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FISCAL IMPACT REPORT

SPONSOR Cook/Baldonado **ORIGINAL DATE** 2/10/19
LAST UPDATED _____ **HB** 463
SHORT TITLE Food Freedom Act **SB** _____
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Agriculture (NMDA)

Environment Department (NMED)

Department of Health (DOH)

Livestock Board (NMLB)

SUMMARY

Synopsis of Bill

House Bill 463 would allow the sale of “homemade” food – defined as that prepared in a home kitchen that is not licensed, inspected, or regulated – to an “informed end consumer” – the last person to buy the product who has been informed the product came from an uninspected, unregulated, unlicensed kitchen.

The food could only be sold at New Mexico farmers’ markets, farms, ranches, producers’ homes, and other locations arranged by the seller and the buyer. The sale of meat would be limited to chicken from small producers meeting certain conditions, live animals and portions of live animals before slaughter, domestic rabbit meat, and farm-raised fish. Only raw fruits and vegetables could be sold to restaurants; however, restaurants could sell homemade food in a separate space with signage indicating the food has not been inspected. Rules for those sales would be promulgated by NMDA.

FISCAL IMPLICATIONS

The bill has no direct fiscal impact; however, NMED and DOH indicate it potentially could result in additional foodborne illness and create additional costs for outbreak investigations and related activities. NMDA adds that the requirement the department generate rules would involve staff time and resources, but the amount is indeterminate because the bill does not include enforcement language.

SIGNIFICANT ISSUES

NMED reports state regulation allows homemade food to be prepared, served, and sold to the general public by “producers” under the Home-Based Food Processing Requirement developed by NMED, in conjunction with and supported by, the New Mexico Farmer’s Market Association. This provides the opportunity for “producers,” as identified in HB463, to prepare certain lower-risk foods in their homes and serve and sell those products to the general public. NMDA notes farmer’s markets have struggled to reduce their liability and HB463 might increase liability.

NMED reports an estimated 60 percent of the 48 million foodborne illness in the United States each year result from home-prepared foods, and DOH notes that improper processing and storage of food is the vehicle for many illnesses, including some that are deadly.

NMED says New Mexico’s Food Program, Food Act, Food Service Sanitation Act, and Food Service and Food Processing Regulations protect public health by requiring entities serving food to be permitted, adhere to sanitation standards, allow NMED inspection, and be subject to compliance and enforcement actions. In addition, proper labeling of food ensures consumers are informed of ingredients, important for those with food allergies, and inspection of packaging ensures the product does not pick up contaminants.

DOH says the sources of foodborne illnesses are difficult to trace, complicating foodborne illness and outbreak investigations. HB463 would impede interventions, such as food recalls, remediation of food preparing conditions, or remediation of improper harvesting conditions to stop further spread of foodborne diseases associated with uninspected and unregulated food.

Overall, DOH concludes, the health status of New Mexicans could decline, and news coverage of a disease outbreak due to consumption of uninspected and unregulated food items could have a negative impact on the public’s perception of the state.

PERFORMANCE IMPLICATIONS

HB463 would significantly reduce the NMED Food Program’s ability to support the protection of public health through evaluation, permitting, and inspection of food prepared for the general public, the department says.

ADMINISTRATIVE IMPLICATIONS

NMED says its Food Program would need to participate in updating state regulations, hold public meetings, and appear before the Environmental Improvement Board for approval of the proposed regulation changes. If enacted, HB463 would require NMED’s Food Program to update inspection procedures and enforcement policies and conduct staff training to account for homemade food during food establishment inspections.

In the case of a product recall or foodborne illness outbreak resulting from a homemade food, NMED would have to enact investigation and recall procedures to limit the effects of the product on public health.

DOH reports increased disease burden in New Mexico's populations would require increased workforce and prevention activities.

TECHNICAL ISSUES

NMED has regulatory oversight over food safety, but HB463 authorizes NMDA to regulate some activities under HB463.

In addition, NMED reports the following conflicts:

- Sections 1 and 2, Chapter 25, NMSA 1978
- NMAC 7.6.2

NMDA notes the language on page 4, lines 3 and 4, that allows “the sale of portions of live animals before slaughter for future delivery” is unclear.

Further, NMDA lists the following conflicts:

- 25-7-1-8 NMSA 1978 Dairy Act
- 25-7A-1-19 NMSA 1978 New Mexico Dairy Products Act
- 25-7B-1-11 NMSA 1978 Dairy Establishment Sanitation Act
- 25-8-1-3 NMSA 1978 Raw Milk
- 57-17-1-19 NMSA 1978 Weights and Measures Law
- 21.16.4 NMAC Method of Sale of Commodities
- 21.16.10 NMAC Checking the Net Contents of Packaged Goods
- 25-6-1-16 NMSA 1978 Egg Grading Act
- 21.34.8 NMAC Grades and Standards for Shell Eggs and Reports Covering Information
- Aspects of the federal Food Safety Modernization Act
- Other county and municipality food regulations.

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