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

SPONSOR Steinborn/Small ORIGINAL DATE 02/15/21
LAST UPDATED _____ HB _____
SHORT TITLE Game & Fish & Wildlife Changes SB 312
ANALYST Wan _____

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|-----------|---------------------------|---------------|
| FY21 | FY22 | | |
| | \$2,000.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|-------|------|-----------|------|-------------------|---------------------------|----------------------|
| Total | NFI | \$2,000.0 | NFI | \$2,000.0 | Nonrecurring | Game Protection Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)
State Land Office (SLO)

SUMMARY

Synopsis of Bill

Senate Bill 312 renames the Department of Game and Fish (DGF) the “Department of Wildlife Conservation” and renames the State Game Commission the “State Wildlife Conservation Commission.” The bill amends all statutory references to the department and commission to reflect the name changes. The bill further transfers all functions, personnel, money, appropriations, records, property, and contractual obligations of both the department and the commission to the renamed entities. Additionally, SB312 changes the majority, but not all, references to “game” in Chapter 17 NMSA 1978 to “wildlife.”

Section 14 of SB312 amends Section 17-1-1 NMSA 1978 to redefine the policy of the State Game

Commission to be:

“to provide for the conservation and management of the state's wildlife as a public trust resource with intrinsic and ecological value, for the benefit, use, enjoyment, and food supply of all New Mexicans, including future generations, regardless of wealth, privilege, or land ownership.”

Section 39 of the bill amends Section 17-1-26 NMSA 1978, which governs the State Game Commission's rulemaking authority. New material would allow the commission to promulgate rules for any species of wildlife as provided by a proposed amended Section 17-2-2 NMSA 1978, which would let the commission determine which wildlife species should be protected in the state by commission rule or policy. Additionally, this section would allow the commission to determine if a protected wildlife species could be released, bartered, imported, or exported from the state.

Section 39 further changes the factors the commission must take into account when creating rules for protected species from “the zones of temperatures, and … the distribution, abundance, economic value and breeding habits of such game animals, birds and fish” to “species' population size and trends, habitat availability, migration and hibernation, response to near- and long-term changes in climate conditions, and conservation actions necessary to sustain healthy populations.”

Section 43 repeals Section 17-2-2 NMSA 1978, “game to be protected,” and replaces it with “wildlife to be protected.” Under this current statute, the commission's authority is limited to the protection and regulation of hunting, taking, capturing, killing, or possessing or attempting to hunt, take, capture, or kill species specifically named in Chapter 17 NMSA 1978. The new language proposed in Section 43 would authorize the commission by rule or policy to extend protection to any wildlife species and would not require DGF to respond to or mitigate property damage caused by wildlife unless the commission adopts a policy or rule to do so or as otherwise provided by law.

Section 43 defines “wildlife” as used in Section 17-2-2 NMSA 1978 as “a living animal, or any part, egg, spawn, offspring, shed antlers or horns, or the dead body or parts thereof, of any nondomestic mammal, bird, reptile, amphibian, fish, or invertebrate species.” This definition of wildlife also replaces the one in Section 17-2-38 NMSA 1978 and used throughout the Wildlife Conservation Act.

Section 43 identifies three criteria the commission shall consider when determining whether and how to protect a species of wildlife: (1) whether a species qualifies as a species of greatest conservation need pursuant to criteria set forth in Section 147 of the bill; (2) the science-based reasons for protection of a species; and (3) the rules and management programs that would potentially accompany protected status.

Section 50, amends Section 17-2-7.2 NMSA 1978 removing the ability of a landowner or lessee to kill an animal on private property that poses an immediate threat of damage to property, including crops. The amended section would allow a landowner or lessee to kill an animal on private land that has damaged or presents a threat of damage to property, including crops, in accordance with commission rules. Section 50 stipulates that commission rules adopted regarding the ability of a landowner or lessee to kill an animal that has damaged or presents a threat to property shall provide when, whether, and by what manner and method a species can be killed in order to mitigate damage.

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Additionally, Section 50 removes the ability of a landowner or lessee to kill an animal believed to be responsible for property damage if interventions provided by DGF have not been successful within a year.

Section 51 of the bill amends Section 17-2-8 NMSA 1978, regarding the unlawful taking of big game and waste of game. It adds bear, cougar, and javelina to the species of fish and game that must be removed from the field and used for human consumption. Additionally, a person who wounds or may have wounded any game mammal must make a reasonable attempt to track and reduce to possession the wounded game, including bear, cougar, and javelina. These species are added to the existing list of animals for which it is a fourth degree felony to kill without a license or out of season and remove only the head and not the edible portions.

