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## FISCAL IMPACT REPORT

ORIGINAL DATE 3-06-07

SPONSOR HENRC LAST UPDATED \_\_\_\_\_ HB 858/HENRCS

SHORT TITLE Liquid Waste Fund Purpose & Distributions SB \_\_\_\_\_

ANALYST Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	(\$0.01)	Recurring	Liquid Waste Fund
	See narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act  
 Relates to SB 702, SB 920, SB 919, SB 921, HB 859, HB 1130

### SOURCES OF INFORMATION

LFC Files  
Responses Received From  
 Legislative Finance Committee (LFC)  
 New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

The House Energy and Natural Resources Committee Substitute for House Bill 858 sets limits on how the liquid waste fund could be utilized by the New Mexico Environment Department and requires an annual budget for the fund, as well as an annual audit by the Legislative Finance Committee (LFC). The bill would limit NMED expenditures in a fiscal year from the fund as follows:

- 25 percent for a liquid waste certification program conducted by the Surface Water Quality Bureau of the Water and Waste Management Division of NMED;
- no more than 13 percent for a public awareness education program;
- no more than 12 percent for central office administrative expenditures for oversight and management of liquid waste rules and technical assistance to district and field offices; and

- any remaining money may be expended for liquid waste district office and field office personnel.

## **FISCAL IMPLICATIONS**

Fees from liquid waste permits are deposited in the liquid waste fund, which is used to run the Liquid Waste Program. In FY06, expenditures were \$1.2 million and fee revenues were \$845.8 thousand. Therefore, the cost to operate the Liquid Waste Program throughout the state exceeded the liquid waste fee revenue collected. The unrestricted fund balance as of June 30, 2006 was \$15.5 thousand.

NMED proposes that the limitations on some expenditures, coupled with mandated annual expenditures for other activities, will disrupt the day-to-day work of the Liquid Waste Program throughout the state. As an example, NMED points to the proposed expenditure limit of 12 percent of the liquid waste fund for administrative oversight, management and technical assistance to district and field offices. NMED claims that the 12 percent limit would not be sufficient to cover the costs for these necessary activities. On the other hand, committing 25 percent to a certification program run by another bureau would divert funds that currently support the Liquid Waste Program's activities.

For the Liquid Waste Program to continue, any reduction in its current funding source would require replacement from the general fund.

## **SIGNIFICANT ISSUES**

Most of the expenditures in any fiscal year are for program administration functions of the liquid waste rules, including permitting, inspections and enforcement. Other administrative program functions include program planning, training and development (including development of a certification program), regulation review and amendment, public outreach and education, and free well testing. According to NMED, most of the fee revenues fund technical staff outside of Santa Fe. The personnel breakdown is as follows: 2 management, 1 liquid waste engineer, 6 liquid waste specialists and hours charged by 49 field inspectors.

Diversion of 25 percent of fee revenues from the liquid waste program would result in reduced funding, which may lead to a reduction in these liquid waste services. In addition, NMED would have to create a separate NMED program without specific liquid waste certification program expertise to be conducted by the Surface Water Quality Bureau.

Timely permit reviews and a high percentage of inspections are critical services that NMED provides to the taxpayers. Any reduction in the delivery of those services would be detrimental to New Mexico. Illegal or improper liquid waste systems can pose imminent public safety hazards related to entrapment, asphyxiation and drowning, and can create public health hazards related to surfacing sewage and pollution of both private and public drinking water supplies.

NMED's revenue and expenditure records for the liquid waste fund are already subject to review by LFC and DFA. An annual audit is performed and reviewed by the State Auditor. NMED notes that it welcomes any additional examination or audit that the Legislature deems appropriate.

