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FISCAL IMPACT REPORT

SPONSOR <u>McKenna/McQueen</u>	LAST UPDATED <u>3/01/23</u>
SHORT TITLE <u>Free-Roaming Horses</u>	ORIGINAL DATE <u>2/14/23</u>
	BILL NUMBER <u>Senate Bill 301/aSFI#1</u>
	ANALYST <u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$35.0	\$70.0	\$105.0	Recurring	NMLB or NMSU Operating Budget
(See Fiscal Implications)	No fiscal impact	\$150.0	\$0	\$150.0	Nonrecurring	NMLB Operating Budget
(See Fiscal Implications)	No fiscal impact	\$15.0	\$15.0	\$30.0	Recurring	NMLB Operating Budget
Total		\$200.0	\$85.0	\$285.0		

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
 UNM Sunshine Portal

Responses Received From
 New Mexico Livestock Board (NMLB)
 Office of the Attorney General (NMAG)
 State Land Office (SLO)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor Amendments to Senate Bill 301 add language to exempt federal facilities from the list of horse rescue or retirement facilities that are disallowed from taking in free-roaming horses if they advertise or solicit for horses. The amendments also insert language specifying that nothing in the added sections will impact horses found on lands administered by the federal bureau of land management. The effect of these changes will be to add clarity to the parameters of the bill and prevent conflict with federal law which preempts state law in matters relating to the management of federal land.

Synopsis of Original Bill

Senate Bill 301 amends Section 77-18-5, NMSA 1978 (Wild horses; conformation, history, and deoxyribonucleic acid testing; Spanish colonial horses; birth control.). The bill proposes completely redrafting the section and changing the section header to read: Free-Roaming Horses; Humane Management; Fertility Control. The amendments proposed in this bill include revised definitions for the terms “adoption,” “carrying capacity,” “free-roaming horse,” “humane capture,” “humane euthanasia,” “qualified free-roaming horse expert,” and “range.”

Senate Bill 301 adds a new sub-section to Section 77-2, NMSA 1978, which would require the New Mexico Livestock Board (NMLB) to undergo a rulemaking process and approve the qualifications of a “free-roaming horse expert.”

Senate Bill 301 proposes to assign responsibility for making determinations regarding populations of free-roaming or wild horses to the free-roaming horse expert certified by NMLB. The bill would require the expert to work with appropriate landowners to control the free-roaming horse populations using methods such as fertility control via immunocontraception or chemical castration, humane capture and relocation to a horse rescue or retirement facility, humane capture, and relocation to a range, or for horses with untreatable medical conditions, allow for euthanasia. In addition, the bill prohibits any activities authorized in this section from being engaged on federal or tribal land and prohibits the slaughter or export for slaughter of any free-roaming horses.

Senate Bill 301 further amends Section 77-2-30 NMSA 1978 (Horse Rescue or Retirement Facility) to remove language that currently qualifies facilities “that advertise [or] solicit for horses.”

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The New Mexico Livestock Board’s analysis included a breakdown of costs associated with obtaining licensing guidance and rule promulgation, as indicated in the table below.

ESTIMATED OPERATING BUDGET IMPACT - NM LIVESTOCK BOARD
(dollars in thousands)

Category	Detail	Cost	Recurring or Nonrecurring
Contract Services	Free Roaming Equids and Ecosystem Sustainability Expert	\$20.0	Nonrecurring
Contract Services	Range Management Expert	\$20.0	Nonrecurring
Contract Services	IT-Database Development	\$5.0	Nonrecurring
Contract Services	Attorney Fees (rule promulgation)	\$30.0	Nonrecurring
Other Costs	Travel to out-of-state training (Free-Roaming Horse Summit)	\$10.0	Nonrecurring
Other Costs	Court Reporter Expenses	\$10.0	Nonrecurring
Other Costs	Outreach/Education	\$5.0	Nonrecurring

Other Costs	Per Diem for NMLB Committee Members	\$10.0	Nonrecurring
Other Costs	Ancillary Expenses	\$25.0	Nonrecurring
Other Costs	Applicant Review Board	\$15.0	Recurring
TOTAL		\$150.0	

Most of NMLB’s costs associated with contracting experts in range management and attorney fees related to rulemaking will be nonrecurring. However, Senate Bill 301 does not contain an appropriation to fund such activities. Consequently, the agency will be forced to rely on its dwindling fund balance (\$400 thousand in FY24, down from \$1.4 million in FY23) to cover the costs associated with the rulemaking process and development of licensing procedures.

