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## FISCAL IMPACT REPORT

**SPONSOR** Madalena **ORIGINAL DATE** 01/24/10  
**LAST UPDATED** 02/01/10 **HB** 78

**SHORT TITLE** Environmental Board Climate Change Policies **SB** \_\_\_\_\_

**ANALYST** Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI*		

(Parenthesis ( ) Indicate Expenditure Decreases)

\* No immediate fiscal impact on state agencies.

House Bill 78 relates to Executive Message 19.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

House Bill 78 continues the initiative for New Mexico to become a leader in addressing climate change by enacting a new section of the Air Quality Control Act that directs the Environmental Improvement Board (EIB) to adopt rules in preparation for possible policy, whether federal or state, implementing greenhouse gas (GHG) emission reductions. The rules fall into three categories:

1. Rules to design an early reduction program (a voluntary program that issues allowances for GHG reductions that are achieved before such reductions are required by law);
2. Rules for an emission offset program (a voluntary program that issues allowances to a project that reduces or avoids GHG emissions in industry sectors that will most likely not be subject to GHG regulation); and
3. Rules for mandatory reporting of GHG emissions for sources that import electricity into the state or distribute fuels whose production or use may cause the emission of 10,000 metric tons (mt) or more of carbon dioxide equivalent.

The effective date is July 1, 2010, which would allow the EIB to begin its rulemaking process.

## FISCAL IMPLICATIONS

NMED states that the activities directed by this bill can be accomplished with existing resources.

This bill does not implement a cap-and-trade program but continues to lay the groundwork for future implementation, whether mandated by the federal government or through a multi-state program, such as the Western Climates Initiative. The industries importing energy or transporting fuel that will release GHG emissions when combusted in New Mexico by residential, industrial or through transportation uses might incur some additional cost to identify, measure, and report as required -- but the cost is indeterminable. Presumably, these industries have means to measure energy portfolios and fuel inventories, and in some case already report to some agencies; thus, the reporting would not appear burdensome.

A “cap and trade” program reduces emissions by establishing a market for credits created by reducing targeted emissions, allowing those industries that find it relatively inexpensive to reduce emissions to sell their credits to those industries that find it more expensive to reduce emissions. While this process reduces the overall cost of an emission reduction program relative to a “cap only” program that forces all regulated industries to reduce emission regardless of cost, the fiscal implications of a cap and trade program remain significant according to prior testimony presented to interim legislative committees. The primary cost has been identified as higher energy costs due to the production of energy as being inventoried as the biggest contributor to GHG emissions. A second fiscal implication points to the “windfall” potential for unregulated industries that can reduce emissions cheaply in an emission offset program and sell those credits to the regulated industries.

A third possible fiscal impact of a cap-and-trade program derives from whether the initial credits are auctioned or distributed freely, and if auctioned, whether the revenue would flow to the general fund or a special fund established for that purpose. Legislation proposed in the 2009 Legislative Session (House Bill 653) estimated the potential for such auction revenues between \$7.4 million and \$50.4 million according to NMED.

A final fiscal impact related to GHG reduction occurs due to the climate change itself, which simulations indicate could have broad negative impacts to New Mexico agriculture, recreation, tourism, and human and animal health due to higher temperatures and diminished water supplies: (Hurd, B.H. and J. Coonrod, 2007, *Climate Change and Its Implications for New Mexico’s Water Resources and Economic Opportunities*. National Commission on Energy Policy, New Mexico State University, Las Cruces, NM.

See also: <http://www.nmdrought.state.nm.us/ClimateChangeImpact/completeREPORTfinal.pdf>).

While most of the literature dealing with climate change relates to the announced and commonly accepted scientific findings, there is an opposing view. Those opposing the climate change theories disbelieve the announced findings and point to recently published reports that scientists in Great Britain manipulated the findings to advance their concepts regarding climate change. This school of thought also believes efforts and costs to combat climate change are unrealistic or unnecessary.

See also:

<http://www.aei.org/googleSearch?query=%22Climate+Change%22&start=0&sortBy=relevance>

## SIGNIFICANT ISSUES

GHG reduction initiatives focus on measuring and reducing greenhouse gas (GHG) emissions while developing and promoting cleaner energy resources. This approach is based on research that links GHG emissions to global warming and the concept that such emissions, because they are human-caused rather than natural phenomena, represent a viable avenue to slow or reduce the projected warming by their reduction.

These concepts are controversial, as stated in the LFC publication *Volume I, Legislating for Results: Policy and Performance Analysis* (January 2010):

The Waxman-Markey bill (American Clean Energy and Security Act), which passed the U.S. House of Representatives in June 2009, brings the debate to the national forefront and highlights the complexities of addressing GHG reduction given the wide range of issues and conflicting viewpoints.

For example, some experts claim a cap and trade program that auctions initial credits to generate proceeds for the public benefit would suffice. Others see a cap and trade program as part of an integrated approach that would require other essential components, such as promoting energy efficiency, to be successful. Still other experts claim that a cap and trade program would contribute to energy price volatility, reduce economic growth, provide windfall profits to those allocated credits, and burden low income households. These opponents to cap and trade point to a carbon tax as a better solution.

A reporting system and registry program for greenhouse gas emissions was developed in 2007 by NMED (NMAC 20.2.87). Large emitters have been reporting since January 1, 2008. In November 2009, NMED suspended hearings for developing requirements for the additional industries slated for GHG emission reporting in order to harmonize state GHG reporting rules with newly announced federal requirements. According to the department, “the entities and facilities subject to federal reporting requirements will include:

- Fossil fuel and industrial chemicals suppliers
- Motor vehicle and engine manufacturers
- Direct emitters of greenhouse gases who emit 25,000 metric tons or more per year. Such sources of emissions might include cement production, iron and steel production and electricity generation.

