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## FISCAL IMPACT REPORT

SPONSOR Pirtle ORIGINAL DATE 01/27/21  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Food Accessibility Act SB 118/ec

ANALYST Wan

### REVENUE (dollars in thousands)

| Estimated Revenue         |                   |                   | Recurring or Nonrecurring | Fund Affected             |
|---------------------------|-------------------|-------------------|---------------------------|---------------------------|
| FY21                      | FY22              | FY23              |                           |                           |
| (\$225.0-\$300.0)         | (\$225.0-\$300.0) | (\$225.0-\$300.0) | Recurring                 | Environmental Health Fund |
| See "Fiscal Implications" |                   |                   | Recurring                 | General Fund              |
| See "Fiscal Implications" |                   |                   | Recurring                 | Local Governments         |
| See "Fiscal Implications" |                   |                   | Recurring                 | GGRT Recipients           |

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY21             | FY22             | FY23                     | 3 Year Total Cost          | Recurring or Nonrecurring | Fund Affected             |
|--------------|------------------|------------------|--------------------------|----------------------------|---------------------------|---------------------------|
|              |                  | \$100.0          |                          | \$100.0                    | Nonrecurring              | Environmental Health Fund |
|              | \$1,970.9        | \$1,575.9        | \$787.9-\$1,575.9        | \$4,334.7-\$5,122.7        | Recurring                 | General Fund              |
| <b>Total</b> | <b>\$1,970.9</b> | <b>\$1,675.9</b> | <b>\$787.9-\$1,575.9</b> | <b>\$4,434.7-\$5,222.7</b> |                           |                           |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 177, Conflicts with House Bill 33

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Environment Department (NMED)

Department of Agriculture (NMDA)

## SUMMARY

### Synopsis of Bill

Senate Bill 118 would enact the Food Accessibility Act, which allows consumers to directly purchase homemade products and producer-raised meats and fish and allows homemade non-potentially hazardous food to be sold in commercial food establishments. SB118 exempts certain homemade food products and producer-raised meats and fish from state or local government licensure, permitting, inspection, packaging, and labeling requirements. For non-hazardous foods, defined in the bill as those not requiring refrigeration for safe storage, the exemptions apply to the producer<sup>1</sup> of the homemade food product, an agent of the producer, or a third-party vendor. For hazardous foods requiring time or temperature control, the exemptions apply if the food is sold within New Mexico by the producer or an agent of the producer. SB118 also lays out the requirements under which the unregulated homemade products may be sold directly to informed customers.

SB118 allows a consumer to acquire meat not subject to inspection or regulation directly from a farmer or rancher by acquiring an ownership interest (an “animal share”) in the seller’s animal or herd.

The bill expands the exemption of agricultural products from the gross receipts tax (GRT) and governmental gross receipts tax (GGRT) to sales of all agricultural products. The current exemption applies only to “unprocessed” agricultural products as well as certain livestock, live poultry, hides, and pelts. The bill also stipulates that this exemption applies to persons engaged in buying and selling meat on their own account.

The bill directs New Mexico State University, through the Department of Agriculture (NMDA), to design and implement a state meat inspection program to replace federal meat inspections conducted by the U.S. Department of Agriculture’s Food Safety and Inspection Service (USDA/FSIS).

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

## FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) projects a decrease in general fund, local government, and GGRT revenues as a result of the expanded receipt exemption on agricultural products. TRD did not provide an amount for the expected revenue loss, but provided the following analysis:

“Receipts from sales of food purchased at a retail food store for home preparation and consumption are deductible, and application of the deduction triggers a partial hold

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<sup>1</sup> Defined in the bill as “a person who grows, harvests, prepares or processes food or drink products on the person's owned or leased property, who does not produce more than two hundred fifty thousand individual food or drink products annually and whose gross revenue from the sale of the food or drink products does not exceed \$250,000 annually.”

harmless payment from the state General Fund to local governments. [If consumers replace their retail food store purchases with new types of food purchases made available as a result of SB118], a decline in sales at food retail stores [would reduce] hold harmless payments.”

