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FISCAL IMPACT REPORT

SPONSOR Ferrary **ORIGINAL DATE** 2/8/19
LAST UPDATED _____ **HB** 445
SHORT TITLE Wild Horse Protection & Habitat Act **SB** _____
ANALYST Gaussoin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$300.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SM26 and HB444.
 Conflicts with SB158 and HB218.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals, and Natural Resources (EMNRD)
 New Mexico Livestock Board (NMLB)
 Administrative Office of the Courts
 Tourism Department (NMTD)
 *Regulation and Licensing Department (RLD)
 *Board of Veterinary Medicine (BVM)

SUMMARY

Synopsis of Bill

House Bill 445 appropriates \$300 thousand from the general fund to the New Mexico Equine Board for the purpose of carry out the provisions of the Wild Horse Protection and Habitat Act.

House Bill 445 would create the Wild Horse Protection and Habitat Act, establish criminal penalties for violation of the act, create a New Mexico Equine Board, and create a wild horse protection and habitat fund.

Among other duties, the board, administratively attached to EMNRD, would

- Regulate the treatment of wild horses;

- Establish fees of no more than \$100 for fencing, training, range improvement, adoptions, and other services;
- Employ wild horse specialists and an equine veterinarian and equine inspectors with peace officer powers to enforce the act;
- Conduct a census of wild horse herds and establish wild equine districts within the state;
- Work with the Range Improvement Task Force of New Mexico State University and Department of Game and Fish on range and herd management;
- Develop educational materials and programs, create wild horse tourism maps for sale, and equine tourism brochures for distribution by the Tourism Department;
- Develop a cooperative fencing program and work with the Transportation Department on safety issues;
- Develop a process for determining if an equine is wild or has been abandoned by its owner and work with the Livestock Board to reduce abandonment;
- Work with veteran’ organizations on volunteer and employment opportunities and the Economic Development Department on the development of rural jobs;
- Work with the Tourism Department to develop a revenue stream.

To control the wild horse population, the board would have the authority to use birth control and, if necessary, relocate, adopt out or euthanize unhealthy horses. Captured horses would undergo DNA testing.

The bill makes it illegal for an equine owner to allow the animal to roam unattended outside a fenced private property and for anyone to drive, hold or kill a wild horse or lure it from its natural habitat. The also amends animal cruelty laws to include wild horses, removes wild horses from the definition of livestock in laws on seized animals, and repeals 77-18-5 NMSA 1978, the existing law governing wild horses.

Finally, the bill adds wild horses to an existing law that requires “every gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals” to erect a fence to keep animals out.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY20 shall revert to the general fund.

The Livestock Board calls the appropriation “insufficient to the point of absurdity.” With the average cost of a state employee, with salary and benefits, around \$75 thousand a year, personnel costs alone for an agency with four employees would be \$300 thousand. A veterinarian position is likely to cost more than the average.

EMNRD notes entities that are administratively attached to EMNRD require different levels of support and estimating the cost to the department is difficult. Among entities already attached to EMNRD, the Department of Game and Fish operates completely independently and needs no support, while the Youth Conservation Corps relies on EMNRD for budget and fiscal assistance and legal and contractual assistance and pays the department for those services. EMNRD reports, while a similar arrangement could be possible with the New Mexico Equine Board, the \$300

thousand in HB 445 would make it difficult to fund much administrative support.

The Administrative Office of the Courts (AOC) estimates a minimal administrative cost for a statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

NMAG says HB445 might require the office to hire staff to fulfill its duties.

SIGNIFICANT ISSUES

AOC reports HB445 codifies the Appeals Court finding in *Wild Horse Observers Association, Inc. v. NMLB* (2015) that “livestock” did not include undomesticated, unowned animals, including wild horses, and, therefore, unowned, undomesticated horses could not be “estrays” under the Livestock Code. The court remanded the case for further proceedings and, as of September 2017, the parties were still fighting over discovery requests in the case. HB445 would potentially end that case.

The Tourism Department says it does not have enough information about the potential for wild horses as a tourism draw to judge whether it would be effective for the department to market wild horse observation. However, NMTD raises concerns about directing visitors to wild horse observation areas, which could encourage trespassing or other unwanted repercussions.

NMLB, which endorses action clarifying the definition of wild horses to resolve existing and potential lawsuits, created a multi-page list of concerns. Among them:

- The definition of wild horse in the bill might conflict with the federal Wild Horse and Free-Roaming Horses and Burros Act.
- Most of the state’s feral and wild horse populations exist on federal or tribal land. The equine board would have no jurisdiction over horses in these areas.
- The New Mexico Equine Board would duplicate and conflict with certain duties of the New Mexico livestock board such as the appointment of a state veterinarian.
- Horse rescue and retirement facilities would still fall under the authority of the New Mexico Livestock Board pursuant to 77-2-30 NMSA 1978.
- The bill contains a provision that owners of equine shall not allow their animals to graze or roam unattended outside of fenced private property. This conflicts with the common practice of livestock owners who have a permit to graze livestock on federal or state lands.
- The bill restricts the ability of the equine board to control the horse herd populations to birth control methods, relocation, or adoption. As a last resort, a horse may be euthanized only if it is determined to be crippled or otherwise unhealthy. These provisions have not been effective in controlling the populations of horse herds subject to the federal Wild Horse and Free-Roaming Horses and Burros Act.
- The exemption of wild horses from the Livestock Code might conflict with their inclusion in the animal cruelty statutes, which are partially enforced by NMLB.
- Criminal statutes involving wild animals typically are included in Chapter 17, the Wild Life Conservation Act.

- Wild horses are already protected under 77-18-5 NMSA 1978, a portion of the Livestock Code.
- The duties of the New Mexico Equine Board duplicate those already fulfilled by NMLB.

PERFORMANCE IMPLICATIONS

AOC says the bill could have an impact on its performance measures “cases disposed of as a percent of cases filed” and “percent change in case filings by case type.”

ADMINISTRATIVE IMPLICATIONS

NMTD does not currently charge for brochures and maps available in visitors information centers and says it does not currently have a mechanism for charging for a wild horse observers map.

NMAG and EMNRD would both have additional support responsibilities under HB445, although the extent is unclear. NMAG says the bill authorizes the Equine Board to use NMAG for advice and counsel and representation in legal proceedings. The NMAG Open Government Division would be charged with supporting the drafting of new rules and conducting rule hearings under the State Rules Act and the Attorney General’s Default Procedural Rules. Additionally, the Litigation Division could be responsible for enforcement and prosecution of violations of the Wild Horse Protection and Habitat Act.

In addition to saying the Equine Board would duplicate the functions of the Livestock Board, NMLB says it also duplicates some of the functions of the State Veterinarian and Department of Game and Fish.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SM26 calls for a study of a wild horse state park, and HB444 authorizes a wild horse specialty license plate.

HB445 and SB118, which would clarify the definition and disposition of a wild horse, propose different amendments to Sections 30-18-1.2, 77-2-1.1, and 77-18-5 NMSA 1978. HB218, providing registered horse shelter the right of first refusal to purchase stray domestic horses, conflicts with HB445 in amending Section 77-2-1.1 NMSA 1978).

HFG/sb