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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/09

SPONSOR HBIC LAST UPDATED _____ HB 195/HBICS

SHORT TITLE Ozone Emission Regulation SB _____

ANALYST Aubel

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*	\$0.1*	Recurring	Title V Air Quality Fund General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 New Mexico Environment Department (NMED)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee Substitute for House Bill 195 amends the Air Quality Act to add a new section that expands the jurisdiction of the Environmental Improvement Board (EIB) or local board to adopt air quality control standards more stringent than federal standards for sources of emissions of ozone in regions of the state where the ozone concentrations exceed ninety-five percent of the national ambient air quality. The bill provides for attainment and maintenance of the standard in those areas. The committee substitute for HB 195 requires that the EIB or local board take into consideration the following when adopting regulations for the control of emissions that cause the formation of ozone:

1. The public interest;
2. Previous experience with equipment and methods available to control air contaminants involved;
3. Energy, environmental and economic impacts and other social costs;

4. Efforts by sources of emission to reduce emissions prior to the effective date of regulations adopted under this bill; and
5. For existing sources of emissions, the remaining useful life of any existing source to which the regulation would apply.

The bill specifies that the standards adopted “shall reflect the degree of emission limitation achievable through the application of control technology that is reasonably available considering technological and economic feasibility.”

The bill exempts sources from the emission reduction requirements that between March 25, 2004 and January 1, 2009:

1. Implemented and are operating reasonable control measures that result in quantifiable reductions for emission of oxides of nitrogen or volatile organic compounds; and
2. Are mandated by other requirements enforceable by NMED or the local authority to implement reductions in emissions.

This latter provision prevents the “layering” of regulations for the same objective.

FISCAL IMPLICATIONS

EMNRD notes that HB 195/HBICS may increase operating costs for the administering agencies, NMED and local boards, depending on what type and what frequency of testing is required to determine ozone levels, how much time is spent adopting plans to address nonattainment or prevent nonattainment, and then ascertaining whether abatement has been achieved and the standard met. Because NMED already performs testing for air quality in the state, additional costs for testing would most likely be minimal for that agency, but staff time for EIB meetings would most likely increase. NMED maintains costs savings would accrue to the department because permitting conditions would be more consistent among similar sources of the emissions in areas of nonattainment. Thus, the fiscal impact to implementing HB 195/HBICS most likely would be minimal or cost neutral.

SIGNIFICANT ISSUES

In response to the original bill, HB 195, the agencies stated as follows:

According to DOH, ozone is associated with several health problems, including “airway irritation, coughing, wheezing, breathing difficulties, inflammation of the airways, aggravation of asthma, decreased lung capacity, scarred lung tissue, and a higher chance of getting respiratory illnesses like pneumonia and bronchitis. The agency maintains that many of these effects occur at levels near the current ozone standard. NMED points out that ozone also damages plants and crops, which would be a negative impact to New Mexico’s agriculture industry. Tourism could also be negatively affected by smoggy vistas.

In March of 2008, the Environmental Protection agency (EPA) reduced the 8 hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone standard from .08 to .075. When an area goes into ‘non-attainment’ the EPA requires certain measures for that area, depending on the severity of the violation, and will implement a Federal Implementation Plan (FIP) for the area without consultation with the state.

According to NMED, several regions of New Mexico have ozone levels approaching or exceeding the health-based federal ambient air quality standard for ozone, including San Juan/northwestern Rio Arriba County, Bernalillo County, southern Sandoval County, and southern Dona Ana County. The department provides additional background information:

“Areas that exceed the federal ambient air quality standard for ozone are subject to federal requirements for “nonattainment areas” where public health is negatively impacted, including:

- a stringent air quality permitting process for new facilities and existing facilities that modify their operations, including the use of the lowest achievable emission rate control technology, regardless of the cost of that equipment and evaluation of impacts to national parks and wilderness areas;
- a requirement to offset any additional air pollution with reductions in air pollution greater than increases, which can be difficult to obtain in a region where many industrial sources are attempting to expand or construct;
- requirements to implement state regulations to reduce air pollution from existing industrial facilities in the area so that the federal standard is met; and
- extensive requirements for transportation plan analysis to ensure state and local highway and road projects do not adversely affect ozone levels.”

NMED maintains that those requirements can negatively impact economic development and tourism in the state. According to the department, if state fails to improve air quality, the federal government can impose sanctions, including the U.S. Environmental Protection Agency (EPA) imposing a plan to ensure improvement of air quality in the area and the loss of federal highway funds to the state.

Furthermore, NMED states that federal standards may not reflect “many of the cost effective (and often cost saving), up-to-date, technically-feasible, commercially-available air pollution control technologies that have become available in recent years. Some federal requirements have been established for some industrial equipment, but there remains equipment that is not covered by federal standards.” NMED concludes that federal standards do not ensure that air quality will remain below the federal, health-based ozone standards, particularly in areas where there is a significant quantity of industrial facilities.

All responding agencies agreed that HB 195/HBICS would be a proactive step to ensure the state can address areas where attainment of the national ambient air quality standard for ozone is threatened, while also allowing for continued economic development. In areas of the state where the ozone standard has been violated, HB 195/HBICS will allow the state to fulfill federal requirements as well as minimize the period of time that an area is in nonattainment.

NMED claims that HB 195/HBICS will provide protection for New Mexico's citizens and environment from undue exposure to ozone pollution that the federal requirements do not provide.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The purpose of the bill to allow the state to develop a non-attainment plan and the EIB to constructively adopt rules to reduce ground level ozone in areas that the ozone concentrations exceed 95 percent of the national ambient air quality standards. According to NMED, it is likely

that ozone reduction would be less, leading to continued or increased issues relating to public health, economic development, tourism and agriculture. In addition, the agency determines that federal sanctions may lead to loss of highway funds and an imposition of an abatement plan without state input.

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