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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Griego LAST UPDATED _____ HB _____

SHORT TITLE Right to Farm Nuisance Lawsuits SB 229

ANALYST Hartzler-Toon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$15.0	\$15.0	\$30.00	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 51

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

Attorney General’s Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 229 would amend the Right to Farm Act, Section 47-9-3 NMSA 1978, by

- (1) Striking the allowance for a public and private nuisance cause of action against certain agricultural operations or facilities if the operation or facility is operating “negligently, improperly or illegally” and is a nuisance;
- (2) Eliminating private nuisance against any agricultural operation or facility if negligence or other theory of recovery is available; and
- (3) Nullifying any local ordinance or resolution that makes any agricultural operation or facility a nuisance or provides for abatement of it as a nuisance if the operation or facility is in substantial compliance with applicable federal laws.

FISCAL IMPLICATIONS

This bill does not contain an appropriation.

The AOC estimates that it would incur minimal administrative costs for statewide update, distribution, and documentation of the statutory changes. Additional costs could include those related to increased court filings (as a result of enforcing the law).

SIGNIFICANT ISSUES

According to the AGO, “SB 229 eliminates the cause of action for public or private nuisance for the operation of an agriculture operation or facility, even if it is operated negligently or illegally, as long as the operation or facility was not a nuisance when it began operating and operated for a year.” Removing this cause of action would permit an agricultural operation or facility to interfere with private property rights, the public health and safety, and enjoyment of public property, and be immune from a nuisance suit.

NMDA noted that other causes of action are permissible under this amendment (including negligence), just not a nuisance claim. However, the AGO observed that one could have a meritorious nuisance claim, while not satisfying the requirements and standards of a negligence claim.

NMDA observed generally that Right to Farm Acts serve to reduce the loss of a state’s agricultural resources by limiting circumstances under which agricultural operations may be deemed a nuisance. Where urban areas expand into agricultural regions, agricultural areas come under new scrutiny, frequently resulting in nuisance and other claims against the agricultural operations or facilities.

PERFORMANCE IMPLICATIONS

The AOC commented that SB 229 could impact district courts that have the following performance metrics:

- Cases disposed of as a percent of cases filed.
- Percent change in case filings by case type.

RELATIONSHIP

SB 229 relates to HB 51, which also amends the Right to Farm Act. HB 51 strikes the word “improperly” from the exemption of agricultural operations and facilities from nuisance actions except where the agricultural operation or facility “is operated negligently, improperly or illegally such that the operation or facility is a nuisance.”

TECHNICAL ISSUES

Both AGO and AOC noted that SB 229 disallows a nuisance claim where “negligence or other theory of recovery is available.” The phrase “other theory of recovery” is ambiguous and broad.

Both also noted the bill nullifies local ordinances for nuisance if an agricultural operation or facility is “substantially in compliance with the applicable federal laws.” The phrase “substantially in compliance” is vague and without definition. Also, it is unclear what “federal laws” are applicable.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Private and public causes of action for nuisance could be brought against agricultural operations and facilities that are considered to be operating negligently, improperly, or illegally under the Right to Farm Act and outside the Act's exemption for such operations or facilities.

THT/ds