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FISCAL IMPACT REPORT

SPONSOR Wirth DATE TYPED 3/10/05 HB 1004/aHENRC
 SHORT TITLE Air Quality Control Act Requirements 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)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMDE)
 Department of Transportation (DOT)
 Department of Health (DOH)

SUMMARY

Synopsis of HENRC Amendment

The HENRC amendment to HB1004 would limit the scope of the original bill in two ways:

1. It would not allow the Environmental Improvement Board (EIB) to be more stringent than the federal standards for Hazardous Air Pollutants except mercury emissions.
2. It does not allow the EIB to be more stringent than the federal standards for visibility protection in mandatory class 1 areas.

The amendment does allow the EIB to be more stringent than federal performance standards with regard to mercury emissions from electric generating units.

Synopsis of Original Bill

The New Mexico Air Quality Control Act (Act) prohibits the EIB and the Albuquerque/ Bernalillo County Air Quality Control Board from adopting air quality regulations that are more stringent than federal regulations with respect to the Prevention of Significant Deterioration (PSD) permitting program, non-attainment areas, visibility protection, and performance standards. The original HB1004 removed this prohibition for the PSD program and performance standards.

Significant Issues

According to NMED, existing provisions of the Act authorize the board to adopt state regulations to implement federal performance standards in New Mexico. However, the Act prohibits the board from adopting regulations that are more stringent than these performance standards, except for regulations pertaining to solid waste incinerators. Recently, the EPA proposed performance standards for electric generating units (EGUs) that would not require implementation of control technologies to prevent mercury pollution, but would provide for a cap-and-trade program, whereby mercury emission "credits" would be bought and sold by EGUs, which could emit any amount of mercury as long as they purchased sufficient emission credits. Unlike performance standards based on control technology, the cap-and-trade program would not reduce mercury emissions as quickly or as much, and would allow some EGUs to emit much more mercury than others, producing "hot spots" of mercury pollution. Unless the legislature removes the prohibition on more stringent regulations, New Mexico will be compelled to implement the cap-and-trade program, putting the health of New Mexicans at risk from increased mercury pollution. The EPA is required by court order to adopt a performance standard for mercury emissions from EGUs by March 15, 2005.

NMED indicated New Mexico should have the authority to adopt performance standards for mercury emissions from EGUs to protect New Mexico's citizens and environment. EPA's proposed cap-and-trade program does not provide this protection, and we cannot expect the EPA to understand and consider the unique aspects of the state - including our ranking as one of the largest mercury emitters in the Western US and having some of the highest mercury fish concentrations in the nation- when developing performance standards for mercury emissions from EGUs. Twenty-four states in the nation are not precluded from adopting rules more stringent than EPA, and at least six of these states have already adopted their own rules governing the control of mercury emissions from EGUs.

The New Mexico Department of Health (DOH) indicated that agency receives numerous health complaints from citizens of the state related to air quality. The current law does not allow the state to respond to air quality issues that may be unique to our state or not a concern on a national level. By regulating the specific contaminants that may be of concern in New Mexico that are not of concern at a federal level, New Mexico would be able to reduce exposures and potential health effects.

FISCAL IMPLICATIONS

There would be no direct fiscal impact from enactment of HB1004. If the bill is not enacted, the EIB would be required to change its regulations by January 2006 to reflect new federal regulations. If the bill is enacted, NMED could save the cost of modifying its regulations in the next year.

ADMINISTRATIVE IMPLICATIONS

The bill allows, but does not require, the board to adopt new regulations. Current staffing levels in the department of the environment are sufficient for the development of any new regulations that might be required.

DH/yr:sb