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FISCAL IMPACT REPORT

SPONSOR Baldonado ORIGINAL DATE 02/06/21
LAST UPDATED 02/10/21 HJR 5

SHORT TITLE Right to Hunt, Fish & Harvest Wildlife, CA SB _____

ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$150.0- \$200.0		\$150.0- \$200.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 32 and House Joint Resolution 8.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)

State Land Office (SLO)

SUMMARY

Synopsis of Bill

House Joint Resolution 5 proposes to ask voters to amend the New Mexico Constitution to add language stating, "The people of the state have a right to hunt, fish and harvest wildlife in accordance with laws and rules established to manage wildlife. That right shall not be construed to impair laws established to prohibit trespass or to protect property rights."

The question would be put to the voters at the next general election in November 2022.

FISCAL IMPLICATIONS

HJR5 does not include an appropriation and managers of the Department of Game and Fish, which manages wildlife under Chapter 17 of state statute, indicate they do not anticipate additional responsibilities or costs.

The State Land Office raises concerns HJR5 could "interfere with the Commissioner of Public Lands ability or discretion to make management decisions regarding the best fiduciary use of state trust land." A constitutional amendment could similarly interfere with DGF ability to manage gaming and fishing and impact its revenues.

Constitutional Amendment. Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand-\$200 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

DGF, which identified no significant issues in its analysis on HJR5, issued almost 294 thousand hunting licenses to state residents in 2020, or about 14 licenses for every 100 New Mexicans. The state issued 425 thousand fishing licenses to residents, or one for every five New Mexicans. In addition, the state sold 93 thousand hunting licenses and 127 thousand fishing licenses to out-state-residents.

An October 2020 LFC Evaluation Unit report on the performance of the Game and Fish Department did not address access to hunting and fishing in New Mexico (although it did find the process for permitting hunting on private lands appears to favor out-of-state hunters). Notably, the report, *Program Evaluation: Performance of the Game and Fish Department*¹, found the state could benefit from more collaborative management of wildlife:

The Legislature may want to reconsider the merits of consolidating the Department of Game and Fish with other state land-management agencies into a comprehensive natural resources department. However, if the Legislature does not act on consolidation, the Legislature may consider creating a working group comprising secretaries from applicable state agencies, LFC, and Department of Finance and Administration to help align priorities between the Legislature and Game and Fish.

Given the robust level of hunting and fishing in New Mexico, it is unclear why the activity needs to be protected in the constitution. In addition, the state has made outdoor recreation a priority, with the creation of a program and appropriations for its promotion. Expanded hunting seasons and grounds could discourage nonconsumptive outdoor recreation.

Significantly, establishing a right to hunting and fishing in the constitution could be used to legally challenge quotas, bag limits, and other restrictions on methods, seasons, or locations.

The State Land Office, while arguing the constitutional amendment would not create an absolute right to hunt, fish, and harvest wildlife because management would be “in accordance with laws and rules established to manage wildlife,” nevertheless notes its concerns with its impact on land management:

This language could be construed to include only those laws and rules directly related to wildlife conservation or preservation. If so, the amendment could be interpreted to render unconstitutional laws or rules regulating hunting, fishing, or harvesting for other reasons, such as public safety or environmental protection.

¹ https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-%20Performance%20of%20the%20Department%20of%20Game%20and%20Fish.pdf

The office reports advocates for and opponents against a constitutional amendment to protect hunting and fishing in New Mexico acknowledge the intent is to prevent regulations on trapping, even though the experience of 23 states with constitutional provisions indicate constitutional protections “do not preclude ordinances limiting hunting, do not prevent prosecution of people hunting without valid licenses, and do not supersede trespassing laws.”

Further, the office, which says studies show a growing interest in hunting after a decline in the 1990s, says hunters list access to land the biggest barrier preventing them from hunting more often (41 percent), with restrictive policies coming in a distant third (18 percent). However, the provision proposed in HJR5 would not address “pervasive access problems.”

If some of the biggest barriers to hunting in New Mexico are access to land and water, articulating hunting as a constitutional right will not address those barriers. A more substantive solution to protecting the right to hunt and fish would be the creation of a task force to recommend concrete solutions to access barriers that includes representatives from state and federal land agencies, pueblos, tribes, and nations, and private land-owners to formalize recommendations on how to increase public access to land and waterways.

SLO notes it recently issued a four-year easement to the State Game Commission allowing Department of Game and Fish hunting and fishing license holders access to most parcels of state trust land. In addition, since March 2020, DGF and SLO have partnered on \$200 thousand worth of projects to enhance hunters’ access to and use of state lands.

ADMINISTRATIVE IMPLICATIONS

The State Land Office notes the constitutional amendment proposed by HJR5 could interfere with its management of state trust land. While the Game and Fish Department did not note any issues with administration of HJR5, it is possible that efforts to regulate hunting and fishing could be hindered by constitutional protections.

RELATIONSHIP

HJR8 relates to House Joint Resolution 5, which also asks voters to amend the constitution to guarantee a right to hunt and fish; however, HJR5 does not include HJR8’s language referring to traditional hunting methods or the use of hunting and fishing as the primary means to manage wildlife.

HJR8 also relates to Senate Bill 32, which would make it unlawful to use a trap, snare, or poison wildlife on public land.

ALTERNATIVES

From the State Land Office:

If the number one barrier to hunting in New Mexico is access to land and water, including hunting as a right within our constitution will not address those barriers. A more substantive solution to protecting the right to hunt and fish would be the creation of a task force to recommend concrete solutions to access barriers that includes

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representatives from state and federal land agencies, pueblos, tribes, and nations, and private land-owners to formalize recommendations on how to increase public access to lands and waterways.

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