Section 78, amends Section 17-2-39 NMSA 1978 to state that funding “shall,” rather than “should,” be made available to the department by annual appropriations from the general fund or other sources separate from the game protection fund for the purpose of managing threatened and endangered species.

Section 90 amends the nonresident, elk bull or either sex license fee from \$525 to \$700 in Section 17-3-13 NMSA 1978.

Section 93 amends 17-3-13.4 NMSA 1978 to allow expenditure of funds from the big game depredation damage fund for administrative costs.

Section 100, removes the provision of Section 17-3-16 NMSA 1978 that specifies 10 percent of draw licenses shall be set aside for residents and nonresidents who contract with an outfitter. Section 100 also increases the minimum percentage of licenses that must issue to residents of New Mexico from 84 percent to of 90 percent.

Section 147 of the bill creates a new section of Chapter 17 NMSA 1978 to define species of greatest conservation need, as used in the state wildlife action plan, to mean a species residing in New Mexico and subject to one or more of the following factors:

- Species that have experienced substantial long term declines in habitat or numbers, known as declining species;
- Species in which some aspect of their life history and ecology makes them disproportionately susceptible to decline within the next 10 years, including concentration to small areas during migration or hibernation, low reproductive rates, susceptibility to disease, inability to respond to changing climate conditions, habitat loss, wildfire and overexploitation for anthropogenic purposes, known as vulnerable species;
- Species that are limited to New Mexico, known as endemic species;
- Species that have populations geographically isolated from other populations of the same species and are thereby disproportionately susceptible to local decline or extirpation, known as disjunct species; or
- Species that are crucial to the integrity and the functioning of their ecosystems and that may represent more value to conservation of biological diversity than the size of their population or their distribution would suggest, known as keystone species.

Section 148, amends the factors the commission must consider when developing rules for the taking of fur-bearing animals from “the zones of temperatures and … the distribution, abundance,

economic value and breeding habits of such animals” to “species' population size and trends, habitat availability, migration and hibernation, response to near- and long-term changes in climate conditions, and conservation actions necessary to sustain healthy populations.”

Section 153 amends the period in which an individual's trapper's or fur dealer's license may be revoked for violating regulations pertaining to furbearers from “the year in which the violation occurred” to be consistent with other license revocations found in Section 17-3-34 NMSA 1978.

SB312 appropriates \$2 million from the general fund to DGF. \$1 million is appropriated for expenditure in FY22 and subsequent fiscal years for the management of species of greatest conservation need, as enumerated in the state wildlife action plan. Any unexpended or unencumbered balance from this appropriation remaining at the end of a fiscal year shall not revert to the general fund. Additionally, \$1 million is appropriated for expenditure in FY22 for expenses relating to the name change of the department and the State Game Commission. Any unexpended or unencumbered balance from this appropriation remaining at the end of fiscal year 2022 shall revert to the general fund.

The effective date of Section 195 of this bill is July 1, 2021. The effective date of Section 193 is April 1, 2022. The effective date of Sections 1-192, 194, 196, and 197 is July 1, 2022. The delayed repeal date of the version of Section 17-3-16 NMSA 1978 that Section 193 of this bill amends is July 1, 2022.

FISCAL IMPLICATIONS

The appropriation of \$2 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance of the \$1 million appropriation for implementing the department name change remaining at the end of FY22 shall revert to the general fund. The other appropriation of \$1 million is nonreverting.

DGF estimates that changing the name of the department and commission would cost approximately \$3 million, resulting in an additional operating budget impact of \$2 million in addition to the bill's appropriation. DGF notes that changing the department's name would include revising and replacing staff uniforms, vehicle decals, trailer wraps, and all educational materials (i.e., student manuals, volunteer vests, and certification patches); revising business collateral, exhibits, displays, and brochures; rebranding the department website, mobile apps, social media, online hunter and wildlife education courses, and online business systems. Furthermore, the commission owns, and DGF manages, approximately 192,000 acres of wildlife habitat. On these properties and fish hatcheries, there are approximately 1,000 regulatory signs, 120 main entrance signs, and several dozen interpretive signs that DGF says would need to be removed and replaced. In addition to the expense of replacing DGF-branded items, the department expects these changes will require significant staff time to facilitate.

SB312 would change current statute to require annual appropriations from the general fund or other sources separate from the game protection fund for the management of threatened and endangered species. Currently, DGF receives no general fund appropriations, so there would be a general fund impact, but the bill does not specify a funding level. DGF did not provide an estimate of how much annual funding might be needed for this purpose or what the department would request in the first year of the bill's implementation. The department did say SB312's appropriation of \$1 million for management of species of greatest conservation need may be insufficient to meet

this need in the long term.

