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FISCAL IMPACT REPORT

SPONSOR: Lopez DATE TYPED: 2/11/03 HB _____

SHORT TITLE: Enforcement of Environmental Laws SB SJM 42

ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative	Recurring	General Fund

SOURCES OF INFORMATION

Responses Received From
Environment Department, Office of General Counsel

SUMMARY

Synopsis of Bill

Senate Joint Memorial 42 requests the Environment Department and the Environmental Improvement Board (EIB) work together to develop and implement policies on an array of issues, including:

- developing an environmental and public health assessment that includes an assessment of air and water impacts;
- conducting an analysis of environmental burdens faced by communities with permitted facilities compared to communities with higher incomes and fewer minority residents;
- proposing on-site and off-site measures to reduce environmental impacts and increase environmental benefits; and
- analyzing technological, site planning and operational alternatives to reduce impacts of environmental permittees.

The Environment Department and the EIB are required to present their findings by October 30, 2002. (See Technical Issues)

Significant Issues

The Environment Department reports the following:

- The most significant issue is that the Environment Department and EIB do not presently have the resources or technical expertise to accomplish all that SJM seeks. The department asserts that undertaking the studies outlined in SJM 42 would divert attention from its core functions.
- The Memorial states that the Department promulgates rules to implement its responsibilities for hazardous waste, solid waste, water quality and air pollution. This is not entirely accurate; the EIB promulgates rules for such matters. Further, it is the Water Quality Control Commission (WQCC) that promulgates rules concerning surface and ground water quality. The WQCC was not assigned responsibilities under SJM 42, but likely should be in order to achieve a more comprehensive assessment.
- SJM 42 requests assessment of environmental impacts from pollution sources. While such an analysis is worthwhile and important, it would not have a direct effect upon the Environment Department's permitting and compliance functions because those functions are already governed by, and in some measure restricted by, statute. The Air Quality Control Act and the Hazardous Waste Act require regulations to be promulgated that are as stringent, but no more stringent, than the federal rules. Therefore, the EIB's discretion in rulemaking to address environmental impacts beyond those contemplated in the federal rules is severely limited. The Legislature, however, may amend the Air Quality Control and Hazardous Waste Act to give the EIB authority to promulgate rules more stringent than the federal rules.

On this same note, the Environment Department and EIB do not recommend consideration of *less* stringent rules or the federal delegation of the air and hazardous waste programs to the state would be threatened.

- SJM 42 requires the Environment Department to undertake responsibilities that are already defined by existing statute or regulation. For example, the Memorial requires public notification of new emission sources and discharges to surface and ground water. The applicable statutes and regulations already require such notification. Another example, the Memorial requires the Environment Department and EIB create a citizen review committee to review and approve new air emission sources, ground water discharges, surface water discharges and waste facilities. The applicable statutes currently require the Environmental Department to issue such permits, pursuant to a public participation process.
- SJM 42, in a number of ways, has the effect of attempting to amend current statutes. *See Significant Issues and Other Substantive Issues sections.* If the legislature desires to change statute, this should be done through amending the statute, not through a Memorial, which does not have the same force of law as a statute.

- The EIB is a volunteer board, comprised of seven public members who do not necessarily have technical expertise. The EIB is administratively attached to the Environment Department, but does not have its own budget. The EIB does not have the resources or the technical expertise to carry out its responsibilities under this Memorial. Redirecting resources to such a project would compromise its ability to carry out its core functions: rulemaking and hearing appeals of air quality permits.

FISCAL IMPLICATIONS

SJM 42 contains no appropriation. It does, however, outline extensive work for the Environment Department and the EIB. The department has, through its analysis, expressed great concern about their capability of achieving the goals of SJM 42 with existing staff and budget resources.

TECHNICAL ISSUES

SJM 42 requires the Environment Department and the EIB to file their report by “October 30, 2002.” This should read “October 30, 2003”.

OTHER SUBSTANTIVE ISSUES

SJM 42 requires that solid waste facilities be located at least five miles beyond the border of any community. The Solid Waste Act currently has no such restriction and, under the Act, the Environment Department must issue permits that meet the statutory and regulatory requirements. If the legislature desires to impose such a requirement, it should be done through an amendment to existing law. The Environment Department does not believe it can be done through a Memorial.

Similarly, the Memorial requires notice of permit applications in 3 newspapers. The applicable statutes have different requirements. Such a change would need to be done through amendment to the existing law.

ALTERNATIVES

The Environment Department suggests the Legislature prioritize the issues raised in SJM 42 and select the priorities for the Environment to analyze bit by bit in a systematic method that will not overwhelm the Department or EIB’s resources.

SJM/prr/njw