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## FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 3/10/03 HB 610/HJCS

SHORT TITLE: Wild Horse Protection Act SB \_\_\_\_\_

ANALYST: \_\_\_\_\_

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |         | Recurring or Non-Rec | Fund Affected        |
|-------------------------|------|-----------------------------|---------|----------------------|----------------------|
| FY03                    | FY04 | FY03                        | FY04    |                      |                      |
|                         |      |                             | \$180.0 | Recurring            | Game Protection Fund |

### REVENUE

| Estimated Revenue |         | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected        |
|-------------------|---------|-------------------------|----------------------|----------------------|
| FY03              | FY04    |                         |                      |                      |
|                   | Unknown |                         | Recurring            | Game Protection Fund |

Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

No new agency analysis submitted for Committee Substitute for HB 610. However, relevant material in Game and Fish Department's first analysis of original HB 610 have been included in this analysis.

### SUMMARY

#### Synopsis of Bill

House Bill 610 / HJCS creates a new Act, the Wild Horse Protection Act. Pursuant to this Act:

1. "Wild horse" means a free-roaming and unowned horse, and a "free-roaming horse" is presumed to be a wild horse if it is not branded, identified by a free mark or brand, subject to a registration certificate, or the offspring of a mare that is not branded, freeze marked, or registered.

2. Wild horses shall be protected as a valuable resource of the , and the New Mexico livestock board shall promulgate such rules as are necessary to protect them.
3. No person shall take, possess, impound, or sell a wild horse, or parts thereof, except as permitted under this Act.
4. A person violating this Act shall be guilty of a fourth-degree felony.
5. A person may impound a wild horse on property that the person owns or controls only if the wild horse has damaged or is threatening to damage the person's property. However, within 24 hours of impounding the wild horse, the person shall notify the board of the impoundment. And, the board shall, within 24 hours of receiving notice, take possession of the horse.
6. If following taking possession of a horse, the board determines the horse is not wild, the board shall pursue the sale or other disposal of the horse pursuant to the Livestock Code. If the horse is determined to be wild, the board shall pursue disposal of the horse pursuant to this Act.
7. The board shall establish a program for disposal of wild horses impounded or possessed by the board. This program will:
  - i. include procedures to assure the board that the adoptive owner intends and has the facilities to care for the horse in a humane manner and will not abuse or destroy the horse.
  - ii. include provisions for a fee schedule to charge adoptive owners. Fees collected by the board shall first be applied to compensate the owner or lessee of the land for any damage caused by the wild horse. Thereafter, the board may reimburse itself for the costs incurred in the impoundment and adoption processes.
  - iii. be permitted to contract with public or private entities to administer the adoption program.
  - iv. be permitted to implement the state program in coordination with the federal wild horse adoption program.
8. If the board determines that the horse is old, sick, lame or otherwise unadoptable, the board may destroy the horse in the most human manner possible.
9. Pursuant to a joint powers agreement, the state may enter into an arrangement with the deferral government.
10. The New Mexico Wild Horse Protection Act does not apply to those horses falling under the jurisdiction of the Federal Government.

The bill also amends a separate Act for balancing property-owners' rights with depredation caused by an animal. The amended Act provide as follows:

11. Currently, a landowner or lessee may kill or otherwise "take" an animal on private land in which they have an ownership, except game birds and fowl, that present an immediate threat to human life or an immediate threat to property.

This bill adds wild horses to the exception carved out for game birds and fowl.

12. Currently, a landowner or lessee may kill or take an animal on private land in which they have an ownership interest, except game birds and fowl, that present a threat to human life or damage to property.

The bill adds wild horses to the exception carved out for game birds and fowl.

However, in this second instance of basic threat (not immediate threat) to life or property, the State Game Commission must put in place regulations that the landowner/lessee is required to follow in killing or taking an animal under these circumstances. These regulations must:

- i. provide a method for filing a complaint with the Game and Fish Department regarding the existence of a depredation problem;
  - ii. provide for various departmental interventions, depending upon the type of animal and depredation being caused;
  - iii. require the department to offer at least three interventions, if practical;
  - iv. require the department to respond to the initial and any subsequent complaints within ten days with an intervention response;
  - v. permit the landowner or lessee to reject (for good cause) the intervention;
  - vi. require a landowner or lessee to demonstrate that the property depredation is greater in value than the value of any wildlife-related income or fee collected for permission to take or kill an animal of the same species; and
  - vii. permit the landowner or lessee, when interventions by the department have not been successful and after one year from the date of the filing of the initial complaint, to kill or otherwise take the animal.
13. Finally, the bill also amends the Livestock Code to provide:
    - i. the terms "animals" or "livestock" used in the code do not include wild horses subject to protection under New Mexico's Wild Horse Protection Act; and

- ii. a minor correction to the definition of bison or buffalo.

Significant Issues

1. Until 1974, livestock, including wild and free-roaming horses, had been under the authority of the Livestock Board by cooperative agreement. In 1974, state vs. federal jurisdiction was litigated and established.

Currently, wild horses are afforded protection under the *Federal Wild and Free-Roaming Horses and Burros Act*.

In 1994, the New Mexico Attorney General opined that the State Game Commission lacks jurisdiction over wild horses.

2. Adoption of this bill would require the State of New Mexico to enter into an agreement with the U.S. Army, White Sands Missile Range, to manage wild horses residing on missile range property.
3. Capture related expenses would be significant, including manpower associated costs (overtime, per diem, etc.), helicopter fees, veterinary costs (including labor, medication, immunizations, lab fees, etc.), rental of holding facilities, purchase of relocation equipment, etc. Captures on White Sands Missile Range have cost approximately \$1,000 per horse, not including subsequent care.

**FISCAL IMPLICATIONS**

The bill does not have an appropriation. Section 5 does propose a fee schedule. The Game and Fish Department anticipates numerous fiscal implications as follows:

1. \$80.0 will be needed for one additional FTE to oversee the program.
2. Any fees collected for adoption costs would fall short of compensation for damage to private property by trespass wild horses.
3. Capture related expenses would be significant. Please see "Significant Issues".
4. Numerous professional services contracts would be required to administer this program, including veterinary services, helicopter fees, feed and supplies, rental of facilities to house horses pending adoption, and the like.
5. It is estimated that \$100.0 annually, in addition to FTE and service contract funding, would be required to effectively administer this program to cover costs for equipment, capture and care.

**OTHER SUBSTANTIVE ISSUES:**

1. White Sands Missile Range currently has approximately 9 male horses that reside on U.S. Army property. They currently manage those horses and have carried out past adoptions. These horses do not fall under the protection of the federal act

due to a glitch in that law and would be subject to Commission jurisdiction and adoption procedures. It is recommended that the U.S. Army be consulted on the bill's ramifications to their program.

2. Does the federal law, the Federal Wild and Free-Ranging Horses and Burros Act, permit state action, or is the state preempted?

**SJM/yr**