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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/08

SPONSOR Gardner LAST UPDATED _____ HB 267

SHORT TITLE State Budget Provisions & Increases SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$0.1	Recurring	General Fund and other funds

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1	\$0.1	Recurring	General Funds and others

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Board of Architects (BA)

Department of Finance & Administration (DFA)

Environment Department (ED)

SUMMARY

Synopsis of Bill

House Bill 267 will prohibit any state agency from requesting budget increases to expend money collected from penalty assessments in a fiscal year if the money is derived from penalties assessed during the same fiscal year.

Furthermore, this bill will prohibit any state agency from requesting budget increases to expend money collected from penalty assessments in a fiscal year if the money is derived from penalties assessed during the same fiscal year.

FISCAL IMPLICATIONS

The bill contains no appropriation but will affect future funding for state agencies authorized to assess and budget penalty assessment revenue.

The AGO states that it is conceivable that they will submit a budget or budget adjustment request asking for the appropriation and expenditure of any civil “penalties” collected as a result of litigation or other official efforts. It is unclear as to the possible impact of this bill on such requests.

The New Mexico Environment Department administers two special revenue funds that derive revenue from penalties -- the Solid Waste Facility Grant Fund (SWFGF) and the Hazardous Waste Emergency Fund (HWEF). HB 267 in its current form will have no fiscal impact on programs and grants administered from the SWFGF. Expenditures from the HWEF in emergency situations as occurred during the State’s response to the Cerro Grande Fire in 2000 could be statutorily limited.

SIGNIFICANT ISSUES

The AGO provided the following:

Annual state agency budget requests are generally governed by NMSA Section 6-3-7 (1978 comp.). The bill appears to prohibit state agencies from submitting budget requests containing provisions authorizing those agencies to spend money derived from “penalties” during the same fiscal year in which those penalties are collected. It also appears to prohibit state agencies from requesting budget increases if the agency intends to use money derived from penalties assessed in the same fiscal year. However, the bill does not provide for the diversion of penalties from the funds into which they are deposited, but prohibits their expenditure in the same fiscal year in which they are collected. The bill appears to allow the submission of budgets or budget adjustment requests proposing to spend penalties collected in prior fiscal years.

The bill does not define “penalties”. Under many state law provisions, the term includes “fines” and is generally applied to criminal violations. Fines collected as a result of criminal penalties are deposited into the Current School Fund established in Article XII, Section 4 of the New Mexico Constitution. However, the term “penalties” could also include civil assessments, fees, or other punitive collections. For example, state law provides penalties for dishonored checks given to state agencies and civil penalties for tax law violations. See NMSA Sections 7-1-70; 65-1-36.1; 7-1-69.

The bill could conflict with other state laws allowing the expenditure of revenue collected from penalties and other sources. For example, NMSA Section 7-1-6 of the Tax Administration Act establishes several funds consisting of revenue (including penalties) collected by the Taxation and Revenue Department. That section authorizes disbursement of those funds for specified departmental expenses and refunds.

Certain professional licensing boards are authorized to collect “penalties” which are then deposited into non-reverting funds and normally appropriated to the boards for expenditure in carrying out the provisions of their licensing acts. For example, the Board

of Medical Examiners is entitled to receive a civil “penalty” from a health care facility failing to report a malpractice case settlement as provided in NMSA Section 61-6-16 (1978). Those penalties, and others collected by the Board, are deposited into a non-reverting “New Mexico Medical Board fund” which presumably is included in the annual budget request. It is unclear as to the impact of this bill on those budgeting and expenditure procedures.

DFA provided the following:

The bill could significantly impact the budgets of state agencies that use revenue derived from penalty assessments to fund operations. If an agency has statutory authority to keep these funds, the bill just delays the agencies ability to use the funds until a subsequent fiscal year and will require some kind of supplemental funding in the initial year of implementation. If the agency does not have authority to keep these funds for subsequent year expenditure, the agency might require recurring funding from other sources, potentially from the general fund in order to maintain the same level of operations. The general fund will benefit from additional reversions to the fund. In addition, in some cases penalties are assessed by one agency and are designated by statute to be used to fund specific programs within other agencies. This bill could not only affect the assessing agency, but affect programs funded by specific assessments.

The bill could affect the agencies ability to meet its statutory requirements if alternative funding is not available to supplement the loss of penalty revenues it uses for operations.

ED notes the sole source of revenue for the HWEF is penalties assessed under the State Hazardous Waste Act. Uses of the HWEF are defined in 74-4-8 NMSA 1978, and include “cleanup of hazardous substance incidents”, which are in turn defined at 74-4-3.J NMSA 1978. While most hazardous substance incidents involve little more than fuel spills from transportation accidents or clandestine drug laboratories, larger incidents can compel the State to engage in a huge cleanup effort necessary to protect human health and the environment. The most recent such incident was the Cerro Grande Fire in 2000, in which a wildfire overcame portions of the Town of Los Alamos and Los Alamos National Laboratory (LANL). The ED deployed personnel and contractors with HWEF monies to remove hazardous materials from destroyed buildings before reoccupation, conduct sampling at removal sites, monitor emissions and runoff from LANL, conduct air monitoring and soil sampling, and develop risk assessments for future uses of affected properties. This work – conducted mostly on an emergency basis while the fire was still burning – cost approximately \$1 million. BAR authority was sought on an emergency basis, and its approval allowed the State to respond in a timely fashion protective of human health, property, and the environment. Restrictions on budget authority such as those envisioned in HB 267 could severely compromise the State’s ability to effectively respond to disasters such as that which occurred in Los Alamos in 2000.

ADMINISTRATIVE IMPLICATIONS

DFA notes the bill limits the ability of an agency, the State Budget Division and the Legislative Finance Committee from using revenues available in a fiscal year from penalty assessments to fund agency expenditures. In years of declining revenues, the State Budget Division and Legislative Finance Committee should have the ability to recommend the use of all available resources as needed.

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The Board of Architects notes that this bill will add an additional layer of accounting for their agency revenues and will require separate accounting for penalty money obtained during a fiscal year.

DW/nt