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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/11

SPONSOR Sapient LAST UPDATED _____ HB _____

SHORT TITLE Agritourism Activity Limited Liability SB 428

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY11 | FY12 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

New Mexico Department of Agriculture (NMDA)

New Mexico Tourism Department (TD)

SUMMARY

Synopsis of Bill

Senate Bill 428 (SB 428) enacts the “agritourism limited liability act” (act) to limit liability for businesses that permit the public to participate in agricultural activities such as farming, ranching and winemaking. The bill will require that such businesses post warnings about the inherent dangers of these activities. Provided that such a warning has been posted, the agritourism business will be immune from liability for any injury or death suffered by a patron of the business that stems exclusively from the inherent risks of the agricultural activity.

The bill more specifically:

- Section 2 provides for definitions such as “inherent risk of agritourism activity” to mean “those dangers or conditions that are an integral part of an agritourism activity...”;
- Section 3 limits liability for injury or death so long as a warning notice is posted, except for negligent acts or omissions including if an agritourism professional had prior knowledge of a dangerous situation or animal; and
- Section 4 provides specific posting requirements for the signage and specific language requirements for signage and contracts between agritourism professionals and patrons.

FISCAL IMPLICATIONS

There is no appropriation in the bill.

TD reports that rural New Mexico communities often struggle financially in their efforts to promote tourism to their areas. Agritourism provides a significant incentive for travelers to journey to these areas, which will result in longer visitors stays in New Mexico and increased state and local revenues.

SIGNIFICANT ISSUES

An activity is an “agritourism activity” regardless of whether or not the participant paid to participate in the activity. An “agritourism professional” is any person that provides an agritourism activity, whether or not for compensation. The bill attempts to reduce the liability that opening family farms and ranches to guests bring, along with the increased revenue.

An agritourism business must post a warning notice at the entrance to the farm or ranch where the activity is to take place and at the site of the activity. Every written contract entered into for services or sales must contain in clearly readable print the same warning notice as specified for posting at the facility where activities take place.

TD states that agritourism is a commercial enterprise at a working farm, ranch, or agricultural plant conducted for the enjoyment of visitors that generates supplemental income for the owner. It is a subset of a larger industry called rural tourism that includes resorts, off-site farmers' markets, non-profit agricultural tours, and other leisure and hospitality businesses that attract visitors to the countryside.

PERFORMANCE IMPLICATIONS

SB 428 relates to civil liability and provides for limited liability in agritourism activities.

ADMINISTRATIVE IMPLICATIONS

TD has developed the first state managed ecotourism program, which includes in its mission the promotion and support of agritourism.

TECHNICAL ISSUES

Agritourism professionals may not always be owners of the agritourism business, they may also be paid or contracted seasonal employees of those farm and ranch businesses.

OTHER SUBSTANTIVE ISSUES

Agritourism and nature-tourism enterprises include:

- Outdoor recreation (fishing, hunting, wildlife study, horseback riding).
- Educational experiences (art, cooking classes, or wine tasting).
- Entertainment (harvest festivals, hay rides or barn dances).
- Hospitality services (farm stays, guided tours or outfitter services).
- On-farm direct sales (you-pick operations or roadside stands).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

It remains uncertain if posting a notice or including that same notice in a contract for services fully relieves an agritourism business from liability.

AHO/svb