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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/09

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Nutrition Council Act SB 400

ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1	\$0.1	Recurring	“nutrition research and education fund”

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Aging and Long-Term Services Department (ALTSD)
 Public Education Department (PED)
 Department of Health (DOH)
 Health Policy Commission (HPC)
 Office of the Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 400 enacts the “Nutrition Council Act” and creates a nutrition council and a “nutrition research and education fund” administratively attached to DOH. The purpose of the act is to improve the quality of food grown in, produced in, imported into or exported from New Mexico and to educate New Mexico residents in good nutritional choices.

The council will include representation from the Office of the Attorney General, PED, DOH and Governor appointments to include a pediatrician, an internist or family practitioner, a cardiologist, toxicologist, doctorate-level biochemist, licensed nutritionist, farmer, rancher, faculty member of the University of New Mexico (UNM) school of medicine, dentist and representative of the cooperative extension service or the Department of Agriculture at New Mexico State University (NMSU) and one public member with active involvement in the area of nutrition.

The council would be responsible to:

- study ways to improve nutrition services and programs in state government;
- recommend nutrition training programs for state employees of nutrition programs;
- develop nutrition programs for food stamp recipients;
- recommend nutrition programs, public education programs and campaigns on health, nutrition and ideal weight maintenance for all state institutions and public schools, colleges and universities;
- consult with UNM school of medicine to ensure that its nutrition curricula train medical students in basic nutrition and how to prevent and treat nutritional diseases;
- recommend the development and implementation of nutrition and food safety programs;
- advise the appropriate departments, including the AG, on areas of concern such as:
 - the effects of genetically modified organisms and food additives,
 - the incidence of diabetes on Indian pueblos and reservations.
 - the effects of food-induced hyperactivity and attention deficit disorders in children,
 - obesity in all age groups, and
 - other areas deemed important by the council;
- making recommendations on ways to improve nutrition in New Mexico;
- assist the appropriate agencies in developing educational materials on nutrition and on toxic or potentially toxic additives to foods and processes that result in food toxicity;
- through PED, advise public school districts on the development of nutrition courses that are grade specific;
- develop a nutrition questionnaire to be sent to students in New Mexico; and
- review the quality of public school lunch programs.

FISCAL IMPLICATIONS

Members of the council who are not paid by taxpayer funds may receive per diem and mileage expenses pursuant to the Per Diem and Mileage Act.

Senate Bill 400 does not contain an appropriation but creates in the state treasury a non-reverting “nutrition research and education fund” to be administered by the DOH. The fund shall consist of monies appropriated by the Legislature, donations, grants from the federal government and other public and private sources. In the absence of a state appropriation, the council may not be able to hire a director or have the necessary funds to carry its duties. Any additional fiscal impact will need to be balanced against the state’s interest in maintaining the public health.

DOH reports that funds for administering the Council was not included in the department's base budget request. DOH further reports that the cost to develop and administer the nutrition council is estimated at: 1 FTE (\$52,995.00); a .5 FTE Data Base Administrator (\$52,014.00); information technology costs to develop and support maintenance of the new data base (\$250,000.00).

PED reports one 7th grade nutrition module that has been adopted. If SB 400 were to pass separate books would need to be purchased for nutrition, health education, science and physical education as nutrition is taught in at least one of these curricular areas and varies from district to district. The next adoption cycle for health education is 2011.

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

SIGNIFICANT ISSUES

According to the National Cancer Institute, during the last two decades, the percentage of overweight and obese adults and children has been steadily increasing. Obesity increases the risk of coronary heart disease, stroke, high blood pressure, and diabetes. DOH notes that the department administers federally funded categorical nutrition and food assistance programs and diabetes prevention and control programs. DOH is endeavoring to implement community-based obesity prevention programs within existing staff and resources.

