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FISCAL IMPACT REPORT

SPONSOR Gomez **ORIGINAL DATE** 1/30/16
LAST UPDATED 2/02/16 **HB** 149

SHORT TITLE Big Game Depredation Damages & Compensation **SB** _____

ANALYST Liu

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	(\$0.0 - \$1,203.1)	(\$0.0 - \$1,203.1)	Recurring	Big Game Depredation Damage Fund
	(\$350.0)	(\$350.0)	Recurring	Game Protection Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 - \$1,203.1	\$0.0 - \$1,203.1	\$0.0 - \$2,406.2	Recurring	Big Game Depredation Damage Fund
Total		\$350.0	\$350.0	\$700.0	Recurring	Game Protection Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)

SUMMARY

Synopsis of Bill

House Bill 149 amends Section 17-3-13.3 NMSA 1978 to include direct compensation from the big game depredation damage fund to landowners for damages caused by big game.

FISCAL IMPLICATIONS

According to DGF, the big game depredation fund (BGDF) has generated approximately \$450 thousand annually over the past five years. The cash balance in BGDF as of December 31, 2015 was \$1.4 million. This bill allows the fund to be used to “correct damage to federal, state or private land caused by big game and to prevent such damage in the future.” The proposed amendment would require DGF to continue these measures as well as provide monetary compensation for damage caused by big game.

The total fiscal impact on BGDF would be dependent on rules adopted by DGF for direct compensation. DGF estimates the fund would be depleted quickly, as the agency would be required to provide permanent solutions and direct monetary payments for claims submitted by landowners. Additionally, DGF would need to support at least 4 FTE to evaluate damage and determine appropriate compensation for landowners at a cost of approximately \$350 thousand. Currently, DGF responds to approximately 500 big game depredation complaints annually. Using Colorado Parks and Wildlife’s model for big game animal damage reimbursement and DGF’s big game depredation complaint data, expenditures from BGDF could reach up to \$1.2 million annually.

SIGNIFICANT ISSUES

DGF provided the following:

The Anti-Donation Clause, Section 14 of Article IX of the New Mexico Constitution, states:

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.

In *Village of Deming v. Hosdreg Co.*, the Supreme Court of New Mexico interpreted “donation” as a gift, an allocation or appropriation of something of value, without consideration to a person, association or public or private corporation. Language in this bill includes “compensation of landowners for the financial damage caused by big game,” comparable to a “donation to or in aid of [a] person, association or public or private corporation.” Funds allocated under this bill could also be considered a donation because, owing no compensation to the private landowner, the state transfers compensation to the landowner who takes possession and ownership of the funds without any consideration to the state. Further, the state, which owns New Mexico wildlife in trust for its citizenry, does not owe compensation to private landowners for damage done to private property by protected wildlife, as opined by the Tenth Circuit Court of Appeals decision in *Mountain States Legal Foundation v. Hodel*.

PERFORMANCE IMPLICATIONS

In FY15, DGF met its mandated performance measures and resolved 95.5 percent of all depredation complaints submitted. Without additional funding or FTE, DGF believes the agency would not be able to address the needs of all complaints and reach the mandated performance

measure of resolving 95 percent of depredation complaints in one year. Additionally, the statute requires that DGF resolve depredation complaints. Direct compensation discourages permanent resolutions to underlying depredation issues.

ADMINISTRATIVE IMPLICATIONS

DGF provided the following:

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. DGF 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 or cougar to quantifying the loss that has occurred through forage consumption of ungulates. Additionally all administrative procedures regarding depredation response would need to be revised, including the current software program developed and utilized by the DGF to properly track complaints received.

Other western states that have compensation programs dedicate a significant portion of time to the compensation program on appeals to the compensation amounts as determined by the department. More time is spent in front of boards or commissions and bringing in third party contractors to evaluate compensation amounts.

TECHNICAL ISSUES

DGF provided the following:

The bill does not specifically define 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 or livestock by bears or mountain lions, and other damages caused to persons and private property. The scope of compensable damage is not defined and allows a wide range of damage claims that could be made against the State, without limit.

Section 17-2-7.2 NMSA 1978, Landowner Takings, and 19.30.2 NMAC, Depredation Assistance, would require amendments upon enactment of this bill as written. Section 17-2-7.2 NMSA outlines the conditions for landowners to take or kill animals on private land and responsibilities of DGF regarding depredation complaints. 19.30.2 NMAC prohibits expenditures related to direct compensation from the big game depredation damage fund.

OTHER SUBSTANTIVE ISSUES

Colorado Parks and Wildlife (CPW) reimburses for damage caused by native big game animals to livestock, commercial orchards, nurseries, growing and harvested crops, forage, fences, and apiaries. By statute, CPW is not liable for:

- damage to motor vehicles by wildlife;
- injury or death to any person;
- damages if the claimant restricts big game hunting or access for the problem species

unreasonably;

- damages if the claimant charges hunting fees over \$500 per animal;
- damages when permanent damage prevention materials have been offered and refused; or
- damages when permanent damage prevention materials have been provided and not used or installed as specified.

In FY11, CPW paid out \$1 million to settle 297 game damage claims. Averaged over the preceding four years, CPW paid out \$770.5 thousand on 320 claims annually.

<http://cpw.state.co.us/aboutus/Pages/GameDamage.aspx>

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Expenditures from the big game depredation damage fund will remain restricted to the procurement of goods and services intended to resolve or mitigate big game depredation.

SL/jle