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FISCAL IMPACT REPORT

SPONSOR <u>Pirtle</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/16/23</u>
SHORT TITLE <u>Food Accessibility Act</u>	BILL NUMBER <u>Senate Bill 405/ec</u>
	ANALYST <u>Sanchez/Graeser</u>

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
≥ (\$40.0)	≥ (\$120.0)	≥ (\$120.0)	≥ (\$120.0)	≥ (\$130.0)	Recurring	General Fund
≥ (\$20.0)	≥ (\$80.0)	≥ (\$80.0)	≥ (\$80.0)	≥ (\$80.0)	Recurring	Local Governments
(\$225.0)	(\$225.0)	(\$225.0)	(\$225.0)	(\$225.0)	Recurring	FDA MFRPS Grant (NMED)

Parenteses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$2,168.0	\$1,733.5	\$1,733.5	\$5,635.0	Recurring	NMDA Operating Budget
	\$100.0	\$200.0	\$208.0	\$708.0	Recurring	Environmental Health Fund (NMED)
Total	\$2,268.0	\$1,933.5	\$1,941.5	\$6,343.0	Recurring	

Parenteses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 205

Sources of Information

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
Department of Environment (NMED)
New Mexico Livestock Board (NMLB)
New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Senate Bill 405

Senate Bill 405 (SB405) proposes to enact the Food Accessibility Act, which would allow consumers to directly purchase homemade products and producer-raised meats and fish and

permit homemade non-potentially hazardous food to be sold in commercial food establishments. SB405 offers definitions for “animal share,” “commercial food establishment,” “farmers market,” “home consumption,” homemade food,” informed end consumer,” “non-potentially hazardous food,” “potentially hazardous food,” “process,” “producer,” and “transaction.”

Senate Bill 405 amends Section 25-1-2, NMSA 1978 (the Food Service Sanitation Act), Section 25-7-1 to 25-7-8, NMSA 1978 (the Dairy Act), and Section 25-7B-1 to 25-7B-11, NMSA 1978 (the Dairy Establishment Sanitation Act). The amendments create exemptions for certain “homemade food” products and producer-raised meats and fish from state or local government licensure, permitting, inspection, packaging, and labeling requirements.

- For food products deemed “non-potentially hazardous” (not requiring time or temperature control), the exemptions apply to the producer of the homemade food product, an agent of the producer, or a third-party vendor. For food products deemed “potentially hazardous” (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.
- The bill also puts forth the conditions under which “homemade food” may be sold directly to “informed end consumers,” which allow 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.

Senate Bill 405 amends Section 7-8-18, NMSA 1978 (Exemption; gross receipts tax and governmental gross receipts tax; agricultural products) by removing the word “unprocessed,” which would expand the exemption from the gross receipts tax (GRT) and governmental gross receipts tax (GGRT) to cover the sale of all agricultural products. This exemption currently only applies to “unprocessed” agricultural products and certain livestock, live poultry, hides, and pelts.

Senate Bill 405 amends Section 76, NMSA 1978 (Agriculture) to direct the Department of Agriculture (NMDA) to design and implement a state meat inspection program and to obtain statutory authority to conduct meat inspections, eliminating the need for inspections by the U.S. Department of Agriculture’s Food Safety and Inspection Service (USDA/FSIS).

Finally, SB405 amends Section 4-16, NMSA 1978 (the Homeowner Association Act) to prohibit homeowners associations or political subdivisions of the state from adopting rules limiting the number of chickens or ducks a homeowner can keep on their property.

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

FISCAL IMPLICATIONS

Senate Bill 405 includes a small expansion of a gross receipts tax exemption. This narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico’s taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state’s largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and

businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit. The Taxation and Revenue Department (TRD) notes a small impact based on an analysis of current taxable entities:

Tax & Rev obtained data from the agency’s “RP-80 Reports” and isolated taxable gross receipts data reported by establishments in the meat processing industry. The industries selected were: 3116 – Animal Slaughtering and Processing, 31161 – Animal Slaughtering and Processing, 311611 – Animal (except Poultry) Slaughtering, 311612 – Meat Processed from Carcasses, and 311613 – Rendering and Meat Processing from Carcasses. To estimate the future revenue impact, Tax & Rev used a 5-year average as the baseline of taxable gross receipts and the Consensus Revenue Estimating Group (CREG) December 2022 forecast. It was assumed that the taxable gross receipts from these industries would be exempt under the proposal. Tax & Rev assumed that given the emergency effective date, that if signed into law, the revenue impact would begin in the last three months of FY23.

New entrants into the small-scale producer category would add to this minimal impact. This sector would be unregulated and uninspected; therefore, the TRD estimate of the potential tax impacts should be considered minimal.

SB405 would assign responsibility for most of the provisions of the act to the New Mexico Department of Agriculture (NMDA), which expresses concerns about the potential fiscal implications. NMDA stated:

If NMDA is to stand up a state meat and poultry inspection program, state support and sufficient appropriations are key to a sustainable program. The state will be required to fully fund program operations from start-up through an initial inspection period. Once the United States Department of Agriculture (USDA)/Food Safety and Inspection Service (FSIS) conducts an audit and the state agency passes, there is a possibility that USDA/FSIS will supply up to fifty percent (50%) of program costs; however, this is not a guarantee and should not be relied upon. Fees alone will not cover the cost of a sustainable inspection program. NMDA estimates it will cost approximately \$2,168.0 the first year, and \$1,733.5 each subsequent year. The additional cost in year one is due to initial set up expenditures, including the procurement of equipment, supplies, vehicles, and a substantial staff training commitment, most of which would be required to be conducted out of state.

The Environment Department’s (NMED) analysis explains that, by exempting some food manufacturers from the stringent requirements of the U.S. Food and Drug Administration’s (FDA) Manufactured Food Regulatory Program Standards (MFRPS), Senate Bill 405 would prevent the agency from complying with the terms of its grant. The agency would lose approximately \$225 in annual revenue from the FDA’s MFRPS program. Additionally, NMED states the passage of SB405 would compel the agency to petition the Environmental Improvement Board to amend state food safety regulations. These actions would cost the department roughly \$100 thousand in FY23, \$200 thousand in FY24, and approximately 4 percent more each successive year to ensure permitting and inspection requirements for food service establishments adequately satisfy the consumer health protections required by the bill.

SIGNIFICANT ISSUES

Senate Bill 405 proposes to establish a meat inspection program at the New Mexico Department

of Agriculture. However, in the 2021 legislative session, the New Mexico Livestock Board received a \$500 thousand appropriation for this same purpose. In FY23, the NMLB's Meat and Poultry Inspection program hired a director and began working with the U.S. Department of Agriculture's (USDA) Food Safety Inspection Service (FSIS), the State Personnel Office, the Environment Department, and agricultural producers throughout New Mexico. In addition, the Livestock Board is well on its way to obtaining FSIS certification for its inspection program, which will eventually obtain primacy for meat and poultry inspections and replace the USDA inspection program in the state.

Analysis from multiple state agencies expresses concerns about the potential adverse outcomes for health and safety resulting from the exemptions created in SB405. NMDA believes the bill would expose citizens to food safety risks and allow potentially hazardous foods (including dairy products) to be sold in an unregulated fashion. NMED also reports the potential for significant negative health impacts from the provisions of this bill, stating:

The Center for Disease Control (CDC) estimates that 48 million foodborne illnesses occur in the U.S. every year, up to 60% from home prepared foods. New Mexico has an established Food Program within NMED to regulate, educate, permit, and inspect entities preparing and serving food to the general public (referred to as the "informed end consumer" in SB405). The purpose of the Food Program, Food Act, Food Service Sanitation Act, and Food Service and Food Processing Regulations is to protect public health by regulating food that is served to the general public to assure that consumers do not suffer adverse health effects from consuming the food.

