

LFC Requester:	Caroline Malone
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____ **Date** 02/04/16
Correction _____ **Substitute** _____ **Bill No:** SB 72

Sponsor: Senator Stuart Ingle **Agency Code:** 305
Short Title: Right to Farm to Operations as Nuisance **Person Writing** Ismael L. Camacho
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Senate Bill 72 adds a new section "D" to NMSA 1978, § 47-9-3. This new section expands nuisance claims by person for previously establish agricultural operation or facility when they substantially change in nature and scope of its operations. This new exception only applies to a person who purchase, lease or rental of property that is in proximity to a previously established agricultural operation or facility.

Synopsis:

Senate Bill 72 expands the nuisance claim exception to apply to also apply to any person who's claim arises from the purchase, lease or rental of property in proximity to a previously established agricultural operation or facility, if the previously establish agricultural operation or facility substantially changes its nature and scope of its operations.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Senate Bill 72 expanded nuisance exception applies to any person who "purchase, lease or rental of property that is in proximity to a previously establish agricultural operation or facility. . ." This language suggest an *in rem* claim may be brought by a person who purchases, leases or rental of property, but may not apply to a tenant who occupies the purchased, leased or rental property. Senate Bill 72 is silent on the occupancy issue.

There is an issue as to whether the nuisance claim arises only if the purchased, lease or rental property is occupied at the time the previously established agricultural operation or facility substantially changed the nature and scope of its operation.

Under NMSA 1978, § 47-9-3(A) "Any agricultural operation or agricultural facility is not, nor shall become, a private or public nuisance by any changed condition in or about the locality of the agricultural operation or agricultural facility if the operation was not a nuisance, at the time the operation began and has been in existence for more than one year;" Since the expanded

nuisance exception applies to agricultural operation or agricultural facility that substantially change its nature and scope of its operations (a changed condition under subsection A) – this change suggests that proof that the operation was a nuisance must be established within one year of its operation.

Previously, a nuisance claim only arose if the agricultural operation or facility is operated negligently or illegally such that the operation or facility is a nuisance.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NONE

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A