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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/10

SPONSOR Giannini LAST UPDATED \_\_\_\_\_ HB 22

SHORT TITLE Ban Children's Products with Bisphenol A SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$5.0 - \$10.0	\$5.0 - \$10.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$25.0 - \$100.0	\$25.0 - \$100.0	\$50.0 - \$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

Office of the Attorney General (AGO)

Department of Health (DOH)

Health Policy Commission (HPC)

Children, Youth & Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

House Bill 22 would prohibit the use of Bisphenol A (BPA) in the manufacture, sale and distribution of new reusable food or beverages containers intended for use by children five years of age or younger.

The bill provides for penalties and further requires persons use the least toxic alternative when replacing BPA in a new reusable food or beverage container designed for a child's use.

The new provisions would be in effect after December 31, 2011.

## **FISCAL IMPLICATIONS**

Violators would be guilty of a misdemeanor and fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

NMED reports that it would need additional funding to hire FTE's and train staff to do inspections to identify banned products.

The AGO reports that it would also incur costs to enforce the new program; presumably for criminal prosecutions, and for seeking injunctive relief against persons violating its provisions.

## **SIGNIFICANT ISSUES**

There is increasing scientific concern about the health effects of reusable plastic containers that contain BPA that are heated and regularly washed and leach BPA into the liquids consumed from the containers.

## **PERFORMANCE IMPLICATIONS**

The NMED and AGO both note that the prohibition on importing foods that are banned in New Mexico and legally manufactured in another state may raise United States Constitution Commerce Clause issues.

## **ADMINISTRATIVE IMPLICATIONS**

Regulations would be promulgated by the NMED. The department would then conduct inspections and identify violations which would be forwarded to the AG's office for enforcement.

## **OTHER SUBSTANTIVE ISSUES**

DOH noted that on January 15, 2010, the United States Food and Drug Administration (FDA) announced that recent research studies provide reason for "some concern" about BPA's potential effects on fetuses, infants and children. In cooperation with the National Toxicology Program, FDA's National Center for Toxicological Research is carrying out in-depth studies to answer key questions and clarify uncertainties about the risks of BPA.

In the meantime, the following steps will be taken by the FDA to reduce exposure to BPA in the food supply:

- supporting the industry's actions to stop producing BPA-containing baby bottles and infant feeding cups for the U.S. market;
- facilitating the development of alternatives to BPA for the linings of infant formula cans; and
- supporting efforts to replace BPA or minimize BPA levels in other food can linings.

Some companies are already voluntarily removing BPA from baby bottles.

**ALTERNATIVES**

DOH notes that the State could issue a public service announcement to inform people about ways to reduce exposure to BPA.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The manufacture, sale, or distribution of food or beverage containers intended for use by children five and under and containing BPA would not be prohibited in New Mexico.

AHO/mt/mew