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HOUSE BILL 445

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Joanne J. Ferrary

AN ACT

RELATING TO WILD HORSES; ENACTING THE WILD HORSE PROTECTION AND HABITAT ACT; CREATING THE NEW MEXICO EQUINE BOARD; PROVIDING POWERS AND DUTIES; CREATING A FUND; PROHIBITING CERTAIN ACTS; ESTABLISHING CRIMINAL PENALTIES; REQUIRING PROPERTY OWNERS TO FENCE OUT WILD HORSES; REMOVING WILD HORSES FROM THE DEFINITION OF "LIVESTOCK"; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Wild Horse Protection and Habitat Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Wild Horse Protection and Habitat Act:

- A. "board" means the New Mexico equine board;
- B. "director" means the director of the board;

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1 C. "dumped" means abandonment of an animal by the
2 person who has custody or control of the animal;

3 D. "fund" means the wild horse protection and
4 habitat fund;

5 E. "public land" means land controlled or
6 supervised by an agency of the state government or its
7 political subdivisions but does not mean state trust land
8 controlled by the state land office;

9 F. "range" means the amount of land necessary to
10 sustain a herd of wild horses, which range does not exceed its
11 known territorial limits; and

12 G. "wild horse" means an unclaimed and unbranded
13 horse that is not an estray.

14 SECTION 3. [NEW MATERIAL] NEW MEXICO EQUINE BOARD--
15 CREATED--COMPOSITION--QUALIFICATIONS--TERMS--MEETINGS.--

16 A. The "New Mexico equine board" is created to
17 manage the wild horses of the state. The board is
18 administratively attached to the energy, minerals and natural
19 resources department.

20 B. The board shall be composed of nine members
21 appointed by the governor. The members shall be knowledgeable
22 specifically with regard to wild horses and shall not have
23 interests that conflict with the interests of wild horses. The
24 board shall be nonpartisan, with no more than four members
25 being members of the same political party, and wild horse

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1 knowledge among the members shall be prioritized.

2 C. The term of office of each member of the board
3 shall be six years; provided that of the members of the board
4 to be appointed after the enactment of the Wild Horse
5 Protection and Habitat Act, two shall be appointed for a term
6 of two years, two for a term of four years and three for a term
7 of six years and, upon the expiration of the terms of the
8 appointments, the successors shall be appointed for a full term
9 of six years.

10 D. A member shall hold office until the member's
11 successor is appointed and qualified. A member appointed to
12 fill a vacancy shall serve for remainder of the term for which
13 the member was appointed.

14 E. The board shall elect from its members a chair,
15 vice chair and secretary.

16 F. The board shall hold two regular meetings each
17 year, one in June and the other in December. Special meetings
18 may be called by the chair, by the vice chair in the event that
19 the chair is absent from the state or because the chair is
20 physically incapacitated or by a majority of the members of the
21 board.

22 G. The members of the board are entitled to receive
23 per diem and mileage as provided in the Per Diem and Mileage
24 Act and shall receive no other compensation, perquisite or
25 allowance.

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1 SECTION 4. ~~[NEW MATERIAL]~~ NEW MEXICO EQUINE BOARD--

2 DUTIES.--The board shall:

3 A. exercise general regulatory supervision over the
4 wild horses of this state to protect them from theft,
5 overpopulation and disease;

6 B. promulgate humane handling, loading, hauling and
7 on-range movement rules for wild horses;

8 C. every two years, conduct a census of each wild
9 horse herd in the state and develop best practices for
10 conducting a census of wild horse populations;

11 D. proactively perform range improvement treatments
12 in coordination with the New Mexico state university range
13 improvement task force, the cooperative extension service or
14 soil and water conservation districts;

15 E. proactively manage wild horse herds;

16 F. create educational materials, including wild
17 horse safety educational materials, and develop programs to
18 educate the public about wild horses;

19 G. create wild horse tourism maps for sale and
20 equine tourism brochures for distribution to the tourism
21 department;

