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| LFC Requester: | Gaussoin |
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Jan. 22, 2025 *Check all that apply:*
Bill Number: SB 5 Original Correction
 Amendment Substitute

Sponsor: Sen. Campos, Sen. Wirth, Rep. McQueen **Agency Name and Code** State Ethics Commission (410)
Short Title: Game Commission Reform **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| | | | |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| | | | | |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------------|---------------|---------------|-------------------|---------------------------|---------------|
| Total | Indeterminate | Indeterminate | Indeterminate | | | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 5 renames the State Game Commission the State Wildlife Commission and the Department of Game and Fish, the Department of Wildlife. The bill creates the Wildlife Commission as a commission with seven voting members appointed by the Governor (following recommendation by a nominating committee) and confirmed by the Senate. The bill specifies conditions for each appointed member and a procedure for the removal of commissioners. Senate Bill 5 also creates non-voting advisory memberships. It also creates a seven-member State Wildlife Commission nominating committee, providing for who those nominating committee members are appointed. Temporary provisions of the bill sunset the current Game Commissioners on January 1, 2027, authorize the Wildlife Commission and the Department of Wildlife as the successor agencies to the Game Commission and Department of Game and Fish, respectively, and provide for the initial appointments of Wildlife Commissioners, by staggered terms, starting January 1, 2027.

Senate Bill 5 also empowers the State Wildlife Commission with rulemaking power regarding how wildlife may be hunted, sold, and imported or exported from the state, and instructs the Commission to consider specific population and ecological factors when promulgating rules.

Senate Bill 5 also amends the Wildlife Conservation Act to authorize the Commission to make rules to protect a species of wildlife and to require the Wildlife Department to publish data collected on the species of greatest conservation need.

Senate Bill 5 also increases the fees for hunting and fishing licenses and authorizes the State Wildlife Commission to adjust license fees based to keep pace with inflation, based on increase in the consumer price index as published by the U.S. Department of Labor.

FISCAL IMPLICATIONS

The fiscal impact on the State Ethics Commission is indeterminate. Subsection 3(G) authorizes the State Ethics Commission to bring civil actions to enforce the removal or appointment processes related to the State Wildlife Commission. First, Subsection 3(G) authorizes the State Ethics Commission to file a civil action exclusively in the Supreme Court of New Mexico for the removal of a commissioner for incompetence, neglect of duty, or malfeasance in office. Second, Subsection 3(G) authorizes the Commission to file an action to enforce the provisions of Subsection 3(F), regarding whether a position has become vacant or whether a successor has been duly appointed following a vacancy.

Civil litigation is not costless. Under SB5, the State Ethics Commission will incur marginal indeterminate costs that are attendant to the Commission's civil litigation practice, including contract expenses (court reporters, paralegal staff), other operating expenses (legal subscription services, bar dues), and potentially expenses related to defending against unfounded counterclaims and third-party complaints alleged under the New Mexico Civil Rights Act and 42

U.S.C. § 1983. Defending against such collateral attacks raises costs born by the Risk Management Divisions and, ultimately, by premiums paid to the Risk Management Division through appropriated funds.

Generally, it is important to note that the costs for civil enforcement by state agencies of statutory provisions have increased with the advent of the New Mexico Civil Rights Act. Following the enactment of that Act and its provision for attorneys' fees, state agencies that are charged with enforcement actions face increase costs of pursuing enforcement. For example, if the State Ethics Commission were to pursue a removal action against a State Wildlife Commissioner in the Supreme Court for incompetence, neglect of duty, or malfeasance in office, it is conceivable (and perhaps even likely) that the respondent State Wildlife Commissioner could, as part of their litigation strategy, file bogus counterclaims and third-party complaints alleged under the New Mexico Civil Rights Act and 42 U.S.C. § 1983 or (assuming the Supreme Court would lack original jurisdiction for such counterclaims and third-party claims) file a collateral action asserting the same claims in state or federal district court. State agencies, such as the Racing Commission and the State Ethics Commission, have been confronted with such litigation tactics when attempting to enforce state law against pugnacious respondents. Whether, in pursuing a removal action under Subsection 3(G), the State Ethics Commission would have quasi-judicial immunity from such counterclaims and third-party claims turns, in part, on a case currently pending in the New Mexico Supreme Court, *Bolen v. New Mexico Racing Commission*, S-1-SC-40427.

The proposed amendments would therefore have some fiscal impact on the State Ethics Commission. The exact cost is indeterminate because there is no baseline for the number of enforcement actions the Commission might need to bring or how extensive the litigation might be in those cases.

SIGNIFICANT ISSUES

A part of Subsection 3(G) is likely unconstitutional. Senate Bill 5 purports to grant the Supreme Court with original jurisdiction for removal actions for incompetence, neglect of duty, or malfeasance in office, and authorizes the Supreme Court to promulgate rules of procedure for such removal proceedings. Article IV, Section 3 of the New Mexico Constitution, however, specifies the exclusive original jurisdiction of the Supreme Court. The attempt by the Legislature to expand the original jurisdiction of the Supreme Court beyond that specified in Article IV, Section 3 is likely unconstitutional. For example, in analogous federal circumstances, the United States Supreme Court has long held that Congress does not have the power to expand the Constitution's grant of original jurisdiction to the United States Supreme Court. *See, e.g., Marbury v. Madison*, 5 U.S. 137 (1803) (holding Section 13 of the Judiciary Act of 1789 an unconstitutional attempt to expand the Supreme Court's original jurisdiction set forth in Article III of the United States Constitution). Whereas Article VI, Section 3 of the New Mexico Constitution—which provides the original jurisdiction of the Supreme Court—does not authorize the Legislature to confer additional original jurisdiction, Article VI, Section 13—which provides the original jurisdiction of the district courts—does authorize the Legislature to expand the original jurisdiction of the district courts. *Compare* N.M. Const. art VI, § 3, with N.M. Const. art VI, § 13 (“The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings *as provided by law. . .*” (emphasis added)).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS