F I S C A L I M P A C T R E P O R T

SPONSOR McSorley **ORIGINAL DATE** 02/23/09 **LAST UPDATED** **HB**

SHORT TITLE Farmer Protection Act **SB** 560

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Substantial	Substantial		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Agriculture (NMDA)
Cuatro Puertas (CP)

SUMMARY

Synopsis of Bill

Senate Bill 560 would:

- impose private nuisance liability and defenses for manufacturers of genetically engineered plants under certain conditions,
- prohibit open field production of pharmaceutical crops if the crop is of a plant species commonly produced as food for humans or animals,
- provide an inspection and sampling protocol,
- provide for administrative penalties and
- require annual reporting to the legislature.

The act would provide policy and procedures for establishing liability in the event a genetically-engineered plant causes unreasonable or substantial interference with the use and enjoyment of a person's property. The act provides to a manufacturer of genetically-engineered plants a defense for liability in a private nuisance action if proper procedures supplied by the manufacturer were not followed by a property owner or property owner's agent in carrying out the terms of a manufacturer's seed contract.

The act would require a person undertaking open field production of a genetically engineered plant to notify the NMDA, at least 30 days prior to open field production, of their intention on a form specified by the NMDA and consisting of the date of open field production; proposed location and number of acres; the kind, variety, type and lot number of a seed or plant; trait or traits for which a plant is genetically-engineered; and any additional information requested by the director of NMDA. NMDA is required to report county aggregated data annually to the legislature on the number of acres of open field production of genetically engineered plants, types of crops produced and the genetic traits of the crops.

The act would prohibit the production of pharmaceutical crops in open field production which are commonly produced for use as food for humans and animals.

The director of NMDA would be given civil penalty authority for violations of rules adopted to enforce the requirements of the act. With three or more violations, the violator would be prohibited for 12 months from planting in New Mexico.

The act would provide for an inspection and sampling protocol of the seed and crop growing from seed by a seed supplier pursuant to a seed contract. NMDA would be directed to oversee the collection of samples taken of either seed or plant materials and have laboratory tests conducted on those samples with reporting of testing supplied to the department and all parties involved. Inspection, sampling, and laboratory testing costs would be borne by the seed supplier.

FISCAL IMPLICATIONS

NMDA reports that costs would be substantial, without estimates, for appropriate staff and related program costs, investigations of private nuisance due to genetically engineered plants, inspection and sampling if requested (reimbursable on a fee basis by the seed supplier) and contracting for independent laboratory testing of samples as required in the bill .

The CP asserts that the bill should not cause NMDA any additional expenditures as it currently houses the State Seed Lab that inspect seeds in NM, and the Food, Animal and the Plant Programs that ensure a safe and secure food supply. An electronic form can be developed for reporting of GE crops planted. The sampling costs in the bill will be incurred by the Seed Manufacturer.

SIGNIFICANT ISSUES

NMDA states:

> The responsibility for regulatory oversight of agricultural biotechnology is shared by three federal agencies: the U.S. department of agriculture's animal and plant health inspection Service (APHIS), the U.S. environmental protection agency (EPA), and the

department of health and human services' food and drug administration (FDA). These agencies authority comes from the 1986 Coordinated Framework for Regulation of Biotechnology.

Farmers' rights under a seed contract come into question under this act which places greater scrutiny and regulation on the production and research of genetically modified plant crops and vegetables for commercial use.

SB 560 will have implications for research on genetically modified plant research conducted by the state's universities.

Reporting requirements and department database of all genetically modified plant acreage and associated records would become public information.

Persons who violate the reporting requirement section (4) of the act can be prohibited from planting any crop, the same for those who might violate any of section 5 of the act dealing with pharmaceutical crops.

Section 5 of the act, prohibited actions, is fairly subjective as the department is required to investigate violations of this section based upon reasonable belief. If the department is to keep a database of all plantings, the database would be public information and subject to a request for public information. This concerns the department due to the potential for vandalism, intentional contamination, and destruction of a genetically modified crop due to the information being made public

SB 560 will impact the ability of the state to be competitive in attracting genetically modified plant research, contracts for seed, researching alternative biofuel crops, and overall may put the state at a competitive disadvantage in all aspects of crop and plant production.

Producers and researchers in this state will likely not be involved in the production of any pharmaceutical crops due to the restrictions placed by the act.

The CP comments:

Seed Manufacturer Lawsuits. Because the genetically engineered (GE) seeds are patented, farmers and non-farmers across the US are encountering lawsuits due to unknowingly planting GE seeds. An example is if you plant a field of non-GE corn, and your neighbor plants a field of GE corn. The following year, it is possible that the GE seed cross-pollinated the corn seed that you saved, or a GE corn seed blows into your field and starts to grow. In both cases, if you unwittingly plant this patented corn seed, the seed manufacturer can sue you. For the GE corn grower, if they do not purchase GE corn seed the second year, but there are volunteer plants that start to grow that have the GE traits, then they could be sued for "planting" these seeds without having purchased them.