DOH further notes that the bill will require the council to develop a nutrition questionnaire for students that will be used to build a statewide nutrition database. DOH currently has epidemiological expertise to develop a valid survey instrument and to interpret the data, yet lacks funding to develop and maintain the statewide database. Current sources of nutrition information for children and youth in NM include: 1) the Youth Risk and Resiliency Survey (YRRS) for high school students administered by DOH in collaboration with PED; and, 2) a state sample in the National Survey of Children's Health (NSCH) of the federal MCH bureau, for ages birth to 17 years, which doesn't provide local data. There are no statewide or local data systems for children from age 6-12 years. This request in the bill may be addressed by adding nutrition questions to the BRFSS and the YRRS; and, by enhancing the New Mexico sample of the NSCH.

PED stated that the bill requires consultation with nutrition experts and appropriate state agencies to recommend grade-specific nutrition education programs. PED reports that the department has developed Performance Standards in both Health Education (6.30.2.19 NMAC) and Physical Education (6.30.2.20 NMAC) which include what should be taught in K-12, including nutrition education.

PERFORMANCE IMPLICATIONS

The AG reports that Section 2 of the act states that federal authorities have not intended to or expressed an intention to occupy and preempt the areas of nutrition addressed in the nutrition council act. However, any additional food labeling requirements would have to be analyzed in light of the preemption provisions of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. Section 343-1.

PED reports the department has adopted rules in nutrition (6.12.5 NMAC) and wellness (6.12.6 NMAC) for local school districts. PED also reports that the department has the authority and responsibility for quality of public school lunch programs. Reviewers ensure schools are using standardized recipes. Nutritional analysis is performed on menus and over a week's time the lunch menus must meet $\frac{1}{4}$ of the RDAs for protein, vitamin A, vitamin C, iron, calcium and 30% or lower of total calories from fat and 10% or less from saturated fat.

ADMINISTRATIVE IMPLICATIONS

The proposed Nutrition Council will be administratively attached to DOH. DOH notes that there are currently no specific state appropriations for operation of obesity prevention programs within the department.

TECHNICAL ISSUES

PED has the Physical and Health Education Content Standards with Benchmarks and Performance Measures to support schools in providing nutrition education. PED reviews the quality of public school lunch programs and student nutrition data is collected biannually.

ALTSD is not named as a participant in the act. ALTSD is concerned that the individuals served by the department may not be adequately represented by the proposed Nutrition Council and there may be some inconsistency with the Older Americans Act.

OTHER SUBSTANTIVE ISSUES

HPC reports that in 2003, the New Mexico Food and Agriculture Policy Council was organized as a democratic organization composed of groups and individuals working on issues around food and agriculture systems. It educates those affected by these issues and develops and advocates for specific policy recommendations and alternatives at the local, state and national levels.

HPC further reports that the United States Department of Agriculture (USDA) reports that food suppliers provide information to consumers about foods such as price, taste, and nutrition. However, food suppliers do not report the negative attributes of food products such as ingredients that may increase the risk of adverse health outcomes. Labels may provide information about the ingredients but may not tell where the food came from, how it was handled or prepared or if it is partially artificial or 100% natural.

ALTSD reports that adults with disabilities and older adults are vulnerable to eating unhealthy foods because of cost constraints, inability of prepare healthy foods, and inability to purchase fresh produce, fresh fruits and other foods because of cost, transportation and health issues that may not allow them the opportunity to get to the sites that the foods are sold or prepared.

ALTSD oversees the Older American Act Aging (AAA) Network programs, which include nutrition services (congregate and home delivered meals). By law, Aging Network providers must plan nutritious meals which lead to healthy aging; and a decrease in chronic diseases, malnutrition and premature admission to a long-term care facility and social isolation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Nutrition Council would not be created.

AMENDMENTS

Suggested amendments from agencies with expertise in health:

On page 3, Line 1, (f) delete the word, “licensed” and replace with the words “public health”;

On page 3, insert after line 7 and before line 8, (l) “one nutrition representative from the Department of Health, the Children Youth and Families Department, the Public Education Department, the Human Services Department and the Aging and Long-Term Services Department.”

AHO/mt

