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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/22/18  
**LAST UPDATED** 2/10/18

**SPONSOR** Kernan **HB** 51/aSPAC/aSFC/  
**SHORT TITLE** Pet Food Fee for Animal Programs **SB** aSFI#1/aSFI#2

**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	\$312.4	\$781.0	Recurring	Statewide Spay and Neuter Subaccount
	\$13.7	\$34.3	Recurring	Department of Agriculture
	\$16.5	\$41.1	Recurring	Board of Veterinary Medicine Operating Funds

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		(\$13.7)	(\$34.3)	(\$48.0)	Recurring	New Mexico State University Operating Funds
		(\$16.5)	(\$41.1)	(\$57.6)	Recurring	Board of Veterinary Medicine Operating Funds
		(Indeterminate)	(Indeterminate)	(Indeterminate)	Recurring	Local Government Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 64 as amended

## **SOURCES OF INFORMATION**

LFC Files

### Responses Received From

Board of Veterinary Medicine (BVM)  
New Mexico Attorney General (NMAG)  
New Mexico Department of Agriculture (NMDA)  
Department of Health (DOH)  
Human Services Department (HSD)  
Regulation & Licensing Department (RLD)

### No Response Received

Association of Counties (ASC)  
New Mexico Municipal League (NMML)

## **SUMMARY**

### Synopsis of SFI#2 Amendment

The Senate Floor Amendment #2 changes the delayed repeal date of the bill from July 1, 2028 to July 1, 2024.

### Synopsis of SFI#1 Amendments

The Senate Floor Amendments #1 strike SPAC amendments described below in paragraphs 1), 3) and 4), and strike all of the SFC amendments. They also:

1. Remove language that set a 60 percent cap on low-income assistance for spay and neutering services provided in class A counties;
2. Set a cap of 5 percent of funds in the spay and neuter subaccount for reasonable costs incurred by BVM in administering the Animal Sheltering Act;
3. Require NMDA provide for inclusion in BVM's annual report to the legislature the number of pet food product labels by registrant for current and previous year registered pursuant to the Commercial Feed Act;
4. Clarify the new spay and neuter program fee under the Commercial Feed Act is to be charged annually and provide for its phased-in implementation: \$50 beginning January 1, 2019; \$75 beginning January 1, 2020, and \$100 beginning January 1, 2021 and thereafter; and
5. Direct distribution of 96 percent of the fees collected to the spay and neuter subaccount and 4 percent to BVM for NMAG to administer the Commercial Feed Act.

The numbers in the revenue and budget impact tables above have been revised to reflect these amendments. Revenue to the spay and neuter subaccount reflects the balance in the subaccount after payment of administrative fees for NMDA and to BVM.

Synopsis of SFC Amendments

The Senate Finance Committee Amendments to Senate Bill 51 as amended: 1) clarify that the administrative fee that BVM may charge is up to 7.9 percent of total fees distributed to the spay and neuter subaccount (and not total fees collected); and 2) provide a graduated roll-out of the new spay and neuter program fee, beginning with a \$50 fee on July 1, 2018, which increases to \$75 on July 1, 2019, and increases again to \$100 on and after July 1, 2020.

The numbers in the revenue and budget impact tables above have been revised to reflect these amendments. Revenue to the spay and neuter subaccount reflects the deduction of administrative fees to NMSU (for NMDA) and BVM.

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 51: 1) clarify that the \$100 fee imposed in SB 51 is an annual fee; 2) increase the exemption from that fee for small manufacturers of pet food with annual gross revenues from no more than \$500 thousand to no more than \$3 million; 3) increase the cap on the administrative fee that BVM may charge the spay and neuter subaccount from seven and one half percent to seven and nine-tenths percent; and 4) clarify that a distribution to NMSU of five percent of the total fees collected is for administrative costs of NMDA.

The numbers in the revenue and budget impact tables above have been revised to reflect these amendments. Revenue to the spay and neuter subaccount reflects the deduction of administrative fees to NMSU (for NMDA) and BVM.

NMDA questions whether the small manufacturer exemption applies to \$3 million in annual gross revenue from total company sales or sales in New Mexico.

Synopsis of Original Bill

Senate Bill 51 creates a new \$100 spay and neuter program fee in the Commercial Feed Act to be charged and collected by NMDA on each brand name of commercial feed that is distributed in New Mexico for consumption by a pet. This fee will be collected at the same time as the two dollar registration fee imposed under existing law. Prescription pet food prescribed by a veterinarian and pet food manufactured by a person whose tax-year gross revenue from distribution of that feed is no more than \$500 thousand are exempt from this fee.

Monies collected upon imposition of this fee is credited to the spay and neuter subaccount of the animal care and facility fund, to be used to carry out the governing board's dog and cat sterilization program and to cover that board's reasonable costs in administering that program.

These monies may also be used to cover the reasonable costs of administering all of the governing board's activities under the Animal Sheltering Act, subject to a cap of 7.5 percent. SB 51 limits assistance provided by the board for the sterilization program to those individuals and groups who service recipients to members of households whose incomes do not exceed 200 percent of the current federal poverty level guidelines. The criteria for the assistance program ensure that no more than 60 percent of the services funded go to programs in class A counties

(Bernalillo, Santa Fe, Dona Ana, San Juan and Sandoval).