22 H. develop a cooperative fencing program to provide
23 assistance with the building of fences in cases of economic
24 hardship;

25 I. develop a process and procedure for determining

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1 the status of an equine as wild or dumped and work with the New
2 Mexico livestock board to end horse dumping;

3 J. work with agencies serving veterans to develop
4 and promote opportunities for employment and volunteering
5 involving wild horses;

6 K. secure funding grants and work in conjunction
7 with the tourism department to develop revenue streams for wild
8 horse management in the state;

9 L. work with the department of transportation and
10 county highway departments on safety improvement projects in
11 areas where wild horses are present;

12 M. work with county animal control departments
13 where wild horses are present;

14 N. work with the department of game and fish, as
15 needed, on range and population management;

16 O. coordinate with the New Mexico livestock board
17 on disease control;

18 P. work with fire marshals to develop or capitalize
19 on fire reduction due to wild horse grazing;

20 Q. work in conjunction with the economic
21 development department to develop rural jobs relating to wild
22 horses; and

23 R. as needed, work and coordinate with state,
24 federal or tribal entities to carry out the Wild Horse
25 Protection and Habitat Act.

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1 SECTION 5. [NEW MATERIAL] NEW MEXICO EQUINE BOARD--

2 POWERS.--The board may:

3 A. appoint and fix the salary of a director who
4 shall file an oath and be bonded in an amount fixed by the
5 board. The director shall manage the affairs of the board
6 under the direction of the board. The director shall be chosen
7 solely on qualifications and fitness for the office;

8 B. employ two wild horse specialists, equine
9 inspectors and other personnel necessary to assist the board in
10 carrying out its duties pursuant to the Wild Horse Protection
11 and Habitat Act. Equine inspectors shall have the same powers
12 as any other peace officer in the enforcement of the Wild Horse
13 Protection and Habitat Act;

14 C. employ an equine veterinarian with wild equine
15 and equine genetic expertise to assist the board in carrying
16 out the Wild Horse Protection and Habitat Act;

17 D. provide office space and purchase equipment,
18 including drones, horse trailers, trucks, wildlife cameras,
19 mobile panels, contraceptives or darts and dart guns for
20 census, fence building, wild horse inspections, investigations
21 and population and habitat management;

22 E. establish wild equine districts within the state
23 to facilitate the implementation of the Wild Horse Protection
24 and Habitat Act and address unique issues with wild horse
25 management that may exist within particular areas of the state;

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1 F. enter into contracts for research into habitat
2 and range improvement and management;

3 G. set fees or charges, not to exceed one hundred
4 dollars (\$100) per instance, for any services rendered by the
5 board or its employees that are deemed necessary by the board
6 and for which no fee has been set by statute;

7 H. hold hearings and subpoena witnesses for the
8 purpose of investigating or enforcing the Wild Horse Protection
9 and Habitat Act or rules established pursuant to that act;

10 I. enter into joint powers agreements with Indian
11 nations, tribes or pueblos to carry out the provisions of the
12 Wild Horse Protection and Habitat Act;

13 J. use the office of the attorney general or hire
14 an attorney to give advice and counsel in regard to any matter
15 connected with the duties of the board, to represent the board
16 in any legal proceedings and to aid in the enforcement of the
17 laws related to wild horses. The office of the attorney
18 general shall not charge the board for legal services; and

19 K. adopt and promulgate rules to carry out the
20 purposes of the Wild Horse Protection and Habitat Act.

21 SECTION 6. [NEW MATERIAL] HERD MANAGEMENT.--

22 A. If the board determines that a wild horse herd
23 is nearing or exceeds the number of horses that is necessary
24 for preserving the genetic stock of the herd and for preserving
25 and maintaining the range, it may proactively cause control of

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1 the wild horse population through the use of birth control and
2 may as a last resort cause excess horses to be:

3 (1) humanely captured and relocated to other
4 public land or to a public or private wild horse preserve;

5 (2) adopted by a qualified person for private
6 maintenance subject to an adoption contract that does not allow
7 the horse to be used for human consumption and requires the
8 person to care for the horse for the entirety of the horse's
9 life; or

10 (3) euthanized; provided that this option
11 applies only to wild horses that are determined by an equine
12 veterinarian to be crippled or otherwise unhealthy.

