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## FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 2/07/05 HB \_\_\_\_\_

SHORT TITLE Mitigate Dangers Associated with Wolf Release SB 72

ANALYST Wilson

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |         | Recurring or Non-Rec | Fund Affected        |
|-------------------------|------|-----------------------------|---------|----------------------|----------------------|
| FY05                    | FY06 | FY05                        | FY06    |                      |                      |
|                         |      | \$165.0                     | \$660.0 | Recurring            | Game Protection Fund |

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Attorney General's Office (AGO)  
 Game & Fish Department (GFD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 72 makes it unlawful for any wolf to migrate to any non-federal lands, to injure or kill a human being or threaten to, or to injure or kill any pet or any livestock. The bill also dictates that any individual found in violation of his or her lawful duty to supervise, monitor and control a wolf or to appropriately limit its migration shall be guilty of a misdemeanor. In addition, any person with the duty to supervise, monitor, and control wolves will be guilty of committing an act greatly dangerous to the lives of others if a wolf kills a human. It also establishes penalties and protocols for handling circumstances involving offending wolves. The bill contains an emergency clause.

#### Significant Issues

Mexican gray wolves are listed as endangered under the Endangered Species Act (ESA), and gray wolves are listed as endangered under the New Mexico Wildlife Conservation Act (WCA), Mexican gray wolves were considered to be extirpated from the United States until on-the-ground restoration of Mexican gray wolves was undertaken, beginning with releases of Mexican gray wolves into the Blue Range of east-central Arizona in late 1997, as part of a Mexican wolf recovery program carried out under the ESA. Since that time, limited numbers of wolves have

dispersed into New Mexico, or been released in New Mexico following translocation from Arizona for management purposes. Currently there are 3 wolf packs that are known to inhabit New Mexico in or around the Gila Wilderness, plus some other lone wolves or small groups that may occur within southwestern New Mexico. Public opinion surveys of New Mexico residents regarding Mexican wolves in both 1987 and 1995 found that a clear majority of the state's residents surveyed expressed positive opinions toward reintroduction of Mexican gray wolves into the state. The 1995 survey also geographically divided the survey results to the counties of proposed Mexican wolf restoration, and found at least of 50% of respondents within these counties expressing moderate or strong support for the proposed Mexican gray wolf reintroduction. However, some segments of the state's population, particularly livestock producers, have expressed opposition to Mexican gray wolf reintroduction based on concerns for wolves preying upon livestock and wildlife.

GFD states that there could be adverse implications to the GFD personnel participate in the Mexican gray wolf reintroduction program, under the broad guidance of the United States Fish and Wildlife Service (USFW) which has primary responsibility for conservation and recovery of wildlife listed under the ESA, in an effort to implement Mexican wolf reintroduction in a manner that is as consistent as possible with the needs and desires of New Mexico citizens and New Mexico wildlife populations.

The AGO states that it is legally questionable to impute the acts of a wild animal, living in the wild, to humans for the purpose of criminal or civil liability. Common law does allow for civil liability when the wild animal is being kept in domestic settings, however, no such legal precedent exist for animals living in the wild.

### **FISCAL IMPLICATIONS**

If the GFD is required to comply with all provisions of this bill, then significant resources would have to be diverted from other programs in order to comply with these requirements. Based on the number of wolves present in New Mexico, 24-hour surveillance for each wolf, and a minimum of 12 FTEs, would be required in order to ensure that Mexican gray wolves do not ever "migrate" off federal lands and onto state lands, or other properties. This does not include personnel and time required to maintain the records of DNA samples and respective identification numbers. Without any appropriation contained in this bill, these resources would have to be drawn from existing GFD programs and functions.

GFD estimates costs of \$165 thousand in fiscal year 2005 and \$660 in fiscal year 2006. These will be recurring costs and come from the game protection fund.

### **ADMINISTRATIVE IMPLICATIONS**

The provisions of this bill will make the GFD responsible for administering a process to retain and track DNA samples for all Mexican wolves, along with unique identification numbers assigned to each sample. Additionally, GFD administrators will take on the added responsibility of ensuring that all personnel were in compliance with all provisions of this bill relating to Mexican gray wolves and their movements.

