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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/17

SPONSOR Gomez LAST UPDATED _____ HB 145

SHORT TITLE Big Game Depredation Fund Uses SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Unknown	Unknown	Unknown	Unknown	Recurring	Big Game Depredation and Damage Fund
	\$350.0	\$350.0	\$350.0	\$1,050.0	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 145 (HB145) 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) generated approximately \$490 thousand annually over the past five years. The BGDF cash balance as of December 2016 was \$1.8 million. The fund is eligible to be used to “correct damage to federal, state or private land caused by big game and to prevent such damage in the future.” This bill 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 from the game protection fund. Currently, DGF responds to approximately 500 depredation complaints annually, more than half of which are big game damage complaints. The proposed amendment does not delineate how direct compensation measures would be calculated and dispersed, so the total fiscal impact to the BGDF is unknown. Assuming DGF would be required to provide permanent solutions as well as direct monetary payments, the fund would be drawn-down to a zero balance quickly (within the first full fiscal year of implementation) and annual revenues would be dispersed until depleted each year.

SIGNIFICANT ISSUES

DGF provided the following:

The foremost issue with the proposed bill, which has been discussed several times in recent years by the State Legislature, is that direct monetary compensation is a violation of the New Mexico Constitution.

Specifically, Article IX, Section 14 of the New Mexico Constitution, the Anti-Donation Clause, provides in relevant part: “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. . . .”

A “donation” is a gift, an allocation or appropriation of something of value, without consideration to a person, association or public or private corporation. *Vill. of Deming v. Hosdreg Co.*, 62 N.M. 18, 29 (N.M. 1956). House Bill 145 violates the Anti-Donation Clause because the direct “compensation of landowners for the financial damage caused by big game” constitutes a donation to or in aid of [a] person, association or public or private corporation.” 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. *Mountain States Legal Foundation v. Hodel*, 799 F.2d 1423, 1427-29 (10th Cir. 1986).

Funds allocated under HB145 are a donation because, owing no compensation to the private landowner, the state would transfer monetary compensation to the landowner without any consideration to the state.

ADMINISTRATIVE IMPLICATIONS

According to DGF, HB145 conflicts with existing statute and regulations, and passage of the bill as written would create a need for the Legislature to reconsider Section 17-2-7.2 NMSA 1978, which outlines the conditions for landowners to take or kill animals on private land and responsibilities of DGF regarding depredation complaints. Additionally, the State Game Commission to amend 19.30.2 NMAC, prohibits expenditures related to direct compensation from the BGDDF. Additionally all administrative procedures regarding depredation response would need to be revised, including the current software program developed and utilized by the Department to properly track complaints received by the Department.

TECHNICAL ISSUES

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.

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.

JA/al/jle