

LFC Requester:	Jonas Armstrong
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date February, 2015
Bill No: HB 461

Sponsor: Rep. Larry A. Larrañaga
Short Food Service Sanitation
Title: Exemptions

Agency Code: Attorney General's Office - 305
Person Writing Tannis L. Fox, AAG
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

HB 461 proposes to exempt certain organizations from the Food Service Sanitation Act, NMSA 1978, §§ 25-1-1 to -15, if they serve food six times or less during a calendar year. The organizations are “charitable organizations,” “chartered branches, lodges or chapters of a national or state organization,” “educational organizations,” “environmental organizations,” “fraternal organizations,” “religious organizations” and “veterans’ organizations.” Each of these organizations is defined in HB 461.

The Food Service Sanitation Act requires food establishments “to prepare and serve food in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness” Regulations promulgated thereunder cover: (1) disease control; (2) employee hygiene and sanitation; (3) food service establishment premises sanitation; (4) all aspects of food service establishment construction relating to food service sanitation, including requirements for food service establishment construction plans and specifications review and approval by the division; (5) control of pests and infestation by pests; (6) lavatory and toilet facility placement and sanitation; (7) lavatory hygiene; (8) food equipment and utensil design and construction; (9) food equipment and utensil storage and handling; (10) liquid and solid waste disposal; (11) food and drink preparation, handling, display and storage; (12) food service establishment ventilation; (13) water supply; (14) itinerant food service establishment construction and operation; and (15) any other facet of food service operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public.” NMSA 1978, § 25-1-4(A).

FISCAL IMPLICATIONS N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

1. HB 461 allows unincorporated organizations (“chartered branches, lodges or chapters of a national or state organization,” “educational organizations,” “environmental organizations,” “fraternal organizations,” “religious organizations,” “veterans' organizations”) to be exempt from the food safety provisions of the Food Service Sanitation Act and regulations promulgated thereunder. If a person were to become sick, ill or somehow injured as a result of consuming food or otherwise being on the premises of such an establishment, it could be difficult or impossible to assign liability or responsibility to the organization for the sickness, illness or injury if the organization is not incorporated (as a 501(c)(3) nonprofit, for example).

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None identified.

TECHNICAL ISSUES None identified.

OTHER SUBSTANTIVE ISSUES

1. a. Section 1.B(1) of HB 461 defines “charitable organization” as:

“an organization, not for pecuniary profit, that is operated for the relief of poverty, distress or other condition of public concern in New Mexico and that has been granted an exemption from federal income tax as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;”

The language underlined is ambiguous. The proposed language limits the nonprofit organizations that are eligible for the exemption, but the terms “distress” and “other condition of public concern” are broad and vague, and would be difficult to enforce.

The Charitable Solicitations Act defines “charitable organization” as:

“any entity that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or identifies itself to the public as having a charitable purpose;”

NMSA 1978, § 57-22-3(A). “Charitable purpose” is defined as:

“a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic or other eleemosynary objective or an activity conducted in support of or in the name of law enforcement officers, firefighters or other persons who protect public safety;”

Id. § 57-22-3(B). Using the “charitable organization” definition in the Charitable Solicitations Act would be more clear.

b. Such a definition would likely cover the term “environmental organizations” in HN 461.

ALTERNATIVES None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL The organizations identified in HB 461 will continue to be covered by the food safety provisions of the Food Service Sanitation Act and regulations.

AMENDMENTS See Significant Issues and Other Substantive Issues Section.