The application of the language "any person" would appear to include the GFD and its personnel unless there is a specific exemption added. As a result it is impossible for the GFD or its person-

nel to implement any wolf related activities as there is the possibility of incurring liability under this bill. The liability, in addition to civil, includes potential liability for the State Game Commission of first degree murder if a wolf kills someone, and a third degree felony if a person has been injured or attacked.

## **CONFLICT**

SB 72 conflicts with the Federal Endangered Species Act, the New Mexico Wildlife Conservation Act and the Mexican Wolf Memorandum of Understanding. Further, the bill could create conflict with the federal government if the state attempts to prosecute federal employees acting within the scope of their assigned duties.

## **TECHNICAL ISSUES**

GFD provided the following:

The bill imposes liability if a wolf “threatens”, however there is no definition of what constitutes a threat.

Section (f) on page 11 requires the GFD to euthanize a captured wolf for which there is no DNA on file. This would violate both the federal ESA and the state WCA. It also appears that compliance with the provisions of this bill would violate the obligations of the GFD under the current reintroduction memorandum of understanding.

## **OTHER SUBSTANTIVE ISSUES**

GFD provided this additional information:

The bill states that wolves were not known to exist in New Mexico prior to April 2000. Mexican gray wolves are native to New Mexico. They were extirpated from the state, with no confirmed records of wild wolves in the United States after 1970, until the advent of Mexican wolf restoration in 1998. Some of the Mexican gray wolves that had been released in Arizona beginning in 1998 had dispersed onto lands within New Mexico, for at least brief periods of time, prior to wolves being translocated to the Gila Wilderness of New Mexico in April 2000.

The bill describes wolves as being “inherently dangerous to any human beings they may randomly encounter”. There are no documented cases of wolves attacking and killing or severely injuring people in North America. Wolves may interact with humans on occasion. An independent review of the Mexican gray wolf recovery program after its first 3 years documented 11 reported wolf-human interactions. In 2 of these 11 cases (both in Arizona), the reporting parties expressed some level of fear for personal safety. An analysis of one case (and similar cases like it) suggested that the persons were in fact in no danger. The second case involved a man who shot a wolf for reportedly attacking the man’s dog. The shooting of this wolf was considered allowable under the experimental population rule for the Mexican gray wolf in the Blue Range Recovery Area of Arizona and New Mexico, and no prosecution for violation of the ESA occurred. Based on all the above information, the characterization of wolves as being “inherently dangerous to any human beings they randomly encounter” is inaccurate.

The bill states that “any human being or New Mexico citizen found responsible for the death or maiming of wolves shall be prosecuted by federal authorities”. The experimental population rule for Mexican gray wolf reintroduction into Arizona and New Mexico contains provisions for allowable take of Mexican gray wolves that may kill, wound, or bite livestock on private or tribal lands, or for Mexican gray wolves anywhere if necessarily as a result of a threat to human safety. Under this rule, any person taking a Mexican gray wolf under these circumstances is required to report the event, but has no further legal obligations or liabilities for take under the ESA. Similarly, the New Mexico WCA prohibits the taking of species listed as endangered under that act, but allows take of state-listed species in situations involving an immediate threat to human life or property. Therefore, this statement within the bill is considered to be inaccurate.

The language could conflict with the provisions of the New Mexico WCA regarding the management of wildlife in the state found to be threatened or endangered, which state that this wildlife should be “managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat”. These sections could be interpreted as requiring that all wolves currently in the wild within New Mexico would have to be recaptured and have certified DNA samples taken and filed in order for the wolves to be allowed to continue to exist in the wild. This bill authorizes taking of wolves in a manner that will be in conflict with federal law

The bill refer to the “knowing, premeditated and intentional unconstrained release of any inherently dangerous carnivorous predator” could be interpreted as applying to other wildlife such as black bears. The GFD utilizes black bear relocation as one available tool to resolve wildlife-human conflicts. Without defining an “inherently dangerous carnivorous predator”, if enacted this bill could impact the GFD’s available tools for alleviating human-wildlife conflicts.

**DW/sb/njw**