species defined in Section 17-2-3 (which animals fall under the management authority of the DFG) except farmed cervidae.

Section 3 of CS/SB 126 also amends the definition of “wild horse” in the existing Section 77-18-5 addressing certain unclaimed horses and providing for disposition procedures under certain circumstances. Those changes:

- Remove the qualification that the horse not be stray;
- Clarify that the horse does not have obvious brands or evidence of private ownership;
- Require the board to determine the horse originates from public or federal land or is part of or descended from a herd that lives on or originates from a public herd; and
- Exclude horses that are subject to the jurisdiction of the federal government pursuant to the federal Wild Free-Roaming Horses and Burros Act.

New language expands NMLB’s duties to require it relocate wild horses that are captured on private land to public or private wild horse preserves, allow wild horses to be adopted by qualified persons for private maintenance after paying an adoption fee, or humanely euthanized by a licensed veterinarian if these specified options are not available or if the horse is crippled or otherwise unhealthy as determined by a licensed veterinarian.

As to wild horses on state public land, the board also may ask New Mexico State University’s Range Improvement Task Force (RITF) to evaluate the viability of wild horse herds. If required, the board may control those populations through birth control measures or by relocation, adoption or humane euthanization upon a veterinarian’s determination that a wild horse is crippled or otherwise unhealthy.

RITF must submit annual reports to the legislature of evaluations completed and the overall status of the New Mexico range.

FISCAL IMPLICATIONS

NMLB anticipates additional costs arising from euthanasia procedures it may be responsible for under this bill, due to its expanded jurisdiction over wild horses captured on private land.

SIGNIFICANT ISSUES

This bill appears to attempt to address an issue concerning wild horses that has arisen under existing law. NMLB provides this background:

The New Mexico Court of Appeals decision in *Wild Horse Observers Association, Inc. v.*

the New Mexico Livestock Board (No. 34,097, filed August 4, 2015) concluded that “livestock” does not include “undomesticated, unowned animals,” therefore, “undomesticated, unowned horses may not be ‘estrays.’” In effect, the Court held that if a horse was proven, as a matter of fact based on evidence presented to a trial court, to be unowned and “undomesticated,” it is not to be considered “livestock”. Accordingly, the NMLB would have no jurisdiction over those particular horses, and would not be allowed to impound them for sale under the estray statutes.

The resulting predicament of the NMLB includes a potential lawsuit every time the NMLB responds to a call for service of any citizen requesting the NMLB to take possession of animals trespassing on their land (which happens quite often). If the animals are not considered “livestock,” then the NMLB would not have jurisdiction to impound the animals; thereby leaving private landowners without the relief they have enjoyed for decades under the estray statutes of the Livestock Code.

In analyzing the changes to existing law made in this bill, OAG asserts that it addresses the treatment of wild horses found on private as well as public lands, providing for the legal disposition of herds of wild horses addressed in the *Wild Horse Observers* opinion.

On the other hand, NMLB, after first noting that the existing definition of “wild horse” is problematic because it is limited to those horses on public land, goes on to point out that the new definition in Section 3 would open up the designation to any unclaimed horses that the Livestock Board determines have originated from “public land or federal land or to be part of or descended from a herd that lives on or originates from public land.” The board expresses concern that this definition substantially expands the definition of “wild horse” in New Mexico, which may lead to new issues and problems that the courts would have to address, rather than eliminating confusing language in existing statute.

NMLB also calls attention to new language in Section 3(F) linking the term “adoption” in that section to its usage under a federal law. It believes that creates more potential confusion given that the federal government controls that term (which is not expressly defined in the federal law), or its application under federal regulations.

CONFLICT, RELATIONSHIP

CS/SB 126 conflicts with SB 284, which requires a different procedure for NMLB to follow for horses that trespass onto private land. It also conflicts with HB 446, which transfers jurisdiction over wild horses from NMLB to DGF, as well as HB 390, which maintains NMLB jurisdiction over “equines” and provides a registered equine rescue or retirement facility with a right of first refusal to purchase estray, cruelly treated or trespassing equines. It relates to HJM 17, which requests the Conservation 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.

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.

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