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FISCAL IMPACT REPORT

SPONSOR Keller & Kane ORIGINAL DATE 01/23/14
LAST UPDATED _____ HB _____
SHORT TITLE Health Impact Assessment Program SB 48
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$500.0	\$500.0	\$1,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)

Department of Health (DOH)

Department of Environment (NMED)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 48 (SB 48) establishes the Health Impact Assessment Program in the Department of Environment.

Section 1 cites the name as the "Health Impact Assessment Act".

Section 2 defines the terms used in the act

Section 3 requires NMED to create a health impact assessment program to promote healthy communities, eliminate health disparities among communities and protect the human environment. The program shall develop a health impact assessment and issue certificates of health impact for use statewide. The secretary is instructed to develop and promulgate rules for the program that include the following:

1. procedures for requesting, applying for, reviewing, taking public comment on and appealing the department's ruling on issuance of a certificate of health impact;

2. acceptable health impact standards for purposes of issuing or denying a certificate of health impact;
3. the use of county health indexes in the health impact assessment procedure;
4. a procedure for enhanced public notification of and involvement in developing community health awareness and mitigation options; and
5. an application fee and procedure for conducting health impact assessments.

The rules must establish procedures that ensure the public, affected governmental agencies and any other person whose health may be affected by a project receives notice of each application for issuance, renewal or modification of a certificate. Public notice shall include for issuance or modification or of a certificate of health impact:

- (a) notice by mail to adjacent and nearby landowners; local, state and federal governments; land grant organizations; ditch associations; and Indian nations, tribes and pueblos;
- (b) posting notice at a place conspicuous to the public and near the discharge or proposed project site; and
- (c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed project; provided, however, that the advertisement shall not be displayed solely in the classified or legal advertisement sections. Renewals of a certificate require only (a) and (c).

At the public hearing all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing. The hearing shall be recorded. Certificates of Health Impact (CHI) are issued for fixed terms not to exceed five years. Persons adversely affected by a project that has received a certificate of health impact may file a petition for review based on certain defined criteria.

Section 4 creates a five-member Health Impact Assessment Program Advisory Committee (HIAPAC) appointed by the secretary that will review applications and make recommendations based on the department rules for health impact statements. The secretary shall appoint five members to the committee who shall have specialized knowledge of health impact assessment and environmental impact analysis. Committee members will be non-salaried public officers and only receive compensation based on the Per Diem and Mileage Act.

Section 5 proposes that a construction or development project that requires and environmental assessment or impact statement is not to commence without a health impact certificate or impact waiver. A person who seeks to begin construction or development of a project that requires an environmental assessment or an environmental impact statement shall apply to the department for a certificate of health impact authorizing the project. Within ninety days of receiving an application the department must issue the health impact assessment relating to the area within a one-mile radius of the proposed project. This section does not apply to a project that is identified by the secretary as a project that is:

- (1) in response to an emergency declared by the governor;
- (2) a remediation project; or
- (3) for the treatment or disposal of wastewater or sewage sludge.

Section 6 outlines reasons for denial of an application that includes:(1) the project would not meet the health impact standards established pursuant to department rules; (2) the applicant has failed to supply the information required by department rules in making an application; or (3) the applicant has, within the ten years immediately preceding the date of submission of the application for certificate of health impact been guilty of a variety of defined bad behaviors related to the application process, certain crimes or has a history of poor environmental stewardship. In addition, a certificate may be terminated or modified for cause.

Section 7 amends Section 24-14A-3 NMSA with the addition of E that requires the Department of Environment to develop and publish a county health index for each county. The index shall take into consideration the following factors: (1) primary indicators of the vulnerability of the county to health effects from sources of air, water or soil contamination that include: (a) total age-adjusted mortality; (b) total age-adjusted emergency room visits; (c) the prevalence of elevated blood lead levels in children thirteen years of age or younger; (d) the number of hospital admissions related to asthma; (e) the prevalence of asthma in children who are fourteen years of age or younger; and (f) the infant mortality rate. Secondary indicators of the vulnerability of the county to health effects from sources of air, water or soil contamination that include: (a) the morbidity rate related to age-adjusted non-congenital cardiovascular disease and stroke; (b) the total number of age-adjusted heart attack hospitalizations; (c) the total number of age-adjusted stroke and stroke-related hospitalizations; and (d) the total number of bronchitis and bronchitis-related hospitalizations of children who are fourteen years of age or younger and of adults who are sixty-five years of age and older. Other health indicators in the county may include: (a) other health outcome indicators determined by the secretary to be relevant to a county's vulnerability to pollutants; and (b) environmental indicators, including air and water quality data."

