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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24 /17

SPONSOR Woods **LAST UPDATED** _____ **HB** _____

SHORT TITLE Disposition of Trespassing Wild Horses **SB** 284

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	NMLB Operating Funds

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with CS/SB 126, HB 446, HB 390
Relates to HJM 17

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)
New Mexico Livestock Board (NMLB)
Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

Senate Bill 284 enacts a new section of the Livestock Code granting NMLB jurisdiction over horses that trespass onto private land. NMLB shall attempt to determine ownership of a trespassing horse and simultaneously notify animal rescue organizations. If ownership cannot be determined after five days, NMLB must offer the horse to these organizations. If no organization assumes ownership after two days, NMLB may auction the horse.

FISCAL IMPLICATIONS

NMLB notes the bill, unlike the existing estray statute, contains no provision for its reimbursement for the cost of seven days' feed and care of a horse whose ownership is assumed by an animal rescue organization. Current law allows such recoupment from the horse's original owner or the proceeds of an auction.

SIGNIFICANT ISSUES

NMLB provides this background information on strayed livestock:

Under current law, the board's first obligation is to identify any potential owner of the livestock; and if none can be determined, then the board must publish notice of the estrayed animal. If no owner claims the animal within five days, then the board is authorized to sell the animal. This practice is generally followed without difficulty for livestock other than horses. However, as the opposition to horse slaughter has risen in the state, more alternative destinations for horses have also developed (i.e., numerous horse rescue shelters now exist). With those alternatives in place, the board has historically worked with the shelters to take unwanted horses rather than have them sold on the open market. However, when those shelters have refused taking unclaimed horses in the past, the board has no other alternative but to offer the horses for sale to the public. In effect, this bill simply requires that this process continue, with the board being required to give notice to animal rescue organizations and to allow such organizations to have a right of first refusal for assuming ownership of any unclaimed horses, prior to offering the horses for sale to the public.

Recently, litigation has arisen when no one comes forward to claim a trespassing horse. As NMLB explains:

“Wild Horse Observers Association” (WHOA) has sued the New Mexico Livestock Board claiming that the board should not have jurisdiction over those horses that are determined to be “wild horses”. “Wild horse” is defined in a 2007 statute (Section 77-18-5 NMSA 1978), to mean “an unclaimed horse on public land that is not an stray.” WHOA argued the board should only have jurisdiction of those horses that were “domesticated” because the definition of “livestock” at Section 77-2-1.1 described such animals as “domestic or domesticated animals.” The New Mexico Court of Appeals decision in WHOA V. NMLB (No. 34,097, filed August 4, 2015) concluded that “livestock” does not include “undomesticated, unowned animals.” Therefore, “undomesticated, unowned horses may not be ‘stray’.” In effect, the Court held that if a horse was proven, as a matter of fact based on evidence presented to a trial court, to be unowned and undomesticated, it is not to be considered “livestock”. Accordingly, the NMLB would have no jurisdiction over those particular horses.

NMLB points out that, in the absence of NMLB jurisdiction to take possession of these animals when they trespass on private land, private landowners are without the relief they have previously been afforded under the stray statutes of the Livestock Code, since Section 77-18-5 providing NMLB authority over wild horses only applies to those captured on public land.

According to NMLB, this bill would clarify the procedures to be followed when unclaimed horses trespass on private land in New Mexico. However, the OAG points out existing law governing estrays (Sections 77-13-1 et seq, NMSA 1978), which by definition in Section 77-2-1.1(N) of the livestock code only includes livestock, including domesticated horses that are used or raised on a farm or ranch. Because the question of whether a trespassing horse is livestock or not may not immediately ascertainable, it may be unclear whether the provisions of SB 284 or the stray statutes apply.

Under general principles of statutory construction, in the event of an irreconcilable conflict, the later-enacted statute governs. See Section 12-2A-10(A) NMSA 1978. If applicable, that principle may resolve the dispute between the estrayed livestock statutes and the new section this bill enacts. However, that principle may cause an implied repeal of the existing section of law governing wild horses, including Spanish colonial horses. See Section 77-18-5 NMSA 1978.

CONFLICT

SB 284 conflicts with SB 126, which changes the definition of “livestock” in the livestock code and provides specific procedures relating to “wild horses” captured on private land. This bill also conflicts with HB 446, which transfers jurisdiction of wild horses to the Department of Game and Fish (DGF), as well as HB 390, which creates new procedures for strayed equines (a newly defined term that includes horses). Additionally, SB 284 is related to HJM 17, which requests the Conservation Services Division of DGF conduct an interim study and provide recommendations to protect, maintain and enhance wild horse herds and habitats in New Mexico to the legislature by December 2017.

TECHNICAL ISSUES

NMLB recommends these language changes:

1. Replace “confiscate”, which appears on page 1, line 22, with “impounded”. Impoundment is the more common term in the industry, and appears in the stray statutes.
2. Replace “animal rescue organization” with “horse rescue or retirement facility”, the term used in the livestock code to describe facilities that are properly equipped to care for horses specifically.

OTHER SUBSTANTIVE ISSUES

According to the factual recitations in HJM 17:

- there are fewer than three hundred wild horses on federal and state grazing lands in New Mexico and approximately five hundred thousand cattle on public lands;
- the actual population of wild horses in the state is unknown on and off sovereign lands, but the number of horses handled as estrays by the New Mexico livestock board averaged only seventy-one horses per year, of which approximately fifty percent may be wild horses;
- two non-governmental organizations and a number of pueblos and tribes in New Mexico are trained to administer immunocontraception by darting; and
- the immunocontraceptive porcine zona pellucid has a ninety-five percent efficacy and no behavioral impacts, as it is not hormonal.

AMENDMENT

NMLB suggests amending the bill to require reimbursement of its expenses arising from confiscation/impoundment by an animal rescue organization/horse rescue or retirement facility assuming ownership of the horse.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Issues regarding horses trespassing on private land may continue.

MD/jle