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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/18

SPONSOR Pirtle/Munoz LAST UPDATED 2/13/18 HB \_\_\_\_\_

SHORT TITLE Pecan Buyers Licensure Act SB 217/aSJC/aSFI#1

ANALYST Amacher

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	NMDA (See Fiscal Impacts)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 214/CS

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Department of Public Safety (DPS)  
 New Mexico Attorney General (NMAG)  
 New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of SFI#1 Amendment

The Senate Floor #1 Amendment removes the word “Criminal” from the title and from the title of Section 7 which relates to violations, revocation of license, and penalty. Additionally, the definition of “buyer” is amended to mean a person engaged in the business of purchasing in-shell pecans from a pecan producer and includes an accumulator, buying station, cleaning plant, sheller, dealer or broker. A new definition for “pecan producer” is added with subsequent re-lettering thereafter. A “pecan producer” means a person who grows pecans. References to seizing in-shell pecans from a noncompliant transaction and disclosure of buyer’s financial documents related to in-shell pecan transactions are removed. Finally, the amendments make clear that a person who violates the Act, or a rule or order promulgated under that act, after a notice to cease and desist, is guilty of a penalty assessment misdemeanor (not petty misdemeanor) and the penalty assessment is \$250 dollars.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment removes all provisions regarding larceny of pecans; and removes “Sections 1 through 8 of this” to make clear “This Act may be cited as the ‘Pecan Buyers Licensure’ Act.

Synopsis of Original Bill

Senate Bill 217 enacts the Pecan Buyers Licensure Act creating an in-shell pecan buyer’s license; provides powers and duties to the New Mexico Department of Agriculture (NMDA), peace officers and in-shell pecan buyers; enacts criminal penalties for violations of the Act and for larceny of pecans. The effective date of these provisions is July 1, 2018.

**FISCAL IMPLICATIONS**

The NMDA notes that in-shell pecan buyers covered in this act will be required to obtain a pecan buyer’s license from NMDA at an amount established in rule that shall not exceed five hundred dollars (\$500) per buying location. Licensing revenue will be deposited in the treasury of New Mexico State University and credited to NMDA. It is estimated that less than 50 locations will be licensed under this rule (approximately \$25 thousand).

**SIGNIFICANT ISSUES**

Senate Bill 217 as amended enacts the Pecan Buyers Licensure Act (Act) creating an in-shell pecan buyer’s license. Such license is required for the purchase of in-shell pecans by a buyer and for each buying location used by a buyer. The NMDA will set a reasonable annual fee not to exceed \$500 dollars. As defined in this amended bill, a buyer is a person engaged in the business of purchasing in-shell pecans from a pecan producer and includes an accumulator, buying station, cleaning plant, sheller, dealer or broker. Pecan producer means a person who grows pecans. Buying location means a physical location where a buyer accepts in-shell pecans, or a physical location where records relating to the purchase are maintained in the event the purchase is brokered. Compliance with the provisions of the Pecan Buyers Licensure Act (Act) and adopted rules are clear including additional mandatory duties of the buyer. Such duties include:

- Not purchasing without a license;
- Ensuring that all of the buyer’s employees involved in the purchasing, receiving or shipping of in-shell pecans are trained on the provisions of this act and adopted rules;
- Compliance with state and federal requirements related to the movement of in-shell pecans;
- Maintaining comprehensive records in a form approved by NMDA related to purchases of in-shell pecans;
- Ensuring such records are available for inspection by either the NMDA or a peace officer and consistent with the formatting and information requirements of the Act.

Either the NMDA or a peace officer may inspect buying locations and documents related to the buying and selling to determine compliance with the Act or adopted rules. A person who violates the provisions of the Act, or a rule or order promulgated under that act, after a notice to cease and desist, is guilty of a penalty assessment misdemeanor, and the penalty assessment is \$250 dollars.

Exemptions are provided to:

- Business owners of grocery stores, retail stores, gas stations or other similar operations and that conducts in-shell pecan transactions totaling less than 100 pounds during any twelve-month period;
- Transactions of in-shell pecans for personal consumption totaling less than 50 pounds during any twelve-month period are exempt;
- Brokers or other individuals, as approved by NMDA, which are engaged in in-shell pecan transactions, but do not physically receive pecan shipments within the state.

## **RELATIONSHIP**

HB 214/HJCS is substantively similar to SB 217/aSJC/aSFL#1 but for the following exception: there is no definition of “pecan producer”.

## **TECHNICAL ISSUES**

The NMAG suggests adding language that the procedure for denial or revocation of license shall be in accordance with the procedures set out in the Uniform Licensing Act or other similar statutory scheme.

The AOC seeks a definition for “an accumulator”; as it is included in the definition for “buyer” but not defined otherwise in the proposed Pecan Buyers Licensure Act.

## **OTHER SUBSTANTIVE ISSUES**

According to NMDA, recently in-shell pecan theft in pecan growing counties has increased significantly. Although covered under existing theft statutes, the inability of agencies to identify ownership and origin of in-shell pecans has impeded enforcement actions. As a result of increasing theft and related issues, New Mexico’s pecan industry has requested legislative support directed at: reducing the incidence of in-shell pecan theft; reducing the frequency of potentially dangerous interactions between pecan growers and thieves; preventing the introduction and spread of invasive pecan pests; and providing additional regulatory tools to help identify in-shell pecan ownership. Following a series of pecan industry and state agency meetings, the pecan industry has determined that licensing and oversight of commercial pecan buyers would be the best strategy to address their concerns.

The NMAG and the AOC note the NMDA’s revocation and denial of licensure without notice and an opportunity for a hearing may implicate a licensee’s due process rights if a court were to deem pecan-buyer licenses property rights. Final agency action for the purpose of providing an appeal to the district court is also not defined in this Act. Furthermore, there is not an appeal procedure outlined for revocation or denial of a license.

JMA/sb/al/jle