

The bill requires NMED to adjust penalties annually to account for inflation, but limits annual increases to not more than 150 percent of the prior penalty. SB229 contains an emergency clause.

FISCAL IMPLICATIONS

NMED estimates increased general fund revenue of \$61 thousand in FY17, \$243 thousand in FY18, and an increase of \$247 thousand in FY19. The FY17 estimate is based on increasing the average penalties collected in FY16 and FY17 to date by the same percentage as the penalty increases in the bill. The FY18 and FY19 estimates are based on the 1.636 percent consumer price index (CPI) increase for calendar 2016. The estimated revenue increase of \$61,000 for the current fiscal year assumes a penalty increase will become effective on or about April 1, 2017, based on the emergency provision of SB 229. The state constitution and the Act provide that penalties shall be paid into the general fund.

SIGNIFICANT ISSUES

In 1972, the Legislature passed the Act that led to the creation of NMED's Occupational Health and Safety Bureau (OHSB). OHSB operates its state plan under federal approval and provisions of the federal Occupational Safety and Health Act of 1970. To maintain state plan approval, New Mexico must enforce rules that are "at least as effective" as federal occupational safety rules, including those establishing maximum and minimum penalties.

In November 2015, Congress enacted the Federal Civil Penalties Adjustment Act of 2015 ("FCPAA") requiring federal agencies, including OSHA, to adjust their penalties to account for inflation. Such inflation adjustments had not been made to OSHA penalties since 1990. In July, 2016, the federal agency published a final rule to increase federal penalties as prescribed by Congress, and notified all state plans of their obligation to make an "at least as effective" change to state maximum penalties. In October, 2016, NMED notified the federal agency of the state's intent to seek legislation during the 2017 session to increase statutory maximum penalties in accordance with federal law. The maximum and minimum penalties published in the final federal rule are identical to the increases contained in SB229.

NMED supports SB229. The proposed legislation conforms to the requirements of the federal Occupational Safety and Health Act, the FCPAA, and federal rules for approval of state occupational health and safety plans. SB229 will bring New Mexico into compliance with current penalties under federal law, and with the second part of the federal requirement, i.e. annual adjustments in response to changes in inflation. Further, NMED supports declaring an emergency in order to ensure that New Mexico's program maintains its enforcement effectiveness as required by federal law by bringing its penalties in parity with federal penalties as soon as possible. While NMED will have the legal authority to impose maximum penalties, the agency tries to work with violators to accomplish compliance versus issuing penalties at the maximum level allowable.

TECHNICAL ISSUES

On page 4, line 6, the bill provides the NMED secretary shall adjust civil penalties on January 1 of each year based on CPI changes from the prior calendar year. However, it is unlikely such data would be available on January 1 for a year that ended the previous day. For example, CPI

data for December 2016 was released on January 18, 2017. Other bills that implement indexing, such as Senate Bill 131 and Senate Bill 132, provide that adjustments shall be made no later than April 30 of each year.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 229 is not enacted, the federal oversight agency will likely determine New Mexico's program is not as effective as the federal program and initiate action to withdraw approval and funding. By operating its own program, the state can focus resources on New Mexico industries most in need of health and safety improvement to decrease occupational injuries, illnesses, and fatalities. Additionally, the state is able to engage in outreach and cooperative programs with employers that are not available through the federal agency. New Mexico receives approximately \$1 million in federal grants annually to operate the state plan.

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