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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-27-07  
 SPONSOR Trujillo LAST UPDATED 3-08-07 HB 859/aHAFC  
 SHORT TITLE Cesspool Elimination Assistance Act SB \_\_\_\_\_  
 ANALYST Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$4,000.0	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$4,000.0		Non-Rec	Cesspool Elimination Assistance Grant Program Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 702, SB 920 and HB 1130

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		.01*	.01*	*See narrative	Recurring	General Fund
				\$4,000.0	Non- Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

New Mexico Municipal League (NMML)

**SUMMARY**

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendment makes two changes:

1. The maximum household income threshold is reduced from 250 percent of the federal poverty level to 150 percent. As can be seen from the chart below, for a four-person household, this amendment would lower the maximum household income in order to qualify for the program from \$51.6 thousand to just under \$31 thousand.

The Federal poverty level rates are as follow for calendar year 2007:

2007 POVERTY LEVEL GUIDELINES  
ALL STATES (EXCEPT ALASKA AND HAWAII) AND DC  
Income Guidelines as Published in the Federal Register on January 24, 2007  
ANNUAL GUIDELINES

FAMILY SIZE	100% POVERTY*	133%	150%	170%	175%	185%	200%	250%
1	10,210	13,579	15,315	17,357	17,868	18,889	20,420	25,525
2	13,690	18,208	20,535	23,273	23,958	25,327	27,380	34,225
3	17,170	22,836	25,755	29,189	30,048	31,765	34,340	42,925
4	20,650	27,465	30,975	35,105	36,138	38,203	41,300	51,625
5	24,130	32,093	36,195	41,021	42,228	44,641	48,260	60,325
6	27,610	36,721	41,415	46,937	48,318	51,079	55,220	69,025
7	31,090	41,350	46,635	52,853	54,408	57,517	62,180	77,725
8	34,570	45,978	51,855	58,769	60,498	63,955	69,140	86,425

2. The appropriation of \$4.0 million is removed and language is inserted to reflect a future appropriation by the Legislature.

Synopsis of Original Bill

House Bill 859 appropriates \$4.0 million from the general fund to a new fund, the cesspool elimination assistance grant program fund for the purpose of assisting indigent homeowners with replacing cesspools with modern liquid waste systems. In order to qualify for assistance, the homeowner must have an income that does not exceed 250 percent of the federal poverty level.

**FISCAL IMPLICATIONS**

The appropriation of \$4.0 million contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall not revert to the general fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

HB 859 provides for administration of the fund by NMED, but does not specify that such support will be paid from the new fund. Any additional FTE to manage the selection process and fund disbursement would require general fund.

### **SIGNIFICANT ISSUES**

Cesspools were a recognized and legal liquid waste disposal system until 1973, when they were outlawed in the State of New Mexico. Despite having been illegal for 34 years, many cesspools remain in use in the state and are being discovered during property transfer inspections.

NMED states that failed or improperly installed septic systems, which include cesspools, are the leading source of groundwater pollution and have impaired 355 river miles in New Mexico. Since cesspools allow the seepage of raw sewage into the soil, they do not provide the primary level of wastewater treatment that conventional septic tank systems provide. Cesspools can pose public health and safety hazards related to entrapment, asphyxiation, and drowning.

The bill creates a cesspool elimination assistance grant program fund for the purpose of assisting qualified indigent people or households to pay for: the pumping, abandonment and replacement of cesspools located on the recipient's property; permitting, site evaluation, design, purchase and installation costs of a new on-site liquid waste treatment and disposal system; and up to two years of maintenance, operation and any required testing of the on-site liquid waste treatment and disposal system.

### **PERFORMANCE IMPLICATIONS**

HB 859 would facilitate the elimination of cesspools and thereby reduce the amount of water-quality degradation and risks to public health and safety caused by these illegal systems.

### **ADMINISTRATIVE IMPLICATIONS**

NMED will be charged with establishing rules concerning the eligibility, priority and application and selection of individuals that may participate in this program. NMED notes that clear guidelines for disbursement would be helpful.

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

HB 859 is similar to, but more limited in scope than Senate Bill 702. Senate Bill 702 appropriates \$200.0 thousand from the corrective action fund for the purpose of establishing a liquid waste system assistance fund for the replacement of improper liquid waste systems but is not limited only to cesspools.

Relates to Senate Bill 920 and HB 1130 (duplicate), which appropriates \$5.0 million from the general fund to the liquid waste revolving loan fund for making low-interest loans to indigent homeowners to purchase, permit, install and maintain on-site liquid waste treatment systems.

## TECHNICAL ISSUES

NMED notes that a clarification regarding “indigent recipient” might be necessary, as follows:

HB 859 defines “indigent recipient” based on household income that does not exceed 250 percent of the federal poverty level. The federal government, however, has established differing poverty guidelines and poverty thresholds, and HB 859 does not specify which is to be used.

- Health and Human Services Department (HSSD) poverty guidelines:  
<http://aspe.hhs.gov/poverty/05poverty.shtml>
- Census Bureau poverty thresholds:  
<http://www.census.gov/hhes/www/poverty/threshld/thresh05.html>

These federal poverty levels, and the corresponding 250 percent income level proposed by HB 859 for indigent recipients, are compared in the table below for different households.

Household Occupants	HSSD	HSSD * 2.5	Census	Census * 2.5
2 adults, 2 children	\$19,350	\$48,375	\$19,806	\$49,515
1 adult, 2 children	\$16,090	\$40,225	\$15,735	\$39,337

Although the difference between the amounts generated by the two thresholds is not significant, specifying the guideline to be used would eliminate any possible confusion in the program’s implementation.

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

If HB 859 is not enacted, a smaller number of illegal cesspools will be replaced with modern liquid waste systems.

## AMENDMENTS

NMED suggests the following amendments:

- Expand the scope of HB 859 to include other illegal or improper liquid waste systems.
- Define which federal poverty level is to be used.
- Provide clearer guidelines for fund disbursements may be needed.

MA/mt:csd