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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/2007

SPONSOR Salazar LAST UPDATED _____ HJM 38

SHORT TITLE Chimayo Chile Farmers, In Recognition SB _____

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SJM 35.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

House Joint Memorial 38 resolves that the community of Chimayo's chile farmers, who actively farm the native Chimayo chile strain in the geographical area of Chimayo, be recognized as the rightful owners of the name "Chimayo" with full authority to register name. The memorial further resolves that the NMDA be requested to study trademarking and copyrighting of community farm products on behalf of those farmers who are actively farming Chimayo chile. The memorial requests the Attorney General to assist the NMDA and requests the NMDA to report study findings and recommendations for legislation no later than December 2007.

Copies of the memorial will be transmitted to the NMDA Director and the Attorney General.

FISCAL IMPLICATIONS

NFI

SIGNIFICANT ISSUES

Chile peppers have been cultivated in New Mexico for at least four centuries as Don Juan de Oñate grew chiles in 1598 irrigation from the Rio Chama in northern New Mexico. For New Mexicans, the chile pod is a cultural icon. The state has chile festivals, a Chile Commission, a Chile Institute, a university rugby team called the Chiles, mail-order businesses that specialize in shipping chile worldwide, a monthly publication about chile, and countless restaurants that specialize in some variation on the theme. To many, the thought that New Mexico might not have a commercially viable chile industry seems preposterous. It is a concept roughly comparable to France without a wine industry.

“Chimayo” chile identifies a native strain of chile that was inherited from the traditional families who founded and named the village of Chimayo, New Mexico. In 2005, the state Legislature recognized Chimayo chile as a living heirloom of northern New Mexico Hispanic cultural, food, and agricultural tradition. To many, Chimayo chile has attained legendary status with a marketing potential yet unrealized.

House Joint Memorial 38 acknowledges this potential and resolves that the community of Chimayo’s chile farmers be recognized as the rightful owners of the name “Chimayo”, having full authority to register the Chimayo name and any logo incorporating the name, with the U.S. Patent and Trademark Office and other appropriate entities; and to establish and enforce the rules of usage, certification standards and manner of control of the Chimayo name’ logo, and trademark.

To some extent, HJM 38 is a bit too late. According to the U.S. Patent and Trademark Office (USPTO) web site, there are three live trademark applications for the word mark “Chimayo” and one application for “Chimayo Red.” There are two fully registered trademarks for a stylized form of Chimayo and a typed drawing of the word. The stylized form trademark *CHIMAYO* was issued to Culinary Holdings Inc. for restaurant services in February 2001. The second trademark, from January 1998, was issued for “distilled liquors, namely tequila.”

Two of the three trademark applications were submitted by El Encanto, Inc. for chile powder and “processed chile peppers, namely chile puree.” The other application was filed on June 30, 2006 by the Chimayo Chile Farmers, Inc. from Santa Fe for “chile powder, dried chile peppers and dried crushed chile peppers; processed chile peppers; fresh unprocessed chile peppers.”

The application for “Chimayo Red” was filed on May 26, 2006 by an individual for “bakery products.” An El Encanto application for “Chimayo Brand” was filed in 1995 but abandoned on October 9, 1998.

The applications from the Chimayo Chile Farmers, Inc. and El Encanto, Inc. are competing applications, at least as the trademark might apply to chile powder and processed chile peppers. Both applications are pending and the federal government allows time for the expression of opposition. Chimayo Chile Farmers, Inc. is a not-for-profit corporation affiliated, at least in address, with the Santa Fe Institute for Native Hispanic Culture. El Encanto is the parent company of Bueno Foods in Albuquerque.

The *NewMexican* has reported the Santa Fe Institute for Native Hispanic Culture has formed a partnership with Santa Fe County to grow chile on seven acres of public land behind the Santuario de Chimayo. A *Moving New Mexico Forward* article (Winter 2005/06) indicated:

Economic Development Department, local leaders, U.S. Senator Jeff Bingaman, State Sen. Nancy Rodriguez, State Rep. Debbie Rodella, and Marie Campos of the Santa Fe Institute for Native Hispanic Culture are collaborating to trademark the village of Chimayo's unique brand of chile. If they're successful, they could vault Northern New Mexico's little chile pepper to celebrity status – like the Key lime or Vidalia onion.

In a related story, the *NewMexican* (July 9, 2006) reported that some farmers say Chimayo Chile Farmers Inc. "might not have their interests at heart. The article quoted Marie Campos as saying that the Chimayo Chile Farmers is and will be run by farmers and not the SF Institute.

The NMDA analysis states that mechanisms that identify Chimayo growers will need to be put into place in order to accomplish the goals of HJM 38. There may be significant complexities associated with the end goal copy righting Chimayo Chile.

In the past, NMDA has worked with chile growers in Hatch to trademark the "Hatch" name. However, the New Mexico Secretary of State indicated the name of a city or town or village could not be trademarked.

OTHER SUBSTANTIVE ISSUES

According to the *NewMexican* article the Chimayo Chile Farmers USPTO application states

The certification mark, as intended to be used by authorized persons, is intended to certify that the chile peppers contain the native genetic seed of chile peppers that have historically grown in Chimayo, New Mexico and that the chile peppers were grown by farmers in Chimayo, New Mexico.

If trademarking fails seed certification might be an alternative. The New Mexico Crop Improvement Association (NMCIA) is a public agency that supports the New Mexico seed industry by managing seed certification programs.

The problem might also be addressed with an official New Mexico appellation control for New Mexico and, perhaps, Chimayo chile. A number of foreign countries have appellation controls for their most famous products, almost exclusively for wine.

POSSIBLE QUESTIONS

Senate Joint Memorial 31, 47th Legislature, First Session, 2005 requested the State Records Center to conduct a study to document Chimayo's chile culture, traditional, and industrial connection to present ways of living to provide a written report by December 31, 2005. The memorial also requested the NMDA to conduct a seed, soil, and industry study of Chimayo chile; to plan for Chimayo chile's long-term cultural asset preservation; and provide a written report by December 31, 2005

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1. Are these written reports available?
2. Were the reports reviewed by the Legislature and the Governor?

BM/mt