

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Brantley</u>	LAST UPDATED <u>2/20/2025</u>	ORIGINAL DATE <u>2/4/2025</u>
SHORT TITLE <u>Dept. of Ag. Administration & Enforcement</u>	BILL NUMBER <u>Senate Bill 214/aSCONC</u>	ANALYST <u>Jorgensen</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMDA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	Other state funds

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 231

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of SCONC Amendment to Senate Bill 214

The Senate Conservation Committee amendment to Senate Bill 214 restores the definition of a commercial apiary (pg. 26), adds language allowing NMDA to impose additional rules on apiaries established in New Mexico by out-of-state beekeepers (pg. 32), and removes a repeal of 79-9-10 NMSA 1978 relating to registration requirements for commercial apiaries (pg. 81).

Synopsis of Original Bill

Senate Bill 214 (SB214) makes several changes relating to the New Mexico Department of Agriculture (NMDA). The bill:

1. Establishes administrative penalty authority at the agency level specific statutes, citing that authority where relevant; provides New Mexico State University (NMSU) Board of Regents authority to establish in rule monetary penalty guidelines for the New Mexico Department of Agriculture (NMDA). Statutes clarify that administrative penalties shall be deposited in the state treasury to the credit of the current school fund.
2. Updates fee limits directed at fulfilling regulatory obligations under the Pesticide Control Act, Plant Protection Act, Fertilizer Act, Bee Act, Commercial Feed Act, Egg Grading Act, Weights and Measures Act, Weighmaster Act, Petroleum Products Standards Act.

3. Provides definitions of additional terms; clarifying language; general language clean-up where needed; amendments made to comply with recent federal requirements; and regulations repealed or updated to align with evolving business practices.
4. Proposes to repeal bonding sections of the Weights and Measures Act and Weighmaster Act. Establishes registration sections in the Weights and Measures Act and Petroleum Products Standards Act for service establishments and service technicians to service weights and measures devices used in commerce.
5. Proposes the repeal of the 1899 Act 76-5-1 (NMSA) “County Commissioners to Prohibit Importation of “Codlin [sic] Moth” or Other Worms or Insects Destructive to Fruit.”

The effective date of this bill is October 1, 2025.

FISCAL IMPLICATIONS

SB214 increases the potential fees imposed by NMDA for regulation and oversight related to nine separate acts enforced by the agency. However, the fee increases set a ceiling rather than a floor and additional revenue is generally restricted to covering costs of enforcing the individual acts. Increasing the fees would be done by rule and would have to be approved by the NMSU Board of Regents. Because there is no mandate to increase fees, the estimated additional operating budget impact is unknown, but it is likely that SB214 will result in an increase in the other state funds in the NMDA operating budget.

SIGNIFICANT ISSUES

NMDA is housed at NMSU and received a \$17.4 million general fund appropriation for FY25. The department also receives funding through fees and a distribution from the Land of Enchantment Legacy Fund. Additional revenue raised through changes resulting from enactment of SB214 would remain with NMDA and be used to pay for costs of administering the respective acts affected. To the extent that state general fund appropriations are used to cover costs of administering the various acts NMDA must enforce, SB214 could free up state funds for other purposes.

NMDA provided a summary of changes and additional context for the changes made in SB214:

Increases in the cost of inspection and sampling, the complexity of investigations, cost and complexity of laboratory analysis and general public concern around food and environmental issues have stretched current resources, challenging the ability of NMDA to adequately provide consumers, the regulated industries and producers the services and activities obligated in accordance with the regulations. Fee limits within specific statutes addressed in the bill have not been updated in decades.

The fee limit proposed in the Pesticide Control Act and expected fee increase related to the review, registration, and inspection of pesticide products will impact approximately 1,545 out-of-state and 13 New Mexico businesses. The proposed increase in the fee limit from \$150 to \$300 per product will result in a limit that will be comparable with states on the lower end of the national scale (\$100-\$2,300/product annually). The fee limit has not been addressed in the past 20 years.

The proposed fee limits under the Commercial Feed Act will help provide the necessary

resources for inspecting and sampling commercial feed products. This change would impact approximately 1,092 out-of-state businesses and 64 businesses in New Mexico. The current inspection fee limit at fifteen cents (\$0.15) per ton, twenty-five dollars (\$25.00) for small packages of ten pounds or less was established in 1973. The fee limit was reached in 1977.

The proposed fee limits under the Fertilizer Act will provide essential resources for product registration review, as well as the inspection and sampling of fertilizer products. This change would affect approximately 620 out-of-state businesses and 38 businesses in New Mexico. The current registration fee at five dollars (\$5.00) and inspection fee limit at thirty-five cents (\$0.35) per ton, and ten dollars (\$10.00) for small packages of five pounds or less was established in 1976. The fee limit was reached in 1977.

