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FISCAL IMPACT REPORT

SPONSOR Egolf ORIGINAL DATE 03/11/17 511/HJCS/aHFL#1/
 LAST UPDATED 03/14/17 HB aHFL#2

SHORT TITLE False Statements to Environment Department SB _____

ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See narrative			Recurring	NMED AOC, District Attorneys

Relates to HB 371

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of House Floor Amendment #2

The House Floor Amendment #2 ensures that all facts, information and representations are related to a public water system.

Synopsis of House Floor Amendment #1

The House Floor Amendment #1 removes the \$10 thousand dollar penalty for negligent violations.

Synopsis of HJC Substitute

The House Judiciary Committee Substitute for House Bill 511 prohibits false statements to the Environment Department by an owner or operator of a public water system and provides for criminal penalties. If enacted, this bill becomes effective June 16, 2017.

FISCAL IMPLICATIONS

This bill as amended provides for felony charges that could result in imprisonment ranging from 18 months to 9 years. Under the state and federal constitutions, a criminal defendant is automatically eligible for a jury trial if facing a possibility of more than six months in jail. The average cost of a jury trial in the Second Judicial District Court is \$4.7 thousand. District attorneys' offices and the Public Defender Department could experience similar increased costs.

According to the Administrative Office of the Courts:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. Under Subsection 74-1-6(F) of the Environmental Improvement Act, NMED has the power to “enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction.” New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase. AOC is currently working on possible parameters to measure resulting case increase and the costs thereof.

SIGNIFICANT ISSUES

This bill as amended prohibits false statements to the New Mexico Environment Department (NMED) by owners or operators of public water systems, and provides for a fourth degree felony for a person who knowingly violates or knowingly causes or allows another person to violate provisions, as outlined in this bill, in accordance with the provisions of Criminal Sentencing (Chapter 31-18-15 NMSA 1978).

NMED notes the department periodically receives information which has been knowingly falsified from persons regulated by the department in drinking water programs. False information submitted to the department can have serious public health consequences, can lead to significant costs to innocent individuals and businesses, and can compromise NMED's regulatory programs.

Furthermore, NMED states that false information or omissions can have serious repercussions and should have serious consequences. NMED receives a large volume of technical information in making decisions under its drinking water program and must rely on the correctness and accuracy of the information provided by public water systems. Without accurate information, facilities may be approved that may not adequately treat the water, contaminated water may be served to customers without their knowledge, and NMED may not be prompted to enforce when it should, compromising public health, safety, and welfare.

PERFORMANCE IMPLICATIONS

NMED notes that complete and accurate information submitted to the department will enhance the ability of the staff to perform their jobs effectively and efficiently and will support the protection of public health and safety.

RELATIONSHIP

House Bill 511 is similar to HB 371 in that both prohibit false statements to NMED regarding public environmental systems such as public water systems with similar fines and criminal penalties. However, HB 371 addresses more than just a public water system by including liquid waste permittees or applicants, and owners of unpermitted liquid waste systems.

TECHNICAL ISSUES

A false statement, representation, certification or omission of a material fact in documents is prohibited as outlined; however, it is not clear if electronic statements or oral or visual statements are covered.

Notably, this bill criminalizes “allowing” another person to submit a false statement to the department, but does not explain under what circumstances a person could be held criminally responsible for falsehoods submitted by another. While the definitions section of the bill includes agents of a “person regulated by the department,” which inserts a required element of control of or agency over the other person; however, the criminal provisions of this bill regarding “allowing” another person to violate could include a person’s agent with mere awareness of a falsehood who takes no steps to stop or expose the false statement. Beyond agency, the criminal provisions do not specify what the relationship between the persons must be to create criminal liability for “allowing” a violation by another.

OTHER SUBSTANTIVE ISSUES

NMED periodically receives information which has been knowingly falsified from persons regulated by NMED in the areas of drinking water and liquid waste. False information submitted to the department can have serious public health consequences, lead to significant costs to innocent individuals and businesses, and compromise NMED’s regulatory programs.

False information or omissions can have serious repercussions. NMED receives a large volume of technical information in making decisions under both its drinking water and liquid waste programs and often has to rely upon the correctness of that information. Without accurate information, facilities may be approved for an inappropriate location, activities may be permitted where they would not otherwise have been permitted, and NMED may fail to enforce when it should, compromising public health, safety, and welfare.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

This bill as amended criminalizes false statements to NMED by owner or operator of a public water system. Under the Environmental Improvement Act, NMED has the duty to maintain, develop, and enforce rules and standards in many areas in addition to water quality and supply, liquid waste, including food protection, air quality, radiation control, noise control, and hazardous waste. False statements in these other areas of environmental management and consumer protection would seem to be as critical and dangerous as in a public water system.