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## FISCAL IMPACT REPORT

	<b>ORIGINAL DATE</b>	01/26/11	
<b>SPONSOR</b> <u>Griego, P.</u>	<b>LAST UPDATED</b>	03/18/11	<b>HB</b> _____
			155/aSCONC
<b>SHORT TITLE</b> <u>Private Landfill Term Of Permits</u>			<b>SB</b> <u>/aHENRC/aHBIC</u>
			<b>ANALYST</b> <u>Haug</u>

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$14.7)*	(\$14.7)*	Recurring	

(Parenthesis ( ) Indicate Revenue Decreases)

\*See fiscal impact. The number in the table is the average cost per year, extending for 10 Years.

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		(\$250.0)*	(\$250.)*	(\$500.0)	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See fiscal impact. The number in the table is the average cost per year, extending for 10 Years.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of HBIC Amendment

The HBIC amendment to Senate Bill 155, as amended, strikes all House Energy and Natural Resources Committee amendments. This repeals the notification requirements and extended notification time. The bill that will be presented to the House for passage is the identical bill that was passed by the Senate.

#### Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee Amendment to Senate Bill 155 modifies the opt in provision for 20 year licensing of a private facility by including in the requirement to notify the Solid Waste Bureau by September 1, 2011 not only current owners of a private facility

but also those with a permit application pending. In addition the amendment provides additional time for filing the opt in provision decision notification up to 60 days after receiving the final order approving a permit if the 60 days date is later than September 1, 2011.

#### Synopsis of SCONC Amendment

The Senate Conservation Committee Amendment restores 5 year review of permits by the NMED rather than the 10 year reviews proposed in the original bill.

#### Synopsis of Original Bill

Senate Bill 155 amends the Solid Waste Act, 74-9-24 NMSA 1978, to increase the maximum permit term for privately owned and operated facilities from ten years to twenty years (which is the same permit term as for publically owned and operated solid waste facilities). The mid-term permit review would occur at a ten year interval rather than a five year interval.

### **FISCAL IMPLICATIONS**

The NMED states without specifying funds affected that the fiscal implications are estimated to be a loss of permit application fee revenue of approximately \$147,000 for a 10 year period. This estimate is based on an evaluation of the private facilities that currently would be required to renew their 10 year permits by 2021. The current maximum permit application fee is \$10,000 plus a fee for each special waste requested. However, the loss of revenue is offset by significant cost savings realized by elimination of the need for NMED staff to complete permit reviews, publish notices, and hold hearings. Based on an evaluation of FTE hours needed to review a permit application, and costs of court reporters, interpreters, publishing notices, and other associated costs it is estimated that an average permit review process costs the Department between \$150,000-\$500,000 depending application quality, complexity and length of the hearing.

The revenue and estimated operating budget tables above reflect the average annual changes which are projected in the NMED analysis.

### **SIGNIFICANT ISSUES**

According to the NMED there is no compelling reason or justification for different permit terms for a publically or privately owned permitted solid waste facility. A review of the Solid Waste Bureau's files and records regarding operational history of privately owned versus publically owned permitted solid waste facilities finds that the majority of privately owned and operated facilities have significantly better operating records, with fewer substantial violations than publically owned and operated permitted facilities. Privately owned facilities tend to have greater fiscal resources and higher quality personnel and consultants to properly construct, manage, operate, monitor groundwater and methane gas, and meet the requirements for financial assurance and post-closure care requirements.

The NMED notes further:

The period of time to allow for public comment at a quasi-judicial hearing will be expanded considerably from every 10 years to 20 years reducing public access and input to permitting processes. This will have a negative impact on those persons with environmental justice concerns regarding proliferation of facilities that may negative

impact the quality of life where they live, work and recreate. The residents in or near these facilities and the public as a whole will lose a significant opportunity to participate in a public hearing process, provide comments, voice concerns or raise issues for the decision maker about mitigation measures and proposed permit conditions relating to the continued operation of these facilities. The lack of participation opportunities in the past in New Mexico have led to mistrust of government decision making processes and cynicism of residents in neighboring communities around solid waste facilities.

In the case of a “bad actor” or significantly non-compliant operator due process requirements make it more difficult and expensive for the Department to revoke a permit, than to condition or deny a permit application.

### **PERFORMANCE IMPLICATIONS**

The NMED states there are no anticipated performance implications, since enforcement and permitting staff will have more time continue to complete unannounced facility inspections and site visits, construction checks, and to provide technical assistance. The applicable performance measure is the percent of permitted active solid waste facilities that are found to be in compliance with the New Mexico solid waste rules. The modification of the permit term for privately owned and operated facilities should have a negligible impact on this performance measure.

GH:LG/bym:svb:mew