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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/21

SPONSOR Campos LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Confinement of Egg-Laying Hens Act SB 347

ANALYST Gaussoin

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Start up costs		Indeterminate but Minimal			Nonrecurring	General Fund
NMDA		\$150.0	\$150.0	\$300.0	Recurring	General Fund
Potential Fees and Fines		Indeterminate but Minimal	Indeterminate but Minimal		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 347 would create the Confinement of Egg-Laying Hens Act requiring New Mexico commercial farm operators with more than 3 thousand hens to use cage-free housing for egg-laying hens and prohibiting businesses from selling or transporting eggs the business knows came from a producer that did not meet New Mexico standards for housing egg-laying hens.

SB347 defines a cage-free housing system as an indoor or outdoor controlled environment that allows hens to roam freely and allows farm employees to walk through the flock or subgroups of the flock to provide care. Farm owners must provide at least one square foot of space for each hen if the birds have free access to vertical space, such as a multitiered aviary, or at least one and half square feet of space if hens are limited to a single level. The hens must have access to spaces that allow them to exhibit natural behaviors, including scratch areas, perches, nest boxes, and dust bathing areas.

The new act would apply to domesticated chickens, turkeys, ducks, geese, or guinea fowl kept for the commercial production of shell egg (eggs in the shell) or egg products, defined as eggs broken from the shell and intended for human consumption, whether raw or cooked, liquid, solid, dried or frozen, but not combination food products that include eggs, such as pancake mixes, cookie dough, or ice cream. The act would not apply to the operators of the products from live animal markets or plants inspected under the federal Egg Products Inspection Act.

SB347 allows for some exceptions to the cage-free standards, including hens being housed for medical research; treated by a licensed veterinarian; transported; exhibited at a state or county fair, 4-H program, or similar program; or housed for slaughter or when birds are being bred (although hours are limited) or chicks are being hatched.

Under the legislation, the Department of Agriculture (NMDA) would be responsible for administering and enforcing the act, including certifying farm operations, and farm operators would be required to allow the department to access operations during regular business hours to inspect the farm, vehicles, and records. The New Mexico State University Board of Regents is authorized to promulgate rules to implement the act, including rules on inspections of farms, shell eggs, and egg products.

Farm operators would be required to obtain a certificate of compliance, and business that sell their products would be required to obtain a certificate from the farmer verifying the compliance. SB347 would allow the NMDA to seek an injunction against violators in district court. Any person violating the act would be subject to a \$5,000 civil fine per violation.

SB347 includes a severability clause that provides that, if any part of the act is found invalid, the remainder of the act shall remain in place.

The effective date of this bill is July 1, 2021.

## **FISCAL IMPLICATIONS**

NMDA reports implementing and enforcing the provisions of SB347 would require an additional 2 FTE at a cost of \$150 thousand for salary, benefits, travel, and per diem. SB347 does not provide for any fees or fines, although it would be within the purview of the Board of Regents to include them in its promulgation of rules. Revenues from fees and fines could offset some of the costs of administration, inspections, and enforcement, although it is unlikely the revenue would be sufficient to cover the entire cost of the program. NMDA also reports it would need to create an in-house data system or buy outside software to manage the program at an unknown cost.

## **SIGNIFICANT ISSUES**

NMDA notes New Mexico currently has no in-state egg production and state regulation of out-of-state producers “presents an enforcement challenge.” The department also notes the requirement that businesses obtain a certificate from each egg supplier would be an additional burden for the business every time it does business with a new supplier or if a supplier provides eggs from several sources.

In addition, the department notes SB347 could lead to higher prices for eggs, “an inexpensive protein source” for low-income families, and cites an unnamed western state that saw prices

increase by 66 percent when a similar law went into effect, and a lack of compliant farm operations led to an egg and egg products shortage.

An animal rights group, writing specifically on SB347, reports “cage-free” eggs are more expensive primarily because producers charge a premium that does not reflect the actual difference in the cost of production, and prices would drop if cage-free eggs became the norm. Citing the farm industry publication *WattAg*, the group says retailers charge a premium of \$1.70 to \$1.80 per dozen for cage-free eggs, while the difference in the cost of production is just 25 cents to 35 cents.

The animal rights group contends prices will also be impacted by the growing use of cage-free eggs by retailers and restaurants, a list that includes Walmart, Costco, Albertsons, Walgreens, Target, Whole Foods, Trader Joe’s, Taco Bell, McDonalds, Denny’s, IHOP, and more than 200 other chains that have pledged to transition to 100 percent cage-free eggs by 2025 or sooner.

The group contends egg producers are looking for regulatory certainty and the provisions in SB347 are supported by major producers in western and southwestern states, including the leading seller of eggs in New Mexico. According to the advocacy group, similar laws are in place in California, Oregon, Washington, Colorado, Michigan, Massachusetts, and Rhode Island and under consideration in Nevada, Utah, and Arizona.

The group claims evidence indicates cage-free standards reduce salmonella risks.

## **ADMINISTRATIVE IMPLICATIONS**

NMDA reports SB347 would require the assignment of staff and the creation of data systems.

## **OTHER SUBSTANTIVE ISSUES**

NMDA raises concerns about the limited enforcement provisions in the bill:

The bill fails to outline any other enforcement options for violations other than court injunctions or administrative penalties. The assessment of administrative penalties would only be used as an intermediate step between field enforcement actions and court action, or when stop sale orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool.