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FISCAL IMPACT REPORT

SPONSOR Taylor **ORIGINAL DATE** 02/25/11
LAST UPDATED 02/28/11 **HB** 579

SHORT TITLE Regulate Greenhouse Gas Emission Requirements **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI*	NFI*			

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Conflicts with SB 489

Relates to SB 91, SB 190, SB 459, SJR 3 and HJR 3

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Health Policy Commission (HPC) (on related SB 489 matters)

No Response

NM Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 579 precludes the environmental improvement board (EIB), a local board, any state agency, board, institution or political subdivision from adopting or enforcing any state, local or regional rule or program to regulate the emission of greenhouse gas except as provided in the Air Quality Control Act.

The bill excludes the emission of greenhouse gas from the definition of air pollution in that Act, and authorizes the EIB or the local board to adopt regulations to control greenhouse gas emissions under that Act to the extent such regulation is mandated by federal law or regulation. A permitted regulation must be no more than but at least as stringent as that required by federal law and regulations and shall only apply to the sources subject to regulation pursuant to federal law.

FISCAL IMPLICATIONS

No responding agency has reported any fiscal implications.

SIGNIFICANT ISSUES

The AGO comments on Section 1, which enacts a new section of the Air Quality Act:

The new section specifically precludes “the environmental improvement board, a local board or any other state agency, board, institution or political subdivision” from adopting or enforcing any state, local or regional rule to regulate greenhouse gas emissions. The new section is very broad in its sweep. It effectively precludes any government attempt to regulate greenhouse gas emissions in New Mexico. The reference to “regional rule[s]” presumably refers to regional programs such as the Western Climate Initiative (“WCI”) and the Regional Greenhouse Gas Initiative (“RGGI”).

While HB 579 can preclude New Mexico’s participation in such a program, HB 579 cannot and does not appear to address federal regulation of greenhouse regulations. The prohibitions of HB 579 may be preempted by federal law were Congress to pass a national emissions program or if the Environmental Protection Agency (“EPA”) were to regulate greenhouse gasses administratively. *See Massachusetts v. EPA*, 127 S.Ct. 1438, 1460 (2007) (The Clean Air Act's sweeping definition of "air pollutant" is broad enough to encompass greenhouse gas emissions). This issue is recognized in Section 3, where the EIB or a local board is granted authority to adopt “...regulations to control greenhouse gas emissions, to the extent that regulations are mandated by any federal act or regulation.”

HB 579 also provides a definition for “greenhouse gas” and amends the definition of “air pollution” to exclude greenhouse gas emissions. Excluding greenhouse gas emissions from the definition of “air pollution” would effectively take away the authority for the EIB to regulate them because the EIB is charged with adopting rules to “prevent or abate air pollution.”

The HPC reports as to SB 489, which is equally applicable to HB 579, based on information appearing on the NMED website, that:

On November 2, 2010, the EIB adopted by a vote of four to three the most comprehensive greenhouse gas pollution reduction regulations in the nation. The rules, proposed by the NMED, will reduce global warming pollutants through a regional cap on greenhouse gas emissions.

The new regulations will enable the state to participate in a regional greenhouse gas cap-and-trade program with other U.S. states and Canadian provinces through the Western Climate Initiative (WCI). The WCI is a collaborative of seven western states and four Canadian provinces that are developing strategies to address climate change.

The program, which is scheduled to start in 2012, will affect about 63 large industrial sources in New Mexico. Those sources include electric generators and the largest emission sources in the oil and gas sector. Each source would have to reduce its

emissions by two percent per year until 2020 or acquire emissions credits from other participants. The program will not be triggered unless at least 100 million tons of emissions are included regionally, which ensures that New Mexico will not implement a trading program alone. The program would have to be more than four times larger than New Mexico's annual emissions of approximately 24 million tons.

The program is designed to contain costs to industry and consumers through several mechanisms, including the free allocation of pollution allowances to regulated sources; trading of allowances to allow the market to find the lowest-cost emission reductions; a generous offset program which allows sectors that are not under the cap to implement low-cost reduction measures; and a delay in turning in allowances until 2015. Economic analyses show a modest net benefit to the New Mexico economy as a result of reducing greenhouse gas emissions and promoting clean energy jobs.