FISCAL IMPLICATIONS

NMED notes that the costs to the agency could be substantial and compromise its ability to fulfill existing statutory duties unless adequate funding is provided. In Section 5, provides that, “a person shall not begin construction or development of a project that requires an environmental assessment or an environmental impact statement for effects on air, water and soil quality pursuant to another state or federal law unless the person receives a certificate of health impact or a waiver”. Section 4(A) requires the creation of a five-member committee to review applications and make recommendations to the Secretary. Section 4(D) requires that those committee members receive per diem and mileage pursuant to the Per Diem and Mileage Act. At the very least, NMED will need to create and implement an application and review process as well as administer the new program. However, part of this process is unclear in SB 48. Section 3(B) requires the Secretary to adopt and promulgate the review procedures. As a public body, recommendations by the HIAPAC will need to be decided pursuant to the Open Meetings Act. Large numbers of applications could result in large new and recurring expenses for NMED.

Additionally, SB 48, Section 5(C) requires that NMED issue health impact assessments outlining the effects of projects on the indicators listed in the Index for areas within a one mile radius around the project site. This will require in-depth analysis of the application project as well as the area surrounding the project in a timely manner. This would be a recurring cost as new staff will need to be hired to conduct these analyses. NMED does not have the resources available to perform such tasks without substantial additional funding.

With respect to the application, the cost of preparing the application falls on the applicant, but NMED would need to review those documents, as well as the committee recommendation, to decide whether to issue a CHI. Since SB 48 subjects such determinations to legal review via an appeal process, each review must be done with care and an eye toward legal challenge. The exact extent of this burden cannot be determined. Still, each review includes the opportunity for a public hearing. This could result in substantial additional expenditures by NMED in terms of the administrative costs of each hearing, the staff hours required to prepare for a public hearing, and the potential retention of expert witnesses.

Based on discussions with the Environment Department, the DFA Executive Budget Analyst estimates that the budget impact would be approximately \$500.0 in recurring General Fund to fully support a new Health Impact Assessment program. This estimate assumes the agency would need an additional 5.5 FTE. Of these FTE, two would serve as highly skilled experts, such as attorneys and individuals with advanced degrees in public health. The program would likely need three FTE to work as analysts. The \$500.0 estimate also includes anticipated expenses for contracts, such as for the maintenance and development of a health information database. Last, the \$500.0 figure includes funds for standard operating costs, such as per diem for the committee members, office supplies and other in-state travel expenses.

SIGNIFICANT ISSUES

DOH reports that health assessments are important tools. This type of study helps policy makers identify and address the likely health impacts of decisions not normally considered as direct health projects. A variety of data sources can be utilized as part of the assessment including environmental data (chemical concentrations in air or water) and health data (mortality, morbidity) and economics (cost of a project, income of a population in proposed project area). For example, if a proposed biomass facility was in a neighborhood near a school, respiratory hospitalization rates among youth may be required to establish if there are any pre-existing disparities.

There are many projects in which the Environment Department and the Department of Health collaborate, so the networking between staff members and the process of exchanging environmental and health data already occurs. The most notable example is the collaboration between the Air Quality Bureau in the Environment Department and the Environmental Health Epidemiology Bureau (EHEB) in the Department of Health during the yearly wildfire season.

NMED feels that the bill is duplicative of the health and environmental standards already in place to protect the health and safety of the environment and the public.

- The stated purpose of the Environmental Improvement Act is to, “...ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment.” NMSA 1978, § 74-1-2.
- The Air Quality Act allows denial of a construction and/or operating permit if the application does not meet the applicable standards, rules, or requirements pursuant to the Air Quality Control Act or the federal act, e.g. the protection and enhancement of New Mexico’s air resources so as to promote the public health and welfare. NMSA 1978, § 74-2-7(C) and 42 U.S.C. § 7401(b)(1).

- The purpose of the Hazardous Waste Act is to ensure the maintenance of the quality of the state's environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands. NMSA 1978, § 74-4-2.
- The Water Quality Standards utilized by NMED's Surface and Ground Water Quality Bureaus are designed to be protective of public health and/or welfare. NMSA 1978, § 74-6-4(D).
- NMED's Petroleum Storage Tank Bureau takes corrective action on leaking storage tanks in order to corrective action at contaminated sites to remove a threat to the public health and safety and the environment. NMSA 1978, § 74-6B-2.
- The purpose of the Solid Waste Act is to enhance the beauty and quality of the environment; conserve, recover and recycle resources; and protect the public health, safety and welfare. NMSA 1978, § 74-9-2(C).

SB 48 would add another step in the permitting process for these projects that is duplicative of the reviews already made by NMED's bureaus and subject to the opportunity for public hearing. Given the lengthy permitting process already in place, SB 48 has the potential to significantly lengthen the time required to approve a permit or fund a project without any additional benefits to the process.

OTHER SUBSTANTIVE ISSUES

In order to better estimate costs and revenues consideration may be given to defining exactly what projects will be required to obtain such a health certificate. This may eliminate confusion later, particularly with the public, as to whether it is appropriate to petition for a permit on a specific project.

MW/svb