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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/18/09

**SPONSOR** Garcia, MH                      **LAST UPDATED** \_\_\_\_\_                      **HB** 576

**SHORT TITLE** Relating to Administrative Procedures                      **SB** \_\_\_\_\_

\_\_\_\_\_  
**ANALYST** Sanchez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
Indeterminate	Indeterminate	Indeterminate	Nonrecurring	Commission of Public Records

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 State Commission of Public Records (SCPR)  
 Regulation and Licensing Department (RLD)  
 Energy Minerals and Natural Resources (EMNRD)  
 Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 576 amends the Administrative Procedures Act, Chapter 12, Article 8 NMSA 1978 by adding six new sections placing them before the first section currently labeled as section 12-8-1; it also adds a new Section 8, which amends the definitions.

## **House Bill 576 -Page 2**

HB576 requires that time frames enacted prior to July 1, 2009 be amended to include implementation of the requirements of this bill.

The bill mandates that each agency promulgate rules to enforce this Act.

The definition of “Agency” includes all boards and commissions.

Agencies will also be required to provide the following information to applicants:

- A list of steps to take in order to obtain the license
- Contact information
- Time frame for review and issuance
- A written notice regarding the applicant’s administrative status
- A list of specific deficiencies, if needed

When an agency does not comply with this Act, it must

- Refund all fees
- Consider an application complete
- File a report of failure with the Governor and the Legislature

The requirement for time frames will also apply to the imposition of sanctions

### **FISCAL IMPLICATIONS**

The bill provides for promulgation of new rules by licensing agencies. The promulgation process includes the publication of notices and adopted rule text in the NM Register. The Commission of Public Records, under statutory authority, charges for publications at the NM Register and deposits the money in its internal service, revolving fund, 37100. Accordingly, some additional revenue may be realized, although the amount cannot be determined since how many agencies would promulgate time frame rules is unknown.

The promulgation of rules carries fiscal implications for each agency, including all 33 professions regulated by RLD—Boards and Commissions.

The estimated cost for one rule hearing is an average of \$1,000, taking into consideration the following expenses:

- Per diem and travel for board members
- Advertising of the hearing
- Publishing of the rules in the Register
- Rental of hearing rooms

## **SIGNIFICANT ISSUES**

This bill would codify and mandate procedures which are, at present, more informal.

According to New Mexico Environment Department (NMED), “HB 576 would add significant costs to NMED permitting and enforcement programs that, presently, NMED could not incur without substantial additional funding. NMED permitting and enforcement programs that would come within the reach of HB 576 include hazardous waste permits, ground water discharge permits, certification of federal surface water discharge permits, solid waste permits, air quality permits, liquid waste permits, and restaurant licenses and associated enforcement activities. HB 576 would place added responsibilities for all permitting programs as well as time frames of permitting and enforcement actions. Additional technical staff in all permitting and enforcement programs would be required to meet the increased responsibilities and time frames. Additional legal staff would also be required to meet the time frames. The bill also provides for increased opportunities for litigation, and additional legal staff would be required to address the litigation anticipated to result. Finally, promulgation of so many rules would consume substantial staff resources. These additional resources would require additional funding.”

NMED also states, “The effect of HB 576 would be to make NMED’s permitting process less thorough and restrict enforcement proceedings against violators of environmental laws. The result would be less environmental protection and increased risk and endangerment to public health. Unless environmental permitting and enforcement programs are fully funded, the requirements in HB 576 would necessarily undermine and threaten protection of human health and the environment. Therefore, legislation that mandates time frames for permit issuance and enforcement actions must also include funding for program costs.”

## **PERFORMANCE IMPLICATIONS**

According to EMNRD, HB 576 would also limit an agency’s ability to impose sanctions by limiting the time frame to impose sanction to 365 days. The Bill provides that the time frame for calculating a sanction starts with the number of days after the date the agency knew or had reason to know of facts allowing the agency to impose a sanction until the date the agency issues a final order imposing a sanction. According to EMNRD, requiring a sanction to be imposed with 365 days of when an agency knew or had reason to know is unrealistic. There may be need for investigation. The time could start even if the agency had no actual notice, under the “had reason to know” standard. A hearing would have to be held on the allegations.

## **ADMINISTRATIVE IMPLICATIONS**

According to EMNRD, agencies will need to make rules establishing time frames for agency licensing procedures and the imposition of sanctions. Agencies would need to implement procedures to help them meet the overall time frame in which to process license applications. There would be additional administrative burdens if the agency fails to process a license within the overall time frame established for processing a license.

## **RELATIONSHIP**

House Bill 576 relates to House Bill 45, House Bill 574, House Bill 575, House Joint Resolution 6 and Senate Bill 18.

## TECHNICAL ISSUES

According to the State Commission of Public Records, there is a concern about amending the Administrative Procedures Act because Section 23 of the act states that the provisions of the act only apply to those agencies which are specifically placed under the act. An excerpt from Section 12-8-23 NMSA 1978 reads:

### **12-8-23. Applicability of Act.**

“The provisions of the Administrative Procedures Act apply to agencies made subject to its coverage by law, or by agency rule or regulation if permitted by law. . .

It is the understanding of the Commission that currently no agencies are under the Act in its entirety, so it may be that the new material added to the act would not apply to any agencies without additional legislation or rulemaking.”

Section 1.B requires statutory time frames for processing permits enacted prior to July 1, 2009 to be “amended” to include time frames for administrative review, substantive review, and overall review, if any such time frame was excluded in the enactment. According to NMED, it is not clear what body is to amend the existing statutes. If the provision refers to the legislature, it does not make sense to direct the legislature in statute to amend statutes. If the provision refers to the agencies, executive agencies cannot amend statutes, but only promulgate regulations consistent with statutory authority.

Section 8.B defines “administrative review” to mean a review that the license application meets all “procedural criteria” required by statute or rule and section 8.C defines “administratively complete” as an agency determination that the application includes “all information to conduct a substantive review.” According to NMED, the information referred to by both sections should be the same, but the use of “procedural criteria” and “all information to conduct a substantive review” refers to different types of information. Neither definition, however, provides a good definition of the information required to make an administrative completeness determination.

## OTHER SUBSTANTIVE ISSUES

According to the NMED, HB 576 establishes as the beginning of the time frame for sanctions “the date the agency knew or had reason to know of facts allowing the agency to impose a sanction.” Establishing a standard based on when the agency should have known, rather than based on actual knowledge, is likely to create a lot of litigation and disputes over application of the time frame. This standard, as well, conflicts with the actual knowledge standard found in the Air Quality Control Act.

According to the NMED, HB 576 places unreasonable restrictions and limitations on NMED’s permitting and enforcement functions, and would undermine NMED’s statutory mandate to protect human health and the environment. The issue of an agency action involving permitting and enforcement not moving quickly enough is better addressed by looking at specific permitting and enforcement programs to identify the barriers and problems, such as insufficient funding, and to address those issues on a program by program basis rather than putting into place a system that wholesale changes how permitting, adjudications and enforcement is undertaken. This would weaken environmental protection and also have unintended negative consequences on business.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt

