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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/13
LAST UPDATED 03/13/13 **HB** CS/CS/238/aSJC

SPONSOR SCONC

SHORT TITLE NM Chile Advertising Act Violations **SB** _____

ANALYST Hartzler-Toon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicate to SB 234

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Conservation substitute for the House Judiciary Committee substitute for House Bill 238 strikes the phrase “at a farmers’ market” and defining a farmers’ market. This amendment broadens the reporting exemption under the New Mexico Chile Advertising Act as amended by House Bill 238. The amendment excludes individual growers who sell 20,000 pounds or less of chile peppers, no matter where the peppers are sold, from reporting requirements issued pursuant to the act as amended.

Synopsis of Original Bill

The Senate Conservation Committee substitute for the House Judiciary Committee’s substitute for House Bill 238 (HB 238) proposes to amend the New Mexico Chile Advertising Act (Chapter 25, Article 11 NMSA 1978) by strengthening the law for advertising, labeling, describing, and offering New Mexico chile and increasing the New Mexico Department of Agriculture’s (NMDA) authority to enforce the law.

HB 238 makes it unlawful to “knowingly advertise, describe, label or offer” a chile pepper or chile pepper product not grown in New Mexico as New Mexico chile or done so by entity that suggests a New Mexico location. The bill also requires that,

- (1) after July 1, 2013, entities, brand names, and trademarks that existed prior to enactment of the New Mexico Chile Advertising Act provide clear and unambiguous labeling in advertising, product descriptions, labels or offers for sale of chile products; and
- (2) allows a restaurant that uses chile grown outside New Mexico to use the term “New Mexico style” to advertise, describe, label or offer for sale a menu item.

The bill expressly exempts chile growers selling 20 thousand pounds or less of peppers at farmers’ markets from recordkeeping that may be required by rules promulgated under the Act. Also, the bill authorizes the NMDA inspectors to issue “stop-sale, use, or removal” of products found in violation of the act.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. The NMDA notes there is no fiscal impact from HB 238. The bill would simply grant additional authority to existing NMDA inspectors.

SIGNIFICANT ISSUES

The NMDA reports that

This bill prohibits the use of deceptive or misleading representations of New Mexico cities, towns, villages, pueblos, mountains, counties, rivers, or other geographic locales in product advertising, descriptions, or labels for chile not grown in New Mexico or for chile products using non-New Mexico chile. It also establishes, if the representation is part of a business name that was established prior to the effective date of the New Mexico Chile Advertising Act, that the product shall include in a prominent location in the advertising, description, or labeling, a disclaimer statement that states “NOT GROWN IN NEW MEXICO” if the product contains chile that was not grown in New Mexico.

PERFORMANCE IMPLICATIONS

The bill allows the NMDA inspectors to more timely respond to possible violations of the New Mexico Chile Advertising Act. Current law authorizes the New Mexico State University’s board of regents to issue an order to immediately cease and desist any activity in violation of the Act, and omits any enforcement or action by the NMDA inspectors (Section 25-11-4.A(3) NMSA 1978).

COMPANIONSHIP

SB 234 is a companion bill. The Senate bill is identical to HB 238 except the Senate bill strikes “at farmers’ markets” on page 3, line 20 of the Senate Conservation Committee’s substitute for HB 238.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the NMDA, if HB 238 is not enacted, “it will be permissible to use New Mexico geographic locales in describing chile or chile products, which could mislead consumers into believing New Mexico chile is used in certain products or the fresh chile they are buying is New Mexico chile.”

THT/svb:blm