Additionally, the board's annual report to the legislature must include the total number of sterilizations of dogs and cats and the average cost per surgery paid from the subaccount for such procedures.

The effective date of this bill is July 1, 2018, and contains a delayed repeal date of July 1, 2028 on the collection of this new \$100 fee.

### **FISCAL IMPLICATIONS**

NMDA reports that in 2017 approximately 13,700 pet food and pet treat labels (out of 20,906 total commercial feed labels) were registered with its office, as required by the Commercial Feed Act. Based on that number, it predicts \$1,370.0 thousand total in annual revenues for the animal care and facility fund, the number appearing for this fund in the revenue and operating budget tables above has been reduced to reflect the imposition of administrative fees authorized by this bill and existing law.

NMDA notes the bill does not address its administrative costs associated with the new fee, but since NMDA's FY 16 ending balance was \$1.6 million in its operational program, LFC staff believes any start-up or recurring costs associated with collecting this fee likely could be absorbed by its budget. Additionally, NMSU's 5 percent administrative fee would apply, and is shown in the revenue and budget impact tables above.

BVM, which will assume responsibility for duties under the Animal Sheltering Act on the effective date of this bill (previously the responsibility of the Animal Sheltering Board (ASB)), reports no fiscal impact on its operational costs. Additionally, as indicated in the revenue and the budget impact tables above, BVM is authorized to collect an administrative fee (capped at 7.5 percent of the estimated fee located based on NMDA's data) for performance of its duties under the Animal Sheltering Act.

Although a reduction to the care and euthanasia costs of local animal shelters as a result of more widespread spay and neuter services may be anticipated over time, absent an analysis from local governments, LFC staff is unable to accurately estimate the amount of any such reduction, which is shown as indeterminate in the budget impact table above.

### **SIGNIFICANT ISSUES**

A 2012 ASB feasibility study (conducted pursuant to SM 36, 2011 Regular Session) on a statewide spay and neuter program found ASB lacked adequate funding and staff to address animal shelter overpopulation issues in New Mexico. The study reported that in 2011, animal shelters and other euthanasia agencies took in 118,000 cats and dogs, and 55,000 of them were euthanized, primarily because there were too many dogs and cats and not enough homes. This issue cost the state \$27 million annually (the total budget for shelters and euthanasia agencies). Existing law authorizes a pet care special registration license plate, as well as an income tax refund check-off, for ASB's spay and neuter program, but neither has provided sufficient monies to adequately fund that program.

The fee imposed in this bill, which is added onto the existing \$2 registration fee on pet foods under the commercial feed registration and inspection program run by the NMDA, was the one potential funding mechanism that stood out above the others, according to the 2012 study. It also concluded this type of fee: a) is equitable because pet owners, not the general public, would pay it; b) provides a steady and reliable revenue stream, and c) generates revenue for a spay/neuter assistance program for low-income households.

NMAG advises there appear to be no constitutional or major legal issues related to the bill.

### CONFLICT

HB 64 conflicts with this bill in two respects: HCPAC amended HB 64 to limit BVM’s administrative fee to reasonable costs and to clarify that the 7.9 percent cap applies to fees distributed to the spay and neuter subaccount (rather than the total fees collected).

### TECHNICAL ISSUES

NMDA notes that the existing Animal Sheltering Act contains a delayed repeal date of July 1, 2024, and the BVM is scheduled to sunset on July 1, 2023, with continuing operations through June 30, 2024. It suggests that, since registration under the Commercial Feed Act expires at the end of each calendar year, Section 6’s delayed repeal date for pet food fee authorized by this bill should be December 31, 2023.

### OTHER SUBSTANTIVE ISSUES

Other states, including Maine and Maryland, have enacted legislation imposing special fees or surcharges on pet food to help fund spay and neuter programs.

SB 51 sets the income limit to receive assistance for dog and cat sterilization program at 200 percent of the U. S. Department of Health and Human Services’ current federal poverty level guidelines. The following chart reflects that income level (which is approximately 75 percent of New Mexico’s median income for a family of four):

2017 Federal Poverty Line	
Family Size	200 Percent
1	\$ 23,760.00
2	\$ 32,040.00
3	\$ 40,320.00
4	\$ 48,600.00
5	\$ 56,880.00
6	\$ 65,160.00
7	\$ 73,460.00
8	\$ 81,780.00

Source: US HHS

LFC staff believes the impact on pet owners likely will be negligible, given the minimal nature (\$100) of the annual fee to be imposed.

Additionally, the duties of the Animal Sheltering Board, which currently administers the provisions of the Animal Sheltering Act including the spay and neuter program which is provided a new funding source by this bill, will be assumed by the Veterinary Medicine Board (and its new Animal Sheltering Committee) effective July 1, 2018. See Sections 77-1B-2(C) and 77-1B-12, NMSA 1978.

MD/jle/al/jle