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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Boone</u>	<b>LAST UPDATED</b> <u>2/20/25</u>
	<b>ORIGINAL DATE</b> <u>2/5/25</u>
<b>SHORT TITLE</b> <u>Beneficial Substances Act</u>	<b>BILL NUMBER</b> <u>Senate Bill 231/aSCONC</u>
	<b>ANALYST</b> <u>Fischer</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
		\$152.0	\$152.0	\$152.0	\$152.0	Recurring	NMDA operating

Parenteses ( ) indicate revenue decreases.  
 \*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$100.0 to \$200.0	\$100.0 to \$200.0	\$100.0 to \$200.0		Recurring	Other state funds

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

Relates to Senate Bill 214

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Environment Department (NMED)  
 New Mexico Department of Agriculture (NMDA)

## SUMMARY

### Synopsis of Senate Bill 231

The Senate Conservation Committee amendment to Senate Bill 231 strikes the “and” from the criteria for deeming a beneficial substance as misbranded, effectively making it so that only one criterion would need to be met instead of all four. The amendment also adds a fifth criteria for determining misbranding: that the beneficial substance contains any hazardous waste defined in Subsection K of Section 74-4-3, NMSA 1978 (the state Hazardous Waste Act) that is not itself equivalent in composition to a beneficial substance.

## Synopsis of Original Bill

Senate Bill 231 (SB231) creates the Beneficial Substances Act in the Agriculture chapter of New Mexico statutes to be administered by the Board of Regents of New Mexico State University (NMSU) through the New Mexico Department of Agriculture (NMDA).

The bill defines and regulates “beneficial substances,” encompassing plant biostimulants, soil amendments, and other chemical or biological substances beneficial to plants or their growing environment. However, it does not include primary, secondary, and microplant nutrients, fertilizers, or pesticides. Hay, straw, peat, leafmold, perlite, vermiculite, gypsum, and vermicompost are specifically exempt and not considered beneficial substances. Compost, garden soil, landscaping soil, topsoil, mulch or wood products, planting mix, potting mix, and soilless growing media are also exempt if no specific beneficial substance claims are made about them.

The bill limits local governments from regulating the sale, handling, and use of beneficial substances and voids existing related local ordinances.

The bill sets requirements for labels of beneficial substances to ensure accuracy and clear usage instructions. The bill requires registration, testing, and inspection of beneficial substances distributed in the state. The bill sets a registration fee of \$50 per product, and inspection fees are set at 50 cents per ton, with a minimum fee of \$5 and an additional fee of \$50 for an annual inspection of individual packages of a beneficial substance containing five pounds or less.

The bill requires quarterly reporting from beneficial substance distributors to NMDA and sets penalties for noncompliance ranging from a \$10 fee for not filing quarterly reports to a \$5,000 fee for other violations, such as selling misbranded beneficial substances. The bill also provides the authority to issue stop-sale orders, cancellation of registration and, if necessary, administrative penalty for violations of the Beneficial Substances Act. The bill provides for exemptions, injunctions, procedural guidelines, and rulemaking, and requires NMDA to publish an annual report on the manufacture and distribution of beneficial substances in New Mexico.

The bill also changes the existing New Mexico Fertilizer Act, removing “soil conditioners” from regulation under the Fertilizer Act. The bill also removes the definition of “person” from the Fertilizer Act. “Person” is currently defined in the Fertilizer Act as an individual, partnership, association firm, or corporation. Finally, the bill clarifies that reports from fertilizer distributors and sellers need to be made to NMDA quarterly.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

Although SB231 proposes fee limits, NMDA reports the fiscal impact to its budget is unknown until the fees are established through the rulemaking process, including approval by the NMSU Board of Regents. The revenue and operating budget costs noted above are estimates using current product registrations and fee structures.

## **SIGNIFICANT ISSUES**

NMDA notes approximately 1,533 soil conditioner products are registered with NMDA and subject to inspection and the parameters proposed under SB231; 101 products from the 1,533 total are produced in New Mexico.

According to NMDA, the 2018 federal Farm Bill directed the U.S. Department of Agriculture to report to Congress on plant biostimulants, outlining regulatory and legislative recommendations for their approval and labeling. USDA collaborated with the federal Environmental Protection Agency and other stakeholders, culminating in a December 2019 report identifying key issues and regulatory challenges. In response, the Association of American Plant Food Control Officials (AAPFCO) drafted a model beneficial substances bill, which was adopted in February 2024 to guide state-level regulations. The National Association of State Department of Agriculture (NASDA) has adopted a policy in support of the AAPFCO model bill language. Some states have already adopted this universal approach. This bill will more closely align states' approach to regulating beneficial substances more uniformly.

NMED notes it periodically encounters businesses that attempt to pass off hazardous wastes as “products” and the current wording of SB231 implicitly adds a new exemption from hazardous waste regulations under beneficial use provisions, adding confusion to the regulatory authority of NMED and its regulatory authority of hazardous waste. To address this confusion, NMED recommends one addition to the list of conditions under which NMDA would consider a beneficial substance “adulterated” under 76-11A-12 on page 14, adding a subsection to read, “It contains any hazardous wastes, as defined in 74-4-3(K), that are not themselves equivalent in composition to a beneficial substance.”

NMED also notes SB231's revised exemption in the amendment mirrors the exemption in the NMED's hazardous waste regulations but, in contrast, provides the authority to NMDA to either address or refer to NMED any instance where hazardous wastes are included in a soil amendment material, and prevents anyone from using the uncorrected language in this bill to say they are otherwise exempt and okay to adulterate beneficial substances instead of properly disposing of such wastes. NMED notes this as a concern because the language in 76-11A-12(A) only states “in sufficient amount,” which may provide a loophole for a business to dilute their hazardous waste and deem it an ingredient of a beneficial substance.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB231 relates to SB214, which removes the definition of “soil conditioner” and all related references from specific sections of the Fertilizer Act. Similarly, SB231 eliminates the “soil conditioner” definition and strikes all mentions from the Fertilizer Act.