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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/2015

SPONSOR Wooley LAST UPDATED 3/6/2015 HB 564/aHJC

SHORT TITLE Right to Farm and Operations as Nuisance SB \_\_\_\_\_

ANALYST Hartzler

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to and conflicts with

- SB 307, Right to Farm as Nuisance
- SB 348, Right to Farm and Operations as Nuisance

### SOURCES OF INFORMATION

LFC Files

Responses Received From

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

### SUMMARY

#### Synopsis of House Judiciary Committee Amendment

The House Judiciary Committee Amendment amends the current damages provisions in the Right to Farm Act, Section 47-9-6, NMSA 1978 (the Act). Current law states a person has the right to recover damages or injuries sustained by “pollution of, or change in the condition of, waters of a stream or because of an overflow on [the person’s] lands.” The amendment states that a person may recover “actual” damages from injuries or sustained by the person because of “acts or omissions of an agricultural operation.”

The amendment also clarifies the renumbered subsection B of Section 47-9-6 NMSA 1978 so that compensatory damages can be sought for nuisance affecting a plaintiff’s real property, not their personal property.

Synopsis of Bill

House Bill 564 amends the Act, Sections 47-9-3 and 47-9-6, NMSA 1978.

First, the bill amends Section 47-9-3 by prohibiting the application of a local ordinance or resolution pertaining to nuisance or abatement of nuisance of an agricultural operation or agricultural facility where that operation or facility existed prior to the local ordinance or resolution. In effect, the provision would allow a local ordinance or resolution to apply to agricultural operations or facilities established after the effective date of the local ordinance or resolution.

Second, the bill strikes the statutory provision affirming the rights of individuals who suffered injuries or damages sustained due to pollution of, or change in the condition of, property damages due to violations of the Right to Farm Act. (See Section 47-9-6 NMSA 1978.) The bill inserts new provisions regarding damages, specifically allowing compensatory damages where permanent or temporary nuisance has been found to affect property, defines individuals who have standing to bring claims for compensatory damages, and caps damages to fair market value of property at issue. This provision also adds a severability clause, so that, should a provision under this section be deemed invalid, the rest of the section of law may be given effect.

**FISCAL IMPLICATIONS**

HB 564 does not present major fiscal implications for the state.

**SIGNIFICANT ISSUES**

NMDA states that HB 564 “addressing the issues created by urban areas expanding into rural agricultural regions that are agriculturally productive.” The agency also notes that, nationally, nuisance lawsuits are being filed based on encroachment of urban area adjacent to agricultural activities. NMDA concludes that HB 564 “further delineates the conditions under which compensatory damages can be awarded to a plaintiff or a plaintiff’s successors in interest. The effect of the changes to the Right to Farm Act serves to limit frivolous lawsuits in excess of actual damages and in direct relation to fair market value, recognizes a good-faith effort on the part of a plaintiff to mitigate a condition and sets forth parameters for damages if that good-faith effort is not capable of abatement.

**CONFLICTS**

OAG notes that “both SB 307 and SB 348 deal with the Right to Farm and Operations Act and nuisance. HB 564 duplicates neither of these. All of the bills amend the Act differently, putting them in conflict.”

TH/bb/aml