The first annual report on greenhouse gas emissions, covering calendar year 2010, would be submitted to the Environmental Protection Agency in 2011. Vehicle and engine manufacturers, however, would begin reporting for model year 2011.”

Although the department withdrew the proposed regulations, it maintained its authority to continue to collect information on greenhouse gas emissions under existing authority in the air quality control regulations.

This bill would expand the EIB’s authority to track GHG emissions from those *directly* occurring within New Mexico to those sources of GHG emissions *indirectly* tied to New Mexico through the “upstream” production of energy elsewhere that is imported for use in the state. The bill would also provide a means for tracking GHG emission related to fuel consumption, which has a

“downstream” GHG component when the fuel is used—such as in transportation. The ability to quantify “tailpipe” emissions, for example, has proven difficult at the point of use. Using inventory measured at the terminal rack for fuels before distribution would enable the department to estimate the potential GHG emissions.

According to NMED, these new reporting provisions “would better enable the state to evaluate New Mexico greenhouse emission reductions and to track changes in electricity imports and fuel use under a greenhouse gas reduction program.”

ENMRD provides the additional analysis:

*HB 78 could prepare New Mexico industry for potential federal or state action on climate change and greenhouse gas regulation by providing emission credits to entities that voluntarily reduce or avoid greenhouse gas emissions before the date required by law. Those entities that so reduce or avoid the emissions would have a marketable emission credit issued to them by the Environment Department. An economic benefit to New Mexico businesses could be achieved by providing allowances to those who reduce emissions before they are required. The mandatory reporting requirements created under HB 78 may prepare industry for upcoming federal reporting requirements. New Mexico may be more prepared to meet the possible greenhouse gas emission reporting requirements of a potential federal reporting program.*

A key issue is whether the New Mexico GHG allowances and emissions reporting would be recognized by a federal program. Also unclear is whether Congress will act on legislation, such as the Waxman-Markey bill (American Clean Energy and Security Act), which passed the U.S. House of Representatives in June 2009. The Environmental Protection Agency’s action to regulate GHG emissions under the Clear Air Act without legislation complicates the matter further.

## **PERFORMANCE IMPLICATIONS**

EMNRD notes that HB 78 “could strengthen New Mexico’s standing as the Clean Energy State. The bill provides incentives, through sales of greenhouse gas emission credits, to New Mexico businesses to voluntarily increase energy efficiency and to maximize use of clean energy.”

The bill stems from Executive Order 2009-047 that directs NMED to work with stakeholders and state agencies “to develop offset protocols and evaluate mechanisms for quantifying and awarding greenhouse gas emission allowances for reductions that occur before mandatory cap-and-trade programs require such reduction.” The department states it will finalize reports summarizing findings from both stakeholder processes by August 2010.

## **ADMINISTRATIVE IMPLICATIONS**

HB 78 directs the EIB to issue rules establishing two voluntary greenhouse gas emission reduction programs and enhance the current greenhouse gas emissions reporting program. According to NMED, current staff would be used to implement the programs.

NMED notes that the EIB’s authority under the Air Quality Control Act does not include Indian lands; therefore, sources on those lands would be excluded from the program.

## **OTHER SUBSTANTIVE ISSUES**

House Memorial 52 (2009) requires that a study be conducted on the impact of various GHG reduction programs on the citizens, businesses, and environment of New Mexico and that the Radioactive and Hazardous Materials Committee (RHMC) report its findings and recommendations to the New Mexico Legislature by December 2010. According to the Fiscal Impact Report for this memorial, the “RHMC would study, evaluate, and issue recommendations for legislation, policies, programs, and regulatory approaches, including the authority of the state to regulate interstate power sales and GHG emissions from non-WCI entities and from tribal lands for approaches proposed by the WCI. The RHMC would consider and address the environmental and fiscal impacts to New Mexico citizens, consumers, and industry resulting from the adoption and implementation of a GHG reduction program, including the impacts to gross state product, state income, employment, taxation and revenues, and price impacts on electricity, natural gas, and petroleum products.”

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

No additional EIB authority for establishing procedures for GHG reporting will be granted. EMNRD maintains that “if federal laws are passed to regulate greenhouse gas emissions, New Mexico businesses that early adopt emission reduction practices may not gain an economic benefit since their early reduction or offset allowance would not be verified by the state.” However, as previously noted, it is unclear whether such state programs will be recognized by a federal program. NMED claims that there might be “an adverse economic impact to not having sufficient cost-effective offset allowances available at the beginning of a mandatory greenhouse gas emission reduction cap and trade program. Additionally, if this bill is not enacted, the department would not be able to accurately assess the state’s greenhouse gas emissions related to the production and use of imported electricity and fuels, hampering the state’s ability to analyze greenhouse gas emissions reductions.”

## **POSSIBLE QUESTIONS**

1. Under what provision does the EIB consider the Air Quality Control Act granting it authority to monitor and require reporting of GHG emissions?
2. How will federal program impact GHG emitters on Indian lands?
3. Without the participation of coal-powered plants located on tribal lands, how will GHG emissions be reduced in New Mexico?
4. Would GHG emission reduction programs implemented by the Environmental Protection Agency be subject to challenge in federal court?
5. Would such legal entanglements delay implementation of a national program?
6. Does any provision of this bill place New Mexico industry, businesses or consumers at a disadvantage relative to neighboring states?
7. Will reducing GHG emission impact any climate change and is reducing GHG emission even necessary?