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FISCAL IMPACT REPORT

SPONSOR Cisneros ORIGINAL DATE 2/21/17
 LAST UPDATED _____ HB _____

SHORT TITLE Livestock Running at Large SB 349

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | | None | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 NM Livestock Board (NMLB)

Responses Not Received From
 NM Association of Counties (NMAC)
 NM Municipal League (NMML)

SUMMARY

Synopsis of Bill

Senate Bill 349 (SB349) amends existing statute regarding livestock running at large to provide that it is a misdemeanor to willfully allow livestock to run on the lands of another regardless of whether it violates a local ordinance. In addition to current law that allows the sheriff, other peace officers, or military authorities to impound livestock running at large, SB349 allows the Livestock Board to do so. The bill also increases the allowable daily impounding fee from \$5 to \$10. Finally, the bill repeals other existing statute regarding animals running at large but retains sections regarding definitions, trespass by grazing or watering livestock on lands without the owner’s permission, and the impoundment of trespassing livestock. The bill’s title indicates these repealed provisions are “unnecessary and outdated provisions from territorial law.”

FISCAL IMPLICATIONS

According to NMLB analysis, increasing the allowable impoundment fee to \$10 per animal per day is consistent with fees for other livestock impounded under other provisions of law.

SIGNIFICANT ISSUES

Current statute allows a town, conservancy district, irrigation district, or military reservation to prohibit, within its boundaries, owners to allow livestock to run at large, and provides that a violation of such a prohibition is a misdemeanor. SB349 removes the requirement that a local ordinance prohibit livestock running at large, and makes it a misdemeanor for one to willfully allow one's livestock to run at large on lands owned by another.

NMLB noted that SB349 appears to conflict with the “fence out” rule. See Section 77-16-1 NMSA 1978. However, the rule does not apply to an owner willfully allowing livestock to trespass as prohibited by SB349, and “if the owner of the animals drove them upon the lands of the injured party, or turned them loose upon other lands knowing that they would necessarily enter the lands of the injured party, and intended that they should do so, the case is one of willful trespass.” *Gallegos v. Allemand*, 1945-NMSC-012.

In 2013, the New Mexico Court of Appeals, relying on both the “fence out” rule and the statute amended by SB349, affirmed the Metropolitan Court's dismissal of a criminal complaint for willfully allowing cattle to run at large in violation of a county ordinance because the land in question was not within the boundary of a municipality, conservancy district, or military base. The New Mexico Supreme Court declined to hear the appeal, indicating it would not have overturned the ruling. SB349 changes the applicable law in such a situation by removing the requirement that a local government pass an ordinance prohibiting livestock running at large and making it a misdemeanor to willfully allow one's cattle to do so on lands owned by another.

JA/jle