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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Egolf LAST UPDATED _____ HB 178

SHORT TITLE Denial of Air Quality Control Permits SB _____

ANALYST Aledo

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Economic Development Department (EDD)
 New Mexico Environment Department (NMED)

Other Responses

New Mexico Association of Commerce and Industry (ACI-NM)

SUMMARY

Synopsis of Bill

House Bill 178 provides authority to the Environment Department or local agency that administers the Air Quality Control Act to deny an air quality permit application or revoke an existing air quality permit if the applicant or permit holder has:

- knowingly misrepresented a material fact in a application;
- refused to disclose the information required by the Act;
- been convicted in any court, within 10 years, of a felony related to environmental crime or crime involving restraint of trade, price-fixing, bribery or fraud
- constructed or operated a facility requiring a permit without having the permit, if the emissions of that facility exceed the permit threshold by 25%; or,
- had a permit revoked or permanently suspended for cause under the environmental laws of any state or the United States.

The bill also requires applicants to file disclosure statements with the department. Certain applicant types are exempt the disclosure statement requirement: governments and government agencies, and a corporate officer/director of a company that has a registration on file with the Securities Exchange Commission and submits to the Environment Department evidence of the filing and its Form 10-K.

HB 178 also makes minor grammatical changes to the New Mexico Air Quality Control Act.

FISCAL IMPLICATIONS

According to the Attorney General's Office, it is likely that being aware of and able to act upon an applicant's record of repeat, serious violations of the law will save the state money in the long run by avoiding expensive remediation, clean up costs, and other indirect liabilities from violations of repeat serious offenders. Additionally, possible public health care cost savings could result from lower toxic emissions. Permittees who do not habitually violate the law could see savings from lower administrative costs spread over all applicants, i.e., from lower administrative costs arising from the agency's ability to differentiate between law abiding applicants and permittees and those who have demonstrated an indifference to the law.

The New Mexico Association of Commerce and Industry asserts HB 178 will create additional burdens to doing business in New Mexico and will have a negative effect on the State's ability to recruit and retain viable business.

SIGNIFICANT ISSUES

The Attorney General's Office asserts the logic behind the state and local permitting agencies ability to consider an applicant or permittee's prior serious environmental crimes or significant civil violations when it is granting new or continued approval under a state license to release emissions under the air quality control act. The ability to deny or revoke a permit based on an applicant's conviction for a crime involving restraint of trade, price-fixing, bribery or fraud allows the permitting agency to consider and act upon an applicant or permittee's conviction for a crime demonstrating a propensity for dishonesty in dealings with the government and general disregard for the law.

The New Mexico Environment Department provided the following:

The Act does not currently authorize the Environment Department to deny air permit applications or revoke air permits when the applicant or permit holder has knowingly misrepresented facts; has refused to disclose air quality information required by the Act; has been convicted of felony environmental crime, price-fixing, bribery or fraud; or constructed and operated a facility without an air permit when a permit is clearly needed.

These actions create a greater risk that a permit applicant or holder would not comply with state and federal air quality requirements in the future and that adverse impacts to public health and the environment in New Mexico would occur. Allowing such entities to hold permits can create a burden on agency resources by requiring continued enforcement oversight and legal action. The vast majority of air quality permit applicants and holders comply with state and federal regulations; however, a small minority of air

quality permit applicants and holders do not, leading to intensive resource needs for the agency to address noncompliance numerous times.

Several other New Mexico environmental acts, including the Solid Waste Act, Hazardous Waste Act, and Water Quality Act, have provisions that authorize the Environment Department to address permit applicants and permit holders with a poor environmental record by requiring permittees to be accountable for their actions that harm the environment or denying permits to those with the most egregious record of environmental offense. HB 178 would make the Air Quality Control Act more consistent with these other state environmental acts.

The bill states that corporations and officers or directors of corporations who have filed a registration statement with the SEC if the corporations provide evidence of that filing and submit their Form 10-K to the Environment Department are exempt from the disclosure statement requirement. NMED notes Corporations could have engaged in conduct that may form the basis for denial of a permit, and should be required to disclose this information. There is not a basis for exempting corporations from filing disclosure statements.

NMED also adds notes that corporations that file registration statements represent larger companies. HB 178 gives unfair advantage to larger corporations, who are not required to file disclosure statements, while requiring smaller companies to do so.

PERFORMANCE IMPLICATIONS

NMED notes that the resources required to address permit holders that have a willful disregard for environmental laws is burdensome to the agency and limits the ability of the agency to address other environmental issues. This bill would encourage compliance with air quality permits and alleviate this burden.

ADMINISTRATIVE IMPLICATIONS

EDD notes that a new form will need to be created and procedures implemented for evaluating disclosures.

TECHNICAL ISSUES

HB 178 refers to registration statements filed under “Section 5, Chapter 38, Title 1 of the federal Securities Act of 1933, as amended.” Section 5 should refer to “Section 6,” which is the section under the Securities Act which requires the filing of registration statements.

OTHER SUBSTANTIVE ISSUES

This bill requires air quality permit applicants to file a disclosure statement. The bill does not state what information should be in the disclosure statement or how it relates to the proposed language. The bill should clarify what information is required.

The New Mexico Association of Commerce and Industry consider the categories of conduct proposed by HB 178 to be broad and subjective.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED asserts that if HB 178 is not enacted, entities who misrepresent to the state, have criminal

records, have a poor environmental compliance history, and who have failed to obtain a permit when clearly needed will continue to be able to obtain air quality permits.

The AGO states that there is a possible creation of additional state liability for clean up costs or other damages caused by the NMED's inability to consider and act upon knowledge of an applicant or permittees propensity to violate the law.

The Economic Development Department adds that applicants who have committed the actions outlined in the bill will be allowed an air quality permit in New Mexico. In this case, if we assume that past permit problems are a predictor of future permit problems, this could undermine air quality protection in NM.

MCA/bym