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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/11

SPONSOR Garcia, T LAST UPDATED _____ HB 238

SHORT TITLE Beverage Container Act SB _____

ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	*\$1,000.0		Recurring	Independent Redemption Center Grant Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		** \$291.4			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

Responses Not Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 238 (HB 238) amends the Beverage Container Act, NMSA 1978, §§ 57-20-1 to 3, to create a beverage container recycling program.

Specific provisions within the bill:

Section 2: revises the definition of *beverage* to exclude fruit or vegetable juice and include wine and alcoholic liquor and adds definitions that include *dealer* to mean a person who sells

beverages to a consumer, *distributor* to mean a person who sells beverages to dealers and *redemption center* to mean a facility at which consumers return empty beverage containers for the refund value;

Section 3: imposes a five cent deposit on the purchase of a qualifying container for consumption off the premises, reimburses redemption centers for redeeming empty containers plus one cent per container;

Section 4: requires 1) dealers to pay consumers the refund value of any empty beverage container sold by that dealer, 2) distributors to collect empty containers and reimburse the dealer or redemption center for refund values within one week, and 3) NMED to promulgate rules to prioritize recycling before other disposal methods are implemented;

Section 5: allows a dealer or redemption center to refuse to accept beverage containers under certain stated conditions;

Section 6: requires beverage containers sold in New Mexico to have an affixed refund value indication, limits redeemable containers to certain sizes based on what they contain;

Section 7: provides that NMED approve redemption centers' applications or withdraw its approval if the center no longer provides a convenience service to the public;

Section 8: requires NMED to adopt rules to provide for the recycling or disposal of empty beverage containers;

Section 9: provides for a judicial review process;

Section 10: imposes penalties, violators are guilty of a petty misdemeanor for collecting a refund value a second time, or creating, tampering or attempting to collect with a counterfeit label;

Section 11: provides for distributors' agreements;

Section 12: requires cities to have one redemption center for each 25,000 population;

Section 13: prohibits the manufacture or sale of any single-serving plastic beverage container, violators are guilty of a misdemeanor;

Section 14: bans beverage container disposals at landfills after July 1, 2011, and on beverage containers containing alcohol after September 1, 2013; and

Section 15: establishes the "independent redemption center grant fund" and requires NMED to establish a program for improvements to independent redemption centers.

FISCAL IMPLICATIONS

This bill creates a new nonreverting "independent redemption center grant fund" and provides for continuing appropriations to support an independent redemption center grant improvement program. NMED will not award grants in aggregate of more than one million dollars in any one fiscal year. 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 238 does not contain an appropriation; however, it provides for money otherwise accruing to the fund. Proponents of this bill may believe the program is innovative enough to qualify for grant funding from federal or other sources. Money in the fund (if obtained) will be disbursed at increments not to exceed \$15 thousand for any one project. **NMED reports that it would need five additional FTE to administer the program at an annual cost of \$291,429 per year. The operating budget impact above also reflects those costs.

NMED suggests that the bill could potentially hurt existing curbside and drop-off recycling programs in the state. Municipalities, counties, and solid waste authorities in New Mexico who operate recycling systems rely on the sale of scrap aluminum cans and plastic beverage bottles as

a source of revenue. However, some argue that curbside recycling programs (specifically for glass and plastic) do not pay for themselves. Aluminum recycling appears to be profitable.

SIGNIFICANT ISSUES

The bill attempts to have private industry manage the State's recycling effort. The bill suggests that a deposit placed on beverage containers could promote their recyclability.

Under the bill:

- 1) a dealer (retailer) pays a distributor five cents for each container delivered;
- 2) the consumer pays the dealer five cents for each container purchased;
- 3) the dealer or redemption center pays the consumer five cents for each container returned;
- 4) the distributor (wholesaler or manufacturer) reimburses the dealer or redemption center five cents, plus a handling fee of one cent on each container returned; and
- 5) the distributor keeps the five cents for each unclaimed deposit.

NMED will be required to approve redemption centers' applications or withdraw its approval if the center no longer provides a convenience service to the public and prioritize recycling of empty beverage containers, to the extent possible, before any other appropriate disposal method is considered or implemented in the State.

NMED further reports that the ban on landfilling beverage containers from redemption centers after July 1, 2011 may not be realistic as there are not sufficient recycling centers to take all beverage containers in the state.

PERFORMANCE IMPLICATIONS

NMED is a regulatory agency, and does not provide direct recycling or disposal services or contract for such services.

ADMINISTRATIVE IMPLICATIONS

NMED further maintains that it does not have the staff to implement the program.

OTHER SUBSTANTIVE ISSUES

Bottle bills were introduced in New Mexico several times during the 1980s and 1990s, but were never authorized by the legislature.

ALTERNATIVES

NMED advises that its Solid Waste Bureau, operating under the guidance of the Solid Waste Management Plan, promotes comprehensive recycling programs for citizens and commercial operations across the state. The New Mexico Recycling Coalition, one of the key stakeholders involved in crafting the Solid Waste Management Plan, promotes recycling of all materials, not just beverage containers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Existing curbside and drop-off recycling programs would continue to recycle plastic, aluminum and glass beverage containers.

POSSIBLE QUESTIONS

How many cities or communities in New Mexico do not have curbside recycling service?

AHO/svb