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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/17

SPONSOR Gomez LAST UPDATED _____ HB 387

SHORT TITLE Repeal Dept. of Ag Fees & Assessments SB _____

ANALYST Dulany

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	\$125.0	\$125.0	Recurring	Other State Funds

(Parenthesis () Indicate Revenue Decreases)

Related to HB 207

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

House Bill 387 repeals a section of the Organic Production Act setting fees and assessments for certification and registration of organic producers and products.

FISCAL IMPLICATIONS

NMDA cites the current fee structure for the state's organic certification program as the cause of a \$125 thousand operating gap in the program and asserts the statutorily required fees and assessments are unsustainable to support the program. Based on the attachment provided by NMDA, the gap appears to be growing in recent years. Under current statute:

- producers and handlers, regardless of size, pay a fee not to exceed \$350 for a new application and a fee not to exceed \$300 for renewal;
- producers and handlers may be subject to late fees not to exceed \$500; and
- NMDA may impose and collect assessments for basic certification at an annual rate not to exceed 1 percent of the total gross sales of the organically produced agricultural

products based on previous year’s sales, provided that:

- assessments on total gross sales over \$1 million are to be assessed at a rate not to exceed \$9,500 plus ninety-five thousandths percent of any amount over \$1 million of total gross sales of organically produced agricultural products based on the previous year’s sales; and
- after July 1, 2015, the amounts provided for in the paragraph above may be increased to no more than 1 percent of the total gross sales of the organically produced agricultural products based on the previous year’s sales.

NMDA reports the following number of producers and assessment ranges for organic products in FY16:

FY16 Organic Certification Program Revenues		
Sales	Number of Producers	Assessments
>\$1 million	8	\$7,500 + 0.075% on sales over \$1 million
Between \$200 thousand and \$1 million	15	\$1,500-\$7,500
Between \$100 thousand and \$ 200 thousand	11	\$750-\$1,500
Between \$10 thousand and \$100 thousand	41	\$75-750
<\$10 thousand	29	<\$75

Source: NMDA

Note that assessments for producers with sales over \$1 million are below the statutorily allowed level, leaving some room for NMDA to increase these assessments. According to NMDA, the current fee structure is based on the structure put in place by the New Mexico Organic Commodity Commission (NMOCC). The department has not raised fees beyond this initial structure out of concern current participants would seek alternative certification from another certifying entity.

NMDA further notes in FY16 43 of the 147 applicants who received certification did not pay an assessment, and therefore did not contribute to the revenue received by NMDA, although it appears these producers did pay an application fee of up to \$350. The 43 producers did not pay an assessment because statute requires NMDA to impose an assessment based on the prior year’s reported income. If no income is reported by the applicant for the prior year, as was the case for the 43 producers, NMDA states it cannot collect an assessment. According to NMDA, the US Department of Agriculture (USDA) prohibits NMDA from releasing these entities that are not paying an assessment.

NMDA reports if HB 387 were enacted, the department would conduct public hearings and work with producers to implement a fee structure that closes the current \$125 thousand operating gap. Section 76-21A-4 requires all money received by NMDA pursuant to the Organic Production Act to be expended only for the provisions of carrying out the Organic Production Act.

SIGNIFICANT ISSUES

According to NMDA, the organic market is one of the fastest growing segments in the United States, with consumer demand growing by double digits since the 1990’s. In 2014, United States

consumers' sales of organic food totaled \$35.9 billion, an increase of 11 percent from 2013. In FY16, New Mexico's 147 certified organic producers collectively generated over \$45 million in organic sales. NMDA indicates the organic certification program stimulates local economies and has a multiplier effect, which helps small producers grow as they access the organic market.