The current egg dealer fee limits stated in the Egg Grading Act have not been addressed since 1973. The proposed fee limit increase will provide for inflation adjustments over the past 51 years.

The Weights and Measures Act currently requires bonding of the director of NMDA and the inspector engaged in the servicing of measuring/weighing devices. This responsibility has been assumed by registered service establishments and their technicians. These responsibilities, registration and fees of service establishments and service technicians are absent from the law. In addition, the Petroleum Products Standards Act lacks the authority for NMDA to authorize service establishments and service technicians to service petroleum devices used in commerce and obtain registration.

The Weighmaster Act currently requires a bond for weighmasters and their deputies, this requirement is unnecessary and requires NMDA to obtain unutilized documents. Weighmaster and deputy weighmaster fees are absent from the law. Establishing licensing fee limits provides transparency.

SB214 proposes...repeal[ing] the 1.5-mile distance requirement between a registered apiary and another beekeeper's hive (not located on that beekeeper's property). The amendments are primarily a result of commercial beekeepers' input regarding the distance requirement, thus hindering the ability of new and established beekeepers to utilize forage areas. Additionally, the intent of the 1975 distance requirement was to prevent the spread of newly introduced bee diseases from one apiary to another. Practice and research have largely demonstrated the 1.5-mile distance requirement is insufficient in mitigating the spread of bee diseases and pests. Texas, Arizona, and Colorado, along with other states, have repealed registration requirements over the years. Currently nine registered beekeepers are registered with the state.

Proposed fee limit increases for the Plant Protection Act were last amended in 1979. The proposed fee limit increase will provide for inflation adjustments over the past 51 years.

Administrative fine authority for NMDA is proposed to address outdated and primarily ineffective penalty sections of specific statutes, including the use of the court system to assess fines. Additionally, proposed amendments clarify NMDA's authority to file injunctions to prevent continuous violations.

Quarantine authorities addressed in the 1899 Act 76-5-1 (NMSA) “County Commissioners to Prohibit importation of “Codlin [sic] Moth” have been supplanted by similar authorities addressed in 76-6-1 (NMSA) “Pest Control Act”. The repeal of 76-5-1 will have no impact on NMDA’s ability to address new plant pests of significant importance.

ADMINISTRATIVE IMPLICATIONS

NMDA would have to pursue a rule making procedure to change any of the fees currently established by rule. The NMSU Board of Regents must approve any rule change altering fees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB214 is related to Senate Bill 231 which also removes all references to “soil conditioners” from the Fertilizer Act.

OTHER SUBSTANTIVE ISSUES

Below is a detailed summary of the changes made in SB214:

1. Creation of the Department of Agriculture
 - a. Provides board of regents of NMSU authority to design a system of administrative penalties for NMDA to use to determine penalties for violations of state laws which the department enforces.
 - b. Provides authority to revoke or suspend licensure for failure to pay an administrative penalty or take action to correct a violation.
 - c. Provides that willful and repeated refusal to correct a violation or pay penalties is a fourth degree felony and may be punished by a term of up to 18 months or up to \$15,000 fine, or both.
 - d. Directs that all administrative penalties shall be deposited in the state treasury to the credit of the current school fund.
2. Pesticide Control Act:
 - a. Clarifies that pesticide applicators must pass a certification exam tied to federal competency standards.
 - b. Increases application and renewal fee-limit of pesticide products from \$150 to \$300.
 - c. Gives NMDA power to revoke license for violations.
 - d. Creates administrative penalty up to \$5,000 for each violation of act or rules and other penalties as proposed in 76-1-6.
 - e. Specifies fee and other non-administrative penalty revenue remain with NMDA.
3. Plant Protection Act:
 - a. Adds definitions for cactus plant, farmer’s market, florist, producer, and vegetable plant.
 - b. Gives NMDA power to inspect all nursery stock imported to or transported through the state.
 - c. Clarifies only pest-free nursery stock shall be offered for sale or sold.

- d. Creates administrative penalty up to \$5,000 for each violation of act or rules and other penalties as proposed in 76-1-6.
- e. Creates a new fee limit schedule for the Plant Protection Act.

