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## FISCAL IMPACT REPORT

SPONSOR Coll DATE TYPED 2/3/04 HB 303

SHORT TITLE Nutrition Act SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$5,600.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$1,500.0		Recurring	New Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB273  
Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Environment Department (ED)  
Department of Health (DOH)  
Health Policy Commission (HPC)  
UNM Health Sciences Center  
Livestock Board  
Children, Youth & Families Department (CYFD)  
Public Education Department (PED)  
NMSU

### SUMMARY

#### Synopsis of Bill

House Bill 303 creates a Deputy Secretary of Nutrition and a Nutrition and Food Safety Division within the ED. The bill appropriates the following:

- \$3.4 million to ED from the General Fund to ED for staff, equipment and furnishings for the Deputy Secretary of Nutrition and the Nutrition and Food Safety Division, and for per diem and mileage expenses of the Nutrition Council.
- \$1.5 million to the Nutrition Fund for research and education at UNM.
- \$400 thousand to the PED to employ nutritionists to assist school districts in the public schools.
- \$300 thousand to the Board of Regents at UNM to perform studies related to nutrition.

This bill also does the following:

- Creates a Food Safety Division to enforce New Mexico Food Safety Acts and to develop Nutrition and Food Safety Programs including the examination of pesticides in food, inspection, the testing of food, analyzing State Nutrition Programs, development of Food Nutrition and “Ideal Weight” Education Programs and consulting with the UNM to assure proper training of medical students in nutrition.
- Establishes or increases standards for nutrition and food safety.
- Establishes a Nutrition Council to discuss, study, educate and make recommendations on food safety, nutrition, and health related problems associated with poor nutrition.
- Establishes a grade specific Food Nutrition Program for grade schools and graduation requirements that include nutrition and health.
- Modifies the New Mexico Food Act to include carcinogens, neurotoxins, and other deleterious compounds and labeling for such.
- Modifies the Meat Inspection Act to include language on harmful additives under the Nutrition and Food Safety Standards of the ED. This includes dairy products under established laws of the Misbranded Dairy Product Act.
- Makes nutrition education mandatory for certain health care workers: nurses, dentists, physicians, psychologists, counselors and therapists, osteopathic physicians.

#### Significant Issues

Emerging threats to our nation’s food supply include new and more virulent pathogens and deliberate adulteration through bio terrorism. Additionally, bolstered nutrition standards and education for New Mexico’s citizenry has long been identified as a crucial gap in our health network. Elevating food safety and nutrition issues at the division level would have a positive effect on the State’s ability to protect New Mexicans from food borne illness.

#### **The Environment Department reported the following:**

Positive changes to New Mexico’s Food Safety Program include:

- Consolidation of food-related programs in one agency
- Elevating food-related issues to the division level, with a Deputy Cabinet Secretary
- Vesting rule-making authority with the Cabinet Secretary
- Emphasizing examination of the food supply, and not just food service establishments
- Emphasizing nutrition, especially with young New Mexicans, to combat obesity and the adverse health effects caused by obesity
- Robustly funding food safety and nutrition.

Negative changes are as follows:

- Many aspects of this bill add to, duplicate, or conflict with existing nutrition programs administered by the CYFD and DOH
- Existing nutrition programs would be disrupted either by transferring them to ED which does not have a clear mandate for such programs, or by having these programs duplicated in ED
- Naming of deleterious compounds by the ED in a manner more stringent than that of the federal government, and interdiction of commodities that contain those compounds may violate federal interstate commerce laws and the U.S. Constitution
- Food-related programs should be consolidated, but in a more appropriate agency – namely the DOH

**The Department of Health provided the following:**

DOH notes this bill has gaps regarding nutrition expertise and oversight to carry out its proposed provisions. This would create problems in the licensure boards and regulatory agencies, disrupt patterns of practice, and possibly engender lawsuits from food producers both in and out of state. The proposed appropriations, resources and timeframe may be inadequate to the proposed results.

Many current activities similar to those in this bill exist in the DOH and other agencies. A new federal obesity grant to the DOH provides \$499,000 for nutrition and physical activity services. The relationship of the activities in this bill to other agencies and their similar activities is unclear.

Current DOH Nutrition resources located in the Public Health Division include:

- Association of State and Territorial Nutrition Directors New Mexico Representative, Masters level Registered Dietitian provides statewide leadership for public health nutrition issues affecting New Mexico and collaboration with UCLA, other universities and other State Nutrition Directors
- Special Supplemental Food Program for Women, Infants, and Children (WIC)  
This federal program serves 60,000 financially and nutritionally eligible pregnant, breastfeeding and postpartum women, infants and children and 13,964 financially eligible seniors each month through 110 clinic sites, 279 grocers, 4 commodity warehouses, and 18 farmers markets including 54 PHD field offices and 6 contract health agencies. Recipients receive nutritious food, nutrition counseling and education and referrals to health services, i.e. immunizations. The approach has been demonstrated by 70 evaluations to work, nationally. There is a significant increase in first trimester registration for prenatal care and a decrease in the number of women with adequate prenatal care. Weight gain is improved for pregnant women on WIC, pre-term deliveries are decreased, and birth weight is increased in first trimester registration for prenatal care. Pre-natal deliveries are decreased, and birth weight is increased for infants on WIC. Budget: \$32 million, Food, \$12 million Clinical Nutrition Services & Administration; Staff: 208 FTE's include 85 nutritionists.

