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## FISCAL IMPACT REPORT

SPONSOR: Garcia DATE TYPED: 3/12/01 HB \_\_\_\_\_  
 SHORT TITLE: Exceptions to Cruelty to Animals Provision SB 35/aSPAC  
 ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Office of the Attorney General  
 Administrative Office of the Courts  
 Administrative Office of the District Attorneys  
 New Mexico Livestock Board  
 New Mexico State University

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee (SPAC) amendment maintains the exemption for research facilities who comply with the governing protocols related to animal treatment. Further, the amendment prohibits private causes of action, lawsuits, tort claims or other civil action related to the provisions of this act.

#### Synopsis of Original Bill

Senate Bill 35 deletes an exemption in the New Mexico Criminal Code for research facilities, intermediate handlers, carriers and exhibitors from prosecution for animal cruelty. Enactment of the bill will create parity between the state and federal statutes (7 U.S.C. Section 2136).

#### Significant Issues

The Attorney General Office, in its analysis, has provided an exceptional discussion of the key issues. It is provided in the following paragraphs.

“The purpose of the bill is to prevent inhumane treatment of animals by research facilities and parties who transport or exhibit animals. The removal of the exemption alone may be insufficient to stated goal. The only reported case of a criminal prosecution of an animal researcher on an animal cruelty theory in the United States is Taub v. State, 296 Md. 439, 463

A.2d 819 (1983). That conviction was reversed based on the legislative history of the criminal statute which recited that “unnecessary and unjustifiable” pain to research animals was the conduct sought to be criminalized. The court held that Taub’s conduct did not meet that standard and reversed the conviction.”

“A more comprehensive approach to abuse of research animals can be found in New York law. New York’s regulatory scheme is regarded as the model legislation in this area, granting to the state commissioner of health the power to inspect and regulate animal research in the state. McKinney’s Consolidated Laws of New York, Agriculture and Markets Law, Chapter 69, Article 26.”

“Under current law, the “state of mind” required to commit the misdemeanor is negligence. The meaning of negligence is hotly disputed in criminal law. Uniform Jury Instruction 14-133 defines it as acting “with willful disregard of the rights or safety of others and in a manner which endangered any person or property.” Since the proposed bill enlarges the pool of potential defendants, it would be useful to clarify the meaning negligence as it applies to this bill, as the jury instruction seems inapplicable.”

New Mexico State University argues that removal of the exemption would be detrimental to its education mission.

### **FISCAL IMPLICATIONS**

Senate Bill 35 does not contain an appropriation. According to the New Mexico Livestock Board, it could be impacted by the bill because it will be required to respond to a higher number of complaints that relate to livestock.

The Board is responsible for investigation of cruelty cases related to livestock, and in some of those cases has been ordered by the court to seize the animals. In these cases, the Board is responsible for feeding the animals and having them examined by veterinarians prior to the hearing. The current law states the judge “may” make the defendant liable for these costs. In some cases the judge has used the permissive language to waive the costs of care for the seized animals, thus forcing the agency to pay the feed and veterinarian charges. There is no way of accurately estimating the annual cost that will result from passage of this bill, because of the variety of situations and numbers of animals that may be involved in a given period of time.

### **ADMINISTRATIVE IMPLICATIONS**

There could be an increase in paperwork that is written and kept by the Board which documents a cruelty case. An increase in cruelty cases would also increase the time Livestock Inspectors would be in court. The increased time that inspectors spend with cruelty cases does not increase revenue to the board. These cases do increase costs and there are no fees charged to offset expenditures.

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