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## F I S C A L   I M P A C T   R E P O R T

SPONSOR HJC ORIGINAL DATE 2/1/19 LAST UPDATED 3/1/19 HB 366/HJCS  
SHORT TITLE Wildlife Protection & Public Safety Act SB \_\_\_\_\_  
ANALYST Fischer

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 203

Conflicts with Senate Bill 390

### SOURCES OF INFORMATION

LFC Files

U.S. Department of Agriculture's Wildlife Services

#### Responses Received From

New Mexico Department of Agriculture (NMDA)

State Land Office (SLO)

Department of Game and Fish (DGF)

New Mexico Attorney General (NMAG)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 366 (HB366) creates the Wildlife Protection and Public Safety Act. The bill makes it unlawful for a person or government entity to use a trap, snare, or wildlife poison on public land. It establishes a variety of exceptions with specific requirements. The bill also provides for petty misdemeanor penalties and holds a person convicted of violation of the Wildlife Protection and Public Safety Act liable for civil action for damages related to violation of the Act.

### FISCAL IMPLICATIONS

No responding agencies reported any direct fiscal implications. It is likely district attorneys and the judiciary would incur costs proportional to the enforcement of the provisions of the bill. The provisions for restitution to agencies in Section 5. of the bill may offset some or all of these costs.

## **SIGNIFICANT ISSUES**

Under HB366 it is unlawful for a person or government entity to use a trap, snare, or wildlife poison on public lands. Public lands are defined as land owned by a government entity, not including physical structures or land belonging to or held in trust for an Indian Nation, Tribe, or Pueblo.

The bill includes exceptions to the restrictions on using traps, snares, and poisons on public lands, specifically for:

- Taking of wildlife with firearms, fishing equipment, archery equipment, falconry equipment, or other implements in hand as authorized by law;
- The control of mice, rats, pack rats, gophers, prairie dogs, moles, voles or rock squirrels;
- The taking of birds or fish;
- A government entity acting in the course of its official duties to prevent or mitigate threats to human health and safety;
- DGF, the U.S. Fish and Wildlife Service, or a state conservancy district acting in the course of its official duties related to ecosystem management;
- Bona fide scientific research;
- Depredation trapping by a designated DGF agent using cage traps, but not wildlife poisons, lethal body-gripping traps, or snares designed to cause strangulation;
- The use of cage traps
  - by an owner of property, crops, or livestock lawfully situated on public land for the lawful capture of offending wildlife, feral animals, or domestic animals to abate actual damages caused to property, crops or livestock;
  - by an owner of a domestic animal to recover that animal;
  - for trap-neuter-return programs for feral animals;
  - by an animal control agency, animal shelter, or animal welfare organization to capture feral or domestic animals;
- Enrolled members of a federally recognized Indian nation, tribe or pueblo for religious or ceremonial purposes.

NMDA stated that HB366 would only allow for the use of cage traps for control of coyotes and that cage traps are not generally successful in capturing and controlling coyotes. HB366 does allow for control of coyotes on public land with firearms.

DGF stated that USDA Wildlife Services regularly conducts depredation trapping on public lands for livestock protection. Since HB366 would limit non-DGF staff to the use of cage traps, DGF's responsibilities for depredation trapping (and its associated costs) may increase.

Several agencies noted that HB366 raises potential concerns with state authority over lands owned by the federal government. A February 2018 report by the Congressional Research Service (<http://tiny.cc/i5gv2y>) noted that while state authority to regulate hunting on federal lands does not supersede federal law, for the most part, states have the right and responsibility to manage hunting and fishing on federal lands when not in conflict with federal law.

Statutes authorizing federal land management agency activities often clarify that [federal] agencies shall not impede upon state authority to manage fish and wildlife where it is not in conflict with federal law, and align federal management with state fish and wildlife laws and management to the maximum extent practicable.

USDA's Wildlife Services illustrates this type of deference to state management of wildlife in two recent environmental assessments of their work in Colorado and Arizona – states that both have broad restrictions on using traps, poisons, and snares on public land. In Colorado:

“Unless Amendment 14 [Colorado’s constitutional ban on trapping] is revoked or modified, or the State otherwise provides an interpretation that it is inapplicable to Federal programs and actions, Wildlife Services-Colorado will continue to abide by Amendment 14 in accordance with Wildlife Service’s policy of abiding by State and local laws.” (<http://tiny.cc/53gv2y>)

In Arizona:

“With the passage of Proposition 201 in Arizona, the use of foothold traps, snares, and pesticides is limited only to private and tribal lands in the state [...] Thus, the only methods available that Wildlife Services-Arizona can use in predator damage management actions for livestock or wildlife protection on U.S. Forest Service and Bureau of Land Management lands in the state are nonlethal methods, aerial shooting, and ground-based shooting with the exception of foot-hold traps for Mexican wolves and tools for predator damage management for human health and safety, wildlife disease surveillance, scientific research, and wildlife relocation.” (<http://tiny.cc/i4gv2y>)

## **ADMINISTRATIVE IMPLICATIONS**

As drafted, HB366 may exempt a government entity that violates the Wildlife Protection and Public Safety Act from penalties. The AG stated that

[a]lthough the bill’s prohibitions against the use of traps, snares, and poisons on public land explicitly extends to their use by government entities, the penalties set forth by the bill only apply to individuals. (Only “a person” is subject to criminal penalties, and only “a person” who is convicted criminally is subject to civil penalties.) As a result, as drafted, no penalties are applicable to a government entity that violates the Wildlife Protection and Public Safety Act. [...] Even an individual employee of a government entity would probably not be subject to civil or criminal penalties because the bill defines “government entity” to include an employee acting in the course of his or her official duties.

DGF would be required to assist the State Game Commission in amending applicable rules, such as the New Mexico Hunter and Trapper Reporting System Rule, 19.30.10 NMAC, and the Trapping and Furbearer Rule, 19.32.2 NMAC, and make the necessary changes to internal policies governing trapping and translocation of wildlife and the Hunting Rules and Information Booklet.

DGF stated that the exemption for religious or ceremonial trapping by enrolled members of a federally recognized Indian nation, tribe or pueblo would place the onus of authentication of an individual’s ethnicity and their motivation the department.

The SLO stated they issued an easement to the state game commission which permits licensed hunters, trappers, and anglers to come onto state trust lands to engage in the regulated harvest of protected species. The easement is effective until March 31, 2020, and HB366 would prohibit

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certain activities currently permissible under the game commission easement. The SLO reports they are currently in the early stages of discussions with the state game commission regarding the terms and conditions of an easement that would go into effect upon the expiration of the current easement.

**RELATIONSHIP**

Relates to Senate Bill 203, which generally would rename the Department of Game and Fish as the “Wildlife Department.”

Conflicts with Senate Bill 390, which proposes to amend Chapter 17, Article 5 (pertaining to the trapping of fur-bearing animals) so that the State Game Comision “may develop separate rules for public and private lands,” and shall consider limiting the types of traps allowed or area closures for trapping.

Relates to Senate Bill 417, which proposes to modify Section 17-1-1 and Section 17-2-2 to clarify the purpose of the State Game Commission.

MF/gb