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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-22-07  
 LAST UPDATED 3-10-07      HB 888/HENRCS

SPONSOR HENRC

SHORT TITLE New Mexico Environmental Health Act      SB \_\_\_\_\_

ANALYST Aubel

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		See Narrative			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 880

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Department of Finance and Administration (DFA)
- Energy, Minerals and Natural Resources Department (EMNRD)
- New Mexico Municipal League (NMML)
- Attorney General's Office (AGO)
- Economic Development Department (EDD)
- New Mexico Corrections Department (NMCD)
- New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

The House Energy and Natural Resources Committee Substitute for House Bill 888 enacts the New Mexico Environmental Health Act (Act), which requires the owner or operator of certain regulated facilities to have a community impact assessment report prepared and submitted to the Environment Department (NMED) for its review in making permitting and other decisions that may significantly impact New Mexico communities. Additionally, the HENRC Substitute for HB 888 requires NMED to compile a list of potential contractors qualified to prepare a community impact assessment report. To qualify, the potential contractor must show familiarity with the communities, including their resources and the issues facing the communities.

Section 3 provides definitions. Types of regulated facilities that would fall under this Act include solid waste facilities, hazardous waste facilities, facilities requiring a Title V air permit, and wastewater treatment plants. Impacts to be considered are those relating to public health, safety, welfare or environment. "Community" is defined as an area that includes at least 50

people within one square mile and within five miles of the geographic center of the regulated facility.

Section 4 relates to the preparation of the “community impact assessment report”, which shall include demographic data; potential present, future and cumulative impacts; other known or proposed regulated facilities and their potential impacts; and any other known environmental factors.

Section 5 provides the public notification requirements and provides direction for public hearings by deferring to prior statute that governs the regulated facility.

Section 6 directs NMED to consider that report and explain in any written decision how it took the report into account in its decision.

Section 7 authorizes the Secretary of Environment to adopt rules to ensure compliance with the Act. It also specifies that the Secretary will provide procedures for oral and written input from affected residents into the community impact assessment reports.

Section 8 provides that the Act cannot be construed to preempt more stringent or extensive requirements of any other rules adopted by the department. It also provides a provision to prevent duplicative assessment reports.

## **FISCAL IMPLICATIONS**

According to DFA, this bill could result in some fiscal impact to the NMED as well as those communities or entities proposing or operating regulated facilities. The primary fiscal impacts anticipated for NMED include additional costs for staff that has expertise in multimedia impacts to assess the reports. In most cases, the costs of preparing the community impact assessment reports will be borne by the regulated facility, but in some instances the entity proposing a facility may be a governmental entity.

No appropriation is made in this bill to underwrite this expansion of duties, which could be funded from general fund, special funds, or from additional permitting fees, as required. Permitting fees would usually need statutory authorization for increase or introduction.

## **SIGNIFICANT ISSUES**

The HENRC Substitute for HB 880 requires NMED to consider impacts on communities beyond compliance with environmental standards, and to expand public notice when a decision will have “significant impact” on a community. EMNRD notes that this bill follows the decision of the New Mexico Supreme Court in the Rhino landfill case (*Colonias Development Council v. Rhino Environmental Services, Inc.*, 138 N.M. 133, 117 P.3d 939 (2005)). In *Rhino*, the Environment Department was forced to reevaluate a decision because it failed to consider evidence on community impacts and cumulative impacts.

The Act excludes several permitted facilities, thereby significantly reducing the number of permitting situations covered by the Act. Drinking water system, health clinics, restaurants, on-site liquid waste systems and swimming pools are excluded based on the concept that the facility does not have the potential individually to have a “significant impact on the community.”

The “regulated facility” covered under HB 888/HENRCS is one that receives a permit from the department or is authorized to be constructed or operated by a decision of NMED and is defined by the following list: a facility subject to the Solid Waste Act, a facility subject to the Hazardous Waste Act, a facility subject to the Title V air quality permitting, a wastewater treatment plant or other facility permitted according to the federal Water Pollution Control Act or Water Quality Act that discharges at least 20 thousand gallons per day.

Such existing or proposed facilities would be required to pay for a “community impact assessment report” as part of the issuance, renewal, amendment or denial of any permit, variance or waiver of the facility. NMED would incorporate this report in its decision-making regarding the facility and include an explanation in any written decision.

NMED states its support for cumulative impact reports for these circumstances.

### **ADMINISTRATIVE IMPLICATIONS**

Additional permitting staff hours will most likely be required to accomplish the tasks in this Act. The bill does not specify the administrative impact for new permits that are currently in the pipeline. It would appear that the potential for significant delays exists while the rules are promulgated by the Secretary, and the list of qualified contractors developed, the hearing process initiated and the community impact assessment report prepared.

### **OTHER SUBSTANTIVE ISSUES**

The AGO points out that NMSA Section 39-3-1.1 already confers a right to appeal certain administrative decisions of NMED: administrative actions taken by the Secretary pursuant to the provisions of the Recycling and Illegal Dumping Act (NMSA Section 74-13-15); actions regarding food service permits (NMSA Section 25-1-11); licensing actions relating to radiation control (NMSA Section 74-3-9); etc.

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

NMED will use its current requirements, including the expanded program of Environmental Justice, for public involvement before making decisions.

### **POSSIBLE QUESTIONS**

1. How many covered facilities are in the pipeline for permitting or renewal, and how will the new rules impact these covered facilities in the pipeline?
2. Will significant delays cause undue hardship on the facilities and or communities waiting for NMED decisions?
3. Will there be a shortage of qualified contractors to prepare the impact assessment report in certain areas of the state?