

FISCAL IMPLICATIONS

There may be impact to the courts related to disputes as to whether the presence of certain plants or the release of certain products was *unintended*. These costs are unknown and are proportional to the number of infringement cases related to *unintended* or *de minimus* possession and the court's application of the act's definitions of *technology use agreement*.

Farmers in New Mexico could suffer losses if this technology contaminates their conventional, organic or premium crops.

SIGNIFICANT ISSUES

The substitute bill addresses patent rights of seed manufacturers and extends farmer non-liability beyond unintentional possession to include *de minimus* possession. Unintentional or *de minimus* possession of seed stock can be caused by wind, insects, birds or other animals, or by contamination.

PERFORMANCE IMPLICATIONS

The AG asserts that it is unknown if the State's attempt to limit liability in a patent may be preempted by federal authority.

ADMINISTRATIVE IMPLICATIONS

A manufacturer that files an infringement case against a farmer who does not have a technology use agreement must file suit in a federal district court where the farmer lives or where the farmer committed the alleged act.

TECHNICAL ISSUES

The court venue requirement may be redundant as it already exists in law. A court must have jurisdiction over a person to hear a case against them.

The bill is not clear if a farmer is protected from saving and using seed that has been contaminated by genetically engineered varieties.

SUBSTANTIVE ISSUES

Biotechnology companies have been patenting genetically engineered seeds that are herbicide resistant. Farmers who want to plant these seeds enter into contracts with the seed manufacturer. The contract specifies that these seeds cannot be saved or replanted. However, it is easy for these crops to cross-pollinate and contaminate neighboring fields. According to *Save New Mexico Seeds*, biotech companies have sued neighboring growers for patent infringement and investigated farmers each year for illegally saving seed. Most lawsuits have been settled out of court with the farmers signing confidentiality agreements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AG maintains that the bill provides an affirmative defense to farmers that they might not otherwise be able to assert.

QUESTIONS

Has the New Mexico Department of Agriculture developed best management practices for the use of genetically engineered products in New Mexico?

AHO/bym:mew:svb