For NMLB to effectively enact a licensing procedure and approve the qualifications of such an expert, either a recurring or special appropriation would likely be necessary. Additionally, Senate Bill 301 does not contain an appropriation for salary costs associated with the duties of the free-roaming horse expert. The bill, as written, does not propose to create a position at the Livestock Board or assign FTE for this purpose.

Because the free-roaming horse expert is given exclusive statutory authority to manage free-roaming horse herds and make decisions about controlling their populations, this analysis does not assume the person filling that role would do so for free. A review of State Personnel Office positions revealed no corresponding title in the classification system. For this analysis, the title of sustainability manager most closely aligns with the duties and responsibilities of the proposed free-roaming horse expert. According to the sunshine portal, the average annual salary for a sustainability manager in New Mexico is \$70,259. However, as the bill does not propose creating a salaried position, it also needs to consider where best to place the FTE. For this analysis, it is assumed that the FTE (if created) would be at either the Livestock Board or New Mexico State University.

SIGNIFICANT ISSUES

The State Land Office’s analysis expressed concerns that Senate Bill 301 uses the term “range” instead of “public land,” which it believes will exclude the management of horses on “state trust land controlled by the state land office.” The agency expressed further concerns with what it interprets to be the exclusive right of the Livestock Board to pursue the removal and humane disposition of free-roaming horses. According to SLO,

Under existing law, landowners can kill unowned, free-roaming horses found on their land, as long as they don’t do so in a cruel manner; the bill would outlaw this method of managing free-roaming horses, which is a major step forward toward ensuring humane treatment of all free-roaming horses, but does not provide a mechanism for landowners to address problems with free-roaming horses proactively.

Analysis from the New Mexico Livestock Board stated:

This bill addresses the need for experts in range management and horse handling/care to deal with the issue of the over population of unmanaged horses on public and private lands in New Mexico.

ADMINISTRATIVE IMPLICATIONS

Analysis from the Livestock Board and the State Land Office explains that the changes proposed in Senate Bill 301 will impose significant time and resource burdens on the agencies to initiate rulemaking and begin realigning current practices with the requirements of the bill. The Livestock Board offered estimates of these costs, but the State Land Office did not.

The State Land Office expressed concerns about the scope and types of analyses that would be required before the removal or relocation of free-roaming horses on state trust lands. SLO believes Senate Bill 301 would require the agency to consider the following:

The existing agricultural, mineral, or business leases on the range in question. The actual use and condition of the range. Contractual obligations to agricultural (grazing) lessees and potential conflicts of use. Whether humane capture efforts, such as the use of baited pens, would interfere with grazing lessees' uses. Potential harm to existing lessee livestock posed by free-roaming horses. Whether relocation of horses to state trust lands would reduce the potential income to the beneficiaries from grazing leases, the existence of protected species or habitat may be affected by the relocated horses.

OTHER SUBSTANTIVE ISSUES

The State Land Office takes issue with the definition of “carrying capacity” offered in Section 3 of Senate Bill 301. The proposed definition states, “carrying capacity – the number of grazing animals that a given amount of land can support long-term while maintaining or improving the vegetation, soils, and water.” SLO believes that, by failing to distinguish between livestock and free-roaming horses, the impacts on grazing leases would be inaccurately estimated, leading to the potential for over-grazing.

The federal Wild Free-Roaming Horses and Burros Act similarly provides for the management, protection, and control of wild horses and burros on public lands by directing the Bureau of Land Management of the Department of the Interior, and the Forest Service of the Department of Agriculture, to manage such animals on public lands under their jurisdiction.

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