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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-2-09

SPONSOR Leavell LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Underground Gas Storage Tank Compliance SB 16

ANALYST Aubel

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimal See Below	Minimal See Below	Minimal See Below	Recurring Non-Rec	Department of Transportation (Various)

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of Bill

Senate Bill 16 amends sections of the Hazardous Waste Act and the Ground Water Protection Act to conform to the federal Energy Policy Act of 2005. SB 16 proposes to:

- Amend the definitions of “above ground storage tank” and “underground storage tank” in the Hazardous Waste Act and the Ground Water Protection Act by:
  - eliminating the exemption from regulation for petroleum storage tanks associated with emergency generator systems;
  - limiting the exemption for farm, ranch, and residential tanks to those tanks that store motor fuel only; and
  - expanding the exemption for heating oil tanks to all tanks used to store heating oil for consumptive use on the premises where stored;
- Clarify the definition of a tank “owner” in Section 74-6B-3(F) so that it mirrors the federal definition in 40 CFR 280.12; and
- Grant authority to the environmental improvement board (EIB) in Section 74-4-4 to promulgate rules establishing a program to prohibit delivery, deposit, acceptance, or

sale of petroleum products.

## FISCAL IMPLICATIONS

According to NMED, failure to comply with these federal requirements jeopardizes two federal grants totaling \$917.7 thousand during FY09. The Environment Department maintains it can implement this program using existing employee and budget resources.

DOT states the fiscal impact would be minimal to that agency, including replacing two underground storage tanks owned by the department with equal-capacity aboveground storage tanks, which would be non-recurring. The agency also points to minimal recurring expenses due to SB 16, including employee training and certification for underground storage tank operators.

## SIGNIFICANT ISSUES

According to NMED, the changes proposed in SB 16 are intended to help New Mexico maintain state authority over petroleum storage tank regulation by complying with the federal Energy Policy Act of 2005. The department provides background information, as follows:

### State “Primacy” or Authority

“In order to maintain state primacy, New Mexico’s statutes and rules must be equivalent to and no less stringent than applicable federal law (40 CFR 280.11(b)). In two instances, the Hazardous Waste Act and the Ground Water Protection Act are less stringent than federal law. First, while federal law regulates tanks associated with emergency generator systems, the Hazardous Waste Act and the Ground Water Protection Act (the Acts) exempt these tanks from regulation. (Sections 74-4-3 (A)(7), 74-4-3(U)(7), 74-6B-3(A)(7), 74-6B-3(M)(9) NMSA 1978). The Acts are, therefore, less stringent than federal law. The bill proposes to eliminate the exemption for tanks associated with emergency generator systems in order to conform to federal law.

Second, the Acts exempt from regulation all “farm, ranch or residential tank[s] used for storing motor fuel or heating oil for noncommercial purposes” (Section 74-4-3 (A)(1), 74-4-3(U)(1), 74-6B-3(A)(1), 74-6B-3(M)(1) NMSA 1978). By contrast, federal law exempts only those farm, ranch or residential tanks that store motor fuel for noncommercial purposes...For this reason, the bill proposes to delete “or heating oil” from the exemption for farm, ranch and residential tanks.

Additionally, New Mexico law requires its regulations to be equivalent to and no more stringent than applicable federal law (Section 74-4-4(C) NMSA 1978). By limiting the exemption for heating oil tanks to only those tanks that are farm, ranch or residential tanks, the Acts regulate certain tanks that are exempt from federal regulation and are, therefore, *more* stringent than federal law, which exempts all tanks that store heating oil when the heating oil is consumed where it is stored (40 CFR 280.12). To conform New Mexico statutes to this exemption, HB 16 creates an exemption for tanks “used for storing heating oil for consumptive use on the premises where stored.”

### Compliance with the federal Energy Policy Act of 2005

Section 1527 of the federal Energy Policy Act of 2005 requires states to establish a program that makes it unlawful to deliver, deposit, or accept petroleum products in a storage tank facility that

the state has determined to be ineligible for such delivery, deposit or acceptance. Federal law required this delivery prohibition program to be implemented by August 8, 2007. New Mexico has been unable to meet this deadline because the Environmental Improvement Board (EIB) does not currently have authority to promulgate rules to address these requirements. The changes proposed to Section 74-4-4 NMSA 1978 would grant EIB the authority necessary to comply with the delivery prohibition requirements of the federal act. Specifically, the bill proposes to allow the EIB to promulgate rules that establish the:

- criteria and procedures for determining when tank facilities are ineligible for delivery, deposit, acceptance or sale of petroleum products and when they shall be reclassified as eligible for delivery, deposit, acceptance or sale of petroleum products;
- mechanisms for identifying ineligible tanks; and
- circumstances in which the environment department may defer classifying a tank facility as ineligible.”

### **PERFORMANCE IMPLICATIONS**

NMED states that the agency’s performance will not be impacted by implementing SB 16.

### **ADMINISTRATIVE IMPLICATIONS**

As EMNRD points out, the Environmental Improvement Board will have to adopt rules that establish criteria and procedures for storage tank facility classification and NMED will be responsible for enforcing the rules and determining storage tank facility eligibility. NMED further clarifies that SB 16 would require “the petroleum storage tank bureau (PSTB) to work with the regulated community and the public to develop delivery prohibition rules. Once adopted, these rules would require the PSTB to tag facilities that become ineligible for delivery, deposit, acceptance or sale of petroleum products, and to remove tags when facilities become eligible for the same. The PSTB anticipates that the administrative burden of identifying, tagging, and requalifying facilities will be minor because a facility will become ineligible only for substantial violations of technical and safety requirements, not minor violations or paperwork problems.”

### **TECHNICAL ISSUES**

DOT maintains that an amendment that would not alter the substance or intent of the bill is needed to further clarify a distinction between an “owner of a property” and an “owner of a tank,” as follows:

“The absence of such clarification is problematic for the DOT because the DOT sometimes unknowingly inherits underground storage tanks when acquiring right of way or persons encroach upon DOT right of way by installing tanks without DOT’s knowledge or permission. An amendment to SB 16 would reduce the risk to the DOT of responsibility for fuel releases when tanks that DOT does not own, control or operate, are discovered in DOT right of way.

Suggested language to insert is:

“...and operates...” on page 22, line 16, paragraph F(a), Section 3, and  
“...and operated...” on page 22, line 20, paragraph F(b), Section 3”

**OTHER SUBSTANTIVE ISSUES**

The Petroleum Marketing Association collaborated with the Environment Department on the proposed amendments.

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

NMED maintains that failure to enact this bill may jeopardize New Mexico's authority to regulate petroleum storage tanks as well as the federal funding that New Mexico receives to do so.

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