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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/10
 LAST UPDATED 02/17/10 HB 81/aSFl#1

SPONSOR Heaton

SHORT TITLE Petroleum Storage Tank Definition Changes SB _____

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	(\$972.4)	(\$972.4)	Recurring	Federal Grants

(Parenthesis () Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act
 Duplicates Senate Bill 61

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$972.4)	(\$972.4)	(\$1,944.8)	Recurring	Federal grants for PSTB*

(Parenthesis () Indicate Expenditure Decreases)

*PSTB: Petroleum Storage Tank Bureau

SOURCES OF INFORMATION

LFC Files

Responses Received From (For original bill)
 New Mexico Environment Department (NMED)

SUMMARY

Synopsis of SFl Amendment #1

The Senate Floor amendment #1 to House Bill 81 basically exempts petroleum storage tank facilities in rural or remote areas from the new rules for ineligibility classification to receive petroleum products, thereby ensuring that the public continues to have access to motor fuel in those areas. The amendment strikes language that allowed the department to shut down a petroleum storage tank facility in rural or remote areas if it met the criteria for ineligible classification after deferring the classification for a period up to 180 days:

H. Rules adopted by the board pursuant to this section shall ~~allow the department to defer classifying a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products for a limited period of up to one hundred eighty days if the ineligible classification would not be in the best interest of the public because it would jeopardize the availability of, or access to, motor fuel in any rural and remote areas.~~

“Rural or remote areas” are not defined in the bill so the rulemaking process would need to clarify this provision. Presumably, the original 180 day period for executing a shut down order pursuant to the bill was meant to provide enough time for a facility in a rural or remote area to remedy the deficiency that led to the ineligible classification to receive petroleum products. This amendment requires the EIB to defer such a classification. Past testimony has indicated that “mom and pop” stores in these areas often provide the only location for other services besides providing gas, and shutting them down would present a hardship to citizens in the area.

It is unknown whether this exemption will allow the state to meet compliance with the federal Energy Policy Act of 2005. If the amendment is interpreted as being noncompliant, it may jeopardize the federal grants currently received by PSTB and the primacy of the state in overseeing petroleum storage tanks.

Synopsis of Original Bill

House Bill 81 amends sections of the New Mexico Hazardous Waste Act and the Ground Water Protection Act in order to comply with federal law for petroleum storage tanks.

House Bill 81 proposes to:

- amend the definitions of “above ground storage tank” and “underground storage tank” in the Hazardous Waste Act and the Ground Water Protection Act by:
 - eliminating the exemption from regulation for petroleum storage tanks associated with emergency generator systems;
 - limiting the exemption for farm, ranch, and residential tanks to those tanks that store motor fuel only; and
 - expanding the exemption for heating oil tanks to all tanks used to store heating oil for consumptive use on the premises where stored;
- clarify the definition of a tank “owner” in Section 74-6B-3(F) so that it mirrors the federal definition in 40 CFR 280.12; and
- provide authority to the environmental improvement board (EIB) in Section 74-4-4 to promulgate rules establishing a program to prohibit delivery, deposit, acceptance, or sale of petroleum products.

FISCAL IMPLICATIONS

The New Mexico Department of Environment (NMED) expresses the concern that failure to bring state statute into compliance with federal requirements will jeopardize two federal grants, currently totaling about \$972 thousand, which fund activities in the Petroleum Storage Tank Bureau (PSTB).

The department claims that implementing the bill can be accomplished with existing resources.

SIGNIFICANT ISSUES

According to the department, the changes proposed in House Bill 81 are intended to ensure the state maintains primary oversight for petroleum storage tank regulation and complies with relevant sections of the federal Energy Policy Act of 2005.

NMED provides the following analysis of these two issues:

State Primacy

In order to maintain state primacy, New Mexico's statutes and rules must be equivalent to and no less stringent than applicable federal law. *See* 40 CFR 280.11(b). In two instances, the Hazardous Waste Act and the Ground Water Protection Act are less stringent than federal law.

First, while federal law regulates tanks associated with emergency generator systems, the Hazardous Waste Act and the Ground Water Protection Act (the Acts) exempt these tanks from regulation. *See* NMSA 1978, §§ 74-4-3 (A)(7), 74-4-3(U)(7), 74-6B-3(A)(7), 74-6B-3(M)(9). The Acts are, therefore, less stringent than federal law. The bill proposes to eliminate the exemption for tanks associated with emergency generator systems in order to conform to federal law.

Second, the Acts exempt from regulation all "farm, ranch or residential tank[s] used for storing motor fuel or heating oil for noncommercial purposes." NMSA 1978, §§ 74-4-3 (A)(1), 74-4-3(U)(1), 74-6B-3(A)(1), 74-6B-3(M)(1) (emphasis added). By contrast, federal law exempts only those farm, ranch or residential tanks that store motor fuel for noncommercial purposes. *See* 40 CFR 280.12. For this reason, the bill proposes to delete "or heating oil" from the exemption for farm, ranch and residential tanks.

Additionally, New Mexico law requires state regulations to be equivalent to and no more stringent than applicable federal law. *See* NMSA 1978, § 74-4-4(C). By limiting the exemption for heating oil tanks to only those tanks that are farm, ranch or residential tanks, the Acts regulate certain tanks that are exempt from federal regulation and are, therefore, more stringent than federal law, which exempts all tanks that store heating oil when the heating oil is consumed where it is stored. *See* 40 CFR 280.12. To conform state statutes to this exemption, an exemption for tanks "used for storing heating oil for consumptive use on the premises where stored" must be created.

Compliance with the federal Energy Policy Act of 2005

Section 1527 of the federal Energy Policy Act of 2005 requires states to establish a program that makes it unlawful to deliver, deposit, or accept petroleum products in a storage tank facility that the State has determined to be ineligible for such delivery, deposit or acceptance. Federal law required this delivery prohibition program to be implemented by August 8, 2007; New Mexico is currently the only state/territory that does not have this statutory authority. New Mexico has been unable to meet this deadline because the EIB does not currently have authority to promulgate rules to address these requirements. The changes proposed to Section 74-4-4 would grant EIB the authority necessary to comply with the delivery prohibition requirements of the federal act. Specifically, the bill proposes to allow the EIB to promulgate rules that establish the:

- criteria and procedures for determining when tank facilities are ineligible for

delivery, deposit, acceptance or sale of petroleum products and when they shall be reclassified as eligible for delivery, deposit, acceptance or sale of petroleum products;

- mechanisms for identifying ineligible tanks; and
- circumstances in which the environment department may defer classifying a tank facility as “ineligible.”

ADMINISTRATIVE IMPLICATIONS

Some heating oil tanks will be removed from regulation, tanks that service emergency generators will be regulated, and rules developed with stakeholders for delivery prohibition. Once adopted, these rules would require the PSTB to tag facilities that become ineligible for delivery, deposit, acceptance or sale of petroleum products, and to remove tags when facilities become eligible for the same. The PSTB anticipates that “the administrative burden of identifying, tagging, and re-qualifying facilities will be minor because a facility will become ineligible only for substantial violations of technical and safety requirements, not minor violations or paperwork problems.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 81 duplicates Senate Bill 61, which is sponsored by the interim Radioactive and Hazardous Materials Committee.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico statute regarding petroleum storage tanks will not comply with federal statute. NMED states the concern that failure to enact this bill may “jeopardize the New Mexico’s authority to regulate petroleum storage tanks as well as the federal funding PSTB receives to do so.”

POSSIBLE QUESTIONS

1. How will this legislation impact small “mom and pop” gas stations in rural areas?
2. What does it mean for the state to have “primacy” over petroleum storage tanks?
3. What would happen if New Mexico lost “primacy”?
4. How will this legislation aid PSTB in improving performance on ensuring compliance with the regulations?
5. Have the relevant industries been involved in drafting the legislation and what is the impact to industry?

MA/svb