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## FISCAL IMPACT REPORT

SPONSOR Nuñez ORIGINAL DATE 02/09/11  
LAST UPDATED \_\_\_\_\_ HB 276  
SHORT TITLE Agriculture Protection Act SB \_\_\_\_\_  
ANALYST Haug

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$8.5-\$85.0	\$8.5-\$85.0	\$17.0-\$170.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

House Bill 276 enacts the Agriculture Protection Act. It confers upon the director of the New Mexico Department of Agriculture broad authority to review any rule promulgated by any agency, board, commission, department, institution or officer of the executive branch of state government that relates to an agricultural facility or agricultural operation, as those terms are defined in the act. House Bill 276 gives the director the authority to disapprove any proposed rule, or any rule in effect prior to the effective date of HB 276, which he or she determines has an aggregate economic impact greater than \$5000 on one or more owners of agricultural facilities or agricultural operations. If so, the proposed rule shall not apply to agricultural facilities or agricultural operations.

### FISCAL IMPLICATIONS

House Bill 276 contains no appropriation. The NMDA notes that the increased workload for NMDA is unknown at this time but that it will require additional resources in order for NMDA to carry out the provisions of the Act.

Increased workload would be a function of 1) reviewing rules promulgated by any executive branch agency that relates to an agricultural facility or agricultural operation; 2) determining aggregate economic impact greater than \$5,000 dollars for rules proposed by any non NMDA regulatory body; and 3) investigation of complaints about an agricultural facility or operation. Assuming a cost of \$1,000 dollars per rule reviewed, \$2,500 dollars per determination of

aggregate economic impact, and \$5,000 per investigation of complaints the additional cost to the NMDA would vary from \$8,500 for one each of these occurrences to \$85,000 dollars for 10 instances. This range is used in the table above as a rough indicator of potential costs in implementing the Act.

## **SIGNIFICANT ISSUES**

The AGO comments:

House Bill 276, in apparent response to the dairy regulations adopted by the Water Quality Control Commission in late 2010, authorizes the director of the Agriculture Department unilaterally to veto any rule or order issued by a state agency, board or commission after a rule-making or adjudicatory proceeding, notwithstanding the substantial evidence considered by the agency during the proceeding in support of the rule or order, or the legal necessity for adopting the rule or order. HB 276 may discourage agricultural facility owners and operators from participating in rule-making and adjudicatory proceedings, where their economic impact claims would be subject to cross-examination, in favor of complaining to the director after the fact.

The director's actions may adversely affect the state's participation in certain federal regulatory programs that recognize the state agency, board or commission as the lead agency for monitoring and enforcing provisions of federal law. For example, the director's disapproval of a rule adopted by a state agency and as applied to agricultural facilities and operations may cause the state to be out of compliance with applicable provisions of federal law that require the state to adopt rules or take certain action that are at least as stringent as the federal law.

House Bill 276 raises due process concerns, as it authorizes the director to investigate complaints involving an agricultural facility or operation and issue findings and recommendations that may be made part of the administrative record in an adjudicatory proceeding to which he or she is not a party, called as a witness, or subject to cross-examination.

The NMDA states any person may submit a complaint to the director of agriculture about an agricultural facility or operation. The amount of potential complaints that may be received is unclear and may include items outside of NMDA's jurisdiction.

## **ALTERNATIVES**

The AGO suggests two possible alternate approaches:

- (1) Require state agencies, boards, or commissions with rule-making or adjudicatory authority that may have an impact on agricultural facilities and operations to consider the economic impact (greater than a given dollar amount) of any proposed rule or order on agricultural facilities or agricultural operations.
- (2) Make the director of the New Mexico Department of Agriculture, or his designee, a voting member of those boards and commissions with rule-making or adjudicatory authority that are likely to affect agricultural facilities and operations.