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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/11

SPONSOR HJC LAST UPDATED _____ HB 485/HJCS

SHORT TITLE New Mexico Chile Advertising 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
Total		See Narrative	See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 485 creates the New Mexico Chile Advertising Act, identifies certain unlawful chile advertising practices and provides for administration, audit and inspection by the NMDA.

FISCAL IMPLICATIONS

The NMDA notes The House Judiciary Committee Substitute for HB 485 does not provide an appropriation for inspections, and NMDA may require additional resources to implement the requirements of HB 485. NMDA estimates it would need an additional 2-3 FTEs. NMDA currently works with USDA United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) to audit approximately 50 retail locations in the state for compliance with the federal country of origin law (COOL). These audits take approximately two to three months to complete without a thorough record review and only account for perishable agricultural commodities act (PACA) licensed establishments which must sell greater than \$250,000 annually in perishable agricultural commodities.

SIGNIFICANT ISSUES

The NMDA states:

The USDA AMS already requires mandatory COOL on perishable agriculture commodities through 7 CFR Part 60 and 65. AMS, through a Final Rule published in the Federal Register January 15, 2009 Volume 74, No. 10, regulates mandatory COOL labeling of beef, pork, lamb, chicken, goat meat, wild and farm-raised fish and shellfish, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts. Perishable agricultural commodities are defined as fresh and frozen fruits and vegetables of every kind and character that have not been manufactured into articles of a different kind or character. USDA AMS does not require COOL for processed commodities.

There are over 72,000 tons of chile grown in New Mexico annually. Currently when a producer provides unprocessed perishable agricultural commodities for retail trade to a section 499a (b) of the Perishable Agricultural Commodities Act of 1930 (PACA) retailer, they must provide country of origin labeling for that product. This includes all unprocessed perishable agricultural commodities imported into the United States.

Some New Mexico producers have significant agricultural crop acreage in Mexico and bordering states for chile production as well as their acreage within the state. Additionally there are a number of processing firms within the state that must utilize imported chile products, such as cayenne, green chile and jalapenos, to meet demands by their contracts and consumers on a year around basis.

Recordkeeping requirements by producers and processors may be burdensome.

RELATIONSHIP

House Bill 485 relates to Senate Bill 300 which addresses the same issue but is prescriptive while House Bill 485 is permissive with respect to enforcement.

OTHER SUBSTANTIVE ISSUES

According to the NMDA, HB 485 may conflict with the NEW MEXICO – Taste the Tradition ® and NEW MEXICO – Grown with Tradition ® series of logos developed by NMDA to identify food and agricultural products from the state. The licensing agreement between NMDA and an organization or individual requesting the use of the marketing logos provides for their use only on food and agriculture products that were grown, raised, or processed in New Mexico. This marketing arrangement is very important to producers and the marketing of New Mexico products. Both of these logos satisfy the federal COOL mandate. These labels also allow products processed in New Mexico to carry the logo and Section 2 and Section 4 of the act would conflict with the “or processed” conditions in NMDA’s licensing agreement for use of these logos. With enactment, all chile used in processed food items with the NEW MEXICO – Taste the Tradition ® and NEW MEXICO – Grown with Tradition ® series of logos would have to be grown in New Mexico.

GH/bym:svb