

LFC Requester:

Ginger Anderson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment**
Correction **Substitute**

Date Prepared: 1/24/24

Bill No: SB 187

Sponsor: Sen. Linda Lopez

Short Title: Local Air Quality Control Authority

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Gideon Elliot, AAG

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Bill (“SB”) 187, if enacted, would eliminate the local authority of Bernalillo County to administer and enforce provisions of the Air Quality Control Act (“AQCA”), NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2019). The Bill would effectuate the change by striking from Section 74-2-2(I) through (K) definitions for a “local agency,” “local authority” and “local board,” and repeals Section 74-2-4 which provides the mechanism for an eligible local authority to assume the responsibility for enforcement of the Act.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The Environmental Protection Agency regulates the emissions of airborne pollutants through the Clean Air Act, 42 U.S.C §§ 7401-7671. The Act charges the EPA with identifying air pollutants and establishing ambient air quality standards. However, states are charged with implementing and enforcing the rules at the local level, which they demonstrate through the submission to the EPA of a State Implementation Plan (“SIP”). The ACQA further authorized the delegation of enforcement to local governments of a certain size, namely Bernalillo County. Indeed, only Bernalillo County has a local Air Quality Board. However, there does not appear to be any express requirement in the Clean Air Act that the ACQA must allow for the delegation of local authority.

The effective date of the Legislation, if passed, is July 1, 2024. However, Section 17 of the Bill states that all functions of a local board are to be transferred to NMED’s Environmental Improvement Board before the effective date of the legislation. For obvious reasons, this provision would likely not be enforceable prior to the effective date of the law.

Section 17(A) further provides that all orders and permits of the local authority are transferred to the NMED EIB. However, Section 17(B) provides that rules, orders, and decisions of the local authority shall remain in effect until repealed. These orders and decisions, to the extent they

require continuing compliance, may not carry the force of law unless jurisdiction is expressly shifted to NMED EIB upon the effective date of the law.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS