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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/21
LAST UPDATED 03/11/21 **HB** 177/HAWCS/aHHHC
SPONSOR HAWC
SHORT TITLE Homemade Food Act **SB** _____
ANALYST Gaussoin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	(\$7.0)	(\$7.0)	Recurring	Environmental Health Fund

(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	General Fund
		\$35.0	\$35.0	\$70.0	Recurring	General Fund
Total		\$135.0	\$35.0	\$170.0		General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 118.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)
 Environment Department (NMED)

No Response Received

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HHHC Amendment

The Health and Human Services Committee amendment to the House Agriculture and Water Resources Committee substitute for House Bill 177 makes a technical correction to titles in the

bill.

Synopsis of Original Bill

The House Agriculture and Water Resources Committee substitute for House Bill 177 (HB177/HAWCS) would create the Homemade Food Act to provide for the production and sale of certain homemade food items and amends both the Food Service Sanitation Act (Sections 25-1-1 through 25-1-15 NMSA 1978) and the New Mexico Food Act (Sections 25-2-1 through 25-2-20 NMSA 1978) to exempt certain homemade food from the safety and regulatory provisions of those acts.

Under the substitute for HB177, the exempted food would be items that are safe without time and temperature controls; produced at the private farm, ranch, or residence of the maker; and sold directly to consumers within the state from home, at farmers' markets, festivals, or roadside stands, or through the Internet and mail delivery.

The seller would be required to complete an approved food handler certification course, maintain a sanitary kitchen free of pets or children during food preparation, and transport food in a sanitary manner. Sellers must provide consumers with information on their items through a label, placard at the point of sale, or on the webpage, including the ingredients, the name and contact information of the maker, and the statement, "This product is home produced and is exempt from state licensing and inspection. This product may contain allergens."

The Environment Department, or the Albuquerque/Bernalillo County joint health department, would be responsible for enforcing the act and could investigate and stop the sale of any suspected contaminated food, as long as the enforcement agency issued a warning first. Failure to comply with a written warning would be a misdemeanor subject to a \$100 fine.

HB177/HAWCS would allow the Environment Department to operate a voluntary permit system for home food producers and would allow the Albuquerque/Bernalillo County agency to operate a mandatory or voluntary permit system. The bill also states the Home Food Act should not be construed to conflict with federal law.

The effective date of the bill is July 1, 2021.

FISCAL IMPLICATIONS

NMED reports HB177/HAWCS would require additional resources by creating a new obligation to respond to questionable practices, such as selling food outside the protections of the new Home Food Act, investigating complaints of illness and unsanitary practices. The department estimates it would need 0.5 FTE for compliance efforts. In addition, the department estimates a cost of \$100 thousand in FY22 for staff and attorney time to amend current Food Service and Food Processing regulations, 7.6.2 NMAC. The department further notes:

Since HB177/HAWCS exempts producers from the existing program, NMED will lose approximately \$7 thousand annually in permit fees from its homemade food permit program under a voluntary program if there are no applicants. NMED currently charges \$100 per permit annually.

It can be assumed Albuquerque/Bernalillo County will have similar costs and losses of revenue,

although those figures were not available.

A new industry of homemade food producers could generate tax revenue for the state; however, it is difficult to determine how much tax revenue would be generated.

SIGNIFICANT ISSUES

NMED reports HB177/HAWCS would eliminate the department's existing home-based food processing program, which already provides for home-based processors to sell their products directly to consumers at farmer's markets, roadside stands, festivals, and similar venues. The department notes the substitute bill address food safety in general terms, an inadequate approach to protect public health and does not authorize the state or local health agency to adopt or enforce objective food safety regulations.

Notably, the intent of NMED's Food Program and the state Food Act, Food Service Sanitation Act, and Food Service and Food Processing Regulations is to protect public health by ensuring the food served to the public is safe. By exempting homemade food from inspection, HB177/HAWCS provides only for intervention after the food has already made people sick.

From NMED on the original HB177:

Center for Disease Control (CDC) estimates that 48 million foodborne illnesses occur in the U.S. every year; nearly 60 percent from home-prepared foods. NMED has an established Food Program to regulate, educate, permit, and inspect entities preparing and serving food to the general public. ...

The New Mexico Food Service Sanitation Act (NMSA 25-1-1 to 25-1-15) and state regulations (7.6.2 NMAC) require entities operating as food service businesses or temporary food service businesses to obtain permits, to follow sanitation standards, to allow annual NMED inspection, to pay permit fees, and to be subject to compliance and enforcement actions. The New Mexico Food Service Sanitation Act and state regulations generally define these businesses as entities that prepare and serve (in packaged or unpackaged form) food to the general public. ...

NMED developed these regulations in conjunction with, and supported by, the New Mexico Farmer's Market Association, and these regulations provide the opportunity for "processors" as defined in HB177, to prepare certain lower-risk foods in their homes and serve/sell those products directly to the general public. These state regulations focus on the important aspects of food preparation to avoid food-borne illnesses.

Although HB177/HAWCS specifically states the new law could not be construed to conflict with federal law, it is unclear how the state and local health agencies will prevent interstate sales, as prohibited under the Federal Food, Drug, and Cosmetic Act (FD&C), 21 U.S.C. Section 331.

The Department of Agriculture (NMDA) cited concerns in its analysis of the original HB177 with liability created for farmers' markets and producers, which actively seek ways to reduce their liability, as well as with the applicability of the state's [Weights and Measures Law, Chapter 57, Article 17](#), which applies to food sold at retail.

PERFORMANCE IMPLICATIONS

From NMED: “HB177/HAWCS will reduce the NMED Food Program’s authority and jurisdiction to protect public health by regulation, permitting, and inspection of certain homemade goods prepared for the public.”

ADMINISTRATIVE IMPLICATIONS

From NMED:

NMED would be responsible for administering penalties for non-compliant operators.

If HB177/HAWCS is adopted, NMED will petition the EIB to amend State food safety regulations to incorporate the provisions of the Home Food Act.

NMED will need to develop a guidance document and provide assistance to homemade food processors regarding what food items are classified as Non-TCS foods.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB118, Food Accessibility Act, although SB118 includes direct-to-consumer sales of all homemade products and producer-raised meats and allows the sale of “non-potentially hazardous” foods to commercial food establishments.

ALTERNATIVES

Proponents of expanding the sale of homemade food in New Mexico could review “cottage” food laws in other states to see how New Mexico’s existing food safety laws could be amended without sacrificing food safety.

HG/sb/rl