

House Bill 766 provides that the Commissioner of Public Lands may issue permits for the excavation and removal of fossils on state trust land. All fossils recovered from state trust land remain the property of the state and are to be used for scientific and educational purposes. Additionally, the bill establishes criminal penalties for individuals who damage fossils from state trust land or engage in unlawfully exchanging of fossils recovered from state trust land.

Significant Issues

The State Land Office asserts many states have experienced great difficulties associated with the question of ownership, trespass and theft. This bill would establish a legal framework on state trust land to address a popular and growing demand for fossil resources.

The bill also establishes a permit application process. Permit applications must include detail information regarding purpose, intent and proposed arrangements for a repository for any recovered fossils. Applicants must meet certain professional requirements. The New Mexico Museum of Natural History and Science would serve as the repository for those fossils determined to be a scientific significance.

The criminal penalties established through this bill for individuals who damage fossils from state trust land or engage in unlawfully exchanging of fossils recovered from state trust land are as follows: a.) a fourth degree felony when a person commits a first offense of damaging a fossil; b.) a fourth degree felony when a person commits a first offense or unlawful exchange of a fossil; and c.) a third degree felony for a second or subsequent convictions.

A person shall be sentenced to the provisions of Section 31-18-15 NMSA 1978.

FISCAL IMPLICATIONS

The Administrative Office of the Courts has indicated the fiscal impact to the judiciary is negligible due to the small number of cases that will likely utilize this act. The State Land Office has indicated the fiscal and administrative impacts associated with administering a permit program as envisioned in this bill would be nominal.

The State Highway and Transportation Department (SHTD) has indicated the bill would provide a requirement to assess the impacts of highway construction of fossil resources. On rare occasions fossil resources might need to be recovered prior to construction. Since many fossil resource areas are currently known, pre-construction investigations for fossil resources would likely be limited in scope. The SHTD estimates its cost at \$50.0 based on the expected level of effort for investigation surveys based on other resource surveys currently sponsored by the department. The estimate is also based on the understanding SHTD would have to identify “major” fossil resources. If resource surveys and mitigation were required to identify and protect common fossils which occur in great numbers such as petrified wood which commonly occur in gravel deposits, SHTD estimates its costs could be substantially higher (see Amendment section below).

ADMINISTRATIVE IMPLICATIONS

The State Highway and Transportation Department asserts it would need to develop a consultant service contract in advance of highway construction in order to identify “major” fossil resources.

TECHNICAL ISSUES

The bill does not address differentiate between intentional and unintentional damage to fossils on state trust land.

AMENDMENT

The State Land Office has suggested that a provision be included in both the civil and criminal penalties sections to allow that “unintentional damage associated with an activity authorized by the commissioner shall not be subject to the penalty provisions of the section.”

The State Highway and Transportation Department has expressed concern regarding the bill not distinguishing between “major” and “minor” fossils based on their scientific value or rarity. The State Highway and Transportation Department has suggested its right-of-way could be exempted since the department currently makes a good faith effort to identify and protect major fossil resources (see Fiscal Implications section above).

Paragraph E on page 7, lines 13, 14, and 15 identify the sentencing provisions under the criminal code for non-capital felonies. The amendments have created a conflict between the penalty provision and the sentencing reference. Page 7, line 15, should be amended as follows: Strike “31-18-15” and in its place add “31-19-1.”

POSSIBLE QUESTIONS

Would intentional acquisition or damage of a fossil be subject to the act if a person commits the act while unknowingly being on state trust land.

EB/njw:pr:ar