NMDA's organic program is accredited to conduct inspections and certifications by the USDA National Organic Program (NOP). The NMDA organic program provides NOP organic certification for farmers, ranchers, and processors/handlers throughout New Mexico. Through the accrediting and auditing process, according to NMDA, the NOP determines if there is a sufficient number of working staff to conduct the work needed to certify a farm, processing facility, or livestock facility. Because the NMDA organic program is accredited by USDA NOP, their guidelines pre-empt any state guidelines, unless prior approval is granted.

RELATIONSHIP

HB 387 relates to HB 207, which would appropriate \$125 thousand for NMDA to continue the organic certification program in FY18.

OTHER SUBSTANTIVE ISSUES

According to NMDA:

- In 1990, the New Mexico Organic Commodity Act was enacted creating the NMOCC and establishing an organic certification program at the state level. Upon enactment, the state organic certification program received general fund appropriations for operations.
- In 1990, the federal Organic Foods Production Act was passed creating the NOP. The NOP operates under the National Organic Program Standards, which became effective April 21, 2001, and fully implemented on October 21, 2002. Upon passage, the NMOCC began certifying applicants under these federal standards, which preempts state standards.
- In 2011, the legislation was enacted eliminating the NMOCC and moved the program to NMDA with no legislative appropriation. The NMOCC program was transferred to the department with operating reserves of \$201.9 thousand. With the aid of the operating reserves, NMDA was able to sustain the program until the end of FY14. At the end of FY14, the department's organics program exhausted all reserves. Upon the transfer of the program to NMDA, the department implemented administrative changes to maximize program efficiencies, including moving the program offices into the NMDA district office in Albuquerque to reduce overhead operating expenses, reducing staffing numbers, and maximizing travel efficiencies.
- NMDA is accredited by USDA to conduct inspections and certifications according to USDA standards. To maintain accreditation, USDA standards must be met. Current statutory fee structure does not cover the inspection costs associated with USDA standards. USDA also accredits private entities which often have much higher fees. Fees for the program are set by the NMSU board of regents after public hearings, and the department's enabling legislation only allows recovery of the cost of providing service.

4 Year Operating Average

New Mexico Department of Agriculture
Organic Program (Fee based Operation)
Index: 118671

As of: June 30, 2016

	FY13					FY14					FY15					FY16					FY17				
Beginning Balance	\$17,088.93					\$78,404.04					-\$2,681.61					-\$108,939.97									
Revenue:																									
Certification Revenue ***	\$157,873.58					\$179,932.97					\$189,461.26					\$187,466.46					\$178,683.57				
Total Revenue	\$157,873.58					\$179,932.97					\$189,461.26					\$187,466.46					\$178,683.57				
Expenses:																									
Salary & Fringe Benefits*	\$152,316.32					\$158,708.35					\$182,982.71					\$193,725.75					\$171,933.28				
Travel	\$13,724.03					\$14,277.32					\$22,889.42					\$23,191.64					\$18,520.60				
Supplies/Services	\$46,341.75					\$47,029.24					\$38,956.43					\$39,333.80					\$42,915.31				
Rent: NMSU Albuquerque Center	\$16,737.00																				\$4,184.25				
Professional Service Contracts	\$69,337.32					\$41,003.71					\$50,891.06					-\$733.85					\$40,124.56				
Total Expenses	\$298,456.42					\$261,018.62					\$295,719.62					\$255,517.34					\$277,678.00				
Yearly Operating Net Income/(Net Loss)	(\$140,582.84)					(\$81,085.65)					(\$106,258.36)					(\$68,050.88)					(\$98,994.43)				
Carry forward from State Of NM	\$201,897.95																								
Ending Balance	\$78,404.04					-\$2,681.61					-\$108,939.97					-\$176,990.85					-\$176,990.85				

*NOTE: The Organic Program has been operating with temporary and contract employees since its transfer to the department in FY12 .

**NOTE: FY 17 Budget is estimated by holding 2 permanent positions vacant (Organic Educator and Inspector intermediate) and back filling with temporary inspector only.

***NOTE: FY17 Revenue projections based on addition of new organic peanut operations and organic dairies.