

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

ORIGINAL DATE
SPONSOR Zamora/Townsend **LAST UPDATED** 2/4/22 **HB** 169

SHORT TITLE Dairy Facility Funding **SB** _____

ANALYST J. Torres

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	\$26,000.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$164.0	\$164.0	\$328.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Dairy Association (NMDA)

SUMMARY

Synopsis of Bill

House Bill 169 appropriates \$26 million from the general fund to the New Mexico State University Board of Regents for expenditure by the New Mexico Department of Agriculture in fiscal years 2023 through 2025. This funding will assist dairy processing facilities in: lessening their carbon imprint; addressing water savings; and reducing energy use. The unspent balance at the end of fiscal year 2025 will revert to the general fund.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The appropriation of \$26 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2025 shall revert to the general fund.

Although HB169 does not specify future appropriations, establishing a new program could create an expectation that the program will continue in future fiscal years, therefore this cost is scored as recurring.

NMDA states that it will require two staff persons to implement and administer this new program. One FTE accountant would be paid \$64 thousand per year. The program manager would be paid \$85 thousand per year. The agency will require \$15 thousand per year in operating funds to administer, monitor, and track the program.

SIGNIFICANT ISSUES

NMDA expressed uncertainty as to whether appropriated funds can be used for program administration.

TECHNICAL ISSUES

NMDA suggests that compliance with the anti-donation clause of New Mexico Constitution Article IX, Section 14 should be evaluated.

HB169 provides for grants to a public entity for the purpose of implementing executive orders affecting the dairy industry. Because the appropriation will ultimately be used for agricultural purposes, this may be considered a proprietary rather than a governmental function and should be further explored per the holding in *State ex rel. City of Albuquerque v. Lavender*, [1961-NMSC-096](#), [69 N.M. 220](#), [365 P.2d 652](#).¹

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The dairy industry will not have necessary funds to implement the governor's executive orders on carbon imprinting, water savings, and energy use.

JT/acv

¹ If construed as a study grant for a public-private “proprietary” rather than a “governmental” function, it could be ruled unconstitutional under Article IX, Section 14. Finding that the city’s operation of a water and sewer facility was a “proprietary” not a “governmental” function and holding that the statute authorizing payment for this operation was unconstitutional under Article IX, Section 14 and Article IV, Section 4. *State ex rel. City of Albuquerque v. Lavender*, [1961-NMSC-096](#), [69 N.M. 220](#), [365 P.2d 652](#).