

NMDOT BILL ANALYSIS 2024 REGULAR SESSION

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original Amendment
Correction Substitute

Date 01/25/2024

Bill No. HB 68

Sponsor: Anthony Allison

Agency/ Code:

NMDOT - 805 - OGC

DOT Cattle Guard Clearing

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Short Title on Tribal Lands

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$5000		Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Not applicable.

Duplicates/Relates to Appropriation in the General Appropriation Act: Not applicable.

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 68 (HB 68) appropriates five million dollars from the General Fund to the Department of Transportation (DOT) for the purpose of clearing cattle guards on tribal lands. The DOT is to consult with Tribal governments to prioritize cattle guards with the greatest impact. DOT is required to obtain right of way to enter tribal land for the purpose of clearing the cattle guards. Funds that are not expended or encumbered at the end of FY25 revert to the General Fund.

FISCAL IMPLICATIONS

NMSA 1978 Section 66-7-363 requires the DOT to, as budget permits, “construct, inspect regularly and maintain ...cattleguards as the department of transportation may deem necessary.” HB 68 would increase the budget available for this purpose on tribal lands. This would allow DOT

to reallocate money from the Road Fund already set aside for this purpose to other maintenance needs.

SIGNIFICANT ISSUES

The DOT currently has seven open tort cases caused by incidents involving cows on the highway. The number of these types of cases, often involving death or significant injuries, might be reduced by clearing out cattle guards. However, other methods of keeping cows off the highway, such as fence maintenance or creating cattle under passes, would have the same, or greater, impact.

PERFORMANCE IMPLICATIONS

The DOT consists of six regional districts. Road maintenance is the primary responsibility of the district because the district has the most knowledge of the specific needs in its geographical area. HB 68 states that the DOT shall consult with the sovereign entities to prioritize which cattle guards are cleaned but developing the standards for determining which cattle guards are cleaned rests with the DOT. This means that the DOT would need to ensure that the money appropriated is divided equitably amongst the districts, and that the districts are using the same standards to select which cattle guards are cleaned regardless of which tribal entity makes the request.

Currently the DOT focuses on fencing as the primary form of livestock maintenance because it has determined that fences are the most efficient way to keep cows off the highway. HB 68 might shift resources currently used for fencing to cattle guard maintenance.

ADMINISTRATIVE IMPLICATIONS

There are 23 tribal authorities in New Mexico. Each of these are independent sovereign nations. The DOT would be required to negotiate and obtain right of way with each of the tribal entities and the Bureau of Land Management before entering and clearing the cattle guards. Negotiating with many parties could increase the transactional costs of the projects. HB 68 does not state if the money appropriated could be used to offset the transactional costs. HB 68 also does not state if the money appropriated could be used to purchase the right of way.

Any clearing of cattle guards would necessarily be limited to cattle guards falling within DOT right of way. The State Access Management Manual, adopted pursuant to 18.31.6 NMAC, stipulates that the permittee and occupants serviced by the access to State highways shall be responsible for the repair and maintenance of the access beyond the edge of the roadway including any cattle guard and gate, and the removal of snow or ice upon the access. NMDOT is not authorized or required to clear public or private cattle guards on roads or driveways taking access to highways maintained by the State. This precludes DOT from clearing cattle guards situated on private or tribal lands.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This may conflict with 18.31.6 NMAC which allows the DOT to restrict access to state highways and requires a permit for the placement of cattle guards. One condition of the permit is that it requires the permit holder to maintain the cattle guard.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

HB 68 is a one-time appropriation for cleaning cattleguards. However, the responsibility for the cattle guard is an ongoing obligation. If the DOT cleans a cattle guard pursuant to HB 68, it could be determined that the DOT assumes maintenance for the specific cattle guard in perpetuity.

Cleaning cattle guards is a labor-intensive process. A large cattle guard cleaning project would require the hiring of additional personnel. HB 68 is a one-time appropriation and does not provide funding for additional employees after the project is completed. Currently the DOT suffers from a high vacancy rate. HB 68 might compound this problem.

Because HB 68 only provides monies only to Native Americans without providing the same benefits to similarly situated non-native Americans, it could be subject to a constitutional challenge.

ALTERNATIVES

Money for cattle guard maintenance could be allocated to the DOT with the direction to distribute to tribal entities as grants. The DOT would administer the grants and set standards for work quality. The ownership and responsibility for maintenance of the cattle guards would remain with the tribal entity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.