

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 2/20/01 HB 786
 SHORT TITLE: Drycleaner Environmental Response Act SB _____
 ANALYST: Belmares

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$ 58.0			Recurring	New Fund
			\$ 150.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 580.0	\$ 580.0	Recurring	New Fund: Drycleaner Environmental Response Fund

(Parenthesis () Indicate Revenue Decreases)

Relate to SB89 and SB587

SOURCES OF INFORMATION

Department of Environment
An Environmental Analysis of the Drycleaning Industry: A New Mexico Perspective (Nancy J. Gillard, Author)

SUMMARY

Synopsis of Bill

House Bill 786 enacts the Drycleaner Environmental Response Act which creates a new program to be administered by the Department of Environment for the cleanup of releases from drycleaning facilities. The bill requires the Environmental Improvement Board to establish standards for evaluating and responding to releases of drycleaning solvents at or from drycleaning facilities. The bill creates a Drycleaner Environmental Response Fund and assesses a drycleaning facility gross receipts tax. The bill also precludes administrative or judicial actions against any person who owned or operated a drycleaning facility prior to July 1, 2001.

FISCAL IMPLICATIONS

House Bill 786, creates a new Drycleaner Environmental Response Fund from the drycleaning facility gross receipts taxes. All earnings from investment of the Fund are credited to the Fund. Money in the Fund is appropriated to the Department of Environment to carry out the provisions of the Act.

The Department of Environment has estimated this bill would generate approximately \$580.0 per year. The rate of the drycleaning facility gross receipts tax each year would range from zero to two percent, based upon the amount of unexpended or unencumbered balance remaining in the drycleaner environmental response fund as follows:

Fund Balance on March 31	Tax Rate
Less than \$2 million	2%
\$2 million to \$3 million	1%
Greater than \$3 million	zero

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

House Bill 786 would require the Department of Environment to administer the New Environmental Response Fund, and to create and operate a drycleaner remediation program. No more than ten percent of each expenditure from the Fund can be used for overhead and administrative costs. This translates to approximately \$58.0 per year to cover costs of technical staff who will investigate and oversee cleanup of contaminated drycleaner facilities, and administrative staff to manage contracts and expenditures from the Fund.

The Department of Environment asserts data from other states indicates state's average annual administration costs are \$273.0 and \$150.0 would be necessary to provide salaries, benefits and operational costs for one technical staff person to investigate sites and oversee cleanups and one administrative staff person to manage the Fund. Additionally, the Department of Environment has suggested general fund should be provided to build the administrative infrastructure to properly administer this new program.

CONFLICT

House Bill 786 -- Page 3

The existing Water Quality Act (NMSA 1978, Sections 74-6-1 through 74-6-17) protects all water of the state. However, Section 3 of House Bill 786 provides that only ground water that is, or may reasonably be expected to be, used as a drinking-water supply source would be cleaned up.

RELATIONSHIP

Senate Bill 89 would appropriate \$1,400.0 to perform source control at a drycleaner pollution site in Roswell. Senate Bill 587 would appropriate \$1,000.0 for installation and the first six years of operating at a drycleaner pollution site in downtown Albuquerque.

TECHNICAL ISSUES

The water quality control commissioner, authorized by 74-6-3 NMSA 1978, has the responsibility to “adopt, promulgate and publish regulations to prevent or abate water pollution in the state . . .” (74-6-4.D). Section 2, paragraph A should be deleted and replaced as follows: “‘Commission’ means the water quality control commission.”

Throughout the bill, the word “board” should be replaced with “commission.”

Section 5 specifies a schedule of performance-based pollution prevention requirements for drycleaning facilities. The terms “dry-to-dry” and “transfer-type” drycleaning equipment should be defined in Section 2.

OTHER SUBSTANTIVE ISSUES

House Bill 786 would provide an estimated \$580.0 per year to investigate and cleanup contaminated drycleaner sites in New Mexico. The bill precludes any other persons from taking action against an owner or operator unless the owner or operator fails to comply with the tax provisions and other substantive requirements of the Drycleaning Environmental Response Act. The Department of Environment asserts this bill would limit the cost recovery authority of the federal Environmental Protection Agency under the Superfund Act and would limit third party lawsuits to recover damages. The Department of Environment also asserts the bill would greatly reduce and limit the environmental liability of drycleaner businesses and not provide adequate revenue to clean up water and soil pollution caused by drycleaner operations.

Tetrachloroethylene (PCE) from drycleaners has contaminated ground water and 32 water-supply wells at 15 sites in New Mexico. Nearly \$4 million has already been spent to address these PCE plumes in New Mexico, and the ultimate cost is estimated by the Department of Environment to be nearly \$50,000.0. The following is furnished as information relevant to this bill:

Tetrachloroethylene (PCE)

- PCE is a solvent used in the drycleaning industry.
- PCE is a suspected carcinogen that degrades to other chemicals, which are known carcinogens.
- The presence of PCE in ground water renders the ground water unusable for drinking and other purposes.
- The federal Environmental Protection Agency (EPA) drinking water standard for PCE is 5 parts per billion and the state ground water standard for PCE is 20 parts per billion.

