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## FISCAL IMPACT REPORT

**ORIGINAL DATE**

**SPONSOR** McQueen **LAST UPDATED** 02/02/15 **HB** 186

**SHORT TITLE** Pesticide Application Notices. **SB** \_\_\_\_\_

**ANALYST** Cerny

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Medical Board (MB)

Department of Health (DOH)

NM Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

House Bill 186 would amend the Pest Control Act (NMPCA), SectionS 76-6-1-39 NMSA 1978, to provide for public notification of pesticide application when the application is to a publicly accessible building and publically accessible grounds. Any building where the public has access or where three or more full-time employees work is included in the definition of “publically accessible building” except for buildings used for commercial agriculture.

Responsibility of posting falls upon the person who applies the pesticide including hired commercial applicators. HB 186 specifies that the notice must be orange with black lettering and a minimum of eight and one-half inches by eleven inches, must contain the words "Notice-Pesticides" and "Aviso-Pesticidas." The notice must also include the pesticide brand name, active ingredient and registration number; the date, time, and method of application; and the name and phone number of the applicator. Additionally, the signage must be posted in a noticeable place for at least seven days. The responsibility for production of the notice material (signs) is not noted but implied to be that of the applicator.

## **FISCAL IMPLICATIONS**

HB 186 carries no appropriation.

NMDA analysis states

Inspection and investigation of non-compliance of pesticide notification posting as proposed in HB 186 will be very resource intensive due to the proposed scope of sites required to be posted. The impact will be statewide and in all publicly accessible buildings and grounds where any pesticide, regardless of its classification, ingredients, or toxicity has been applied. NMDA is unable to anticipate the magnitude of staffing needs to inspect for compliance, investigate complaints, conduct outreach and pursue enforcement of any violations under the proposed bill and to ensure resources are not pulled from other regulatory duties assigned under the NMPCA.

## **SIGNIFICANT ISSUES**

The NMPCA defines a pesticide as “any substance or mixture of substances intended for:

- (1) preventing, destroying, repelling or mitigating any pest;
- (2) causing the leaves or foliage to drop from a plant, with or without causing abscission;
- (3) artificially accelerating the drying of plant tissue; or,
- (4) accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof, through physiological action but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

NMDA analysis points out that

The definition of "pesticide" in the NMPCA includes products which are disinfectants and antibacterial cleaners. The definition is not based on the ingredients so pesticides also include “all natural”, organic, and other reduced-risk (25B) products, regardless of their toxicity. Places where janitorial, maintenance staff, or even general staff use disinfecting or sanitizing cleansers such as Lysol on a daily or weekly basis would require continual posting.

DOH analysis indicates that pesticide poisoning is a “notifiable condition” in New Mexico.

This means that all physicians, laboratories, health care professionals, and other persons having knowledge of a pesticide poisoning must report the case to the health department.

Exposure to pesticides may cause a wide variety of health problems with the nervous and endocrine systems, skin, and eyes. Children can be particularly susceptible to adverse effects from exposure to pesticides, including neurodevelopmental effects. Therefore, posting signs about application of pesticide can potentially avoid unnecessary exposure among visitors to and workers in public buildings. If inadvertent exposure did occur, individuals would know which chemicals had been applied and could become informed if there were any treatment required for subsequent health outcomes.

EPA requires that employers must notify workers about areas where pesticide application has taken place. Some pesticide labels require the employer to notify workers **both** orally and with signs posted at entrances to the treated area. However, some worker populations may still need additional assistance in order to protect themselves.

NMDA analysis raises questions about the intended scope of the bill:

As written, it will affect more than just buildings and grounds accessible by the public. The definition of "publicly accessible building/grounds" uses "or" – so any place where three (3) or more employees work is subject to this requirement, whether or not the public has access. This could include private offices and businesses. As defined, publicly accessible grounds could include sidewalks and lawns in front of private dwellings.

NMDA's authority over persons applying pesticides is focused on persons licensed to use pesticides designated as restricted and licensed commercial companies. Violations are addressed through denial, suspension or revocation of the license. HB 186 would apply to any person applying any pesticide in publically accessible buildings/grounds. In the majority of cases, the person making those applications is not required to obtain a license. The person then is subject to NMDA bringing an action in a court of competent jurisdiction of the county in which a violation occurred. NMPCA 76-4-34 Penalties, indicates persons violating the act are guilty of a petty misdemeanor and allows the court to assess a civil penalty not to exceed one thousand dollars. If for example, the owner of an insurance business used a general-use pesticide purchased at a retail outlet, he is not required to keep records or be licensed; he is only required to follow the label directions on the pesticide label.

HB 186 states "a person that applies a pesticide **or** hires a commercial applicator . . . shall post". So if a person hires a commercial applicator, the "person", not the commercial applicator, must post. However, the notice must include details the "person" may not have, including the brand name, active ingredient and registration number; the time of the application; and the name and phone number of the individual applicator.

HB 186 requires the pesticide application notice be posted "at the point of entrance". However, a pesticide application in a building/grounds may be remote from places where the public has access. For example, if a hotel room on the 12<sup>th</sup> floor is treated for bedbugs, must the hotel post the point of entrance to that hotel room? Or to the hotel? Similarly, if a restaurant uses rodent bait in a secured storage area, must the business owner post the entrance to the restaurant or to the storage area? If the New Mexico Department of Transportation applies an herbicide to 80 miles of public right-of-way, where should this be posted? If the county vector control department uses insecticide to control mosquitoes in a community, where should this be posted? As written, HB 186 would apply to those situations.

There is no provision requiring the notice be removed after seven days, so notices could accumulate and become confusing and ineffective.

The minimum size requirement for signs, 8 ½ x 11" may be not effective for some conditions, such as roadways but the applicator may choose to use the minimum size specified.

MB analysis questions the exemption of agricultural buildings from the act, stating that “It is unclear why commercial agriculture buildings are exempted from this bill if public health is the focus of this legislation: pesticide toxicity doesn’t change with building type.”

**PERFORMANCE IMPLICATIONS**

NMDA states that their agency’s ability to investigate a complaint related to the posting requirement:

...would be limited, since only licensed persons are required to keep records of pesticide applications and records of pesticide sales are not required for the thousands of products that are not restricted, including weed or insect control products and disinfectants. NMDA can only address a violation where adequate evidence supports occurrence of the violation. If violations of the proposed bill occur, it will be difficult and resource intensive for NMDA to prove and then pursue enforcement through the court system.

CAC/aml/bb