

LFC Requester:	Klundt, Kelly
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**AGENCY BILL ANALYSIS
2014 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 X **Amendment**
Correction **Substitute**

Date Jan. 10, 2014
Bill No: HB51-305 Jan 10

Sponsor: Y. Herrell
Short Right to Farm Nuisance
Title: Amendment

Reviewing Attorney General's Office
Person Writing Tannis Fox, AAG
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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

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

BILL SUMMARY

Summary Synopsis:

The Right to Farm Act exempts agricultural operations and facilities from nuisance actions unless an operation or facility “is operated negligently, improperly or illegally such that the operation or facility is a nuisance.” HB 51 proposes to delete the word “improperly” from the exception to the exemption.

The bill also makes a technical amendment in the citation to the effective date of the Right to Farm Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None.

SIGNIFICANT LEGAL ISSUES

None.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None known.

TECHNICAL ISSUES OR DRAFTING ERROR

None.

OTHER SUBSTANTIVE LEGAL ISSUES

In a nuisance suit, “negligent” operation of an agricultural operation or facility would include “improper” operation of such an operation or facility and, therefore, the “improper” language could be considered unnecessary or superfluous in the first instance. However, one canon of statutory construction is that the legislature’s change in language should be assumed to have meaning and, therefore, if the word “improperly” is deleted from the act, it can be interpreted to mean that “improper” operation of an agricultural operation or facility is lawful even if such actions meet the other requirements of “nuisance”.

ALTERNATIVES TO ENACTING THIS BILL

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

“Improper” operation of an agricultural operation or facility will continue to provide a basis for a potential nuisance claim.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None offered.