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FISCAL IMPACT REPORT

SPONSOR Nunez DATE TYPED 2/26/05 HB 984

SHORT TITLE Environmental Improvement Board Open Fires SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB940

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

House Bill 984 would specify that the Air Quality Control Act does not authorize the Environmental Improvement Board (EIB) to:

1. make any regulation that prohibits open-fire burning by a person when the burning occurs one-half mile or more from all occupied dwellings not owned by the person; and
2. enforce any regulation relating to open-fire burning when the burning does not result in pollution that does not exceed federal standards or regulations.

Significant Issues

The New Mexico Department of Agriculture indicated that, without this bill, the EIB could add a layer of regulation and enforcement on legitimate private and business endeavors.

The Department of Environment (NMED) provided the following comments:

The kinds of open burning affected by HB 984 would primarily be residential burning of household waste, burning of weeds, yard waste, and fields, and prescribed burning of forests and rangeland. In recent years, NMED received more citizen complaints regarding open burning than for any other type of air pollution source. Complaints include serious incidents such as a family with young asthmatic children forced to evacuate their home overnight, and a person being hospitalized for severe respiratory problems caused by heavy smoke. The federal government does not promulgate performance standards for open burning of household waste because they view this pollution source as one that should be dealt with by state and local regulation. The effect of HB 984 would be to allow unrestricted backyard burning of household waste.

Open burning of the plastics and other synthetic materials in today's household trash produces large amounts of smoke containing pollutants like acid gases and fine particles that can cause asthma and other acute effects when inhaled. A number of pollutants such as dioxin and heavy metal are released and can harm the health of people far removed from the site of burning. These do not degrade easily and tend to spread widely through the environment and enter the food supply. They accumulate to higher concentrations up the food chain, in human bodies primarily through the food they eat, and can be passed to a developing fetus. Fetal exposure can cause abnormal development, learning problems, and fertility problems such as reduced sperm count in males and endometriosis in females. Dioxin is one of the most potent carcinogens known. Environmental Protection Agency measurements of trash barrel burning emissions show that burning the trash from one household in a burn barrel produces as much dioxin as a well-controlled municipal waste incinerator burning the trash from thousands of households. NMED estimates that, in New Mexico, almost 300,000 tons of trash per year are disposed of by backyard burning, making this a greater source of dioxin than all industrial sources combined.

HB984 creates inequities in the burdens of pollution control. New regulations on large-scale vegetation burning were recently adopted as part of New Mexico's plan to achieve federal standards for improving visibility in our national parks and wilderness areas. This regulation includes restrictions on when burning can be conducted, preventing burning when weather conditions would tend to trap smoke near the ground. HB 984 would remove such restrictions on prescribed fire, which would impair New Mexico's efforts to reduce haze and improve visibility. To meet visibility standards would require more stringent controls on other sources of air pollution (industrial sources and vehicles).

Since the limitations apply only to EIB's authority under Air Quality Control Act, the board's authority to make rules restricting open burning under other Acts (e.g., Hazardous Waste Act, Solid Waste Act, and Tire Recycling Act) would not be affected. Regulations promulgated under the authority of these other acts include prohibitions on open burning of tires, commercial and solid waste, municipal solid waste at solid waste facilities, and almost all kinds of hazardous waste.

PERFORMANCE IMPLICATIONS

One of NMED's performance measures is improvement of visibility at all monitored locations in New Mexico. Air pollutants from burning contribute significantly to reductions in visibility.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 940 is a duplicate of HB 984.

TECHNICAL ISSUES

On page 2, lines 8 and 9, there is a double negative that may have the opposite effect of the sponsor's intent. This language is not clear and is subject to multiple interpretations. The LFC analyst reads this language as allowing the EIB to enforce a regulation relating to open-fire burning when the resulting pollutants do not exceed federal standards and prohibiting EIB from enforcing a regulation when the resulting pollutants do exceed federal standards. It appears that the "does not" on line 9 should be removed and "exceed" changed to "exceeds" on that line. The preceding analysis on this bill is based on an interpretation that this is the bill's intent.

DH/yr