

LFC Requester:	Abraham Sanogo
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**AGENCY BILL ANALYSIS
2015 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**
Correction **Substitute**

Date February 4, 2015
Bill No: SB 221-305

Sponsor: Sen. Cliff Pirtle **Agency Code:** Attorney General's Office
Short Report Livestock Injuries to **Person Writing** Jose Puentes
Title: Law Enforcement **Phone:** 827-6021 **Email** jpuentes@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

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.

BILL SUMMARY

Synopsis:

SB 221 seeks to amend Section 30-18-12 of the Criminal Code to add subsections (D) and (E). Under subsection (D), a person who has made a video or digital recording depicting an injury to livestock must submit the recording to law enforcement within twenty-four hours. In addition, the new language would prohibit any person from splicing, editing, or otherwise altering a video or digital recording prior to its submission to law enforcement. Subsection (E) would make it a misdemeanor crime for someone to violate the reporting requirements outlined in subsection (D).

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

I. Constitutional Issues:

SB 221 raises Constitutional concerns, particularly First Amendment concerns: (1) The provisions in SB 221 could be construed as being under-inclusive relative to the governmental interest that the bill seeks to protect, and therefore may be at risk of being invalidated by a court; (2) the requirement to provide any recording to law enforcement authorities could be construed by the courts as an unconstitutional prior restraint; and (3) the Bill’s reporting requirements could be found by courts to constitute an unconstitutional burden on news gathering and reporting. In addition to these First Amendment issues, SB 221 may also implicate Fifth Amendment concerns to the extent that the Bill may require an individual who has created a video or digital recording to incriminate herself/himself.

II. Practical Issues:

First, SB 221 does not require the immediate reporting to law enforcement agencies by “all

persons” **with knowledge** of livestock cruelty. It only requires the report of cruelty to livestock when the person has made a video or digital recording and determines “or ha[s] reason to believe” that the recording depicts an act of cruelty to livestock. If a person knows about an instance of cruelty to livestock, or has possession of evidence of such cruelty but has not herself/himself made the video or digital recording, then SB 221 requirements do not apply. The phrase “having reason to believe” also could create unintended ambiguity. Second, issues could arise in the amended Section (E) due to the omission of the term “knowingly,” which in most criminal statutes denotes *mens rea* as an element of criminal responsibility, a guilty knowledge and willfulness. SB 221 appears to criminalize any failure to report, whether or not that failure is deliberate, knowing, inadvertent or otherwise. Third, SB 221 provides neither confidentiality nor immunity to the person reporting the livestock cruelty, which could deter reporting and also could compromise the ability of law enforcement to investigate livestock cruelty.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

See “Significant Issues” above.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A