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## FISCAL IMPACT REPORT

SPONSOR: Tinnin DATE TYPED: 02/23/01 HB 866  
 SHORT TITLE: Permits for Electric Generation Facilities SB \_\_\_\_\_  
 ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	No appropriation made		\$ 50.0	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 266, Senate Bill 452 and Senate Bill 672. Conflicts with the federal Air Quality Control Act

### SOURCES OF INFORMATION

LFC Files  
 Public Regulation Commission  
 Energy, Minerals and Natural Resources Department  
 New Mexico Environment Department

### SUMMARY

#### Synopsis of Bill

House Bill 866 adds a new section to the Air Quality Control Act that allows local governments to approve construction permits for electric generating facilities of 100 MW or less generating capacity. According to the bill, the validity of the permit would be sound unless the permitted facility does not meet all New Mexico Environment Department (NMED) or federal act emissions standards. If the facility falls below the standards, the NMED will have the authority to shut down the facility, until the operations are certified as meeting standards by the department. A facility that receives a permit under this bill is required to report to NMED within 30 days of receiving the locally approved construction permit.

#### Significant Issues

If enacted, House Bill 866 could significantly decrease the amount of time needed to obtain approval for construction of new electric generation facilities because local governments would not be subject to the federal and state laws regarding construction of facilities that would be a minor or major source

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of pollutants. The federal Clean Air Act states that “No major emitting facility . . . may be constructed in any area . . . unless a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations . . .” (Title I, Part C, Section 165). According to the Environment Department, a major source (emitting facility) is emissions of more than 250 tons per year, or if on a special category list, 100 tons per year. As such, the key provision in the bill is the qualifier “electric generating facilities of 100 megawatts or less generating capacity.”

For minor sources of pollution, the NMED is required obtain the U.S. Environmental Protection Agency’s (EPA) approval of NMED air quality rules as part of a state implementation plan. The plan is approved, in part, from an assurance that federal ambient air standards will be protected. Furthermore, the state requires that all sources comply with the state ambient air quality standards. The state currently requires an air quality permit being issued before construction begins. If enacted, the NMED would be required to resubmit its implementation plan to reflect changes made pursuant to House Bill 866 for EPA approval.

Though the state can allow local governments the authority to preempt state law, enactment of a bill that preempts federal law would likely be challenged in federal court.

### **FISCAL IMPLICATIONS**

House Bill 866 does not carry an appropriation. It would have an impact on the NMED, however, who would be required to revise its rules and resubmit its implementation plan to EPA. If enacted, legal challenges to the law would invariably be brought against the department. Consequently, additional contracts funding would be necessary for the department. LFC staff estimates that a minimum fiscal impact would be \$50.0.

House Bill 866 could impact federal revenues for the NMED. One condition of federal funding is the agreement to comply with federal laws.

### **POSSIBLE QUESTIONS**

1. On average based on conventional technology, what level of emissions would be emitted from a 100-megawatt electric generating facility?
  2. What amount of federal funds could be withheld by the federal government if this bill is enacted?
  3. What percentage of the Environment Department’s budget is from the federal government?
- JE/prr