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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2020
 SPONSOR Sanchez LAST UPDATED 2/12/2020 HB _____
 SHORT TITLE Food Service Sanitation Fees SB 209/aSFC/aSFI#1
 ANALYST Hawker

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	\$2,300.0	\$2,300.0	Recurring	Food Service Sanitation Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$2,300.0	\$2,300.0	\$4,000.0	Recurring	Food Service Sanitation Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment Department (NMED)

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Bill 209 as amended by the Senate Finance Committee as amended by again by the Senate Floor strikes Senate Finance Committee two, then on page three strikes “appropriated” and inserts “subject to appropriation by the legislature”. Revenue in the food services sanitation fund are subject to appropriation.

Synopsis of SFC Amendment

Senate Bill 209 as amended by the Senate Finance Committee on page one strikes “making an appropriation” and on page three strikes “appropriated” and inserts “subject to appropriation by

the legislature”. Thus, revenue in food services sanitation fund are subject to appropriation.

Synopsis of Original Bill

Senate Bill 209 amends 25-1-5 NMSA 1978, the Food Service Sanitation Act, authorizing the Environmental Improvement Board (EIB) to increase the maximum fees for food service licenses. Food permit fee waivers are eliminated for ‘all temporary non-potentially hazardous food service operations’, and ‘for any temporary food service establishment operating no more than two calendar days in any calendar month’.

SB209 establishes the food service sanitation fund as a nonreverting fund, administered by NMED. Money in the food service fund is appropriated to NMED.

The effective date of SB209 is July 1, 2020.

FISCAL IMPLICATIONS

SB209 changes the license fee schedule from a range of \$100 - \$200 to a new range of \$200 - \$700. The administrative and technical service fee is capped at \$250. The cap on temporary food event permits is increased from \$25 to \$50. NMED estimates that a \$500 annual permit fee will result in approximately \$2.3 million in additional revenue.

The increased revenue of \$2.3 million will allow NMED to hire approximately 20 additional FTE.

This bill changes how funds are appropriated to the food service sanitation fund from subject to appropriation by the Legislature to establishing ‘money in the fund is appropriated to the department.’ The LFC has concerns with including continuing appropriation language in the statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

NMED issues licenses and inspects restaurants, temporary food service establishments, and food manufactures through its food program. According to NMED, under current funding it cannot hire enough staff to effectively protect public health in New Mexico.

NMED states:

NMED is not meeting federal Food and Drug Administration (FDA) standards for the minimum number of inspections of food establishments each year. With limited funding, NMED can only inspect each food establishment once per year; the FDA standard requires 2-4 inspections per year for high-risk establishments. Additionally, NMED cannot meet FDA standards for the number of food inspections expected per Full Time Equivalent (FTE). According to FDA standards, the Department’s inspectors have almost twice the number of facilities assigned to a person so the Department sacrifices quality of inspections for quantity of inspections. For example, FDA recommends no more than 280 facilities are managed by a single inspector. Each NMED inspector is assigned close to 500 facilities. FDA standards require NMED to have nine (9) FTEs to implement the

manufactured food program in New Mexico, but NMED has only 3.5 FTEs for this program.

PERFORMANCE IMPLICATIONS

NMED states additional food program revenue will assist in meeting the LFC performance measure: “Percent of priority item food-related violations issued during food establishment inspections that are corrected within timeframes specified and enforcement actions taken”. At the current time, NMED does not perform follow up inspections required by FDA due to the high number of facilities each inspector must cover.

ADMINISTRATIVE IMPLICATIONS

According to NMED, SB209 would provide funds for approximately 20 FTEs. These FTEs would issue licenses, consult with food establishments, meet FDA inspection standards, develop and implement online applications and payments and procure additional services for translation. The result would be a lower inspector to facility ratio. Also, NMED could have staff available to offer technical expertise to community workgroups addressing food-related issues such as food insecurity and school meal donation.

OTHER SUBSTANTIVE ISSUES

Per NMED:

SB209 would change how the Food Service Sanitation Fund is allocated to the Department. Currently, revenues in the fund are “subject to appropriation by the legislature.” SB209 would allow NMED to administer the fund which gives the agency more flexibility by not limiting Budget Adjustment Requests to 5 percent of the fund balance; this would allow the agency to transfer larger amounts of money from the fund for program support. Flexibility is especially important for a program that must respond to occasional imminent human health emergencies such as food-borne illness outbreaks; BAR authority would allow the agency to pay overtime or hire temporary staff or contractors to respond to emergency situations. Limiting the ability of the Department to utilize this fund is to limit the ability of the Department to protect public health in an emergency.

VKH/al/rl