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FISCAL IMPACT REPORT

SPONSOR Munoz **ORIGINAL DATE** 02/05/11 **LAST UPDATED** 03/15/11 **HB** 300/aSCONC/aSJC/
SHORT TITLE Enact "New Mexico Chile Advertising Act" **SB** aHF1#1/aHJC
ANALYST Aguilar/Baca

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------|---------|----------------------|-------------------------|------------------|
| Total | | \$175.0 | \$175.0 | \$350.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Amendment strikes Senate Judiciary Committee Amendment 1 and Item 4 of Senate Floor Amendment number 1 and provides the board with enforcement authority.

The amendment adds definitions for the NMSU Board of Regents as "board" and defines chile pepper as fruit from Capsicum annum. The amendment also authorizes the Board to "issue an order to immediately cease and desist any activity in violation of the New Mexico Chile Advertising Act."

SF1#1 inserts the following paragraph:

"Section 5. INJUNCTION. – In addition to any other remedy under law, the board may apply to the district court for an injunction, and district court may issue a temporary permanent injunction, or both, restraining any person from violation or continuing to violate any of the provisions of the New Mexico Chile Advertising Act or any rule promulgated pursuant to that act by the board. In issuing the injunction on the application of the board, the board shall not require a bond."

Synopsis of Senate Judiciary Committee Amendment

The Senate Judiciary Committee amendment strikes "New Mexican-type" after Capsicum annum in the definition of "chile pepper" as used in New Mexico chile advertising.

Synopsis of Senate Conservation Committee Amendment

The Senate Conservation Committee amends the bill by indicating the Board of Regents of New Mexico State University through the New Mexico Department of Agriculture may, instead of shall, have the authority to promulgate rules.

Synopsis of Original Bill

Senate Bill 300 enacts the New Mexico chile advertising act, identifies certain unlawful chile advertising practices, and provides for the administration, audit and inspection by NMDA.

FISCAL IMPLICATIONS

While the bill does not contain an appropriation, implementing the provisions of this Act will increase the work load for agency inspectors. The agency notes that it would entail hiring 2 additional FTE. LFC estimates these staff would require an additional \$175.0 to hire and equip these staff.

SIGNIFICANT ISSUES

Over 72,000 tons of chile grown in New Mexico annually. Currently when a producer provides unprocessed perishable agricultural commodities for retail trade to a section 499a (b) of the Perishable Agricultural Commodities Act of 1930 (PACA) retailer, they must provide country of origin labeling for that product. This includes all unprocessed perishable agricultural commodities imported into the United States.

Some New Mexico producers have significant agricultural crop acreage in Mexico and bordering states for chile production as well as their acreage within the state. Additionally there are a number of processing firms within the state that must utilize imported chile products, such as cayenne, green chile and jalapenos, to meet demands by their contracts and consumers on a year around basis.

It appears the provisions contained in this bill will provide a usable customer service to the citizens of New Mexico, particularly to those that depend on and are supportive of the New Mexico chile industry.

ADMINISTRATIVE IMPLICATIONS

NMDA will have additional responsibilities for enforcement and administration of the act.

The Board of Regents at New Mexico State University (NMSU) is tasked with responsibility for promulgating rules to implement the provisions of the bill.

TECHNICAL ISSUES

SB 300 may conflict with the NEW MEXICO – Taste the Tradition ® and NEW MEXICO – Grown with Tradition ® series of logos developed by NMDA to identify food and agricultural products from the state. The licensing agreement between NMDA and an organization or individual requesting the use of the marketing logos provides for their use only on food and agriculture products that were grown, raised, or processed in New Mexico. This marketing

arrangement is a very important to producers and the marketing of New Mexico products. Both of these logos satisfy the federal COOL mandate. These labels also allow products processed in New Mexico to carry the logo and Section 2 and Section 4 of the act would conflict with the “or processed” conditions in NMDA’s licensing agreement for use of these logos. With enactment, all chile used in processed food items with the NEW MEXICO – Taste the Tradition ® and NEW MEXICO – Grown with Tradition ® series of logos would have to be grown in New Mexico.

HJA/bym:mew