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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/15

SPONSOR Ezzell LAST UPDATED _____ HB 488

SHORT TITLE Agritourism Limited Liability SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 76 Agritourism Liability Limitations Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Department of Agriculture (NMDA)
 Administrative Office of the Courts (AOC)
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Bill 488 enacts the “Agritourism Limited Liability Act” (“ALLA”), providing immunity from liability for agritourism professionals, providing exceptions from immunity, and requiring the posting of warnings about agritourism activities.

HB 488 provides limited liability for agritourism professionals for injury to or the death of a participant resulting from the inherent risks of agritourism activities so long as the warning notice specified in ALLA is posted as required. The bill defines the following terms:

- “Agritourism activity”: any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, regardless of whether the participant paid to participate in the activity.
- “Agritourism professional”: any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.
- “Farm or ranch”: one or more areas of land used for the production, cultivation, growing,

harvesting or processing of agricultural products.

- “Inherent risks of agritourism activity”: those dangers or conditions that are an integral part of an agritourism activity. (With specified examples.)
- “Participant”: any person, other than an agritourism professional, who engages in an agritourism activity.

HB 488 provides that an agritourism professional is not liable for injury to or the death of a participant resulting from the inherent risks of agritourism activities so long as the warning notice specified in Section 4(C) is posted as required. The bill states that no participant or participant’s representative is authorized to maintain an action against or to recover from an agritourism professional for injury, loss, damage or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

HB 488 requires an agritourism professional to plead the affirmative defense of assumption of the inherent risks of agritourism activity by the participant, in any action for damages against an agritourism professional for agritourism activity.

HB 488 exceptions from immunity occur when an agritourism professional: commits an act or omission constituting negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant; has actual knowledge or reasonably should have known of a dangerous condition, or the dangerous propensity of a particular animal, does not make the dangerous condition or propensity known to the participant, and the dangerous condition or propensity proximately causes injury, damage or death to the participant; or intentionally injures the participant.

The bill requires a specified warning to be posted at the entrance to a farm or ranch where the agritourism activity is to take place and at the site of the agritourism activity, and to be contained in every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant. HB 488 provides that failure to comply with the warning sign and notices requirements shall prevent an agritourism professional from invoking the privileges of immunity provided by ALLA.

HB 488 contains a severability clause. Effective date of the bill is July 1, 2015.

FISCAL IMPLICATIONS

HB 488 carries no appropriation and has no fiscal impact on state agencies.

SIGNIFICANT ISSUES

Agritourism is an emerging industry in New Mexico. According to NMDA:

The main purpose of an agritourism operation is to provide entertainment and education to visitors, while providing a connection to production agriculture. The agritourism industry is growing in New Mexico. There are at least 80 agritourism businesses in the state. With a growing wine industry and a desire for families to form a connection to agriculture, the demand for these types of operations continues to grow. Some agritourism operations have incorporated a school curriculum as a part of their educational component, which makes these destinations appealing to teachers as a

learning tool. These operations attract many local visitors and tourists, contributing to their local economies. Incorporating agritourism programs into traditional farms and ranches allows operators the opportunity to generate alternative sources of income which helps to cover the operating expenses. By diversifying through agritourism, farm and ranch families are able to keep multi-generations involved in their family operations.

There are currently no laws in New Mexico to protect agritourism professionals from inherent risks of the agritourism activity. HB 488 addresses this by providing limited liability to agritourism professionals.

Currently there are no statutes that provide a clear definition of agritourism, nor define the responsibilities related to liability issues associated with agritourism activities.

AGO analysis points out that HB 488 may conflict with the Liquor Control Act and the Equine Liability Act:

The definition of “agritourism activity” is very broad.

The State of New Mexico has a number of laws involving serving and selling alcohol, see Liquor Control Act (Sections 60-3A-1 to 12, NMSA 1978) and tort liability for alcohol vendors (see Section 41-11-1 NMSA 1978). Section 57-6-1 NMSA 1978 provides liability for “hotelkeepers” which may conflict with liability limitations provided in HB 488 regarding “bed-and-breakfast operations.”

The Equine Liability Act provides liability limitations for equine activities, which although HB 488 does not specifically cover equine activities, the broad liability covered under the Equine Liability Act and the expansive definition of “agritourism activity” likely creates a conflict over the applicable standard or liability.

The Equine Liability Act states that it does not limit liability when the operator, owner, trainer or promoter of an equine activity “provided the equine and failed to make reasonable and prudent efforts to determine the ability of the rider to: (a) engage safely in the equine activity; or (b) safely manage the particular equine based on the rider’s representations of his ability” (Section 42-13-4C-2 NMSA 1978).

Additionally, the Equine Liability Act provides that liability is not limited when an operator, owner, trainer or promoter of an equine activity has “committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider and an injury was the proximate result of that act or omission” (Section 42-13-4C-4) NMSA 1978)

HB 488 does not provide a limitation on liability for an agritourism professional who does not “take prudent efforts to determine the ability” of a participant, and the language in HB 488 is for an agritourism professional who “commits an act or omission that constitutes gross negligence or reckless or intentional disregard.”

Because HB 488 covers “an activity carried out on a farm or ranch that allows participants to observe or participate in farm- and ranch-related activities,” there is a potential conflict with the standards and language from the Equine Liability Act which

covers equine activities, “including but not limited to stables, clubhouses, pony ride strings, fairs and arenas, and persons engaged in instructing or renting equine animals” (Section 42-13-3B-1 NMSA 1978).

AOC analysis states that HB 488’s broad definition of inherent risk, defined to include “dangers or conditions that are an integral part of an agritourism activity...” may be problematic:

While the bill goes to some length in expanding on what might be inherent dangers or conditions, the courts may come to divergent conclusions about what is included in the language. This uncertainty may affect the value of a case for settlement or alternative dispute resolution purposes.

Tourism Department analysis on a similar bill stated that “Agritourism is a burgeoning industry that has the potential to positively, and significantly, increase tourism in New Mexico. In order to encourage the growth of this industry it is critical that agritourism professionals, many being small businesses, view their ventures as protected from unreasonable claims.”

CONFLICT

HB 488 conflicts with SB 76 “Agritourism Liability Limitations Act,” as it amends the same sections of statute. Although HB 488 has the same general definition for “Agritourism Activity” as SB 76, it does not enumerate examples of such activities that were included in SB 76, including but not limited to guest or dude ranches; wine tasting and winery tours; and shows, fairs, competitions and rodeos.

OTHER SUBSTANTIVE ISSUES

HB 488, Section 3(A)(2), requires an agritourism professional, in an action for damages against that professional, to plead the affirmative defense of assumption of the inherent risks of agritourism activity by the participant. AOC analysis points out that “This sort of procedural prescription is generally left to the authority of the Supreme Court in establishing pleading procedures.”

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