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FISCAL IMPACT REPORT

SPONSOR Muñoz ORIGINAL DATE 2/27/17
LAST UPDATED _____ HB _____
SHORT TITLE Right to Hunt & Fish, CA SJR 15
ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$50.0-\$100.0	\$50.0-\$100.0	Nonrecurring	SOS operating budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

Office of the Attorney General (OAG)

Department of Game & Fish (DGF)

SUMMARY

Synopsis of Joint Resolution

Senate Joint Resolution 15 (SJR15) proposes an amendment to the New Mexico Constitution to establish a right for New Mexico residents to hunt, fish, and harvest wildlife lawfully. It establishes that the Legislature has the exclusive authority to enact laws regulating the manner, methods, and seasons for hunting, fishing, and harvesting of wildlife. The Legislature may delegate rulemaking authority to the State Game Commission (SGC). The amendment would prohibit laws or rules that unreasonably restrict hunting, fishing, and harvesting of wildlife or the use of traditional means and methods. It specifies that lawful wildlife harvesting and fishing shall be a preferred means of managing and controlling wildlife. This amendment does not modify any common law or statute relating to trespass or property rights.

FISCAL IMPLICATIONS

Section 1-16-13 NMSA 1978, requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the

election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost from \$50,000 to \$100,000 in printing and advertising costs based on 2016 actual expenditures.

SIGNIFICANT ISSUES

According to OAG analysis:

The absolute right to hunt and fish, as stated in Section A, could be in contravention with current state statutes like the Endangered Species statute, NMSA 17-2-41, and the depredation laws, NMSA 17-2-7.2. Further, there is also possible inconsistency with the federal Endangered Species Act. All of these consistencies would need to be resolved.

Additionally, the fact that SJR 15 rests responsibility for implementation of laws and rule making with the legislature, albeit allowing for delegation to the SGC, may also be problematic based on separation of powers constructs. Generally the legislature makes the laws, but the executive branch implements the laws including rule-making. As current state law gives general management of game and fish to the SGC, SJR 15 could make the SGC superfluous. There appears to be some internal inconsistency with SJR 15, in that page 2, lines 3 to 6, states that the purpose of laws and rules is wildlife conservation and management and preserving the future of hunting and fishing. However, Section C, page 2, lines 7 through 9 states that lawful public wildlife harvest and fishing shall be a preferred means of managing and controlling wildlife. These two sections should be reconciled and wildlife conservation may be interpreted in contradiction with the resolution's underlying intent.

Finally, the inclusion of the wording resident might present a problem. Nonresident hunters have challenged state restrictions on nonresident hunters. These challenges have been based on the Privileges and Immunities Clause, the Dormant Commerce Clause, the Equal Protection Clause, and the Supremacy Clause of the Constitution. Historically, courts have held that states may enact discriminatory nonresident hunting regulations if the type of hunting being regulated is typically a recreational activity, such as elk, deer, or bird hunting; but in some instances, courts have held that a state cannot discriminate when the hunting is typically a commercial activity, such as catching shrimp.

OTHER SUBSTANTIVE ISSUES

OAG notes the use of the term “unreasonably” in SJR15 in reference to laws restricting hunting, fishing, and harvesting wildlife is subjective and could create questions of interpretation.

The term “use of traditional means and methods” is not defined. DGF analysis recommends a slight change in the language to ensure that traditional methods for wildlife harvest be recognized:

Section 1(B), page 2, lines 2-3: “...unreasonably restricts hunting, fishing and harvesting wildlife the use of traditional methods for harvesting wildlife or the use of traditional means and methods.”