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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/13
LAST UPDATED 02/11/13 **HB** _____

SPONSOR Padilla

SHORT TITLE NM Commercial Feed Act **SB** 91/aSJC

ANALYST Hartzler-Toon

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	-	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 18, Label Genetically Modified Food

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

New Mexico Livestock Board (NMLB)

SUMMARY

Summary of SJC Amendment

The Senate Judiciary Committee amendment strikes SB 91's severability clause (Section 19), conforming the bill to current legislative drafting style. The severability clause states that, should any part or application of the New Mexico Commercial Feed Act is held to be invalid, the remaining provisions and applications shall be not be affected.

Synopsis of Original Bill

Senate Bill 91 (SB 91) would repeal Commercial Feed Law, enacted in 1973, and enact the New Mexico Commercial Feed Act.

FISCAL IMPLICATIONS

There are no fiscal impacts of this bill. The inspection fees currently listed in the Commercial Feed Law are the same as proposed in SB 91. Section 15 increases the penalties for violating the act, but it is unclear the amount of revenues that would be generated from increased fines. SB 91 does not contain an appropriation.

SIGNIFICANT ISSUES

The New Mexico Department of Agriculture (NMDA) provided an overview of SB 91:

Section 1. Renames the law the New Mexico Commercial Feed Act.

Section 2. Updates definitions to “commercial feed” and places the exceptions in a separate section (Section 5). Updates definitions for “brand name,” “contract feeder,” “distribute,” “distributor,” “drug,” “label,” “labeling,” “official sample,” “pet food,” and “product name.” Adds new definitions for “board,” “department,” “quantity statement,” “registrant,” and “specialty pet food.” Removes definitions for “person,” “sell,” “percent,” and “producer formula feed.”

Section 3. Clarifies the NMDA’s relationship to New Mexico State University Board of Regents and provides for rule authority. Requires the board, when promulgating rules, to consider current good manufacturing practices and definitions of feed ingredients and commercial feed terms recognized by the commercial feed industry and federal government.

Section 4. New section clarifying the act applies to not only commercial feed for livestock but also mineral feed, pet food, specialty pet food, and other commercial feed.

Section 5. New section updates language clarifying exemptions to the act that were previously included in the definition of “commercial feed.”

Section 6. Following the Association of American Feed Control Officials’ (AAFCO’s) model legislation, this section identifies actions prohibited by the New Mexico Commercial Feed Act. Many of these actions are currently prohibited but appear throughout the law, such as manufacturing or distributing adulterated or misbranded commercial feed and failure to register, pay inspection fees, or file reports as required in the act.

Section 7. Updates language to current drafting style.

Section 8. Updates language to current drafting style. Adds a provision allowing the board to prescribe what is considered as an adulterated commercial feed.

Section 9. Updates language to labeling requirements of commercial feed and prescribes how customer formula feed shall be labeled. Most changes simplify the labeling requirements making them less prescriptive in the law to accommodate changes in the commercial feed industry. These changes seek to account for the expansion in marketing of pet food, pet treats, and specialty pet foods with needs for labeling and ingredient variations as opposed to livestock feeds..

Section 10. Registration requirements remain unchanged.

Section 11. Updates language and requires the NMDA to provide written notice for inspections and receipt for any sample obtained to the owner, operator, or agent. If inspection is refused, the NMDA may request an inspection warrant from a district court.

Section 12. Restates inspection fees and filing of quarterly tonnage reports requirement.

Section 13. Updates language to include the ability for the department to file a complaint for seizure of commercial feed in district court if reasonable grounds exist that commercial feed will be distributed in violation of a “withdrawal from distribution” order. Allows for the processing or relabeling of condemned commercial feed upon court order.

Section 14. Adds a new section allowing the NMDA to file an action in district court to seek temporary or permanent injunctions for violations of the act. Appellate procedures are specified (procedures set out in 39.3.1.1 NMSA 1978). Strikes the following language (1) that a minor violation of the act does not require prosecution and (2) requiring the district attorney to prosecute a violation without delay.

Section 15. Updates language. Removes the minimum fine of \$5.00 and states: fined in the amount not more than one hundred dollars (\$100) for the first violation and not more than one thousand dollars (\$1,000) for a second or subsequent violation.

Section 16. No changes.

Section 17. Updates language and renames “publications” to “annual reports.”

Section 18. Repeals Sections 76-19-1 through 76-19-14 NMSA 1978 (being Laws 1961, Chapter 151, Sections 1 through 5, Laws 1973, Chapter 102, Section 6, Laws 1961, Chapter 151, Sections 7 through 12, Laws 1973, Chapter 102, Section 13 and Laws 1961, Chapter 151, Section 13, as amended).

PERFORMANCE IMPLICATIONS

The NMDA reports that SB 91 draws provisions from the AAFCO’s model legislation. By implementing model provisions, New Mexico’s laws would match those of other states and allow vendors to register products easier and comply with state and federal feed labeling requirements. Such standardization will help the NMDA better enforce the law as 97 percent of the commercial feed labels registered in 2012 were manufactured in states other than New Mexico.

The changes in SB 91 clarify feed labeling requirements and help department staff consider good manufacturing practices when inspecting feed mills and pet food/treat manufacturers while increasing consumer and animal protection by expanding upon what constitutes misbranding or adulteration of a commercial feed.

ADMINISTRATIVE IMPLICATIONS

The state’s feed law is inconsistent with the laws of surrounding states and the national model for such legislation, creating a disparity in regulations of commercial feed labeling. Changes

proposed in SB 91 would aid the NMDA in its administration of commercial labeling and monitoring distribution.

RELATIONSHIP

SB 91 relates to SB 18, a bill to revise labeling of genetically modified food.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMDA notes that the current law presents hurdles to working with surrounding states and the U.S. Food and Drug Administration. “Currently, due to many food and feed recalls, state and federal government agencies with regulatory responsibility for food and feed safety are partnering to consistently regulate within the bounds of their authority. The proposed changes in labeling requirements, ingredient use, and safeguards included in this act improves the NMDA’s ability to provide an orderly market place for commercial feed while protecting the citizens of the state and their companion animals, livestock, and food producing animals. The repeal of the New Mexico Commercial Feed Law and replacement with SB 91 creates ties to other regulatory bodies while enhancing food/feed safety in the state.”

POSSIBLE QUESTIONS

Legislators may ask the NMDA and others to provide specific legislative language to either or both SB 18 and SB 91 so that the bills can be implemented consistently.

THT/bm:svb