13 B. A wild horse that is captured under the
14 authority of the board shall have its conformation, history and
15 deoxyribonucleic acid tested for the purpose of genetic
16 viability and tourism data and it shall be returned to the
17 general area it was captured, relocated to a public wild horse
18 preserve or put up for adoption by the board.

19 SECTION 7. [NEW MATERIAL] FEES.--

20 A. Fees for services, not to exceed one hundred
21 dollars (\$100) per instance, shall be fixed by the board for
22 services rendered pursuant to the provisions of the Wild Horse
23 Protection and Habitat Act, including:

24 (1) a fee for fencing, not to exceed the
25 actual costs of materials and installation;

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1 (2) a fee for training wild horses, if the
2 wild horses are to be adopted;

3 (3) a fee to provide training to other
4 agencies and the public;

5 (4) a wild horse adoption fee;

6 (5) a fee for range improvement and
7 management, including re-seeding properties with native
8 grasses, weed control using goats or nontoxic applications or
9 other improvement techniques;

10 (6) a fee for the sale of equine tourism maps;
11 and

12 (7) fees for other services provided to the
13 public in the discretion of the board.

14 B. All fees and charges collected pursuant to the
15 provisions of the Wild Horse Protection and Habitat Act shall
16 be paid to the director of the board to be deposited in the
17 fund.

18 C. Revenue derived from the sale of equine tourism
19 maps shall be deposited in the fund and used for wild horse
20 population management.

21 SECTION 8. [NEW MATERIAL] WILD HORSE PROTECTION AND
22 HABITAT FUND--CREATED.--The "wild horse protection and habitat
23 fund" is created in the state treasury. The fund consists of
24 appropriations, gifts, grants, donations, fees and other
25 revenue collected pursuant to the Wild Horse Protection and

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1 Habitat Act. Money in the fund at the end of a fiscal year
2 shall not revert to any other fund. The board shall administer
3 the fund, and money in the fund is appropriated to the board to
4 carry out the Wild Horse Protection and Habitat Act.
5 Disbursements from the fund shall be made by warrant of the
6 secretary of finance and administration pursuant to vouchers
7 signed by the director or the director's authorized
8 representative.

9 SECTION 9. [NEW MATERIAL] NEW MEXICO EQUINE BOARD--
10 REPORTS--RECORDS.--

11 A. During the first week in December each year, the
12 board shall transmit to the secretary of energy, minerals and
13 natural resources a report of its activities for the previous
14 calendar year. The report shall contain a detailed account of
15 all of the receipts and expenditures of money by the board,
16 together with other facts relating to wild horses in New Mexico
17 that may be of public interest. The report shall be
18 transmitted by the secretary to the governor and the
19 legislature.

20 B. The board shall maintain a record of all wild
21 horse herds to facilitate herd management as well as tourism,
22 where allowable, and the reports of its veterinarians and
23 inspectors.

24 C. Records required to be kept by the director,
25 including inspector reports, shall be maintained by the board

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1 in a readily available manner, and a certified copy of a record
2 maintained by the director or the verified oath of an inspector
3 shall be prima facie evidence in all courts of this state of
4 the truth of any fact stated in the record.

5 SECTION 10. [NEW MATERIAL] PROSECUTION--AUTHORITY OF THE
6 BOARD AND INSPECTORS.--

7 A. The board shall assist in the prosecution of
8 persons charged with the violation of laws involving or
9 impacting wild horses and may call upon a peace officer to
10 execute its orders, and when it does, the peace officer shall
11 obey the order of the board.

