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FISCAL IMPACT REPORT

ORIGINAL DATE 03/13/17

SPONSOR Ferrary LAST UPDATED _____ HM 102

SHORT TITLE Protection of Wild Horses SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|--------------|-----------------|------|-------------------|---------------------------|----------------------|
| Total | Up to \$50.0 | Up to \$4,200.0 | 0.0 | Up to \$4,250.0 | Nonrecurring | Game Protection Fund |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with CS/HB 390, CS/SB 126, and SB 284
 Relates to HB 446
 Duplicates HJM 17

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game & Fish (DGF)
 Energy, Minerals & Natural Resources (EMNRD)
 Indian Affairs Department (IAD)
 Office of the Attorney General (OAG)
 New Mexico Livestock Board (NMLB)

SUMMARY

Synopsis of Bill

House Memorial 102 requests the conservation services division of DGF conduct a comprehensive study of wild horse herds in New Mexico to determine appropriate numbers, habitat and management policies for the preservation and maintenance of wild horse herds and to lessen the impact of populated areas on those herds as well as their impacts on populated areas. The division is to submit its report containing findings and recommendations to the legislature by December 2017.

FISCAL IMPLICATIONS

DGF advises that it is not adequately staffed to perform its obligations under this memorial. It estimates that in order to conduct a statewide study in 2017, a minimum of 5 employees would

be needed to conduct wild horse population estimates (\$400,000), and an additional 10 employees (\$800,000) would be needed to conduct habitat analyses. In order to assess current population numbers, helicopter surveys would be conducted statewide which would cost approximately \$3,000,000; this cost is based on actual cost incurred by the Department for wildlife surveys. Further, it notes that none of these expenses would be reimbursable by the federal Wildlife Restoration Program. In the absence of a general fund appropriation, all expenses will be paid for by hunter, angler and trapper license dollars, which will be diverted from managing species over which the Department has authority to researching and providing recommendations for wild horses, over which the Department has no authority.

SIGNIFICANT ISSUES

HM 102 calls attention to the recent New Mexico court decision that found wild horses are not livestock under the jurisdiction of NMLB. See Wild Horse Observers Association, Inc. v. NMLB, 363 P3d 1222 (Ct. App. 2015). According to the memorial, the interaction of humans and wild horse herds has led to conflict in the management of those herds where fencing and other interventions have not been used, and DGF's conservation division is better suited to determine the status, needs, habitat requirements and issues of human interaction with wild horses than the NMLB.

DFG, however, explains it has no authority to implement any of the recommendations that might be derived from such a study. Additionally, it advises that wild horses have never been considered wildlife, thus the Department is not suited to manage them. Further, it warns that based on the Department's expertise in studying wildlife, the requirements as set forth in the Memorial cannot be completed in the amount of time allotted, primarily because it would have to increase staffing levels, divert financial resources and develop technical expertise regarding wild horses that it currently does not possess.

Similarly, NMLB advises jurisdiction and authority over horses in New Mexico has always rested with the NMLB. It reports that it has only been since the 2007 passage of the "wild horse" definition and disposition process under Section 77-18-5 NMSA 1978 and the subsequent lawsuit referred to above that uncertainty has developed regarding the jurisdiction of "wild horses" in New Mexico. Accordingly, it opines that until that term "wild horse" is more adequately defined in statute, any resolution on the processes for dealing with them will fall short of effective in practice.

ADMINISTRATIVE IMPLICATIONS

As a stakeholder, the State Parks Division of EMNRD reports it will provide information and facilitate access within the parks as needed by DGF in support of its efforts in conducting the study.

CONFLICT, DUPLICATION

HM 102 conflicts with CS/SB 126, which changes the definition of livestock, makes changes in existing law governing wild horses, and requires the NMLB follow certain specified procedures regarding wild horses. This memorial also conflicts with CS/HB 390, which maintains NMLB jurisdiction over "equines" and sets out another set of procedures in handling them. This memorial relates to HB 446, which transfers jurisdiction over wild horses to DFG, and also

duplicates HJM 17.

OTHER SUBSTANTIVE ISSUES

NMLB notes that while some statements in the memorial are accurate, others do not align with its information and experience, along with that of other stakeholders. For example, rather than there being fewer than 300 wild horses on federal and state grazing lands within the state, it reports that current documentation shows there are over 700 wild horses on federal Bureau of Land Management (BLM) and United States Forest Service (USFS) managed Wild Horse Territory within New Mexico. Further, NMLB suggests that language in the memorial regarding domestication of horses is highly debatable and not consistent with the most credible historical and scientific data available to NMLB. It also explains that while it is true that under optimal conditions, the administration of the PZP contraceptive can be 95 percent effective, that is only with consistent reapplication of the same mares, which is very difficult to effectuate in open range environments.

As to management of wild horses generally, NMLB reports this has always been a federally-managed effort, and the state is in no better position to take on this daunting task than the federal government. Even with the BLM's current \$77 million annual budget for managing wild horses, the federal agencies have difficulty maintaining populations at appropriate levels, with PZP and all other options at their disposal.

MD/sb