However, TRD expects any effects of SB118 in this regard to be negligible and also notes that hold harmless payments are in the process of being phased out for some local governments.

The Environment Department (NMED) projects a loss of revenue from licensing fees for home-based food processing facilities and commercial manufactured food facilities. The agency also states that enactment of SB118 would leave New Mexico out of compliance with the U.S. Food and Drug Administration’s Manufactured Food Regulatory Program Standards, resulting in the loss of a \$225 thousand annual grant. In addition, NMED expects to incur approximately \$100 thousand in attorney costs to formally amend state food safety regulations before the Environmental Improvement Board.

The estimated cost of implementing a state meat inspection program is \$1.97 million in the first year and \$1.58 million annually in subsequent years. This includes funding for 14 FTE. Some, but not all, of this cost will offset by inspection fees, and upon audit and certification of New Mexico’s program, the USDA may reimburse up to 50 percent of program costs. However, NMDA warns the state would likely need to fully fund the program for at least the first three years of implementation. NMDA did not provide a cost estimate, but did state that enforcement of SB 118 may require additional agency resources.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

## **SIGNIFICANT ISSUES**

All three responding agencies express varying levels of concern that lifting health inspection and permitting requirements for home-based food producers could increase the risk of contaminated food reaching consumers. NMDA and NMED suggest that, in particular, allowing unregulated sale of dairy, dairy products, and meat could lead to public consumption of hazardous food. NMED is also concerned with SB118’s exemptions related to food labeling standards. The agency argues these standards protect vulnerable consumers from inadvertently consuming a food product containing an allergen. TRD notes that while deregulation has the potential to cause harm, Wyoming, which has a law similar to SB118 in place, has not experienced any outbreaks of foodborne illness from food sold under the law since it was enacted in 2015. Importantly, Wyoming and two other states with this type of law explicitly included in the legislation that regulators have the authority to investigate any complaint of foodborne illness, which SB118 does not do.<sup>2</sup>

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<sup>2</sup> Sibilla, N. (2019, January 22). *Hundreds Of Homemade Food Businesses Flourish Under State Food Freedom Laws*. Retrieved from Forbes: <https://www.forbes.com/sites/nicksibilla/2019/01/22/hundreds-of-homemade-food-businesses-flourish-under-state-food-freedom-laws/?sh=652bb3322260>

Both NMED and NMDA express concerns that SB118 would place the state in conflict with federal statutes as well as local ordinances. NMDA notes that in order to receive federal funding to conduct meat inspections, the state’s inspection program standards must be “at least equal” to USDA/FSIS standards. NMDA is concerned that SB118 does not address how to maintain state compliance with the federal standard. NMED notes that the Federal Food, Drug, and Cosmetic Act, Code of Federal Regulations, and Section 7.6.2 NMAC prohibit food products to be manufactured in a private home and distributed to other business entities. Enactment of SB118 would leave the state out of compliance with this statute, resulting in the loss of federal grant money. Both agencies are concerned that SB118 does not provide sufficient guidance on how its provisions should be enforced.

TRD notes that SB118 could promote economic development and equity by removing barriers to entry stemming from licensing and inspection fees and requirements.

### **ADMINISTRATIVE IMPLICATIONS**

To create a meat inspection program, NMDA would need to hire and train staff, promulgate new rules, and develop databases and inspection software. Under SB118, NMED would need to revise Section 7.6.2 NMAC to avoid conflict and confusion with bill. This would entail public notice, public meetings, and testimony before the Environmental Improvement Board to petition approval of regulation changes.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 33 proposes to create a state meat inspection program under the New Mexico Livestock Board. House Bill 177 proposes similar exemptions of homemade food items from certain licensing, permitting, inspection, and labeling requirements.

### **TECHNICAL ISSUES**

NMDA pointed out that Section 16 of SB118 refers to “meat inspections” only, whereas the FSIS program also includes poultry inspections. To meet the “must be equal to” FSIS inspection program standards, poultry must also be included in the state’s meat inspection program.

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