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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Terrazas/Jones/Lente</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/20/23</u>
<b>SHORT TITLE</b> <u>Livestock Estray Procedures</u>	<b>BILL NUMBER</b> <u>House Bill 423</u>
	<b>ANALYST</b> <u>Sanchez</u>

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$500.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial	Recurring	NMLB Operating Budget

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Livestock Board (NMLB)  
Office of the Attorney General (NMAG)  
New Mexico Department of Agriculture (NMDA)

## SUMMARY

### Synopsis of House Bill 423

House Bill 423 (HB423) proposes amending Section 77 NMSA 1978, also known as the Livestock Code, to add new language to Article 17 (Estrays). The new language would include a new section creating a process for a person who finds 15 or more head of cattle, or a number exceeding 10 percent of the land's carrying capacity, on property they own or hold grazing rights to petition the New Mexico Livestock Board (NMLB) for the right to remove or have the cattle removed by NMLB.

House Bill 423 would require inspection in the field of the cattle suspected to be estray within 15 days of receiving notice. The bill would then require publishing a notice of the estrays pursuant to Section 77-13-4 NMSA 1978. Five days after the information is published, HB423 would allow NMLB to arrange to sell the estray cattle in accordance with Sections 77-13-5 and 77-13-6 NMSA 1978.

HB423 would also modify the Livestock Code so that, after 60 days of receipt of the petition, if NMLB is unable or unwilling to take possession of the estray cattle, the agency would relinquish jurisdiction over the cattle in question. The changes proposed in the bill would then allow the petitioner to gather the cattle for inspection and sale or enable the petitioner to brand the estray cattle themselves legally within 12 months. The bill will also permit the petitioner to request an additional 12-month extension to this period at the discretion of NMLB.

HB423 exempts estray cattle removed under this new section from undergoing health tests if sold for slaughter within 30 days. However, all board health requirements would still apply for estray cattle branded or sold for slaughter after 30 days.

House Bill 423 appropriates \$500 thousand from the general fund to the New Mexico Livestock Board for the purpose of paying for personnel and equipment costs necessary to carry out the board's duties related to estrays.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

Analysis from the New Mexico Livestock Board expressed concerns about the provisions allowing for inspection in a pasture setting. The current requirements that suspected estrays be penned prevent livestock inspectors from traveling to remote locations of various public or private status to conduct brand inspections. The changes proposed in HB423 would no longer require livestock to be penned. HB423 would require the NMLB to purchase all-terrain vehicles (ATVs) or additional horses and riding equipment to reach the suspected estrays.

NMLB's analysis did not estimate the cost of these purchases but raised concerns about the potential liability of having state employees on private property, either on a horse or ATV. For this analysis, it is estimated that these costs, while indeterminate, would be substantial. The bill stipulates that the appropriation is nonrecurring; however, LFC analysis concludes that the personnel costs associated with the new inspection requirements would likely create a recurring cost for the NMLB operating budget. (See estimated additional operating budget impact table)

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund. Although House Bill 423 does not specify future appropriations, it is likely the new requirements created by this bill will remain in future fiscal years; therefore, this cost is assumed to be recurring.

## **SIGNIFICANT ISSUES**

Since 1887 the New Mexico Livestock Board (NMLB) has been the agency authorized to determine if cattle are unbranded. The statute requires suspected estrays to be gathered and

penned to determine the presence or lack of branding. House Bill 423 would allow for inspections in the field rather than in a penned environment. The effect would be to require inspectors from NMLB to travel to wherever the estrays are located to perform the inspections. Eliminating the penning requirement would mean that inspectors may be required to travel onto private, federal, or tribal lands to inspect suspected estrays on an open range.

Further, the changes to the section governing the sale of estrays would allow the petitioner to sell or brand the estrays after 60 days if they remain unclaimed and if NMLB is unable or unwilling to handle the impoundment and sale. Requiring the NMLB to relinquish jurisdiction over the estrays would represent a significant change to livestock-related law enforcement practices dating back to the New Mexico Cattle Sanitary Board.

The bill also includes the statement, “if the number [of estrays] is fewer than fifteen and constitutes ten percent of the carrying capacity of the land, permit, lease or allotment,” but does not include language regarding what entity determines the land’s carrying capacity. This responsibility does not currently fall within the scope of the duties of the New Mexico Livestock Board, which is not a range management agency and therefore does not have the expertise required to make that sort of determination.

## **ADMINISTRATIVE IMPLICATIONS**

The analysis provided by NMLB stated:

The NMLB is charged with the protection of the livestock industry against loss of livestock either by theft or straying. The NMLB can only do this with the expectation that a land owner, with livestock on their property that does not belong to them, pen the livestock and notify an inspector. By relinquishing any jurisdiction to the straying livestock, the NMLB’s legislative mandate will be lessened to the point of inability to adequately administrate that mandate.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Analysis from the New Mexico Livestock Board included the following breakdown of potential conflicts with the existing statutes:

- 1) Private Landowners – Pursuant to 77-13-6 NMSA 1978, proceeds from the sale of estray livestock shall be returned to the Board. By the Board directing an asset and/or funds to be given to a private individual could possibly be a violation of the anti-donation clause.”
- 2) Tribal – Pursuant to 77-2-7 (O) NMSA 1978, the Board has the authority to enter into joint powers agreements with Indian nations, tribes, or pueblos to promote the cooperation in carrying out the provisions of the Livestock Code.
- 3) Not holding proceeds from the sale of estray livestock for two years is in direct conflict with 77-13-6 NMSA 1978.
- 4) Chapter 77 gives specific powers to the Board to regulate the Livestock Industry. Having a law that takes that authority away will lead further weakening of the laws which protect the producers.
- 5) Allowing landowners to gather and sell unbranded cattle will lead to eventual misinterpretation of the law. This will lead to neighbors stealing unbranded cattle and presenting them for sale under the pretense of them being feral.

- 6) Section 77-16 NMSA 1978 states that all private landowners, and any entity wishing to keep livestock off their property(s), must build a fence. There is no reason for several cattle to be on your property, for an extended period, if it is properly fenced.
- 7) Section 77-14-3 NMSA 1978 already addresses “Trespass on lands”. This bill will be direct conflict with already existing laws.

Analysis from the New Mexico Department of Agriculture stated:

As written, HB423 contradicts the statutory responsibilities of NMLB by allowing jurisdiction of livestock to be ceded to individuals. If NMLB no longer has jurisdiction over livestock, it would be unable to fulfill its mandates to prevent theft or illegal movement of livestock and to control disease as outlined in the livestock code (77-2 through 77-8 NMSA 1978).

Pursuant to 77-16-1 NMSA 1978, New Mexico is a fence-out state, meaning landowners are responsible for maintaining fences to prevent trespass livestock from entering and damaging their property. However, allowing landowners to acquire ownership of trespass cattle via the provisions of HB423 may incentivize poor fence maintenance and open the door to legal disputes.

## **TECHNICAL ISSUES**

NMDA presented the following statement describing a potential technical issue in the language of the bill:

It is unclear if the NMLB would relinquish jurisdiction of the cattle after the sixty-day period per subsection 1-C if inspectors have not been able to gather the cattle and confirm that they are in fact stray.

SS/rl/ne