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FISCAL IMPACT REPORT

SPONSOR: Lujan, A. DATE TYPED: 02/22/03 HB 781

SHORT TITLE: Amend Hazardous Waste Act SB _____

ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 514

SOURCES OF INFORMATION

Office of the Attorney General
Department of Environment

SUMMARY

Synopsis of Bill

House Bill 781 would amend the Hazardous Waste Act by requiring to the Environmental Improvement Board to adopt rules for the management of hazardous waste to be at least as stringent as federal regulations, pursuant to the federal Resource Conservation and Recovery Act.

Significant Issues

Currently, the Hazardous Waste Act does not authorize the Environmental Improvement Board to promulgate rules more stringent than the U.S. Environmental Protection Agency (EPA) regulations. This bill would allow the board to promulgate rules stronger than federal rules.

FISCAL IMPLICATIONS

House Bill 781 does not contain an appropriation.

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General states the following concern.

The Bill raises the question of whether the proposed state regulatory scheme is preempted by the federal act.

Pursuant to RCRA, a state program can operate "in lieu of" the RCRA if the EPA Administrator formally approves the state program for that purpose. *Boyes v. Shell Oil Products Co.*, 199 F.3d 1260, 1268 (11th Cir. 2000) citing 42 U.S.C. §6991c(d)(2). More importantly, the state program can replace the federal regulations with more stringent regulations. *Id.* at 1270 n. 20 citing 42 U.S.C. § 6991g. (emphasis supplied).

It is further noted that for a state program to be approved, the Administrator must determine, after "notice and opportunity for public comment," that the state program "provides for adequate enforcement." *Id.* at 1262-3 citing 42 U.S.C. §6991c(d)(1). The requirement has been codified at NMSA 1978, § 74-4-4 (D).

MFV/njw