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FISCAL IMPACT REPORT

SPONSOR SFC **ORIGINAL DATE** 01/25/21 **LAST UPDATED** 03/05/21 **HB** _____
SHORT TITLE Local Gov't Air Quality Regulations **SB** 8/SFCS
ANALYST Wan

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment Department (NMED)

SUMMARY

Synopsis of Bill

The Senate Finance Committee substitute for Senate Bill 8 would amend three sections of law to allow the state and local governments to adopt certain environmental regulations more stringent than federal regulations. First, the bill would amend Section 74-2-5 NMSA 1978, a section of the Air Quality Control Act, to remove provisions that currently prohibit the Environmental Improvement Board (EIB) and the local board, i.e. the Albuquerque/Bernalillo County Air Quality Control Board, from adopting certain types of state air quality regulations and standards more stringent than federal regulations and standards under the Clean Air Act.

SB8/SFCS also amends Section 74-4-4 NMSA 1978, part of the Hazardous Waste Act, to remove language that prohibits regulations for hazardous waste from being more stringent than regulations under the federal Resource Conservation and Recovery Act unless EIB confirms existing federal regulations are insufficient to protect public health and the environment.

Lastly, SB8/SFCS repeals Section 74-2-5.3 NMSA 1978, “duties and powers of environmental improvement board and local board for attainment and maintenance of national ambient air standards for ozone.” This section is replaced with new language requiring EIB and the local board to address ozone pollution when national ambient air quality standards are elevated, as the existing statute does, but with fewer items for the board to consider during rulemaking than in current law and with no restrictions to the types of sources from which the board or local board may seek emission reductions.

SB8/SFCS incorporates the SJC amendment and provides that, before a local authority or the state adopts an ordinance or rule more stringent than the relevant federal regulations, the local authority or state rulemaking body must make a determination based on substantial evidence, and after notice and public hearing, that the proposed ordinance or rule will be more protective of public health and the environment.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

The Environment Department (NMED) reports SB8/SFCS will have no fiscal impact on the agency. Because SB8/SFCS does not create any new responsibilities for NMED, it is unlikely that the agency would need any additional resources associated with this bill. SB8/SFCS also does not increase the duties of EIB, members of which are reimbursed as provided in Section 10-8-1 through 10-8-8 NMSA 1978 (the Per Diem and Mileage Act).

SIGNIFICANT ISSUES

According to NMED, the changes to the Air Quality Control Act proposed by SB8/SFCS are critical to efforts to mitigate regional and statewide air pollution, accomplish the greenhouse gas emission reductions required by Executive Order 2019-003, and develop and implement regulations in a timely and efficient manner as needs arise. NMED reports that the federal air quality regulatory scheme does not comprehensively address all sources and pollutants that affect air quality in New Mexico. Providing the EIB with the authority to adopt more stringent regulations than the federal government would allow New Mexico to have rules tailored to the state's specific circumstances and ensure air quality standards are maintained if federal regulations are rolled back.

NMED's analysis states that if enacted, SB8/SFCS would authorize the EIB to promulgate rules that would result in additional reductions of hazardous air pollutants, toxic pollutants that are known or suspected to cause cancer or other serious health effects or adverse environmental effects; visibility-impairing pollutants or haze-forming pollutants, which can come from natural sources such as wildfires and man-made sources such as industrial fuel burning, and which degrade views of New Mexico's natural landscape in addition to posing health risks; ambient air pollution, which can endanger human health and the environment and damage property; and greenhouse gas emissions, harmful to the human respiratory system and the environment.

SB8/SFCS's amendments to the Hazardous Waste Act would similarly give the EIB flexibility to adapt rules to the state's unique circumstances associated with hazardous waste, mixed waste, and used oil, according to NMED. If enacted, NMED says SB8/SFCS would give the EIB authority to promulgate rules that would provide for greater assurance of safe transport, treatment, and disposal of hazardous waste, as well as provisions for the safe clean-up of hazardous waste facilities. SB8/SFCS would also authorize the EIB to develop rules for the control, management, and remediation of per and polyfluoroalkyl substances (PFAS), which NMED has identified as hazardous waste but are not currently regulated by the federal government. PFAS contamination has been detected in two distinct locations in New Mexico, and the enforcement of remediation responsibility is the subject of ongoing litigation.

PERFORMANCE IMPLICATIONS

Enactment of SB8/SFCS and subsequent rule changes by the EIB will reduce emissions from sources that impact air quality in the state, thereby improving NMED’s performance for the measure “percent of days with good or moderate air quality index ratings.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB8/SFCS is not enacted, the EIB’s rulemaking will continue to be limited by and tied to federal regulations, which may not address the unique needs of New Mexico and can be less stable than state regulations due to administration changes.

CW/sb/al