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FISCAL IMPACT REPORT

SPONSOR Woods ORIGINAL DATE 02/03/13
 LAST UPDATED 03/01/13 HB _____

SHORT TITLE Fertilizer Act Terms and Penalties SB 268/aHAGC

ANALYST Hartzler-Toon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$50.0-\$75.0	\$50.0-\$75.0	\$100.0-\$150.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act, New Mexico Department of Agriculture

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

Department of Health (DOH)

SUMMARY

Synopsis of HAGC Amendment

The House Agriculture and Water Resources Committee amendment to Senate Bill 268 strikes “commercial” from the definition of “specialty fertilizer” in the New Mexico Fertilizer Act. The amendment corrects a drafting oversight, since the bill strikes “commercial” when referring to “fertilizer” throughout the Act.

Synopsis of Original Bill

Senate Bill 268 (SB 268) amends and enacts sections of the New Mexico Fertilizer Act. The bill changes and adds definitional terms, provides penalties for altering fertilizers to be paid by consumers, limits the adulteration of fertilizers, and provides for cooperation with other agencies.

FISCAL IMPLICATIONS

While there is no appropriation attached to SB 268, there may be increased operational costs due to the expanded authority to examine records and assess penalties associated with violating laws and regulations pertaining to the distribution and alteration of fertilizer and soil conditioners. Further, the bill does not increase registration, reporting, or penalty fees so that revenues will not increase to support additional investigatory and enforcement efforts. These costs are estimated and listed as estimated additional operating budget impacts.

SIGNIFICANT ISSUES

SB 268 proposes changes to the New Mexico Fertilizer Act, making it unlawful to distribute “adulterated” fertilizers or substances that may injure human, plant, aquatic life, soil or water when used according to the directions for use or when adequate warnings of such harmful effects are not posted. The Department of Health (DOH) described an international instance where humans had eaten plants that had absorbed containments and resulted in significant health hazards.

The New Mexico Department of Agriculture (NMDA) noted SB 268 follows model language proposed by the Association of American Plant Flood Controls Officials (AAPFCO). The Department summarized highlights of the bill as follows:

Section 2. Removes the term “commercial” from all references to “commercial fertilizer” and replaces with the term “fertilizer.” Updates definitions for fertilizer and fertilizer material to currently recognized terminology in the industry. Adds new definitions for “blender,” “blending,” “custom blend,” “deficiency,” “investigational allowance,” and “primary nutrient.”

Section 3. No changes to the product registration or registration fees.

Section 4. Adds a requirement for “directions for use for fertilizer distributed to a consumer” to labels of fertilizer distributed in the state.

Section 5. No changes to inspection fees or requirements for filing quarterly tonnage reports.

Section 6. A new provision authorizes the NMDA (1) to examine records relating to the distribution of fertilizer and soil conditioners subject to the act, (2) to adopt methods of analysis and sampling beyond those adopted by the AAPFCO, and (3) to retain official samples establishing a nutrient deficiency penalty for a minimum of 90 days from issuance of penalty.

Section 7. A new provision focuses on consumers purchasing and mixing or commingling fertilizers from two or more suppliers that would change the original guarantee and analysis of that fertilizer if distributed to another party.

Section 19. A new provision addresses issues of adulterated fertilizer products. A fertilizer adulterated if:

- it contains any deleterious or harmful substance in sufficient amounts to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or if adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label;
- its composition falls below or differs from that which it is purported to possess by its labeling; or
- it contains unwanted crop seed or weed seed.

Section 20. A new section authorizes the NMDA to enter into agreements with other states, state agencies, and federal government to carry out the provisions of the act.

PERFORMANCE IMPLICATIONS

The NMDA states that SB 268 will help the Department more accurately track fertilizer and soil conditioners in the state, protecting New Mexicans from adulterated products and increasing the level of intelligence sharing between federal and state partners for particularly volatile materials. The bill requires the Department to keep deficient samples, where a penalty has been issued, providing time for further investigation and assessment of the sample.

ADMINISTRATIVE IMPLICATIONS

The NMDA has the authority to review all fertilizer and soil conditioner products submitted for registration or found in distribution for labeling, ingredient composition, and label claims. The Department also samples products in the marketplace. SB 268 seeks to update current law and align state law with that of other states, making it easier for manufacturers and distributors to provide products to the marketplace and provide additional environmental protections for the state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico's current laws are not aligned with those of other states or follow the model legislation, presenting hurdles to both the NMDA in enforcement and regulating the industry and manufacturers and distributors seeking to conduct business in the state. Further, current law does not require instructions for the application of fertilizers, which may result in misuse and harm to plant, human and aquatic life, water, and soil.