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FISCAL IMPACT REPORT

SPONSOR Stewart/Chasey **ORIGINAL DATE** 2/05/19
LAST UPDATED 2/25/19 **HB** _____
SHORT TITLE Wildlife Trafficking Act **SB** 38/aSCONC/aSJC
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		No Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB366, SB228, SB338, SB390, and SB417

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Department of Game and Fish (DGF)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Indian Affairs Department (IAD)

No Responses Received

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment adds three species to the list of animals covered by the act – elephant, lion, and shark – that are not covered, or only partially covered, by Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is used in the definition of covered animal species in the bill. While the international convention includes some species of elephants and sharks in Appendix 1 and some in Appendix 2, not all elephants and sharks would be included in the trafficking act without the addition. The convention does not include any sharks in Appendix 1.

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 38 strikes a list of 13 animals that duplicated species in the Convention of International Trade in Endangered Species of Wild Fauna and Flora, which is used in the definition of “covered animal species” in the bill.

Synopsis of Original Bill

Senate Bill 38 creates the Wildlife Trafficking Act and authorizes all commissioned New Mexico law enforcement officers, including those from the State Parks Division and Department of Game and Fish, to enforce a new law making it a misdemeanor to knowingly sell or purchase a part or product of any of the 1,200 threatened species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, of which the United States is a treaty party. Each product or part sold or purchased can be treated as a separate violation of the law.

Regardless of criminal conviction, the bill provides for a civil fine up to \$25 thousand or three times the value of product, whichever is greater. The bill also authorizes New Mexico law enforcement officers to assist the federal government in discouraging the illegal trade in parts and products of endangered animals.

The bill provides exceptions for certain antiques and items possessed by an enrolled member of a federally recognized Indian tribe.

FISCAL IMPLICATIONS

DGF reports that the bill would require the agency to provide training and investigative techniques to all law enforcement officers to be able to properly identify species and parts. The department did not indicate the need for any additional revenue.

SIGNIFICANT ISSUES

Currently, the federal government is responsible for enforcement of violations like those in the bill. DGF, while noting federal authorities would still have primary jurisdiction, reports the bill would provide additional opportunities for the apprehension and prosecution of wildlife traffickers. Now, New Mexico conservation officers help U.S. Fish and Wildlife Service (USFWS) agents under a cooperative law enforcement agreement, but all criminal investigations and charges are brought forward by the federal agents, who work with the U.S Attorney's Office, and cases are heard in federal court.

EMNRD, which notes most federal wildlife trafficking cases involve interstate and international jurisdiction issues, raises concerns about the bill's specific mention of state park officers, who have limited authority. State Parks Division law enforcement authority is general but limited to state parks except in emergencies. The language could create confusion concerning the limits of state park officer jurisdiction, the department says.

ADMINISTRATIVE IMPLICATIONS

If enacted, DGF indicates game and fish officers would need to provide training to other law enforcement agencies.

The bill requires the NMAG to authorize civil enforcement of the act unless carried out by another entity with commissioned officers. The office says this could result in staff time dedicated to additional administrative duties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB366 would ban traps, snares or poison for the purposes of capturing, injuring, or killing an animal on private land.

SB228 directs DGF and the Transportation Department to prepare a plan to identify and maintain seasonal and daily movements of wildlife and, where action is needed, take steps to protect the life of wildlife and people.

SB338 expands State Game Commission powers to enact hunting and fishing rules that ensure a “fair chase,” including limiting certain technologies for hunting or fishing and withholding wildlife location data.

SB390 removes consideration of the economic value of fur from State Game Commission rule-making authority and requires the commission consider the impact of trapping on nontarget species. It allows the commission to limit the types of traps or snares that can be used and the locations where they can be located, including potentially banning placement near population centers.

SB417 redefines the purpose of State Game Commission to emphasis the management of all species, not just game species, for the enjoyment of all New Mexicans and propagation of species beyond “the extent necessary to provide and maintain an adequate supply of game and fish within the state.”

OTHER SUBSTANTIVE ISSUES

IAD notes nothing in the bill requires that any seized item identified as a Native American cultural item be returned to the tribe of origin.

TECHNICAL ISSUES

NMAG raises concerns that Section 5 of the bill might be overly broad because it includes among those who could be sued civilly “anyone who benefited or would have” benefited from a violation of the act. The agency suggests the following rewrite:

With or without a criminal conviction, a person who violates or attempts to violate Section 3 of the Wildlife Trafficking Act ~~and anyone who benefited or would have from the violation~~ may be sued in district court and is subject to a fine of up to twenty-five thousand dollars (\$25,000) or three times the total value of the covered animal species or covered animal part or product, whichever is greater.

ALTERNATIVES

EMNRD asks that Section 6(A) on page 6, lines 7 and 8, be amended to remove “and the state parks division of the energy, minerals and natural resources department”.