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FISCAL IMPACT REPORT

SPONSOR Gonzales LAST UPDATED _____
ORIGINAL DATE 2/1/23
SHORT TITLE No Exotic Animals in Traveling Performances BILL NUMBER Senate Bill 134
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Tourism Department (NMTD)
New Mexico Attorney General (NMAG)
Department of Game and Fish (DGF)
New Mexico Livestock Board (NMLB)
Gaming Control Board (GCB)

No Response Received

Economic Development Department
New Mexico Counties
Municipal League

SUMMARY

Synopsis of Senate Bill 134

Senate Bill 134 (SB134) amends the Municipal Code (Chapter 3 NMSA 1978) to prohibit the use of exotic animals in traveling performances with the exception of rodeos, animal rehabilitation programs, animal shelter programs, and accredited animal education or conservation programs. An exotic animal is defined as any animal that is not a domesticated cat or dog or livestock, and traveling performance means any event, private or public, in which exotic animals are displayed, required to perform or provide rides, or otherwise used for the entertainment or benefit of a live audience. Municipalities and counties would be responsible for adopting a corresponding ordinance and enforcing the prohibition.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

SB134 carries no fiscal implications for state government because enforcement is the responsibility of local governments. The Municipal League and New Mexico Counties did not respond to requests for input and the impact on municipalities and counties is unknown but likely minimal.

SIGNIFICANT ISSUES

SB134 provides no specifics for drafting local ordinances and provides no penalty or enforcement mechanism. If local governments take a variety of approaches, the result could be a patchwork of laws, with enforcement ranging from toothless to burdensome.

Further, the director of Hillcrest Park Zoo in Clovis and the Department of Game and Fish (DGF) raise concerns SB134's restriction on unaccredited animal education and conservation programs could impede conservation education. From DGF:

It is not clear if some animal education events in schools or other public gatherings would be prohibited because the presenter is not part of an accredited program. ... It is unknown if accreditation programs for education in schools and other public venues exists. For example, a licensed (both state and federal) falconer that brings a hawk to a school for education does not have an entity that would accredit the individual. ... Adding language allowing for a permit from the Department or a Federal Agency for educational purposes may resolve this issue.

From Damian Lechner, Hillcrest Park Zoo director:

The vague language in this bill does not allow for three of the zoos in New Mexico (Roswell, Clovis and Alamogordo) to provide for educational programming beyond our facility ... The Hillcrest Park Zoo is working towards accreditation with the Zoological Association of America (ZAA) and having a successful education program is essential to the accreditation standards. Continuing our education programming throughout the community is vital in providing for our residents and obtaining ZAA accreditation. Our community, local and regional, benefit from the educational programming that the zoo provides by bringing animals to schools and retirement communities. Some of these organizations cannot come out to the zoo for various reasons, such as mobility issues or cost. This bill will diminish all of our ability to provide conservational education to a large area of the state and western Texas.

In addition, the Gaming Control Board reports racinos have benefited from exotic animal races:

Racinos licensed by the Gaming Control Board often run promotions to draw patrons to their facilities. One particular racino held an exotic animal race involving camels and ostriches. No betting was permitted and it was held for entertainment purposes only. No issues were reported with the event and it was reported to have been very successful. This change in the law would prevent this type of promotion, which reportedly drew a large number of additional patrons with the potential of increased revenues for the racino and increased tax revenues for the state.

The Ringling Brothers and Barnum & Bailey Circus resumed performances this year without animals after it shut down in 2017 after 146 years, partly because of pressure from animal rights groups. According to a May 2022 Forbes magazine article¹, elephants last appeared in the show in 2016 after some states banned them from performances. However, it notes, low ticket sales, high railroad costs, and growing interest in digital entertainment contributed to the circus' temporary shutdown.

Animal rights activists argue circuses use of exotic animals is cruel, involving beatings, electric shock, and other violent training methods; chains, small transport cages, and other forms of constant confinement; and neglect of animals because they do not have adequate exercise or urgent access to expert veterinary care. These advocacy groups contend six states and 160 localities have passed laws addressing the abusive display of animals and indicate these laws do not spur local economic activity because any money spent at the circus leaves town when the circus leaves town.

Finally, the office of the Attorney General (NMAG) notes SB134 could be challenged on the basis of the First Amendment because it restricts performances based on subject matter:

Where a restriction is based on content of expression, such as where a law prohibits depictions in which an animal is intentionally harmed, the law creating that restriction is presumptively invalid under the First Amendment, and the government has the burden of rebutting that presumption. *See United States v. Stevens*, 559 U.S. 460, 468, 130 S. Ct. 1577, 1584, 176 L. Ed. 2d 435 (2010). Often referred to as a “strict scrutiny” analysis: where the government seeks to regulate speech on the basis of its content, there must be a compelling, or very strong, interest in the law, and that law must either be narrowly tailored or the least speech restrictive means available to the government to protect or promote that interest. *See e.g. Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004) (in which the United States Supreme Court struck down the Child Online Protection Act (COPA) of 1998, holding that the law furthered a compelling government interest but failed to be narrowly tailored and to incorporate the least restrictive means of protecting children from otherwise constitutionally protected speech). In *Stevens*, the United States Supreme Court held unconstitutional a law prohibiting the depiction of animal abuse in videos, upon the application of the overbreadth doctrine, finding that such a restriction implicated otherwise presumptively protected expression.

TECHNICAL ISSUES

SB134 could conflict with DGF authority to issue permits for the importation and display of “exotic” animals under Section 17-3-32 NMSA 1978 and 19.35.7 New Mexico Administrative Code.

DGF and NMAG also question the lack of a definition of “livestock,” exempted from the prohibitions in the bill. What animals are exempt would vary greatly depending on the definition, the departments suggest. From NMAG:

In order to avoid possible vagueness or an legal interpretation inconsistent with the intent behind the use of the term “livestock” it may be beneficial to define that term either

¹ <https://www.forbes.com/sites/marisadellatto/2022/05/18/ringling-bros-circus-returns-without-animals-five-years-after-closing/?sh=440bff5979b2>

explicitly, or by reference to a statutory definition of “livestock” such as the definition provided by the Livestock Code (NMSA 1978, §§ 77-2-1 through -32) at NMSA 1978, § 77-2-1.1 (A).

NMAG suggests SB134 could be amended to include a remedy for the violation of its provisions:

It may be beneficial to designate what remedy is available and whether violation of this section would be treated as a criminal violation or civil sanction, as otherwise municipalities may create disparate remedies in the ordinances they pass pursuant to this legislation.

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