For comparison, Colorado Parks and Wildlife spent 7 percent of its \$151 million wildlife budget, or \$10.5 million, on management of declining, threatened, and endangered species in FY20. Colorado's wildlife budget is roughly 3.5 times the size of DGF's budget, so funding at an equivalent proportion in New Mexico would be about \$3 million. Of course, appropriations for this purpose would depend on the Legislature's priorities, funding availability, and DGF's capacity to implement this type of programming.

DGF estimates increasing the nonresident bull elk or either sex license fee would generate approximately \$1.4 million in additional annual revenue for the department. The department expects SB312's provision to allow big game depredation fund expenditures for administrative costs would increase expenditures out of that by approximately \$500 thousand to \$750 thousand annually and reduce expenditures from the game protection fund by the same amount.

DGF projects a loss of approximately \$1 million to \$1.5 million in annual revenue as a result of SB312's increase to the percentage of potential draw licenses reserved for New Mexico residents from 84 percent to 90 percent. However, the department anticipates this loss will be canceled out by the bill's increase to the nonresident bull elk or either sex license fee and, therefore, does not anticipate a change in overall revenue.

SIGNIFICANT ISSUES

Wildlife management agencies utilize "public draw" lottery systems to distribute scarce hunting licenses and give preference to state residents over out-of-state hunters. Currently, DGF is required by statute to offer at least 84 percent of licenses available through the public draw to residents, 10 percent to hunters (resident or nonresident) using the services of New Mexico outfitters, and 6 percent for nonresident hunters not required to be contracted with outfitters. Some of New Mexico's neighboring western states, such as Arizona and Utah, apply a simpler 90-10 resident to nonresident split, as proposed by SB312.

A recent LFC program evaluation of DGF concluded that the existing license system in New Mexico favors landowners and nonresidents compared with other states, in large part due to our expansive private lands elk permitting system.¹ The elk private land use system (EPLUS) grants hunting vouchers to landowners enrolled in the program, which they may use themselves or sell on the private market. The residential restrictions of the public draw do not apply to authorizations issued to landowners through the EPLUS system, and out-of-state hunters utilize the private system at far greater rates than New Mexico hunters, accounting for 76 percent of authorizations converted into licenses from 2017 to 2019. Additionally, New Mexico allocates a much greater proportion of its overall license quota to private landowners. This decreases the number of licenses available to the public at large through the already highly competitive lottery. New Mexico residents are most impacted because most landowner vouchers are bought by out-of-state hunters.

One significant change proposed by SB312 is removing the provision in current statute that allows a landowner or lessee to kill an animal that is an immediate threat to property. DGF states making

¹ *Program Evaluation: Performance of the Department of Game and Fish.* Report #20-04. Oct. 28, 2020. Legislative Finance Committee. https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-20Performance%20of%20the%20Department%20of%20Game%20and%20Fish.pdf

this change but still requiring the agency to provide multiple interventions, respond within specific timeframes, and allow the landowner to reject any intervention methods to prevent property damage will significantly increase staff time spent responding to depredation complaints of wildlife presenting a threat to property.

DGF notes that the term “species of greatest conservation need,” which SB312 defines in a new section of Chapter 17 NMSA 1978, originates from a federal grant program that requires states to identify these species in their wildlife action plans to receive federal funding. The agency also points out that the federal program has changed its terminology during its 15-year existence, and future additional changes may require the Legislature to amend this new language to align with federal law.

ADMINISTRATIVE IMPLICATIONS

According to DGF, transitioning the names of the commission and the department would need to begin in 2021 to implement SB312. The change would also require the department and commission to amend all related administrative rules and create new rules in accordance with the State Rules Act. DGF also reports that enforcement of laws and regulations under Chapter 17 may be difficult or impossible because of the incomplete statutory change from “game” to “wildlife.”

The State Land Office reports SB312 could have a manageable administrative impact on the agency, with potential fiscal impact dependent on future cooperating agreements to provide sportspeople with access to state trust lands.

TECHNICAL ISSUES

Section 43, would allow the commission to protect insects and create rules regarding the take or use of them, which DGF says may conflict with that statutory authority already reserved to other agencies such as Department of Agriculture (see Sections 76-5-1 to 75-5-28 NMSA 1978).

Section 119, amends Section 17-3-33 NMSA 1978 to change “game or fish” to “wildlife,” which is a defined term in the bill. This change would make possession of any “wildlife” illegal without a license, permit, or invoice. The definition of wildlife includes all species and animal parts, which, according to DGF, could mean the possession of butterflies, mice, snails, or shed antlers would be illegal because there is currently no license or permit requirement.

CW/sb