Fee by License Type	Existing	SB214
Nursery Dealer	\$75 plus \$2.00/acre of nursery area inspected	\$325 plus \$10.00/acre of nursery production area
Vegetable Plant Producer	\$25.00	\$100.00
Nursery Dealer/Landscaper	\$75.00 (includes florists)	\$325.00
Florists (NEW in SB214)	\$0	\$200.00
Special Dealer (vegetable/cactus)	\$25.00	
Collected Plant	\$75.00	\$325.00
Vegetable Plant Dealer		\$100.00
Cactus Dealer		\$100.00
Farmer's Market		\$325.00

4. Bee Act:

- a. Makes clarifying changes to definitions.
- b. Provides new authority for NMDA to inspect colonies or hives that might be or are infected or infested with a contagious disease.
- c. Includes new requirement for display of hive ownership for hives not located on property owned by the beekeeper.
- d. Clarifies authority of NMSU Board of Regents to establish fees for services requested by the public under 76-1-2.
- e. Removes potential criminal sanction for violation of the Bee Act and replaces with an administrative penalty up to \$5,000 per violation and other penalties as proposed in 76-1-6 creation of New Mexico department of agriculture.
- f. Removes requirement of a hive not located on property owned by the beekeeper to maintain a 1.5-mile radius from a commercial beekeeper's apiary that has been registered with the department.

5. Fertilizer Act:

- a. Removes references to soil conditioners throughout the legislation.
- b. Increases application fee limits for each brand and grade of fertilizer from \$5.00 to a maximum of \$20.00.
- c. Removes a registration fee limit of \$15.00 for brands or grades sold in packages weighing less than five pounds.
- d. Increases inspection fee limits from up to \$0.35 per ton to up to \$0.50 per ton and imposes minimum inspection fee of \$5.00.
- e. Replaces an annual inspection fee limit of \$15.00 for fertilizer sold in packages of five pounds or less with a maximum annual inspection fee of \$50.00.

- f. Changes interval for tonnage reports furnished to the NMDA by sellers of fertilizer from monthly to quarterly.
 - g. Removes potential criminal sanction for violation of the Fertilizer Act and replaces with an administrative penalty up to \$5,000 per violation and other penalties as proposed in 76-1-6.
6. Pecan Buyers Licensure Act:
- a. Adds definitions for accumulator, broker, cooperative, and dealer.
 - b. Removes potential criminal sanction for violation of the Pecan Buyers Licensure Act and replaces with an administrative penalty up to \$5,000 per violation and other penalties as proposed in 76-1-6.
7. Commercial Feed Act:
- a. Increases fee limit from up to \$0.15 per ton to not more than \$0.50 per ton with a minimum inspection fee limit of \$5.00 and increases the annual distributor inspection fee limit from up to \$25.00 to up to \$50.00.
 - b. Removes potential criminal sanction for violation of the Commercial Feed Act and replaces with an administrative penalty up to \$5,000 per violation and other penalties as proposed in 76-1-6.
8. Egg Grading Act:
- a. Increases fee limit from no more than \$0.005 per dozen eggs to \$0.10 per dozen.
 - b. Increases license fee limits from \$10.00 to \$20.00 for small egg dealers, \$25.00 to \$50.00 for medium egg dealers, and \$50.00 to \$100.00 for large egg dealers.
 - c. Removes potential criminal sanction for violation of the Egg Grading Act and replaces with an administrative penalty up to \$5,000 per violation and other penalties as proposed in 76-1-6 and clarifies current penalty fees up to 10 percent of the inspection fees for delinquent filings with a maximum of 25 percent of the inspection fees for payments made within 10 days of notice of delinquency.
9. Weights and Measures Act:
- a. Makes several changes to definitions.
 - b. Removes the power of the department to arrest a willful violator of the act and adds the power to file a criminal complaint in magistrate court and clarifies current power to seize weighing and measuring equipment without warrant for use as evidence.
 - c. Creates a fee limit of \$300 for service establishments for commercial weighing and measuring equipment, and \$100 for registration and renewal of service technician.
 - d. Provides for an administrative penalty of up to \$5,000 per violation of the Act and other penalties as proposed in 76-1-6 as well as potential misdemeanor charges for willfully, knowingly, and repeatedly violates specified provisions of the Act.
 - e. Exempts homemade food items from the requirements of the Act.
10. Weighmaster Act:
- a. Makes several changes to definitions.

- b. Establishes a license fee limit of \$300 for each weighmaster and a fee limit of \$100 for each deputy weighmaster. The department shall charge \$100 for late renewal of licenses.
- c. Provides for an administrative penalty not to exceed \$5,000 for each violation of the Act and other penalties as proposed in 76-1-6.

11. Petroleum Products Standards Act

- a. Adds definitions for service establishment and service technician.
- b. Requires promulgation of rules including technician qualification and registration requirements.
- c. Authorizes fee limits of \$300 for a service establishment registration, \$100 for a service technician registration, and a \$100 late registration fee
- d. Removes potential criminal sanction for violation of the Act and provides for an administrative penalty up to \$5,000 for each violation of the act and other penalties as proposed in 76-1-6.

CJ/rl/hj/rl