## **PERFORMANCE IMPLICATIONS**

NMED maintains that HB 858 would have a detrimental impact on performance of the Liquid Waste Program if the funding is not provided. In that case, the timeliness of permit reviews and the number of inspections conducted would be decreased, and NMED's ability to prevent and eliminate public safety and health hazards from violations of liquid waste rules would be impaired. The Liquid Waste Program would not meet its performance measures because inspections for systems throughout the state would be curtailed.

## **ADMINISTRATIVE IMPLICATIONS**

HB 858 would create additional administrative work for NMED related to accounting for different activities funded by the liquid waste fund and concludes that the financial recording for tracking limitations on program activities would be substantial.

The LFC conducts performance audits, not financial audits. According to LFC, performance audits are most effectively and cost-efficiently conducted on a periodic basis, such as every five years. Requiring one every year would pose an administrative burden and most likely not produce significant information from the prior year's audit. The financial audit on the liquid waste fund is included in the agency's annual audit, which is reviewed by the State Auditor. Any additional financial audit would be redundant.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to the original HB 858 duplicate SB 921.

Relates to funds appropriated to NMED in the General Appropriations Act

Relates to SB 702, SB 920, SB 919, HB 859, HB 1130, all which are legislative efforts directed at reducing the impact of substandard, on-site liquid waste systems on groundwater.

## **TECHNICAL ISSUES**

The type of audit the bill requires the LFC to perform is not specified.

## **OTHER SUBSTANTIVE ISSUES**

The New Mexico Environmental Improvement Board (EIB) has mandated that NMED develop a liquid waste certification program by July 1, 2007. An Education Steering Committee with five industry representatives will make recommendations to NMED for certification program development, including appropriate training materials. This bill would mandate a structure and funding level for the certification program, which may not match needs and goals. For example, NMED relates that some members of the liquid waste industry have expressed concern that placing the certification program in the NMED Surface Water Quality Bureau, which certifies operators of public drinking water systems and wastewater plants, may be setting the bar too high for an industry that is mostly involved with the installation of conventional septic systems. The additional business costs to the industry resulting from certification requirements, beyond those already necessary to obtain a construction industry license, would most likely be passed on to owners of liquid waste systems.

It is also possible that the actual costs to develop and administer the certification program could be less than 25 percent of annual fee revenues, and that the actual costs may vary from year to year. Budgeting for program functions now occurs annually, with review and oversight by DFA and LFC based on existing program needs rather than on a preset percentage.

NMED anticipates developing the certification program by the July 1, 2007 deadline without an increase in funding or full time employees (FTE's). Existing FTEs will work with the Education Steering Committee to have educational curricula, primarily offered by third parties, reviewed and approved for the certification program. The NMED liquid waste database already contains a list of licensed installers and NMED intends to add certification attributes to this data table as a means of tracking certified individuals. NMED concludes that placing the certification program in the Surface Water Quality Bureau would result in unnecessary efforts by the NMED program and unduly expensive costs to the taxpayer.

NMED currently has a public awareness education program and does not anticipate any potential problem in keeping expenditures for this activity to 13 percent of fee revenues. Tracking such expenditures, however, will result in increased administrative time, effort and cost to NMED.

NMED points out that the potential decreases in program performance could result in tort liability claims against the state caused by injuries and illness and by damages to water quality and property rights.

#### **ALTERNATIVES**

One option would be to establish a periodic schedule of performance audits for all special funds managed by NMED. Two to three special funds could be reviewed on a rotating basis every year. No additional authority is required to include the funds for review.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMED will continue the liquid waste program as currently managed. Most likely no LFC audit will be performed, although such an audit can always be made part of a future work plan since this does not require additional legislative authority.

#### **POSSIBLE QUESTIONS**

1. What is the envisioned benefit of having the Surface Water Bureau responsible for the certification program?
2. What is the benefit of restricting the fund's use for specified activities?
3. What is the cost of achieving those benefits?
4. How would the mandates for the Liquid Waste Program be achieved without disruption?
5. Does placing these restrictions on fund expenditures in statute limit the appropriation authority of future legislatures?