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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/13

SPONSOR Taylor LAST UPDATED \_\_\_\_\_ HB 439

SHORT TITLE State Game Commissioner Term Limits SB \_\_\_\_\_

ANALYST Weber

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Game and Fish (DGF)

### SUMMARY

#### Synopsis of Bill

House Bill 439 proposes changes to the Game and Fish and Outdoor Recreation Act at 17-1-2 related to the State Game commission membership.

Commissioners shall serve for no more than two terms. If a commissioner is appointed to fill a vacancy, that commissioner shall serve the balance of the term for the commissioner being replaced. That partial term shall be counted as one full term.

The governor shall appoint five members to the commission, with the advice and consent of the senate. No more than three of the commissioners appointed by the governor shall be of the same political party at the time of their appointment

The remaining two members shall be appointed at large. One at-large member shall be appointed by the speaker of the house of representatives and the president pro tempore of the senate; the other at-large member shall be appointed by the minority floor leaders of the house of representatives and the senate. Both at-large members shall be appointed with the advice and consent of the governor. The at-large members shall not be members of the same political party at the time of their appointment.

1. One at-large member of the commission shall manage and operate a farm or ranch that contains at least two species of wildlife on that part that is deeded land requiring licensing prior to legal pursuit under the provisions of Section 17-3-2 NMSA 1978.
2. The other at-large member shall have a demonstrated history of involvement in wildlife and habitat protection issues and have activities or occupation not in conflict with wildlife and habitat advocacy.

Whenever any member of the commission dies, resigns or no longer has the qualifications required for the member's original selection, that position on the commission becomes vacant. The remaining members of the commission shall certify the existence of the vacancy to the original appointing authority for the vacant position, which authority shall select a successor in the same manner as the original selection was made.

Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, that no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The Supreme Court shall have exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate, and its decision in connection with such matters shall be final.

The commission shall annually select a chair and vice chair. The chair of the commission shall alternate between a member appointed by the legislature and a member appointed by the governor. A commissioner may serve as chair of the commission only once in a four-year period.

### **FISCAL IMPLICATIONS**

No fiscal implications identified.

### **SIGNIFICANT ISSUES**

DGF notes that, currently, the Governor appoints all seven State Game Commissioners, with the advice and consent of the Senate. Commissioners serve terms of four years, with no limit on the number of terms a Commissioner can serve. Five of the Commissioners are appointed based on geographic district, and two are appointed “at-large”. One member must manage and operate a farm or ranch that contains at least two species of wildlife, and one must have a history of involvement in wildlife and habitat protection and not have activities or occupation in conflict with wildlife and habitat advocacy.

DGF continues that the bill would lessen the Governor’s authority and place it in the hands of the legislature. It would also increase legislative control over the policies of the Game Commission and, vicariously, over the policies and practices of the Department of Game and Fish.

The bill increases the complexity of the qualifications for appointment, and it increases the complexity of the process by which those appointments are made. These complexities will make it more difficult to appoint members to the Game Commission. The increased difficulty may result in delays in filling vacancies on the Commission.

Imposing term limits will result in more appointments (which will have to go through the more complex process).

As for the process of removal, the bill would require the assistance of the Supreme Court. Given the appreciable workload of the Court and the fact that it would have to establish its own process for hearing and deciding these cases, the removal of Commissioners may be subject to delay.

The bill may result in unintended consequences when it comes to ensuring Commissioners are legally qualified to serve. Under current law, the farmer/rancher qualification is satisfied if *any* member of the Commission meets the qualification. The same is true for the wildlife/habitat advocate qualification. Thus, if a member rancher sells or loses his or her ranch, the Commission doesn't have to change its membership and the former rancher doesn't lose his or her position on the Commission, so long as another member meets the qualification.

Under the bill, these qualifications may be met only by the two at-large members, with one member meeting the farmer/rancher qualification and the other the wildlife/habitat advocate qualification. Thus, when the rancher member sells or loses the ranch, he or she no longer meets the qualifications for membership. As the bill is written, this constitutes a vacancy, requiring Commission certification and a new appointment.

### **TECHNICAL ISSUES**

DGF questions if the provisions of the bill regarding vacancies and removal are in conflict. The bill establishes what constitutes a vacancy, as a matter of law, and provides that the Commission *shall* certify any vacancy, thereby requiring a new appointment. On the other hand, the bill provides that members *shall not* be removed except for incompetence, neglect of duty or malfeasance in office, and only by the Supreme Court. It will be difficult, if not impossible, to follow one of these provisions without violating the other.

Paragraphs F (page 3, line 25, through page 4, line 7) and G (page 4, lines 8 through 16) are in conflict.

MW/blm