- Commodity Supplemental Food Program (CSFP)  
The federal Commodity Supplemental Food Program was added to the Section in July 1988. CSFP provides a monthly package of commodity foods to low income women and children and the elderly who do not qualify for WIC in 4 warehouses and 38 tailgating sites in New Mexico. During FY00 participation was 19,966 per month. Budget: \$1,146.9 million Administration, Distributes \$5 million worth of Food provided in-kind from USDA; Staff: .5 FTE, 4 contractors, many volunteers
- Farmers Market Nutrition Program (FMNP)  
The Federal Program issues special checks to the WIC target population to attend farmers markets to promote small farmers while providing fresh nutrition produce to 15,527 WIC participants. Budget: 30% State Match, 70% Federal Funds: \$345,000 includes \$235,846 Food Funds; Staff: .5 FTE
- Children's Medical Services  
This component of the CMS Program serves special needs children with nutrition counseling for their special needs. This includes nutrition screening, connecting families to nutrition service providers, nutrition advocacy for children with special health care needs and In-service trainings on nutrition for the community. Budget: \$157,281; Staff: 4 Nutritionists (1 per District)
- School Health Program  
Provide technical assistance and resources to schools regarding nutrition issues; lead strategic planning for nutrition and physical activity for schools; conduct training through forums, in-services, and conferences to school staff; provide the School Health Manual which includes best practices for nutrition in schools; Budget specifically for nutrition \$60,000; Staff 1 FTE
- Diabetes Program  
Teach Diabetes Management to Diabetics to prevent Type II Diabetes; Budget: \$1,869.9 million; Staff: 11 FTEs
- Obesity Grant  
New Mexico was one of 20 states to receive funding from CDC for a Nutrition and Physical Activity Program to Prevent Obesity and Other Chronic Diseases During the first year, NMDOH will develop infrastructure, which will include hiring three new staff people – a program manager, a physical activity coordinator, and a nutrition coordinator. Budget: This is a five-year funding opportunity for approximately \$408,000 per year. Staff: 3 FTE.
- Five a Day Program  
This program's objective is to increase the public's intake of five fruits and vegetables per day to prevent cancer. Funds are primarily used for educational materials. These funds will be used in conjunction with the new Obesity Grant. Budget: \$10,000.

The Diabetes Prevention and Control Program has provided a growing number of schools with funding to support nutrition education and enhanced opportunities for physical activity in the schools. The intervention is a science-based curriculum, Coordinated Approach to Child Health, or CATCH, researched and piloted by National Institutes of Health, National Heart, Lung and Blood Institute. Funding in FY03 was provided to ap-

proximately 50 schools. Many elementary schools have very limited health education and welcome the nutrition curriculum as a good source of nutrition education for their students. CATCH also provides training for classroom teachers so they can be comfortable providing a well-designed period (warm-up and stretches, aerobic activity, and cool-down) in a non-competitive, 'fun for all' manner, thus increasing the opportunities for activity within the school day or week. CATCH includes a school food service component and a family component.

The relationships and collaboration regarding nutrition programs and services among Public Health Division programs of the Chronic Disease Bureau, the Family Health Bureau, the Office of School Health and the Public Education Department are longstanding, supportive and productive.

DOH believes it has proven expertise in the administration of nutrition programs such as WIC, providing nutrition education programs for clients, school staff, and health care providers, and developing public education programs.

**The Livestock Board noted the following:**

The Livestock Board asserts this bill gives the Deputy Secretary the authority to change food safety programs and inspection duties that are currently within the Livestock Board. The Livestock Board's Meat Inspection Program works with the United States Department of Agriculture Food Safety Inspection Service to ensure that the program is rated "equal to" the federal inspection program. Changes to the program could jeopardize this designation and leave the state inspected slaughter and meat processing plants without inspection.

**The Public Education Department explained what they are currently doing in the area of nutrition:**

- Student nutrition data is captured on a bi-annual basis through the New Mexico Youth Risk and Resiliency Survey. This survey is the primary survey for gathering data in New Mexico and is endorsed through a memorandum of understanding between the DOH and PED.
- PED has the authority and responsibility for the quality of public school lunch programs.
- The school meals programs, the National School Lunch Program (NSL) and the School Breakfast Program (SBP) were created to "safeguard the health and well-being of the nation's children..." The school meals offered are consistent with the Dietary Guidelines for Americans. There are nutrient standards for school lunch and school breakfast menus. The nutrient standards establish the required level of calories and key nutrients (Vitamins A and C, calcium, iron and protein), 30% or less of fat and 10% or less from saturated fat to meet the nutrition goals for specific age or grade groups of children.
- The Student Nutrition Programs Unit at PED analyzes school menus to ensure the schools serve quality nutritional meals to the students.
- All food items that are allowed to be served towards a reimbursable school menu must have "Standards of Identity." However, there is no current requirement that "deleterious additives" be discontinued. This would require a major education of State staff as well as all school staff responsible for food services.