12 B. Wild horse inspectors may arrest persons found
13 in the act or whom they have probable cause to believe to be
14 guilty of driving, holding or slaughtering wild horses or of
15 violating any laws related to wild horses.

16 SECTION 11. [NEW MATERIAL] PROHIBITED ACTS--FREE ROAMING
17 HORSES.--An owner of an equine shall not allow an equine to
18 graze or roam unattended outside of fenced private property.

19 SECTION 12. [NEW MATERIAL] PROHIBITED ACTS--DRIVING,
20 HOLDING OR KILLING WILD HORSES.--It is unlawful for a person,
21 without legal justification, to drive, hold or kill a wild
22 horse, or to otherwise remove, or entice a wild horse to move,
23 from the wild horse's natural habitat.

24 SECTION 13. [NEW MATERIAL] CRIMINAL PENALTY.--A person
25 who violates the Wild Horse Protection and Habitat Act or a

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1 rule adopted by the board for the protection of wild horses,
2 unless the penalty has been fixed by law, is guilty of a
3 misdemeanor and upon conviction shall be sentenced in
4 accordance with the provisions of Section 31-19-1 NMSA 1978.

5 SECTION 14. Section 30-18-1 NMSA 1978 (being Laws 1999,
6 Chapter 107, Section 1, as amended) is amended to read:

7 "30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO
8 ANIMALS--PENALTIES--EXCEPTIONS.--

9 A. As used in this section, "animal" includes wild
10 horses, as defined in the Wild Horse Protection and Habitat
11 Act, and does not include insects or reptiles.

12 B. Cruelty to animals consists of a person:

13 (1) negligently mistreating, injuring, killing
14 without lawful justification or tormenting an animal; or

15 (2) abandoning or failing to provide necessary
16 sustenance to an animal under that person's custody or control.

17 C. As used in Subsection B of this section, "lawful
18 justification" means:

19 (1) humanely destroying a sick or injured
20 animal; or

21 (2) protecting a person or animal from death
22 or injury due to an attack by another animal.

23 D. Whoever commits cruelty to animals is guilty of
24 a misdemeanor and shall be sentenced pursuant to the provisions
25 of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent

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1 conviction for committing cruelty to animals, the offender is
2 guilty of a fourth degree felony and shall be sentenced
3 pursuant to the provisions of Section 31-18-15 NMSA 1978.

4 E. Extreme cruelty to animals consists of a person:

5 (1) intentionally or maliciously torturing,
6 mutilating, injuring or poisoning an animal; or

7 (2) maliciously killing an animal.

8 F. Whoever commits extreme cruelty to animals is
9 guilty of a fourth degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA 1978.

11 G. The court may order a person convicted for
12 committing cruelty to animals to participate in an animal
13 cruelty prevention program or an animal cruelty education
14 program. The court may also order a person convicted for
15 committing cruelty to animals or extreme cruelty to animals to
16 obtain psychological counseling for treatment of a mental
17 health disorder if, in the court's judgment, the mental health
18 disorder contributed to the commission of the criminal offense.
19 The offender shall bear the expense of participating in an
20 animal cruelty prevention program, animal cruelty education
21 program or psychological counseling ordered by the court.

22 H. If a child is adjudicated of cruelty to animals,
23 the court shall order an assessment and any necessary
24 psychological counseling or treatment of the child.

