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FISCAL IMPACT REPORT

		ORIGINAL DATE	02/05/10	
SPONSOR	SIAC	LAST UPDATED	02/24/10	HB
	Public Peace, Health, Safety & Welfare -			
SHORT TITLE	Farmer Protection Act			SB 303/SIACS
				ANALYST Pava

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Dept. of Agriculture (DOA)

Indian Affairs Department (IAD)

NM Organic commodity Commission (NMOCC)

SUMMARY

Synopsis of Bill

The Indian & Cultural Affairs Committee Substitute to Senate Bill 303 called the “Farmer Protection Act”, provides protection from liability; prohibits real property inspections without permission; and establishes jurisdiction as the District Court in the county and it as venue for a dispute relating to or arising out of the use of a genetically engineered plant in New Mexico.

FISCAL IMPLICATIONS

Senate Bill 303/SIACS has no appropriation.

SIGNIFICANT ISSUES

SB303/SIAC called the “Farmer Protection Act” provides definitions and states a genetically engineered plant is any plant part or material, including seeds and pollen, in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination.

It states as to protection from liability, a person who owns or occupies property does not have to establish buffer zones or segregation protocols to protect against the release of genetically engineered plants onto that property. And if they are not in breach of a seed contract, but come into possession of a genetically engineered plant as a result of natural reproduction, cross-pollination, or other contamination they are not liable for any damages.

It states as to inspections, a seed supplier of genetically engineered plant seed must meet conditions of notification and written permission if the contractual obligation allows access, before entry upon the property farmed to obtain crop samples.

Many Tribal communities, including the Pueblos of New Mexico, are significant agricultural producers of organic and heirloom crops. Cross-contamination of patented, genetically engineered seeds creates a significant concern for Native farmers as any contamination could impact their organic certification as well as expose them to liability.

DOA indicates:

SB 303 states any contractual provision purporting to waive or preclude New Mexico as the proper venue for that action is void and unenforceable. This provision of SB303 will create a competitive disadvantage in New Mexico because seed companies that cannot protect their patents will be discouraged from selling seed to NM farmers. SB303 attempts to supersede United States patent law and other provisions protecting patented material, which is a disincentive for companies of genetically modified materials doing business in New Mexico.

According to biofuels industry representatives, SB303 threatens the development of biofuels feedstocks in New Mexico, including algae and low-impact seed crops. This will inhibit competitive advantages in New Mexico for the development of agriculturally based alternative fuels. SB303 appears to be in opposition to the Governor's executive order 2010-001, which is meant to foster the development of not only alternative fuels, but also the development of green jobs in many industries including agriculture.

SB303 sends conflicting messages to agricultural producers and threatens to dampen the creative edge of low-impact crops for alternative fuel and algal crop development of high quality alternative fuels. This effect is in opposition to the national and state agendas of reducing dependence on foreign oil.

Other potential effects of this legislation include reduced job creation from alternative fuels development from agricultural crops, possible reduction in research in the realm of viable alternative agricultural crops for fuel in New Mexico, and reduced economic development in rural areas of the state. In addition, much research and practical application for the emerging biofuels industry seeks alternatives to high water use in crop development. This is an important factor in the arid desert climate of NM since water supplies are generally over appropriated. Accordingly, NM biofuels researchers and companies are taking an ecological approach to the development of feedstocks such that minimal competition occurs with food crops or water usage.

NMOCC notes:

Conventional agriculture today uses many genetically engineered seeds and plant materials. The biotech corporate owners of those patented seeds aggressively protect their patent rights by pursuing farmers suspected of patent infringement. Their efforts often include suing farmers who accidentally come into possession of the patented seeds. Such lawsuits and threatened legal action has resulted in many farmers going out of business. The Farmer Protection act would provide that a farmer is not liable based on the presence or possession of patented genetically engineered seeds and plant materials when the farmer did not knowingly buy or otherwise acquire the genetically engineered seed/plant, and acted in good faith and without knowledge of acquiring the patented material. Wind pollination, insects, birds, other animals, or even seed stock contamination may be the cause of these patented seeds and plants finding their way into a farmer's field.

The above illustrated unintentional acquisition of genetically engineered seeds and plant material is potentially devastating to New Mexico's organic agriculture industry. The results of genetic engineering are not compatible with organic production and are prohibited under 7 *CFR* § 205 (National Organic Standards). Crops from certified organic fields that become contaminated by drift from genetically modified seed or pollen can not be sold as organic. Contamination would mean the organic farmer would not be able to market that particular crop as organic, and, depending on the nature and severity of the contamination, the farmer could lose organic certification and potentially have to undergo a three year transition process back to organic certification.

As more and more genetically engineered seeds and plant materials enter New Mexico, the challenges facing NM's organic agriculture industry increase, as they try to keep their organic products free of prohibited materials.

OTHER SUBSTANTIVE ISSUES

DOA notes:

SB303 only protects entities with contracts. New Mexico's small and family owned seed companies will be disproportionately affected by this legislation due to loss of market share to other states without comparable restrictions.

Another unintended consequence of enacting SB303 will be the potential for increased use of pesticides and herbicides in NM agricultural production activities; the use of some genetically modified seed has reduced the need for pesticides/herbicides in production, which in turn has reduced production input costs and improved environmental quality.

The responsibility for regulatory oversight of agricultural biotechnology is shared by three federal agencies: the United States Department of Agriculture's animal and plant health inspection service, the United States Environmental Protection Agency, and the United States Department of Health and Human Services' food and drug administration. The agencies' authority comes from the 1986 Coordinated Framework for the Regulation of Biotechnology. SB303 creates a conflict with federal oversight authority for agricultural biotechnology.

SB303 creates a number of potentially unintended consequences in the following areas: agricultural biotechnology research being conducted by universities and national laboratories in NM; the ability of the state to be competitive in attracting genetically modified plant research, contracts for seed, researching alternative biofuel crops, and overall innovative crop research and production. The state's seed industry will be negatively impacted by potential lawsuits when seed is inadvertently or illegally acquired.

NMOCC notes:

While this bill offers a measure of protection for all farmers from liability for accidental acquisition of patented genetically engineered materials, it does not offer any protection for organic farmers for contamination of their crops by those same genetically engineered materials.

AMENDMENTS

NMOCC recommends language is added to the bill to offer protection and legal recourse to protect organic farmers from having their crops contaminated by patented genetically engineered materials.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL –

New Mexico farmers would not be protected from the potential liability that arises from the unintended or unknowing cross-contamination of patented, genetically engineered plants on their property. Farmers will continue to face potential legal and financial penalties for the accidental acquisition of patented genetically engineered materials. Organic farmers are at greater risk, since they depend upon the premium prices their products bring, and while they might not be faced with legal issues brought by the patent holders, their organic certification may be placed at risk.

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