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FISCAL IMPACT REPORT

SPONSOR Jaramillo/Herrera LAST UPDATED _____
ORIGINAL DATE 2/26/23
BILL _____
SHORT TITLE Big Game Depredation Fund Purpose NUMBER Senate Bill 462
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Personnel		\$91.5-\$274.5	\$91.5-\$274.5	\$183.0-\$549.0	Recurring	Game Protection Fund
Claims		Indeterminate	Indeterminate	Indeterminate	Recurring	Big Game Depredation Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Department of Game and Fish (DGF)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 462

Senate Bill 462 would expand the uses of the big game depredation damage fund, managed by the Department of Game and Fish (DGF), to include monetary awards to landowners in addition to the costs of correcting and preventing damage to property.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Direct payments to landowners is likely to increase the number of complaints filed with DGF's Wildlife Depredation and Nuisance Abatement Program, although projecting that increase is difficult. DGF contends it would need to double the number of FTE in the now-4-FTE

depredation unit to handle the increase in the number and complexity of complaints. The unit currently addresses 400 to 500 complaints a year with a budget of \$1.135 million, including \$366 thousand for personnel costs. Additional workload is likely to increase the demands on the small program but the workload is unlikely to double. This analysis assumes SB462 would necessitate 1 to 3 additional FTE at a current average cost of \$91.5 thousand per FTE starting in FY24.

In its analysis of SB462, DGF reports half of its complaints are related to damage by big game; however, in a report issued in 2017, the department reported raccoons were the number one species behind complaints, responsible for 43 percent of the almost 600 complaints received that year. Bear, elk, and cougar—ranked second, third, and fourth—were together responsible for 34 percent of complaints. Given raccoon damage is likely significantly less costly than that of elk, this distinction is important in projecting claims against the fund. Nearly \$780 thousand of the Wildlife Depredation and Nuisance Abatement Program budget is in contractual services and other uses, presumably much of this to provide interventions and remediation, the program’s stated purpose. However, the program also has a robust public outreach function. DGF did not provide any figures on how much is spent on interventions and remediation.

The balance in the big game depredation damage fund over the last three years has averaged \$2.6 million. The fund is supported through a stamp fee—\$3 for residents and \$10 for nonresidents—on big game hunting licenses. DGF reports in analysis for SB462 the fund receives about \$500 thousand a year in revenue and could be drained within a year if SB462 is enacted, not only because the number of complaints could increase but also because the cost of each complaint would increase, with a payment to the landowner added to the costs of remediation. Claims against the fund would have to increase multifold, perhaps five-fold, to drain the fund; nevertheless, without guardrails limiting the number or size of claims, additional spending on compensation and remediation could, eventually, deplete the fund. Given the uncertainty over how many additional complaints would be filed and the cost of direct payments, the impact is indeterminate.

SIGNIFICANT ISSUES

DGF contends direct payments to landowners would be a violation of the anti-donation clause in the state constitution, which prohibits the use of public funds for private purposes, with some exceptions. It further suggests legal precedent provides that state does not owe compensation to private landowners for damages done to a private property by wildlife held in trust for the people of New Mexico (*Mountain States Legal Foundation v. Hodel*, 10th Circuit, 1986).

The office of the Attorney General (NMAG) points out the landowners who filed suit against the State Game Commission over the state’s response to elk damage (*State ex rel. Calvin Kiehne et al v New Mexico State Game Commission*, 7th Judicial District) argue the damage caused by the elk is “inverse condemnation,” the government taking of private property without just compensation. NMAG also notes SB462 would require the State Game Commission to promulgate rules and the commission currently does not have enough member to constitute a quorum.

PERFORMANCE IMPLICATIONS

Wildlife Depredation and Nuisance Abatement Program performance measures include the

percent of depredation complaints addressed and the percent resolved within a year. The department typically addresses 99 percent of complaints and resolves 96 percent within a year, exceeding the targets for both. Performance is likely to suffer if complaints increase significantly.

ADMINISTRATIVE IMPLICATIONS

DGF raises a number of concerns with the complications of developing administrative rules for the expansion of wildlife depredation and nuisance claims proposed under SB462:

A reasonable process would have to be developed to determine compensation for big game damage. This can vary greatly by species and by the type of property that is damaged. The department would be required to develop a process that has been vetted through the State Game Commission and any interested public. The program developed would have to address a wide range of loss, ranging from the direct loss of livestock by predation from bear/cougar to quantifying the loss that has occurred through forage consumption of ungulates.

... Another significant issue is there is no definition as to what damage may be compensated. While it can be inferred that it relates to the consumption of forage, fencing damage, crop damage, and other agricultural-related impacts, it does not exclude vehicle damage, home garden intrusions, loss of pets/livestock by bears/mountain lions, and other damages caused to persons and private property. The scope of compensable damage is not defined and leaves wide-open the type of damage claims that could be made against the state.

The department indicates the administration of the nuisance abatement program would be further complicated by challenges over compensation amounts:

Other western states that have compensation programs spend a significant portion of time ... on appeals. This has led to a significant amount of time spent in front of boards or commissions and bringing in third party contractors to evaluate compensation amounts.

In addition, opening the door to compensation for losses could draw in environmentalist who object to game animal management practices:

Complicating the development of such a program is that a disparity of perspectives exists regarding direct compensation for damages. Because the state's wildlife is held in the public trust, some public groups have expressed their objection that the state would be required to pay compensation for the consumption of grasses on public land and other potential damages caused by big game in New Mexico.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The House Appropriations and Finance Committee substitute for House Bill 2 (the General Appropriation Act) includes \$1.35 million for the Wildlife Depredation and Nuisance Abatement Program.

HG/ne