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FISCAL IMPACT REPORT

ORIGINAL DATE 02/14/10

SPONSOR SPAC LAST UPDATED _____ HB _____

SHORT TITLE Air Quality Control Permit Denial SB 285/SPACS

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$.1)	(\$.1)	(\$.1)	Recurring	General Fund, Air Quality Permit Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 115, which relates to Executive message #21
 Duplicates House Bill 276, which relates to Executive Message #119

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 New Mexico Department of Transportation (DOT)
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of SPAC Substitute

The Senate Public Affairs Committee substitute for Senate Bill 285 amends the New Mexico Air Quality Act to authorize the New Mexico Environment Department to deny new air permits or revoke existing permits under “bad actor” provisions. It also requires certain air quality applicants file a disclosure statement.

FISCAL IMPLICATIONS

Both NMED and AGO suggest that increased staff time to review disclosures required under this bill would be more than offset by the reduced resources currently spent in pursuing compliance through legal means. This reduction in resources currently spent on enforcement actions through the courts against habitual offenders was not quantified.

Stricter regulations may lead to higher costs for compliance for regulated sectors, most notably, coal-powered energy producers.

SIGNIFICANT ISSUES

According to the AGO, so-called “bad actor” provisions that address habitual violators of environmental regulations have become standard in state and federal environmental laws. Current New Mexico statute relating to other environmental concerns—the Hazardous Waste Act, the Water Quality Act, and the Mining Act—contain such measures while the Air Quality Control Act governing air permits does not. The bill would add limited authority for denial or revocation of an air quality permit under the following conditions:

If the permit holder or applicant has

- been convicted in court of felony related to environmental crime or crime involving restraint of trade, price-fixing, bribery or fraud within 10 years immediately preceding the date of submission of the permit application;
- knowingly misrepresented a material fact in the application for a permit;
- refused to disclose the information required by the provisions of the Air Quality Control Act;
- constructed or operated a facility without a permit when emissions from the unpermitted facility exceed required thresholds by 25 percent for any pollutant; or
- had a permit revoked or permanently suspended for cause under the environmental laws of any state or the United States.

NMED maintains that these “transgressions make it likely that a permit applicant or holder would not comply with state and federal air quality requirements in the future; creating a tremendous burden on agency resources by requiring continued enforcement oversight and legal action in addition to the adverse impacts to public health and the environment in New Mexico. The vast majority of air quality permit applicants and holders strive to comply with state and federal regulations; however, a tiny minority of air quality permit applicants and holders do not, leading to intensive resource needs for the agency to address noncompliance numerous times. Continuous noncompliance can lead to situations that significantly endanger public health and the environment.”

The new authority would apply to NMED and local agencies that handle air permitting, such as Bernalillo County. The bill specifies that the department or local agency may consider “aggravating and mitigating factors” when making a finding under the new provision. It is unclear whether this authority is broader than air quality regulation in neighboring states or how the rulemaking process to implement the new rules will clarify this section of the regulation so that the rules are not burdensome or subject to interpretation depending on the regulating body.

In addition to providing a basic “bad actor” provision, SB 285/SPACS also requires certain air quality permit applicants file a disclosure statement, but exempts federal, state, and local government applicants as well as corporations, directors, shareholders and officers of the corporation registered with the Securities Exchange Commission. The AGO notes that this corporate exemption would most likely mean the disclosure requirement would only apply to a small universe of applicants.

PERFORMANCE IMPLICATIONS

NMED maintains that the “resources required to address permit holders that have a willful disregard for environmental laws is burdensome to the agency and limits the ability of the agency to address other environmental issues. This bill would encourage compliance with air quality permits and alleviate this burden.”

OTHER SUBSTANTIVE ISSUES

The Department of Transportation discusses the following concern:

“If a contractor, working on a NMDOT construction project, applies for an air permit for a crushing operation or asphalt plant and did not comply with environmental regulations or committed bribery or fraud within 10 years of the application for an air quality permit, the permit from NMED would be denied and construction could be delayed or terminated.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Air Quality Control Act would not be amended with a “bad actor” provision. NMED expresses the concern that the bill “is not enacted, significant agency resources will continue to be used to address a small number of air quality permit holders that violate state and federal laws multiple times or even on a continuing basis with no intention of complying. These permit holders will endanger public health and the environment, and may even cause some areas of the state to exceed federal, health-based air quality standards.”

Most permit holders appear to be in compliance according to NMED.

POSSIBLE QUESTIONS

1. Does this bill impose regulation that is “more strict” than federal regulation?
2. Are the “bad actor” provisions in this bill as robust as those contained in the other New Mexico environmental statutes?
3. How will this bill impact coal-powered plants, including those on tribal lands?
4. Will it increase the cost of electricity?
5. How will this provision tie to any future requirements for greenhouse gas reductions?
6. Will this bill help address ozone levels in the Four Corners area?
7. What are some specific examples of “bad actor” polluters in New Mexico?

MA/mt