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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 2/18/01 HB 773
 SHORT TITLE: Environmental Improvement Board Appeals 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)

SOURCES OF INFORMATION

Department of Environment
 Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

House Bill 773 amends Section 74-2-7 of the Air Quality Control Act (AQCA) and Section 74-6-5 of the Water Quality Act (WQA) to provide for a record of review by the Environmental Improvement Board (EIB) or Water Quality Control Commission (WQCC), instead of conducting a de novo evidentiary hearing, in those instances where there was an opportunity for a hearing on the permit before the Department of Environment or Energy, Minerals and Natural Resources Department. The bill allows the EIB and WQCC to remand the matter to the associated department to take additional evidence if criteria established in the bill are satisfied. The bill also defines “permitting action” as any action taken by the department, local agency or constituent agency on a permit. The bill provides that notice of a hearing under the WQA must be provided to adjacent property owners or occupants. Additionally, the bill also makes minor grammatical and stylistic changes.

Significant Issues

Under current state regulations, most permitting actions under the AQCA or WQA before the Department of Environment or the Energy, Minerals and Natural Resources Department may be subject to a full evidentiary hearing before the departments. Final permitting actions under the AQCA and WQCC may be appealed to the EIB and the WQCC, respectively. These appeals take the

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form of a de novo evidentiary hearing before the EIB or WQCC. The bill provides for a record of review by the EIB or WQCC, instead of a de novo evidentiary hearing, in those instances where there was an opportunity for a hearing on the permit before the associated department. The Department of Environment asserts the bill is consistent with basic principles of administrative law as well as permitting procedures under federal environmental statutes.

Under the proposed amendment, the EIB/WQCC may remand the matter to the associated department to take additional evidence if three criteria are satisfied:

- 1) before the date set for the appeal hearing, application is made to the EIB/WQCC to present additional evidence,
- 2) it is shown to the satisfaction of the EIB/WQCC that the additional evidence is material, and
- 3) it is shown to the satisfaction of the EIB/WQCC that there is good reason why the additional evidence was not presented at the initial proceeding before the agency.

If the EIB/WQCC orders the department to take the additional evidence, the agency may modify its findings or decision. If the department modifies its findings or decision, the department must file with the EIB/WQCC the record of the additional evidence together with the modified findings and decision. Based upon the record before it, the EIB/WQCC will sustain, modify or reverse the action of the department.

Additionally, the bill defines “permitting action” in the AQCA but not in the WQA. The bill defines “permitting action” as any action taken by the department, local agency or constituent agency on a permit.

FISCAL IMPLICATIONS

The Energy, Minerals and Natural Resources Department has indicated the bill would have a slightly positive fiscal impact, but did not quantify potential savings resulting from the bill since few appeals are taken before the WQCC. The Department of Environment has indicated the bill would “greatly reduce the financial burden of duplicative hearings”; however, the department has not quantified potential savings.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications section above.

SUBSTANTIVE ISSUES

The bill defines “permitting action” as any action taken by the department, local agency or constituent agency on a permit. The Department of Environment asserts the broadness of the definition includes any and all actions possible actions the department takes on a permit, resulting in no limit to circumstances under which an appeal could be brought. Additionally, the bill defines “permitting action” in the AQCA, but not in the WQA.

The Energy, Minerals and Natural Resources Department has expressed some concern regarding possible litigation resulting from the lack of standards provided to govern the scope of the EIB/WQCC review to “sustain, modify or reverse the action . . .”

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The Energy, Minerals and Natural Resources Department has also suggested the bill's requirement that "adjacent property . . . occupants" be notified of the hearing may be impossible or impractical.

AMENDMENTS

The Department of Environment suggests the definition of "permitting action" under the AQCA be deleted from page 5 lines 16-18.

The Energy, Minerals and Natural Resources Department has suggested an amendment to delete the reference to "occupants" on page 20 line 17.

EB/njw