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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/19
 LAST UPDATED 3/1/19

SPONSOR SJC HB CS/CS/121/SCORC/SJCS
 SHORT TITLE Dept. of Transportation Livestock Fencing SB /aSF1#1

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

SUMMARY

Synopsis of SF1 #1 Amendment

The Senate Floor Amendment #1 to SB121 removes the requirement that, in order for owners of livestock to be held liable for damages or injury caused by livestock entering roadways, the owner be guilty of gross negligence. The amendment requires only a finding of negligence for owners of livestock to be held liable for damages.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Corporations and Transportation Committee substitute for Senate Bill 121 states that owners or custodians of livestock shall not be liable for injury or damage to property resulting from vehicle and cattle collisions unless the owner of the livestock is guilty of gross negligence resulting in the injury. NMDOT would be required to construct, inspect, and maintain fences along all highways under its jurisdiction that are constructed or improved from time to time and to provide cattle underpasses, water pipelines, and cattle guards, as necessary, unless it makes a fact determination that no livestock can enter the highway from a portion left unfenced. NMDOT would also be required to put signs along all highways under its jurisdiction that are not fenced on both sides and that are adjacent to property containing livestock. Those signs, which would be posted not more than every two miles along such unfenced highways, would warn motorists that loose livestock may be encountered and to exercise caution.

FISCAL IMPLICATIONS

To comply with the substitute, NMDOT would have to create a detailed inventory of all sections of state highways that are unfenced and determine if livestock is present in these areas and whether or not they could enter the roadway. If livestock could enter the roadway, the department would need to fence the area or post signs warning motorists of unfenced livestock. NMDOT reports the current cost per mile to fence a highway is \$3.10 per linear foot, or \$16,368 per mile. The cost of fencing both sides of a highway would be approximately \$32,736 per mile.

NMDOT does not currently have an inventory of unfenced parcels. Any costs of implementation of a data system and the costs of fencing would reduce funding available for road construction and maintenance.

SIGNIFICANT ISSUES

DOT reports that:

The bill, as written, also does not allow for any discretionary balancing of safety, highway usage and economic factors and provides no guidance for determining when a highway should be fenced or posted [with signs] regardless of other factors such as safety, traffic usage, visibility and geography.

On new highway projects or improvements involving new right-of-way boundaries, DOT constructs new fencing, and on older established roads, each transportation district has discretion with regard to maintenance and replacement of fences. Where State highways are unfenced and pass through federal- or state-owned public lands leased to private livestock owners, the federal or state lessors could assume the associated fencing or posting costs. Where state highways pass through privately owned unfenced property, DOT commonly enters into cooperative fencing agreements where DOT provides the fence materials and the lessee or owner installs the fence within the DOT right-of-way so that DOT owns the fence.

ADMINISTRATIVE IMPLICATIONS

The general office would likely need to work with individual transportation districts to construct an inventory of unfenced property. This would require staff time that would otherwise be allocated for roadway cleanup, maintenance, and construction.

CJ/gb/al/gb