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, follow sanitation standards, allow annual NMED inspection, to pay permit fees, and be subject to compliance and enforcement actions and requires all food employees to possess a valid Food Handler Card. 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.

SB405 allows homemade non-potentially hazardous food to be sold at commercial food establishments, such as grocery stores. The Federal Food, Drug, and Cosmetic Act (FD&C), Federal Code of Federal Regulations (CFR), and 7.6.2 NMAC prohibit food products to be manufactured in a private home and distributed to other business entities. NMED is required to meet federal requirements of the FD&C and CFR to remain in compliance with the MFRPS and receive federal funding.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met because TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the exemption and other information to determine whether the exemption is meeting its purpose. Exempt gross receipts are not required to be reported to TRD. NMDA or the Livestock Board may be able to provide this information on an annual basis, but TRD would not have the direct data. Analysis from TRD states:

SB405 would significantly reduce the NMED Food Program's authority and jurisdiction to protect public health by the regulation, permitting, and inspection of certain homemade

goods prepared for the general public. The bill would also significantly reduce federal funding that enables NMED to fund its manufactured food program.

SB405 requires NMED to respond to complaints of foodborne illness and determine if the homemade food presents a substantial danger of illness or death to consumers. In order to respond to complaints and conduct investigations, NMED would require two additional FTEs to ensure permitting and inspection requirements of food and food service establishments are met. Without additional FTEs, consumer health will not be adequately protected.

ADMINISTRATIVE IMPLICATIONS

If Senate Bill 405 is enacted, TRD will be required to update its forms, instructions, and regulations and update the publication “FYI-201 Gross Receipts Tax and Certain Foods.”

NMDA, to which SB405 assigns responsibility for the meat inspection program, would be required to recreate the work of the Livestock Board’s nascent Meat and Poultry Inspection Program and restart the process of obtaining statutory authority and USDA FSIS authorization. NMDA estimates it would need at least 14 new positions (FTE) and at least three years to comply with the stringent criteria of the USDA FSIS program.

NMED also notes the passage of SB405 would require the department to revise 7.6.2 NMAC to resolve conflicts with the Food Accessibility Act. Amending any portion of the New Mexico Administrative Code requires extensive public notice, public meetings, and testimony before the Environmental Improvement Board for approval of regulation changes.

Finally, the Legislature has appropriated \$1.5 million to the New Mexico Livestock Board since FY22 for the agency to obtain USDA FSIS authorization to conduct meat and poultry inspections within New Mexico. The value of a state-run program has been well established in discussions with legislators and agricultural producers. However, by reassigning responsibility for this program to the New Mexico Department of Agriculture, Senate Bill 405 would restart the clock and erase two consecutive years of work by the NMLB to establish the same program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB405 directly conflicts with House Bill 205, which assigns responsibility for the development of a Meat and Poultry Inspection Program to the New Mexico Livestock Board.

TECHNICAL ISSUES

Analysis from the Environment Department states:

SB405 requires “sellers” to display a sign (size no less than 20” X 20”) at the point of sale notifying the “informed end consumer” that the homemade food was produced in a private kitchen. This requirement only addresses the size of the sign, but more importantly does not address the minimum font size of the lettering to be used.

The creation and use of the defined term “commercial food establishment” may cause confusion with the defined term “food service establishment” in the Food Service

Sanitation Act and 7.6.2 NMAC and may lead to use of homemade foods by NMED and local permitted food and food service establishments.

The analysis provided by the New Mexico Livestock Board includes the following:

SB405 presents the possibility of multiple conflicts:

- 77 Article 9 NMSA 1978 regarding proof of livestock ownership.
- 77-2-7 Section I NMSA 1978 which authorizes the NMLB to adopt and promulgate rules for a state meat inspection program.
- HB 205, which, if passed, will provide the NMLB with the required statutory authority for an In-State MPI Program.
- 25-8 NMSA 1978 – Raw Milk and 25-12 NMSA 1978 – Homemade Foods, and the
- Federal Health and Human Services Pasteurized Milk Ordinance (PMO).

SS/LG/al/hg