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FISCAL IMPACT REPORT

SPONSOR Fischmann **ORIGINAL DATE** 02/02/11 **LAST UPDATED** _____ **HB** _____
SHORT TITLE Farmer Liability for Certain Products **SB** 51
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|----------------|------|----------------------|-------------------------|------------------|
| Total | | \$1.0 - \$15.0 | | | Recurring | Various |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
New Mexico State University (NMSU)

SUMMARY

Synopsis of Bill

Senate Bill 51 protects farmers from liability to manufacturers of genetically modified crops in the event those crops grow on a farmer's land. The bill also creates liability for patent owners when their patented crops grow on land without the permission of the land owner.

FISCAL IMPLICATIONS

AOC suggests that there may be impact to the judiciary related to disputes as to whether the presence of certain plants or the release of certain products was "unintended". The estimate in the table above attempts to indicate that these costs are unknown and are proportional to the number of infringement cases related to "unintended" possession and the court's application of the act's definitions of "genetically engineered product" and "technology use agreement".

The legislature has the power to decide what items of expense a party in a lawsuit can recover as costs. However, if the legislature does not specify which expenses can be recovered, the judge will decide what expenses can be recovered.

SIGNIFICANT ISSUES

Unintentional possession can be caused by wind, insects, birds or other animals, or seed stock contamination.

The proposed legislation attempts to release a farmer from liability and damages for unintentional possession of a genetically engineered product and allows a farmer to maintain permanent possession of the product without a technology use agreement in place with the manufacturer.

A manufacturer that files an infringement case against a farmer who does not have a technology use agreement must file suit in a federal district court where the farmer lives or where the farmer committed the alleged act.

If a manufacturer, its licensees or its agents release a genetically engineered product, it shall constitute a private nuisance under the following conditions:

- the release causes the presence of the plant within property owned or occupied by a person for whom the plant presence was not intended and with whom the manufacturer does not have use technology agreement; and
- the release results in damages in any calendar year exceeding five hundred dollars, constituting interference with the use and enjoyment of said property.

PERFORMANCE IMPLICATIONS

The AGO states that the State's attempt to limit liability in a patent may be preempted by federal authority.

The NMDA notes that the United States Department of Agriculture's animal and plant health inspection service (APHIS) has regulatory authority over genetically modified organisms. APHIS, the United States Environmental Protection Agency (EPA), and the United States Food and Drug Administration (FDA), play a joint role in the regulation of genetically engineered products that utilize biotechnology. The shared responsibility breaks down as follows: APHIS regulates the planting of crops that use genetically modified organisms; EPA regulates the sale, distribution and use of pesticides in order to protect health and the environment; and FDA is responsible for the safety and labeling of food and feeds.

NMSU maintains that existing state and federal tort law covers growers whose crops are impacted by a neighbor's practices (i.e., drift from spraying or genetically engineered products).

ADMINISTRATIVE IMPLICATIONS

NMSU is concerned that research plots at its agricultural science centers around the state could be vulnerable to lawsuits.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 51 duplicates HB 46.

TECHNICAL ISSUES

The court venue requirement is redundant as it already exists in law. A court must have jurisdiction over a person to hear a case against them.

NMDA suggests clarifying language to say a farmer may unintentionally possess but not use the product. A conflict may arise if a farmer who unintentionally possesses a patented genetically engineered or modified product may use the product under state law, but the manufacturer has not granted the farmer permission to use the patented product, the use of which is governed by federal patent law.

NMDA notes farmers that plant guaranteed genetically modified organism free or organic crops under a production contract receive a premium for these crops; however, the farmer could claim damages and sue a manufacturer and a neighboring farmer if a genetically engineered trait were discovered in the premium crop that had been guaranteed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Federal law will continue to protect farmers who unintentionally possess minimal amounts of patented genetically engineered products.

AHO/bym