

HOUSE BILL 276

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

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AN ACT

RELATING TO AGRICULTURE; ENACTING THE AGRICULTURE PROTECTION ACT; PROVIDING FOR REVIEW OF ECONOMIC IMPACTS OF AGRICULTURE RULES; ALLOWING INVESTIGATIONS OF AGRICULTURE ADJUDICATIONS AND COMPLAINTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Agriculture Protection Act".

SECTION 2. DEFINITIONS.--As used in the Agriculture Protection Act:

A. "adjudication" means a process for determining facts or applying law pursuant to which an agency formulates and issues an order;

B. "administrative record" means the hearing record in an agency adjudication;

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1 C. "adopted rule" means a rule promulgated and
2 adopted by an agency;

3 D. "agency" means any agency, board, commission,
4 department, institution or officer of the state government
5 except the judicial and legislative branches of the state
6 government;

7 E. "agricultural facility" means any land,
8 building, structure, pond, impoundment, appurtenance, machinery
9 or equipment that is used for the commercial production or
10 processing of crops, livestock, animals, poultry, honey bees,
11 honey bee products, livestock products, poultry products or
12 products that are used in commercial agriculture;

13 F. "agricultural operation" means:

14 (1) the plowing, tilling or preparation of
15 soil at an agricultural facility;

16 (2) the planting, growing, fertilizing or
17 harvesting of crops;

18 (3) the application of pesticides, herbicides
19 or other chemicals, compounds or substances to crops, weeds or
20 soil in the connection with production of crops, livestock,
21 animals or poultry;

22 (4) the breeding, hatching, raising,
23 producing, feeding, keeping, slaughtering or processing of
24 livestock, hogs, aquatic animals, equines, chickens, turkeys,
25 poultry or other fowl normally raised for food, mules, cattle,

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1 sheep, goats, rabbits or similar farm animals for commercial
2 purposes;

3 (5) the production and keeping of honey bees,
4 production of honey bee products and honey bee processing
5 facilities;

6 (6) the production, processing or packaging of
7 eggs or egg products;

8 (7) the production, processing or packaging of
9 milk or milk products;

10 (8) the rotation of crops;

11 (9) commercial agriculture;

12 (10) the application of existing, changed or
13 new technology, practices, processes or products to an
14 agricultural operation; or

15 (11) the operation of a roadside agricultural
16 market;

17 G. "best management practice" means a method or
18 technique found to be the most effective, economical and
19 practical means in achieving an objective while making the
20 optimum use of the resources of the agricultural facility or
21 agricultural operation;

22 H. "director" means the director of the New Mexico
23 department of agriculture;

24 I. "economic impact" means effects on spending,
25 saving, investment and asset value;

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1 J. "order" means an agency decision that determines
2 or declares the rights, duties, privileges, immunities or other
3 interests of a specific owner of an agricultural operation;

4 K. "person" means an individual, corporation,
5 business trust, statutory trust, estate, trust, partnership,
6 limited liability company, association, joint venture, public
7 corporation, government or governmental subdivision, agency or
8 any other legal or commercial entity;

9 L. "proposed rule" means a rule that is provided to
10 the public by an agency for review and public comment prior to
11 its adoption, amendment or repeal; and

12 M. "sustainable agriculture practice" means
13 science-based practices, including the use of technology, that
14 lead to broad outcome-based performance improvement to meet the
15 needs of present and future generations while advancing
16 environmental, social and economic goals and the well-being of
17 agricultural operations and rural communities. Critical
18 outcomes to consider in identifying sustainable agriculture
19 include increasing agricultural productivity, improving human
20 health through access to safe, nutritious and affordable food
21 and enhancing agricultural and surrounding environments,
22 including water, soil and air quality.

23 **SECTION 3. DIRECTOR--POWERS.--**The director may make and
24 adopt such rules as may be necessary to carry out the
25 provisions of the Agriculture Protection Act.

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1 SECTION 4. REVIEW OF ECONOMIC IMPACTS OF AGRICULTURE

2 RULES.--

3 A. If a proposed rule has an aggregate economic
4 impact of more than five thousand dollars (\$5,000) per year on
5 one or more owners of agricultural facilities or agricultural
6 operations, an agency shall provide a copy of the proposed rule
7 to the director for review prior to the proposed rule becoming
8 effective. If the director disapproves of the proposed rule in
9 writing because the proposed rule will create an undue economic
10 burden on one or more owners of agricultural facilities or
11 agricultural operations, the proposed rule shall not apply to
12 agricultural facilities or agricultural operations.

13 B. For rules in effect prior to the effective date
14 of the Agriculture Protection Act, the director may review an
15 adopted rule to determine whether the adopted rule has an
16 aggregate economic impact of more than five thousand dollars
17 (\$5,000) per year on one or more owners of agricultural
18 facilities or agricultural operations. If the director
19 disapproves of the adopted rule in writing because the adopted
20 rule will create an undue economic burden on one or more owners
21 of agricultural facilities or agricultural operations, the
22 adopted rule shall not apply to agricultural facilities or
23 agricultural operations.

24 SECTION 5. INVESTIGATIONS OF AGRICULTURE ADJUDICATIONS
25 AND COMPLAINTS.--

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1 A. Prior to the resolution of an adjudication
2 dealing with an agricultural facility or agricultural
3 operation, an agency shall submit to the director a written
4 notice of such an adjudication.

5 B. Any person may submit a complaint to the
6 director involving an agricultural facility or agricultural
7 operation.

8 C. The director may investigate notices pursuant to
9 Subsection A of this section or complaints pursuant to
10 Subsection B of this section. If the director finds upon
11 investigation that:

12 (1) the owner of the agricultural facility or
13 agricultural operation uses best management practices or
14 sustainable agriculture practices in dealing with a problem at
15 issue in an adjudication or at issue in a complaint, the
16 director shall give the owner of the agricultural facility or
17 agricultural operation and either the agency or person written
18 notice of the finding; or

19 (2) the problem at issue in an adjudication or
20 at issue in a complaint is caused by something other than use
21 of best management practices or sustainable agriculture
22 practices, the director may issue written recommendations for
23 changes to the agricultural facility or agricultural operation
24 and provide these recommendations to the owner of the
25 agricultural facility or agricultural operation and either the

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1 agency or person.

2 D. Any findings or recommendations issued by the
3 director under Subsection C of this section may be entered into
4 the administrative record for an adjudication.

5 SECTION 6. SEVERABILITY.--If any part or application of
6 the Agriculture Protection Act is held invalid, the remainder
7 or its application to other situations or persons shall not be
8 affected.