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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/2015

SPONSOR Pirtle LAST UPDATED _____ HB _____

SHORT TITLE Clarify Farm Operations are Not Nuisances SB 307

ANALYST Hartzler

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 307 expands the exceptions to when an agricultural operation can be deemed a nuisance under NMSA 1978, Section 47-9-3(A) (2014). The bill also amends the time frame for when an ordinance or resolution making an agricultural operation a nuisance applies.

FISCAL IMPLICATIONS

SB 307 does not present major fiscal implications for the state.

SIGNIFICANT ISSUES

NMDA states that SB 307 amends current law in two places, “addressing the issues created by urban areas expanding into rural agricultural regions that are agriculturally productive.” The agency notes that, nationally, nuisance lawsuits are being filed based on encroachment of urban area adjacent to agricultural activities. Such lawsuits have the potential to impair New Mexico’s \$4.1 billion agricultural industry and economy.

OAG expressed concern with SB 307's provision striking "or illegally such that the operation or facility is a nuisance" may conflict with existing nuisance law. By law, a public nuisance "consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority..." NMSA 1978, Section 30-8-1. Under current law, an agricultural operation or agricultural facility can be deemed a private or public nuisance if it is operated negligently or illegally such that the operation or facility is a nuisance. NMSA 1978 Section 47-9-3(A). SB 307 could be interpreted to read that an agricultural operation or agricultural facility operated illegally may not be deemed a private or public nuisance under Section 47-9-3 though the definition of a public nuisance could include such an operation or facility.

ADMINISTRATIVE IMPLICATIONS

If there is a conflict in law as noted by the OAG and it is challenged in state court, the courts would be required to resolve the dispute and read the provisions consistent with legislative language.

TH/bb/je