## FISCAL IMPLICATIONS

The bill appropriates a total of \$5.6 million in general fund as follows:

- \$3.4 million is appropriated to the Environment Department and is a recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2005 shall revert to the General Fund.
- \$1.5 million is appropriated to the newly created Nutrition Fund. It is unclear if any unexpended or unencumbered balance remaining at the end of Fiscal Year 2005 shall revert to the General Fund, or remain in the new Fund. (See Technical Issues below)
- \$400 thousand is appropriated to the Public Education Department to employ nutritionalists. Any unexpended or unencumbered balance remaining at the end of Fiscal Years 2005 and 2006 shall revert to the General Fund.
- \$300 thousand is appropriated from the general fund to UNM to prepare the required studies. Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2007 shall revert to the General Fund.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

## ADMINISTRATIVE IMPLICATIONS

The provisions of this bill have a multitude of administrative impacts for ED. These are these no different from those experienced by any agency setting up an entirely new program. The existing infrastructure of the Field Operations Division will allow for efficient addition of FTEs in statewide locations and provide for timely implementation of program duties so there will be less of a need to establish new field offices. Possibly some field offices will require additional space to accommodate additional staff. Implementation of the bill will require up to 12 new field inspectors needed to examine New Mexico's food and food supply and inspect food production facilities, grocery stores, dairy establishments, feed lots, and growing fields not already inspected under the Food Service Sanitation Act.

Additionally, it is anticipated that approximately 12 additional FTEs will be required to develop programs and criteria to implement the other duties of the new division. Additionally, the current food safety program budget is intertwined and overlapping with the liquid waste program, swimming pool program and mosquito abatement program budgets and personnel responsibilities. ED would have to ensure that responsibilities of all programs are carried out.

The DOH of Health conducts nutrition related services within the within the Public Health Division including the Office of School Health, the Obesity Prevention Grant activities of the Chronic Disease Bureau; the Nutrition and WIC Program of the Family Health Bureau; nutrition surveillance and evaluation in FHB and the Office of Epidemiology. The bill would require the staff within existing programs, where the expertise lies, to provide coordination to prevent duplication of efforts.

## TECHNICAL ISSUES

On page 42, lines 8-9 state balances in the Nutrition Fund shall not revert, whereas line 11 states balances shall revert to the general fund. This contradiction needs to be corrected.

The Livestock Board notes that on page 33 under “25-7A-10 Dairy Products” under D changes the word “unsanitary” to “insanitary” then goes on to say that the product may have been contaminated. Insanitary means that the product is contaminated.

## OTHER SUBSTANTIVE ISSUES

The HPC provided the following:

- New Mexico has high incidences of obesity, diabetes, heart disease. All of which can be at least partially tied to poor nutrition and lack of exercise.
- Health classes were once included in public school curriculum.
- Nutrition and health classes taught in schools will give children the tools to make life-style choices that may improve their overall health as children and in their adult and senior years.
- High and increasing medical costs for seniors can be related to poor general health because of poor life-style choices that include nutrition.
- While people are generally living longer, those with poor health can have improved health with sometimes expensive medications and treatments. Medications and treatments might be avoided either entirely or to a later period in life with life-style and nutritional changes.
- Studies in New Mexico may determine why some people have poor nutrition habits. These may include: poor knowledge of proper nutrition, poverty, poor eating habits, dependence on fast food, drug and alcohol abuse and a general lack of caring about nutrition.
- The Federal Department of Health and Human Services through the Food and Drug Administration has oversight of food health and safety along with the Federal Department of Agriculture and the Environmental Protection Agency. Additional (and tightened) State regulations and oversight, while providing an addition layer of defense, may increase food safety, but may also initiate additional costs to consumers.
- The State is dependent on the export of agriculture products to other states and Mexico. Oversight, increased scrutiny and higher standards of food safety may make some foods more expensive, but may also assure buyers of NM agriculture products of the safety.
- Medical studies for nurses and physicians are already filled with other medical topics and the need to include other areas such as pain management and pain relief. Increasing the demands on a medical student to include nutrition curriculum may place more demands on already strenuous education programs.
- The importance of including monitoring of carcinogens, neurotoxins and other deleterious compound in food products is important for informing the consumer and for increasing consumer confidence in certain foods. Such harmful additives, in very minute quantities over a period of time, may increase opportunities for cancers and other longer-term chronic disabilities.

- Many harmful chemicals sometimes end up in food as a by-product of manufacturing industries or pesticide use in agriculture and are carried or stored in the fat cells of the human and vital organs of the human body.
- Since such quantities may be very small (parts per million and billion), they may be difficult to detect and might be very expensive to monitor. Monitoring the effects on exposed populations may take years to develop sufficient data.
- Risk based studies, over time, may determine reasonable standards for the State if the State is determined to develop standards that are more stringent than Federal standards.

**DW/yr:dm**