

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/19

SPONSOR SCONC LAST UPDATED 2/19/19 HB \_\_\_\_\_

SHORT TITLE Wild Horse Definitions & Disposition SB CS/SB158/aSJC

ANALYST Gaussoin

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>				Indeterminate		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bills 218 and 445 and Senate Memorial 26 and HB390 and SB126 from the 2017 legislative session

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Board of Veterinary Medicine (BVM)

#### No Responses Received

Livestock Board

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Conservation Transportation substitute for Senate Bill 158 adds “wild horses” to language in Section 77-16-1 NMSA 1978 that requires gardeners, planters, and others with land or crops that can be damaged by trespassing animals to build fences to keep the animals out. It further amends the bill to require that private landowners who ask the Livestock Board to capture a wild horse must demonstrate that fences have failed to stop the animal from trespassing.

#### Synopsis of Original Bill

The Senate Conservation Committee Substitute for Senate Bill 158 amends animal cruelty laws to include wild horses, removes wild horses from the definition of livestock in laws on seized animals and in the Livestock Code, and replaces the existing law on wild horses with a new section that redefines wild horse and includes procedures for handling wild horses, including

capture, relocation, adoption, and euthanasia.

The bill changes the existing definition of wild horse – “a horse on public land that is not an stray” – to an unclaimed horse “without obvious brands or without other evidence of private ownership.” It excludes from that definition horses subject to federal jurisdiction under the federal Wild Free-Roaming Horses and Burros Act. It clarifies the definition of public land to exclude all federal land and creates definitions for private and public wild horse preserves and wild horse range, defined as pasture with adequate land mass, water, and vegetation to support wild horses.

It authorizes the capture of wild horses on public land for the safety of the public and the health of the horse and allows the Livestock Board to relocate wild horses captured on public land or on private land at the request of the landowner or manager. Under the bill wild horses could be relocated to public land designated a wild horse range, a public or private wild horse reserve, or private land with the written permission of the land owner. The horse could also be transferred to a wild horse rescue or retirement facility or adopted to a private owner under certain restrictions. Wild horses falling under federal jurisdiction would be transferred to federal agencies.

If authorized by the state veterinarian, a wild horse could be euthanized if medically necessary “to prevent suffering from life-threatening illness or injury.” The bill says euthanasia “shall not” be used for population control.

The bill provides for political subdivisions to enter agreements with state and federal agencies, another political subdivision, and private providers to maintain a wild horse range, monitor and identify herds, provide supplemental feed and care, control fertility, protect public safety, and prevent property damage.

By repealing the existing law on wild horses, the bill removes requirements that a wild horse captured on public land undergo DNA testing to determine if it is a Spanish colonial horse, which are protected. Existing law also provides for the capture and removal of horses when a herd exceeds the number needed to preserve its genetic stock and cannot be supported by the range.

## **FISCAL IMPLICATIONS**

NMLB reports a clear definition of wild horses and public lands will prevent “continuous litigation potentially costing the taxpayers hundreds of thousands of dollars of litigation expenses.” The board also indicates being able to quickly move domesticated roaming horses from state custody would have “significant impact” on the agency.

## **SIGNIFICANT ISSUES**

NMLB reports it has been sued for removing horses trespassing on private land because state law is not clear on what is an stray, defined as livestock running at large. Because a 2015 Appeals Court decision ruled “undomesticated, unowned horses” are not livestock and, therefore, not strays, NMLB has no authority to impound the animal. Further, the ruling required a court trial court to determine whether the horse was wild or an stray.

Currently, as a result of the lawsuit, the board says it must determine a specific animal’s level of domestication before it can determine jurisdiction, leaving unwanted animals in limbo and the board covering the cost of care while a court reviews the animal’s history, activity, and behavior.

## **ADMINISTRATIVE IMPLICATIONS**

NMLB indicates it will simplify the management of wandering horses.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB218 provides registered equine rescue or retirement facilities the right of first refusal to purchase estrayed horses.

HB445 creates the Wild Horse Protection and Habitat Act and a New Mexico Equine Board, prohibits certain acts related to wild horses, and, in provisions matching those in the committee substitute for SB158, removes wild horses from the definition of livestock and amends animal cruelty laws to include wild horses.

SM26 requests the Energy, Minerals and Natural Resources Department to study the feasibility of acquiring land for a wild horse state park.

SB126 from the 2017 legislative session, similar to the original SB158, would have clarified the definition of wild horse and provided for the handling of wild horses on public land. The bill passed the Senate but died in the House on adjournment.

## **TECHNICAL ISSUES**

The bill allows for wild horses to be captured on public land at the request of the agency with jurisdiction over the land but does not say who is authorized to capture the horse.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMLB stated about the original bill:

“With the NMCA decision of 2015 being left to the interpretation of individual district courts, as opponents of the NMLB continue to file lawsuits in whatever jurisdiction any horses (or other animals) are found to be trespassing on private land, the NMLB will continue to be placed in the current untenable position of: either (1) responding to requests from private citizens for relief, under the estray statutes, from the damages caused by such trespassing animals, or (2) being sued for impounding animals that have not been found by a court to be “domesticated,” and (3) precluding the NMLB from performing their statutory duty regarding estray horses captured on private land thus impairing private citizens the free enjoyment of their private property when dealing with trespassing estray horses.”

HFG/sb /gb