25 I. The provisions of this section do not apply to:

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1 (1) fishing, hunting, falconry, taking and
2 trapping, as provided in Chapter 17 NMSA 1978;

3 (2) the practice of veterinary medicine, as
4 provided in Chapter 61, Article 14 NMSA 1978;

5 (3) rodent or pest control, as provided in
6 Chapter 77, Article 15 NMSA 1978;

7 (4) the treatment of livestock and other
8 animals used on farms and ranches for the production of food,
9 fiber or other agricultural products, when the treatment is in
10 accordance with commonly accepted agricultural animal husbandry
11 practices;

12 (5) the use of commonly accepted Mexican and
13 American rodeo practices, unless otherwise prohibited by law;

14 (6) research facilities licensed pursuant to
15 the provisions of 7 U.S.C. Section 2136, except when knowingly
16 operating outside provisions, governing the treatment of
17 animals, of a research or maintenance protocol approved by the
18 institutional animal care and use committee of the facility; or

19 (7) other similar activities not otherwise
20 prohibited by law.

21 J. If there is a dispute as to what constitutes
22 commonly accepted agricultural animal husbandry practices or
23 commonly accepted rodeo practices, the New Mexico livestock
24 board shall hold a hearing to determine if the practice in
25 question is a commonly accepted agricultural animal husbandry

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1 practice or commonly accepted rodeo practice."

2 SECTION 15. Section 30-18-1.2 NMSA 1978 (being Laws 1999,
3 Chapter 107, Section 3, as amended) is amended to read:

4 "30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

5 A. If the court finds that a seized animal is not
6 being cruelly treated and that the animal's owner is able to
7 provide for the animal adequately, the court shall return the
8 animal to its owner.

9 B. If the court finds that a seized animal is being
10 cruelly treated or that the animal's owner is unable to provide
11 for the animal adequately, the court shall hold a hearing to
12 determine the disposition of the animal.

13 C. An agent of the New Mexico livestock board, an
14 animal control agency operated by the state, a county or a
15 municipality, or an animal shelter or other animal welfare
16 organization designated by an animal control agency or an
17 animal shelter, in the custody of which an animal that has been
18 cruelly treated has been placed may petition the court to
19 request that the animal's owner may be ordered to post security
20 with the court to indemnify the costs incurred to care and
21 provide for the seized animal pending the disposition of any
22 criminal charges of committing cruelty to animals pending
23 against the animal's owner.

24 D. The court shall determine the amount of security
25 while taking into consideration all of the circumstances of the

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1 case, including the owner's ability to pay, and may conduct
2 periodic reviews of its order. If the posting of security is
3 ordered, the animal control agency, animal shelter or animal
4 welfare organization may, with permission of the court, draw
5 from the security to indemnify the costs incurred to care and
6 provide for the seized animal pending disposition of the
7 criminal charges.

8 E. If the owner of the animal does not post
9 security within fifteen days after the issuance of the order,
10 or if, after reasonable and diligent attempts the owner cannot
11 be located, the animal may be deemed abandoned and relinquished
12 to the animal control agency, animal shelter or animal welfare
13 organization for adoption or humane destruction; provided that
14 if the animal is livestock other than poultry associated with
15 cockfighting, the animal may be sold pursuant to the procedures
16 set forth in Section 77-18-2 NMSA 1978.

17 F. Nothing in this section shall prohibit an owner
18 from voluntarily relinquishing an animal to an animal control
19 agency or shelter in lieu of posting security. A voluntary
20 relinquishment shall not preclude further prosecution of any
21 criminal charges alleging that the owner has committed felony
22 cruelty to animals.

23 G. Upon conviction, the court shall place the
24 animal with an animal shelter or animal welfare organization
25 for placement or for humane destruction.

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1 H. As used in this section, "livestock" means all
2 domestic or domesticated animals that are used or raised on a
3 farm or ranch and exotic animals in captivity and includes
4 horses, asses, mules, cattle, sheep, goats, swine, bison,
5 poultry, ostriches, emus, rheas, camelids and farmed cervidae
6 but does not include wild horses, as defined in the Wild Horse
7 Protection and Habitat Act, or canine or feline animals."

