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FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/17
 LAST UPDATED 3/10/17 HB 305/aSCONC

SPONSOR Sweetser

SHORT TITLE Compliance Inspections for Food Safety Laws SB _____

ANALYST Dulany

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Department of Agriculture (NMDA)
- New Mexico Environment Department (NMED)
- Office of Attorney General (OAG)
- Department of Health (DOH)

SUMMARY

Synopsis of Senate Conservation Committee Amendment

The Senate Conservation Committee amendment would authorize NMDA to enter onto public or private property “after notice of inspection” to collect physical or documentary samples and to review records and documents to verify compliance with the federal FDA Food Safety Modernization Act.

Synopsis of Bill

House Bill 305 adds a subsection to the powers and authority of the New Mexico State University (NMSU) Board of Regents granting the regents the ability to authorize NMDA to enter onto public or private property to collect physical or documentary samples and to review records and documents to verify compliance with the federal FDA Food Safety Modernization Act (FSMA).

FISCAL IMPLICATIONS

NMDA does not indicate any additional revenue or operating budget impact in the next few years; however, NMDA suggests the authority provided for in HB 305 could eventually allow the department to perform required produce safety inspections under a cooperative agreement with the Food and Drug Administration (FDA), which could result in additional revenue to NMDA.

NMDA states the department currently has several ongoing cooperative agreements for performing inspection and other activities on behalf of federal agencies, including the US Department of Agriculture and US Environmental Protection Agency. The department implements programs on behalf of these agencies relating to pesticide registration, certification, licensing and inspection of pesticide applicators, phytosanitary certificate issuance and inspection, analytical services, and invasive pest monitoring and reporting.

NMDA reports it received a five-year grant in September 2016 directed at evaluation of agricultural producers falling under the produce provisions of FSMA, developing and conducting educational efforts, establishing partnerships with applicable entities, and implementation of an inspection program, including establishing applicable priorities. NMDA states the grant award levels are as follows, with some changes depending on the federal budget allocation:

NMDA FSMA Grant Award Levels (in thousands)					
Year 1	Year 2	Year 3	Year 4	Year 5	Total
\$700.0	\$950.0	\$990.0	\$1,010.0	\$1,260.0	\$4,910.0

Source: NMDA

According to NMDA, the grant funding includes distribution of supporting funds to both NMED for education development and inspection of produce processing facilities and NMSU Cooperative Extension Service (CES) for producer training.

SIGNIFICANT ISSUES

According to NMDA, the intent of FSMA is to provide FDA the authority to proactively focus on increasing food safety in the U.S. Since its inception, multiple rules have been approved to carry out the provisions of FSMA. The rules each provide regulatory requirements in areas identified to impact food safety, including preventive controls for human food and animal feed, produce safety, verification of compliance for foreign suppliers, sanitary transportation of food, auditing of third party certifiers, and prevention of intentional adulteration. FDA has initially focused on implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Rule, referred to as the Produce Safety Rule. The rule has a direct impact on New Mexico agricultural producers and businesses involved in the production, harvest, storage, and packaging of specified produce including chile, lettuce, cabbage, onion, and melon, among others.

NMDA reports key requirements of the Produce Safety Rule include provisions for ensuring microbial water quality of irrigation water; limitations on the use of biological soil amendments (compost and manures); training of workers on health and hygiene; minimization of contact

between field crops and animals; sanitary standards for tools, buildings, and equipment; and validation processes to ensure compliance.

NMDA analysis states, with finalization of the Produce Safety Rule, NMDA partnered with NMED and CES and was identified as the primary agency to provide compliance assistance and outreach of the on-farm requirements under the Produce Safety Rule. In 2016, NMDA applied for and was awarded funding as the principal investigator of the produce safety grant described in the fiscal implications section above. According to the department, “NMDA also worked with industry members impacted by the rule. Industry has suggested NMDA pursue FSMA inspection responsibilities in lieu of the FDA performing inspections. The FDA will retain enforcement responsibility for any documented violations.”

DOH notes one of the goals of FSMA is to work with state agencies to perform inspections. Currently, 48 states are participating in FSMA and are in different stages of granting inspection rights to state agencies, according to the department.

According to OAG:

“Case law indicates that the food industry meets the standard for a pervasively regulated industry, permitting warrantless searches. However, the new language in this bill, permitting entry “onto public or private property” may be unconstitutionally vague or overbroad, as it doesn’t limit, identify or describe the types of industries, businesses, property or residences for which search is authorized. The language does not set forth the relationship between the food industry and the property for which search is authorized.”

ADMINISTRATIVE IMPLICATIONS

NMED reports it will work collaboratively with NMDA in assisting with training and outreach related to FSMA and related rules.

TD/jle/sb