Contamination

- PCE has been detected in New Mexico ground water at concentrations up to 30,000 parts per billion, 6,000 times higher than the federal drinking water standard.
- The Department of Environment is currently aware of 15 contaminated drycleaner sites where PCE has contaminated soil and ground water in New Mexico (see table in Other Substantive Issues section below).
- PCE and its degradation byproducts have contaminated at least 32 public and private water-supply wells in New Mexico.
- PCE also has interfered with public welfare and the use and redevelopment of property.

Clean Up

- It can take 30 years or more to clean up ground water contaminated with PCE.
- In some cases, there is no responsible party to clean up this contamination in New Mexico, and the ultimate total cost for known sites is estimated to be nearly \$50,000.0.

AMENDMENTS

The Department of Environment has offered the following amendments for consideration:

Section 3, paragraph C should be deleted and replaced as follows: “may require the abatement of soil and ground water contaminated with drycleaning solvent in compliance with the Water Quality Act (Chapter 74, Article 6). [See Conflict section above.]”

House Bill 786 -- Page 5

Section 4, paragraph B should be amended to delete the last sentence as follows: “[~~Except as provided in those rules, the department shall take no action relating to drycleaning facilities except in a situation where a release of drycleaning solvent presents an imminent and substantial hazard to public health.~~]” [Section 7 already precludes the Department of Environment from taking action in specified circumstances. See Substantive Issues below.]

Section 5, paragraph A(1) should be deleted. [Drycleaning facilities are currently required to manage their wastes in accordance with state and federal law. This requirement cannot be delayed or suspended until July 1, 2002.]

Section 5, paragraph A(2) should be amended to read: there shall be no [discharges] discharge of wastewater from drycleaning machines or of drycleaning solvent [~~shall be made to a sanitary sewer, septic tank or the waters of the state~~];

Section 5, paragraph A(4)(a) should be amended to read: “install impervious dikes or other containment structures...”

Section 5, paragraph A(4)(b), strike the words “to the extent practicable”.

Section 6, a new paragraph should be added which reads: “Two hundred thousand dollars(\$200,000) shall be appropriated from the general fund to the department of environment for expenditure in fiscal years 2002 and 2003 to pay the department and the commission’s costs of promulgating rules and for the department’s program startup costs.”

Section 6, paragraph B(1) should be deleted and replaced as follows: “Every five years the commission shall by rule set a cap on the amount of money to be used from the fund for overhead and administrative costs.” [The Department of Environment asserts the current cap of 10% (estimated to be \$58.0) will not provide sufficient funding for a minimum of one technical and one administrative FTE to implement the Drycleaning Environmental Response Act. See Administrative Implications section above.]

Section 6, paragraph B(3) should be deleted. [The Department of Environment asserts \$100.0 is not enough money to fund response actions at a single site. NMED has estimated response costs for known drycleaner contamination sites which range from \$100.0 to \$10,000.0]

Section 7, paragraph A should be amended to read: “...remediate or otherwise respond to a release or potential noncompliant release of drycleaning solvent at or from a drycleaning facility unless the Drycleaner Environmental Response Fund does not contain sufficient monies to carry out those actions or the person against whom the claim is brought owned or operated the facility [~~after July 1, 2001~~] and:...” [See Substantive Issues section above.]

Section 7 paragraph B should be amended to read: “...to recover damages caused by a release of drycleaning solvent at or from a drycleaning facility unless the Drycleaner Environmental Response Fund does not contain sufficient monies to carry out those actions or the person against whom the claim is brought owned or operated the facility [~~after July 1, 2001~~] and:...” [See Substantive Issues section above.]

Section 8, paragraph C should be amended to read: “...shall be subject to a civil penalty not to exceed [~~five hundred dollars (\$500) for each offense~~] ten thousand dollars (\$10,000) per day for each violation

of a provision of the Drycleaner Environmental Response Act...[The Department of Environment asserts \$10,000 per day per violation is consistent with the Water Quality Act (74-6-10.C(2)).]

Section 9 should be replaced as follows: “The secretary of environment shall appoint a working group composed of representatives of the department of environment, the drycleaning industry and the public, to draft rules pursuant to the Drycleaning Environmental Response Act.”

Section 11, paragraph B should be amended to read: The rate of the tax for the succeeding fiscal year shall be as follows: . . .

- (1) if the amount certified is less than [~~two million dollars (\$2,000,000)~~]five million dollars (\$5,000,000), the tax rate shall be two and one half percent;
- (2) if the amount certified is [~~two million dollars (\$2,000,000)~~]five million dollars (\$5,000,000) or more-but less than [~~three million dollars (\$3,000,000)~~]ten million dollars (\$10,000,000), the tax rate shall be one percent; and
- (3) if the amount certified is [~~three million dollars (\$3,000,000)~~]ten million dollars (\$10,000,000) or more, the tax rate shall be zero.

EB/njw