Additionally, the AGO noted as to SB 489, which is true as to HB 579 as well, that the Air Quality Control Act already contains stringency limitations on, among other things: regulations to protect visibility and prevent significant deterioration in nonattainment areas; standards of performance and emission standards for hazardous air pollutants; regulations governing emissions from solid waste incinerators; and regulations relating to control of motor vehicle emissions. SB 489 would presumably address regulations adopted pursuant to the Board's power to adopt regulations to prevent or abate air pollution, including the rules recently adopted by the board regarding cap and trade and greenhouse gas reporting. SB 489 would ensure that the protections of any regulation passed by the EIB or local board would not exceed federal laws or regulations. For example, the U.S. Environmental Protection Agency has mandated the reporting of greenhouse gas data and other relevant information from large sources and suppliers in the United States.

The AGO also raises the issue of applicability of HB 579, which is silent as to whether it is retrospective in application. The AGO cites the general rule that statutes, except those dealing with remedial procedure, are to be construed as prospective rather than retrospective unless there is a clear legislative intention to the contrary. It concludes that, absent clear legislative intent, HB 579 would not apply to those greenhouse gas emission rules already adopted by the Board. It would only apply to rules adopted by the EIB in the future.

CONFLICT, RELATIONSHIP

This bill (HB 579) conflicts with SB 489, which amends NMSA 1978, § 74-2-5 in a manner that is slightly different than the amendments contained in Section 3. HB 579 also relates to SB 91 – Suspend Effectiveness of Some Rules, SB 190 – Repeal Effectiveness of Some Rules and SB 459 – Repeal Effectiveness of Certain Rules, each of which proposes legislative action against certain existing rules governing greenhouse gas emissions. HB 579 also relates to SJR 3 and HJR 3, proposing constitutional amendments to allow the Legislature to nullify or repeal agency rules.

OTHER SUBSTANTIVE ISSUES

The HPC provides this background information on greenhouse gas:

Gases that trap heat in the atmosphere are often called greenhouse gases. Some greenhouse gases such as carbon dioxide occur naturally and are emitted to the

atmosphere through natural processes and human activities. Other greenhouse gases (e.g., fluorinated gases) are created and emitted solely through human activities. The principal greenhouse gases that enter the atmosphere because of human activities are:

- **Carbon Dioxide (CO₂)**: Carbon dioxide enters the atmosphere through the burning of fossil fuels (oil, natural gas, and coal), solid waste, trees and wood products, and also as a result of other chemical reactions (e.g., manufacture of cement). Carbon dioxide is also removed from the atmosphere (or “sequestered”) when it is absorbed by plants as part of the biological carbon cycle.
- **Methane (CH₄)**: Methane is emitted during the production and transport of coal, natural gas, and oil. Methane emissions also result from livestock and other agricultural practices and by the decay of organic waste in municipal solid waste landfills.
- **Nitrous Oxide (N₂O)**: Nitrous oxide is emitted during agricultural and industrial activities, as well as during combustion of fossil fuels and solid waste.
- **Fluorinated Gases**: Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are synthetic, powerful greenhouse gases that are emitted from a variety of industrial processes. Fluorinated gases are sometimes used as substitutes for ozone-depleting substances (i.e., CFCs, HCFCs, and halons). These gases are typically emitted in smaller quantities, but because they are potent greenhouse gases, they are sometimes referred to as High Global Warming Potential gases (“High GWP gases”).

The HPC also notes that the EIB is responsible under state and federal law for the promulgation of rules and standards in (1) food protection; (2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity and rules authorizing imposition of administrative penalties for enforcement; (3) liquid waste, including exclusive authority to establish on-site liquid waste system fees and to implement and administer an inspection and permitting program for on-site liquid waste systems; (4) air quality management; (5) radiation control; (6) noise control; (7) nuisance abatement; (8) vector control; (9) occupational health and safety; (10) sanitation of public swimming pools and public baths; (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health; (12) medical radiation, health and safety certification and standards for radiologic technologists; (13) hazardous wastes and petroleum storage tanks; and (14) solid waste.

MD/svb