8 SECTION 16. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
9 Chapter 248, Section 2, as amended) is amended to read:

10 "77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

11 A. "animals" or "livestock" means all domestic or
12 domesticated animals that are used or raised on a farm or
13 ranch, including the carcasses thereof, and exotic animals in
14 captivity and includes horses, asses, mules, cattle, sheep,
15 goats, swine, bison, poultry, ostriches, emus, rheas, camelids
16 and farmed cervidae upon any land in New Mexico. "Animals" or
17 "livestock" does not include wild horses, as defined in the
18 Wild Horse Protection and Habitat Act, or canine or feline
19 animals;

20 B. "bill of sale" means an instrument in
21 substantially the form specified in The Livestock Code by which
22 the owner or the owner's authorized agent transfers to the
23 buyer the title to animals described in the bill of sale;

24 C. "bison" or "buffalo" means a bovine animal of
25 the species bison;

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1 D. "board" means the New Mexico livestock board;

2 E. "bond" means cash or an insurance agreement from
3 a New Mexico licensed surety or insurance corporation pledging
4 surety for financial loss caused to another, including
5 certificate of deposit, letter of credit or other surety as may
6 be approved by the grain inspection, packers and stockyards
7 administration of the United States department of agriculture
8 or the board;

9 F. "brand" means a symbol or device in a form
10 approved by and recorded with the board as may be sufficient to
11 readily distinguish livestock should they become intermixed
12 with other livestock;

13 G. "brand inspector" means an inspector who is not
14 certified as a peace officer;

15 H. "carcasses" means dead or dressed bodies of
16 livestock or parts thereof;

17 I. "cattle" means animals of the genus bos,
18 including dairy cattle, and does not include any other kind of
19 livestock;

20 J. "dairy cattle" means animals of the genus bos
21 raised not for consumption but for dairy products and
22 distinguished from meat breed cattle;

23 K. "director" means the executive director of the
24 board;

25 L. "disease" means a communicable, infectious or

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1 contagious disease;

2 M. "district" means a livestock inspection
3 district;

4 N. "estrays" means livestock found running at large
5 upon public or private lands, either fenced or unfenced, whose
6 owner is unknown, or that is branded with a brand that is not
7 on record in the office of the board or is a freshly branded or
8 marked offspring not with its branded or marked mother, unless
9 other proof of ownership is produced;

10 O. "inspector" means a livestock or brand
11 inspector;

12 P. "livestock inspector" means a certified
13 inspector who is granted full law enforcement powers for
14 enforcement of The Livestock Code and other criminal laws
15 relating to livestock;

16 Q. "mark" means an ear tag or ownership mark that
17 is not a brand;

18 R. "meat" means the edible flesh of poultry, birds
19 or animals sold for human consumption and includes livestock,
20 poultry and livestock and poultry products;

21 S. "mule" means a hybrid resulting from the cross
22 of a horse and an ass; and

23 T. "person" means an individual, firm, partnership,
24 association, corporation or similar legal entity."

25 SECTION 17. Section 77-16-1 NMSA 1978 (being Laws 1909,
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1 Chapter 70, Section 1, as amended) is amended to read:

2 "77-16-1. FENCES--WHEN REQUIRED.--~~[Section 1.]~~ Every
3 gardener, farmer, planter or other person having lands or crops
4 that would be injured by trespassing animals or wild horses, as
5 defined in the Wild Horse Protection and Habitat Act, shall
6 make a sufficient fence about ~~[his]~~ the land in cultivation or
7 other lands that may be so injured, the same to correspond with
8 the requirements of the laws of this state prescribing and
9 defining a legal fence."

10 SECTION 18. APPROPRIATION.--Three hundred thousand
11 dollars (\$300,000) is appropriated from the general fund to the
12 New Mexico equine board for expenditure in fiscal year 2020 to
13 carry out the Wild Horse Protection and Habitat Act. Any
14 unexpended or unencumbered balance remaining at the end of
15 fiscal year 2020 shall revert to the general fund.

16 SECTION 19. REPEAL.--Section 77-18-5 NMSA 1978 (being
17 Laws 2007, Chapter 216, Section 1) is repealed.