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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/16

SPONSOR Townsend LAST UPDATED \_\_\_\_\_ HB 111

SHORT TITLE Crop Dusting Tanks as Above Ground Storage SB \_\_\_\_\_

ANALYST Armstrong

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	(\$0.4)	(\$0.4)	Recurring	Storage Tank Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Environment Department (NMED)  
 Department of Agriculture (NMDA)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 111 amends the Hazardous Waste Act and the Ground Water Protection Act to exclude tanks less than 10 thousand gallons used solely by crop-dusting or crop-spraying services from the acts' definitions of "above ground storage tanks."

### FISCAL IMPLICATIONS

HB 111 would reduce annual tank registration fees by approximately \$400 per year. These fees support NMED's Petroleum Storage Tank Bureau's Tank Fee and Certification and Prevention and Inspection Programs.

### SIGNIFICANT ISSUES

Tank systems that contain petroleum products for the purpose of fueling aircraft involved in commercial activities related to agriculture are no different from tanks used by any other

industrial commercial petroleum storage tank owners, such as gasoline service stations, municipal vehicle fleets, government agencies, and construction companies.

If owners of above ground storage tanks used for crop-dusting or crop-spraying services are exempted from registration requirements, they will also be prevented from drawing from the corrective action fund to address any spills or leaks from these tanks.

There are two known facilities in New Mexico that store fuel for aerial application. One of these facilities currently has above ground storage tanks regulated by NMED. The subject tanks are 10 thousand gallons or less and would be removed from NMED oversight by HB 111. Currently, above ground storage tanks used for crop dusting or crop spraying are not specifically exempted from federal or other state laws.

### **ADMINISTRATIVE IMPLICATIONS**

HB111 would require a rule change by the Environmental Improvement Board.

### **TECHNICAL ISSUES**

NMED proposed the following amendments to the bill:

- On page 2, line 25, and page 10, line 19, between “service” and the semicolon, add “and solely for the purpose of crop dusting or crop spraying.” This would clarify the scope of the proposed legislation.
- Striking the proposed edits on: page 7 line 24; page 9, line 17; and page 13 line 7. The agency agrees with the intended subject.

AGO analysis noted that “crop dusting” and “crop spraying” are not defined and may need clarification as to whether these terms are intended to apply only to aerial application.

### **OTHER SUBSTANTIVE ISSUES**

The state’s Hazardous Waste Act allows more flexibility in the regulation of above ground storage tanks than underground storage tanks. Regulations of underground storage tanks must be equivalent to and no more stringent than federal regulations adopted by the Environmental Protection Agency. Section 74-4-4(C) NMSA 1978. Further, rules concerning storage tanks must implement and be equivalent to and no more stringent than the federal Energy Policy Act of 2005, which only applies to underground storage tanks, and its guidelines and regulations. Section 74-4-4(D). The state’s Ground Water Protection Act contains no provisions regarding equivalency to federal regulations. The amendments proposed by HB 111 do not appear to be precluded by federal stringency considerations.

JA/al/jo