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FISCAL IMPACT REPORT

ORIGINAL DATE 2-26-09

SPONSOR Harrison LAST UPDATED _____ HB 1203

SHORT TITLE Trans Fat Restaurant Notices & Limits SB _____

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Indeterminate	See narratives	Recurring	Food Fees Fund or General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Environment Department (ED)

SUMMARY

Synopsis of Bill

House Bill 1203 enacts the “Trans Fat Act” (Act), which would require restaurants in New Mexico with three or more locations, owned or managed by a New Mexico resident, to post trans-fat content and calorie information of all standard menu items on their menus or menu boards by July 1, 2007. Restaurants would also be required to limit use of trans-fat to 0.5 gram per serving by July 1, 2008. By July 1, 2007, Environmental Improvement Board (EIB) would develop rules to regulate trans-fat in restaurants and to establish a system for grading restaurant compliance.

FISCAL IMPLICATIONS

NMED’s 50 inspectors inspect restaurants, liquid waste systems, and public swimming pools or spas statewide, except for Albuquerque, which has its own inspection program. Restaurants are inspected once a year. If the inspections could follow their normal anniversary date, the fiscal impact from HB 1203 during FY07 would most likely be minimal and relate primarily to publication and outreach of the new rules to the targeted restaurants. The posting requirement would simply be an item added to the checklist inspectors review during the restaurant inspection.

However, NMED maintains that the second requirement of limiting trans-fat in food to .5 grams would require either adding FTEs or contracting for food analysis. In addition, NMED points out that ensuring the targeted restaurants are maintaining the limit of trans-fat caloric content to no more than one-half gram per serving in their standard menu items may require more than the one mandatory restaurant inspection per year. No appropriation or increase in food fees is included in the bill to fund this anticipated expansion. The exact amount required is interminable until the number of restaurants affected and the number of times the department would require trans-fat food analysis to ensure compliance are determined.

NMED's projection schedule for the Food Service Fee Fund is included as Attachment 1.

SIGNIFICANT ISSUES

DOH provides the following information regarding trans-fats and health:

Heart disease is the number one killer both in the nation and in New Mexico. The annual death rate for heart disease in New Mexico is 177 per 100,000 people (State of Health in NM, 2005). At least 60% of New Mexico adults are overweight or obese (Behavioral Risk Factor Surveillance System, 2005). At least 27% of New Mexico high school students and 24% of 2 to 5 year olds who participate in federally funded nutrition programs are overweight or at risk of becoming overweight (2005 New Mexico Youth Risk & Resiliency Survey, & Special Supplemental Food Program for Women, Infants and Children data, 2005). Overweight acquired during childhood and adolescence is likely to persist into adulthood and increases the risk for a number of chronic diseases.

Evidence suggests that consumption of trans-fat raises LDL ("bad") cholesterol levels and lowers HDL ("good") cholesterol levels, causing the arteries to become clogged and increasing the risk of developing heart disease and stroke. Sources of trans-fatty acids include hydrogenated/partially hydrogenated vegetable oils that are used to make shortening and commercially prepared baked goods, snack foods, fried foods, and margarine. Trans-fats are chemically-created and are used because they give oil a longer shelf life and sustain higher cooking temperatures.

The 2005 Dietary Guidelines for Americans recommend that trans-fatty acid consumption should be kept as low as possible. The American Heart Association, the American Diabetes Association, the World Health Organization and the National Cholesterol Education Program have similar recommendations.

Effective Jan. 1, 2006, the Food and Drug Administration (FDA) requires food companies to list trans-fat content separately on the Nutrition Facts panel of all packaged foods. Nutrition labels now list any measurable (at least 0.5 gram/serving) amount of trans-fat in a separate line in the total fat section under saturated fat. This labeling only applies to packaged food products, not foods served at restaurants. (www.americanheart.org). However, the FDA points out that labels provide valuable information, and that better labels enable consumers to make smarter, healthier food choices.

Lawmakers in at least 13 states and numerous cities have enacted or introduced some kind of trans-fat legislation. New York City and Philadelphia have banned trans-fat in

restaurants. Some restaurant chains have voluntarily eliminated trans-fats, including McDonalds, KFC, and Starbucks. Other examples of trans-fat elimination include Girl Scout cookies and the Ohio State University campus.

