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## FISCAL IMPACT REPORT

**SPONSOR** Harden **ORIGINAL DATE** 02/28/11  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Greenhouse Gas Emission Rule Stringency **SB** 489

**ANALYST** Daly

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	NFI*	NFI*			

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications

Conflicts with HB 579

Relates to SB 91, SB 190, SB 459, SJR 3 and HJR 3

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Health Policy Commission (HPC)

#### No Response

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 489 amends the Air Quality Control Act to prevent the Environmental Improvement Board (EIB) or a local board from adopting a rule more stringent than federal law or regulation for reporting, verifying, limiting, trading or capping the emission of greenhouse gases.

### FISCAL IMPLICATIONS

No responding agency has reported any fiscal impact.

### SIGNIFICANT ISSUES

SB 489 amends the Air Quality Control Act to limit the EIB's or local board's authority to adopt rules on greenhouse gas emissions. HB 579 also amends that Act with the same result. The

AGO commented as to HB 579, which is equally applicable to SB 489 as noted, that the limitation:

...is very broad in its sweep. It effectively precludes any government [ or as to SB 489, EIB or a local board] attempt to regulate greenhouse gas emissions in New Mexico. The reference to “regional rule[s]” presumably refers to regional programs such as the Western Climate Initiative (“WCI”) and the Regional Greenhouse Gas Initiative (“RGGI”).

While HB 579 [or SB 489] can preclude New Mexico’s participation in such a program, HB 579 [or SB 489] cannot and does not appear to address federal regulation of greenhouse regulations. The prohibitions of HB 579 [or SB 489] may be preempted by federal law were Congress to pass a national emissions program or if the Environmental Protection Agency (“EPA”) were to regulate greenhouse gasses administratively. (The Clean Air Act's sweeping definition of "air pollutant" is broad enough to encompass greenhouse gas emissions).

The impact of federal law is recognized in SB 489, which allows adoption of certain greenhouse gas emission rules which are no more stringent than federal law or regulation.

The HPC reports, based on information appearing on the NMED website, that:

On November 2, 2010, the EIB adopted by a vote of four to three the most comprehensive greenhouse gas pollution reduction regulations in the nation. The rules, proposed by the NMED, will reduce global warming pollutants through a regional cap on greenhouse gas emissions.

The new regulations will enable the state to participate in a regional greenhouse gas cap-and-trade program with other U.S. states and Canadian provinces through the Western Climate Initiative (WCI). The WCI is a collaborative of seven western states and four Canadian provinces that are developing strategies to address climate change.

The program, which is scheduled to start in 2012, will affect about 63 large industrial sources in New Mexico. Those sources include electric generators and the largest emission sources in the oil and gas sector. Each source would have to reduce its emissions by two percent per year until 2020 or acquire emissions credits from other participants. The program will not be triggered unless at least 100 million tons of emissions are included regionally, which ensures that New Mexico will not implement a trading program alone. The program would have to be more than four times larger than New Mexico’s annual emissions of approximately 24 million tons.

The program is designed to contain costs to industry and consumers through several mechanisms, including the free allocation of pollution allowances to regulated sources; trading of allowances to allow the market to find the lowest-cost emission reductions; a generous offset program which allows sectors that are not under the cap to implement low-cost reduction measures; and a delay in turning in allowances until 2015. Economic analyses show a modest net benefit to the New Mexico economy as a result of reducing greenhouse gas emissions and promoting clean energy jobs.

The AGO notes that the section of the Air Quality Control Act being amended already contains stringency limitations on, among other things: regulations to protect visibility and prevent significant deterioration in nonattainment areas; standards of performance and emission standards for hazardous air pollutants; regulations governing emissions from solid waste incinerators; and regulations relating to control of motor vehicle emissions. SB 489 would presumably address regulations adopted pursuant to the Board's power to adopt regulations to prevent or abate air pollution, including the rules recently adopted by the board regarding cap and trade and greenhouse gas reporting. SB 489 would ensure that the protections of any regulation passed by the EIB or local board would not exceed federal laws or regulations. For example, the U.S. Environmental Protection Agency has mandated the reporting of greenhouse gas data and other relevant information from large sources and suppliers in the United States.

The AGO also raises an issue as to this bill's applicability:

SB 489 is silent as to whether it is retrospective in application. The general rule is that statutes, except those dealing with remedial procedure, are to be construed as prospective rather than retrospective unless there is a clear legislative intention to the contrary. Therefore, absent clear legislative intent, SB 489 would not apply to those rules already adopted by the EIB, but would apply to rules adopted by the Board in the future.

## CONFLICT, RELATIONSHIP

This bill (SB 489) conflicts with HB 579, which amends NMSA 1978, § 74-2-5 in a manner that is slightly different than the amendment contained in this bill. SB 489 also relates to SB 91 – Suspend Effectiveness of Some Rules, SB 190 – Repeal Effectiveness of Some Rules and SB 459 – Repeal Effectiveness of Certain Rules, each of which proposes legislative action against certain existing EIB rules governing greenhouse gas emissions. SB 489 also relates to SJR 3 and HJR 3, proposing constitutional amendments to allow the Legislature to nullify or repeal agency rules.

## OTHER SUBSTANTIVE ISSUES

The HPC provides this background information on greenhouse gas:

Gases that trap heat in the atmosphere are often called greenhouse gases. Some greenhouse gases such as carbon dioxide occur naturally and are emitted to the atmosphere through natural processes and human activities. Other greenhouse gases (e.g., fluorinated gases) are created and emitted solely through human activities. The principal greenhouse gases that enter the atmosphere because of human activities are:

- **Carbon Dioxide (CO<sub>2</sub>)**: Carbon dioxide enters the atmosphere through the burning of fossil fuels (oil, natural gas, and coal), solid waste, trees and wood products, and also as a result of other chemical reactions (e.g., manufacture of cement). Carbon dioxide is also removed from the atmosphere (or “sequestered”) when it is absorbed by plants as part of the biological carbon cycle.
- **Methane (CH<sub>4</sub>)**: Methane is emitted during the production and transport of coal, natural gas, and oil. Methane emissions also result from livestock and other agricultural practices and by the decay of organic waste in municipal solid waste landfills.

- **Nitrous Oxide (N<sub>2</sub>O)**: Nitrous oxide is emitted during agricultural and industrial activities, as well as during combustion of fossil fuels and solid waste.
- **Fluorinated Gases**: Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are synthetic, powerful greenhouse gases that are emitted from a variety of industrial processes. Fluorinated gases are sometimes used as substitutes for ozone-depleting substances (i.e., CFCs, HCFCs, and halons). These gases are typically emitted in smaller quantities, but because they are potent greenhouse gases, they are sometimes referred to as High Global Warming Potential gases (“High GWP gases”).

The HPC also notes that the EIB is responsible under state and federal law for the promulgation of rules and standards in (1) food protection; (2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity and rules authorizing imposition of administrative penalties for enforcement; (3) liquid waste, including exclusive authority to establish on-site liquid waste system fees and to implement and administer an inspection and permitting program for on-site liquid waste systems; (4) air quality management; (5) radiation control; (6) noise control; (7) nuisance abatement; (8) vector control; (9) occupational health and safety; (10) sanitation of public swimming pools and public baths; (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health; (12) medical radiation, health and safety certification and standards for radiologic technologists; (13) hazardous wastes and petroleum storage tanks; and (14) solid waste.

MD/svb