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## FISCAL IMPACT REPORT

SPONSOR Herrell ORIGINAL DATE 01/16/2014  
LAST UPDATED \_\_\_\_\_ HB 51

SHORT TITLE Right to Farm Nuisance Changes SB \_\_\_\_\_

ANALYST Hartzler-Toon

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)

New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

The Right to Farm, Nuisance Changes Bill (HB51) does not contain an appropriation. The bill (1) strikes the word “improperly” as an exception to the Right to Farm Act (Act) and (2) makes a technical correction to the Act’s effective date. The Act exempts agricultural operations and facilities from nuisance actions unless an operation or facility “is operated negligently, improperly or illegally such that the operation or facility is a nuisance.”

### FISCAL IMPLICATIONS

There are no fiscal impacts associated with this bill.

### SIGNIFICANT ISSUES

The NMDA comments that striking “improperly” from the Act will remove an ambiguous legal term that could be interpreted more broadly than “negligently” or “illegally.” Further, a broad interpretation of “improperly” could serve as a basis for more lawsuits against agricultural operations and facilities currently located around urban areas.

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The AG acknowledges that “improperly” can be considered within the meaning of a “negligently” operated facility, making “improperly” unnecessary or superfluous to the Act. However, the AG also notes that, under a canon of statutory construction, the legislature’s inclusion of “improper” in the Act should be given meaning and interpreted as a term separate from “negligently” or “illegally.” For example, a court could find an “improperly” operated agricultural operation or facility is lawful even though it does not meet the other requirements of “nuisance.”

### **OTHER SUBSTANTIVE ISSUES**

According to the NMDA,

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 2012 was \$4.1 billion dollar industry serving as a vital component to New Mexico’s economy. The consequence of nuisance or negligent 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.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The term “improperly” will remain in the Act and continue to provide a basis for a potential nuisance claim.

**THT/ds**