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FISCAL IMPACT REPORT

SPONSOR: Heaton DATE TYPED: 02/12/01 HB 278 a/HENRC
 SHORT TITLE: Amend Air Quality Control Act SB _____
 ANALYST: Belmares

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Fiscal Implications Section Below		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 278 and SB 264

SOURCES OF INFORMATION

Department of Environment

SUMMARY

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment eliminates the cap of \$200,000 for civil penalties associated with air quality permit violations. Additionally, the amendment specifies the time a compliance order may be issued as being one year from the time the department or local agency becomes aware of the violation. Additional technical and grammatical modifications are also made.

Synopsis of Original Bill

House Bill 278 proposes to change the definition of potential emission rate (PER) which is used to determine the applicability of the Department of Environment’s air quality construction permit program to a facility. House Bill 278 also would prevent the Department of Environment from issuing a compliance order for a violation that occurred more than one year prior, except with approval from the Attorney General and the Cabinet Secretary, preventing the Department of Environment from issuing a compliance order for a civil penalty greater than \$200,000, except with approval from the Attorney General and the Cabinet Secretary, and creating a five-year statute of limitation for judicial actions for civil penalties.

FISCAL IMPLICATIONS

Penalties collected by the Department of Environment are deposited into the general fund. Possible reduction in penalties collected pursuant to House Bill 278 would be reflected in a corresponding reduction in the general fund. The Department of Environment asserts restrictions on administrative enforcement actions could result in a corresponding increase in judicial actions, which may require more departmental resources to prosecute.

ADMINISTRATIVE IMPLICATIONS

House Bill 278 would require the Department of Environment to modify its regulations to incorporate the new definition of potential emission rate.

DUPLICATION

House Bill 278 duplicates Senate Bill 264.

OTHER SUBSTANTIVE ISSUES

Potential Emission Rate

The Department of Environment indicates the proposed definition of “potential emission rate” is substantially equivalent to the federal Clean Air Act definition of “potential to emit” and is not substantially different from the current definition as interpreted and applied in the current air quality regulations. Additionally, the Department of Environment claims the PER definition change would not provide any more opportunity for facilities to avoid the permit review process by netting emissions (the term “netting emissions” means the process by which a facility takes credit for emission reductions to offset increases in emissions without obtaining enforceable requirements for the reductions).

Administrative Restrictions

The proposed language in House Bill 278 would prevent the Department of Environment from bringing any administrative action for a violation which began more than 12 months prior to the initiation of the administrative action, even if the violation were ongoing at the time of discovery.

The Department of Environment has expressed concerns regarding a possible reduction in enforcement actions stemming from the resource burden placed on the agency in filing a court case as opposed to filing an administrative action for civil penalties.

The federal act states “any such determination by the Administrator and the Attorney General shall not be subject to judicial review.” The Department of Environment has also expressed concern regarding the language in House Bill 278 not providing exclusion from judicial review similar to the exclusion allowed for in the federal Clean Air Act.

Judicial Restrictions

The language contained in House Bill 278 results in a five-year statute of limitations for judicial enforcement actions, which is similar to the federal general statute of limitations. The Department of Environment has indicated that unlike the federal language which allows for some opportunity for temporarily halting the statute of limitations clock, the proposed language in House Bill 278 does not. Additionally, the Department of Environment has indicated the statute of limitations clock should begin at the time the violator discloses the violation to the Department of Environment

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