Loss of Original Seed and GE Seed Contamination. The crops we eat now are domesticated from old varieties. When a new seed variety is created, it requires going back to the original seed. This is because as seeds become domesticated, certain genes may be bred out. But, these genes may be necessary to withstand viruses, diseases, etc.

NMSU is currently developing a GE chile plant. It will be Roundup resistant and they also hope, phytophthora resistant (rot-root fungus). One of their solutions is to insert a gene from a wild potato into the chile plant to make it phytophthora resistant. (Cornell University developed a phytophthora resistant bell pepper without using GE techniques). For farmers who have been saving chile seeds for many generations, possible contamination from a GE seed could contaminate put New Mexico's native varieties at risk. This could create a worse situation for our chile farmers, as there would be no original seed to go back to for development of future varieties.

Loss of Markets for Local Farmers and Loss of Farmers. The NM Farmers Market Association has 50 markets across the state with around 1000 farmers participating. Annual sales total approximately $3.1 million for local produce and products. Sellers at these markets include backyard gardeners, market growers, ranchers and large farmers. The number of markets continues to grow steadily. Customers at these markets look for local pesticide free or organic produce. If a farmer was to become contaminated by GE seed, they could possibly lose their sales at the market, and possibly could face a lawsuit, if they unwittingly planted the GE seed. The financial costs to farmers from the food contamination cases of Starlink corn, spinach, jalapenos, tomatoes and peanuts serves as a barometer of how quickly NM's agricultural economy and food security could be wiped out.

NM Organic Market. The fastest growing agricultural sector is organic food sales. These have tripled to $1.7 billion in 2007 from 2005 (USDA 2/09). In 2007, NM had 250,000 acres certified organic with sales totaling $45 million. Comprised of about 200 certified organic operators this is a growing sector in NM's agricultural economy and the world. A growing problem for organic certified farmers has been segregation of their product from GE products. Organic farmers in Canada suffering from contamination filed a class action lawsuit against Monsanto and Bayer seeking damages for the loss of the premium price their crops command since they can no longer guarantee that their harvest is 100 percent pure. This could become an issue in NM if GE crops were to contaminate the organic products either in the field, packaging or even in transportation. This has caused conventional and organic farmers to sell contaminated crops into the genetically engineered crop stream, causing them to lose premium market income.

Loss of Export markets. The EU, Japan and other export markets do not accept genetically engineered foods. The American Farm Bureau estimates farmers have lost $300 million per year due to the EU refusing to accept GE corn. The US State Department believes the US. could lose as much as $4 billion annually in agricultural exports due to the recent enactment of labeling and traceability requirements by the EU.

Loss of Market Due to PMPs. The consequences of cross-contamination will be more serious with new crops that are altered to produce pharmaceuticals and industrial chemicals. The crops could harm human health and be toxic to wild animals. FDA has not approved any for use and that is why this is the only crop that is prohibited from open field production.

ADMINISTRATIVE IMPLICATIONS

NMDA notes that it does not currently have all of the needed expertise to implement SB 560. The costs of hiring and/or contracting experts to fulfill the requirements of this bill are not known. Performance measures and outcomes would require study and time to implement. The timeline for implementation of the act and the expenditure of associated funds would be insufficient to develop a rational approach to the farmer protection act.

TECHNICAL ISSUES

NMDA notes that:

> The bill does not name the board of regents as the administrator of the act. NMDA is constitutionally administered by the board of regents of NMSU.
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> Sections 6 and 7 of the act seem to be somewhat conflicting as to the duties of the department and requirements of the seed supplier and farmer for inspection and sample collection activities. In section 6 of the act, the department is required to accompany inspections only if the supplier or farmer requests the director's assistance. However, when sampling the department shall oversee collection of seed samples and the department shall take plant materials samples. There also seems to be a chain of custody issue here as the director or farmer shall keep samples for future comparison. This needs clarification as to what the use of the retained sample would be and if the state wants the farmer to hold these samples and for how long.

POSSIBLE QUESTIONS

NMDA raises the following questions:

> If this act applies to commercial agricultural and commercial vegetable crops only, does that mean that someone growing crops in their back yard garden that are genetically modified plants go unregulated even though they have the potential to cause a private nuisance without the knowledge of the manufacturer and do not have to declare their planting to the department for report to the legislature?
>
> Does the state have the authority to restrict a farmer from planting any crop for one full year if found to be in violation of the reporting or pharmaceutical crop provisions of this act? Granted, this follows a third or subsequent violation of either law but it seems there would need to be a willful or intentional act of harm for the need to restrict a farmer from planting any crop.
>
> Does the state want to limit the potential for competing in the global marketplace for genetically modified plants that are considered pharmaceutical crops? Potential producers and researchers will be limited to produce pharmaceutical crops that may only be produced in greenhouse type atmosphere.

GH/svb