NMED points out that the FDA requirements relating to commercially processed food are for products that are prepared the same way each time and, thus, the nutritional facts will be the same each time the product is prepared. NMED suggests that this is may not be the case for menu items prepared in a restaurant. Ingredients may vary from week to week or a recipe may be modified by the different cooks in the same restaurant. Thus, the nutritional content of the menu items will vary accordingly. However, HB 1203 does limit the calorie and trans-fat posting requirement to “every standard menu item.” It is logical to assume that the standard items have some consistency and would not vary widely.

NMED expressed some concerns regarding the costs impacts to restaurants for compliance:

- The affected restaurants would need to analyze their standard menu items for caloric content if not already evaluated, which could be costly;
- Printing the posters would require some expense; and
- To limit the use of trans-fat, many restaurants would have to choose alternative fats such as olive or canola oils for their food preparation and cooking. Olive and canola oil products are generally more expensive than most oils most restaurants use.

NMED maintains that the Act forces restaurants to become accountable for nutrition aspects for consumers rather than placing the responsibility on the consumers for their own nutrition.

PERFORMANCE IMPLICATIONS

The percent of annual restaurant inspections is a performance measure for the Environmental Health Program. Inspecting food in restaurants for caloric and trans-fat content has not previously been part of the NMED Food Program and may negatively impact this measure.

ADMINISTRATIVE IMPLICATIONS

The EIB would be required to develop rules for the regulation of trans-fat in restaurants and establishing a system for grading a restaurant for it compliance with the Trans Fat Act. Additional FTEs will most likely be required to assess the trans-fat content of food or maintain the level of restaurant inspections if the workload is significantly increased.

TECHNICAL ISSUES

DOH suggests that the July 1, 2007 deadline to complete the analyses of the amount of trans-fat in food items, develop a system to post information, and develop compliance parameters may lead to difficulties for some restaurants.

OTHER SUBSTANTIVE ISSUES

DOH states that obesity and heart disease disproportionately affect persons of lower socio-economic levels. A report by the New Mexico Food and Agriculture Policy Council noted that there are numerous fast food restaurants and few grocery stores in many rural, low-income communities. DOH suggests that HB 1203 could positively impact this population.

If enacting HB 1203 led to healthier eating and healthier New Mexico citizens, future health costs would be reduced.

ALTERNATIVES

NMED suggests one option would be to educate the restaurant operators on the use of alternative fats for heart healthier foods and provide economic incentives for using alternative fats.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Requiring restaurants with three or more locations in New Mexico to post trans-fat content and calorie information of all standard menu items on their menus or menu boards would not be established. A limit on the amount of trans-fat in these standard menu items would not take effect.

POSSIBLE QUESTIONS

1. Could “standard menu item” and “serving size” be defined for clarification?
2. How many restaurants that would be affected by HB 1203 already post nutritional contents of their standard menu items?
3. What would be the fiscal impact to the affected restaurants to comply with HB 1203?
4. Would a food fee increase be required to fund the program?

ATTACHMENT

MA/csd

Special Revenue Fund: 991 FOOD SERVICE SANITATION ACT

Type Fee	FY05 Actuals	FY06 Actuals	FY07 Projection	FY08 Projection	FY09 Projection	FY10 Projection
Food Permit Fees (revenues cash)	700.5	813.3	983.7	1,154.2	1,324.6	1,395.7
Projected Revenue	700.5	813.3	983.7	1,154.2	1,324.6	1,395.7
Actual/Projected Revenue ¹	700.5	813.3	983.7	1,154.2	1,324.6	1,395.7
Unobligated Fund Balance (Beginning) ²	992.1	730.0	406.4	249.9	221.8	364.1
Pending BARS ³						
Total Expenditures ⁴	(962.6)	(1,136.9)	(1,140.2)	(1,182.3)	(1,182.3)	(1,182.3)
Total	730.0	406.4	249.9	221.8	364.1	577.5

Cost Per Permit	Through	Nov. 30, 2005	Dec. 1, 2005	Dec. 1, 2006	Dec. 1, 2007	Dec. 1, 2008
		\$100.00	\$125.00	\$150.00	\$175.00	\$200.00

2. From the NMED Trial Balance Fund 991 as of June 30, 2006.

3. Based on current year shortfalls projected.

FY08 projected expenditures are from the base FY08 request with proposed indirect.

FY09 & FY10 projected expenditures are steady from FY 08 projected expenditures.