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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/13  
 SPONSOR SCONC LAST UPDATED 03/05/13 HB \_\_\_\_\_  
 SHORT TITLE No Agriculture As A Nuisance SB 194/SCONCS  
 ANALYST Weber

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Agriculture (NMDA)  
 Attorney General Office (AGO)

### SUMMARY

#### Synopsis of Bill

The Senate Conservation Committee substitute for Senate Bill 194 amends the Right to Farm Act to provide for a nuisance if there is substantial adverse impact on public health and safety.

The bill eliminates the wording “is operated negligently, improperly or illegally” and adds “a substantial adverse effect on the public health and safety”. Then the bill continues, “Agricultural operations and agricultural facilities in compliance with federal, state and local laws are presumed not to adversely affect public health and safety.”

The bill makes a technical amendment in the citation to the effective date of the Right to Farm Act.

### FISCAL IMPLICATIONS

No fiscal implications are identified.

**SIGNIFICANT ISSUES**

Section 47-9-6 NMSA 1978 of the Right to Farm Act already protects agricultural operators from frivolous legal action.

47-9-7. Frivolous lawsuits.

If a court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award reasonable costs and attorneys' fees to the defendant.

Replacing “is operated negligently, improperly or illegally” with “a substantial adverse effect on the public health and safety” seems to make the standard more subjective and difficult to prove. The original language implies a legal or industry standard for comparison.

The NMDA notes there is potential friction between agriculture and other adjacent land uses:

As urban areas expand into rural agricultural regions that are agriculturally productive, such agricultural operations continue to face new and additional scrutiny due to requirements of production as they broach into an urban/rural interface.

Across the United States, nuisance law suits are being filed based on the encroachment of urban presence adjacent to agriculture activities. Agriculture in New Mexico in 2011 was a \$4.1 billion dollar industry serving as a vital component to New Mexico’s economy. The consequence of nuisance or negligence lawsuits provides the potential to impair the state’s industry and the state’s economy and provides a negative impact on the ability for the industry to operate.

MW/blm:svb