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FISCAL IMPACT REPORT

SPONSOR McKenna/Steinborn **ORIGINAL DATE** 02/15/21
LAST UPDATED _____ **HB** _____
SHORT TITLE Increase Penalties for Enviro Violations **SB** 296
ANALYST Wan

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
NFI	\$150.0	\$150.0	Recurring	Hazardous Waste Emergency Fund
NFI	\$17.0	\$17.0	Recurring	Solid Waste Facility Grant Fund
NFI	\$6,000.0	\$6,000.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 296 increases the maximum civil penalties for violations, noncompliance, and failure to correct noncompliance related to the New Mexico Mining Act (Section 69-36 NMSA 1978), the Air Quality Control Act (Section 74-2 NMSA 1978), the Hazardous Waste Act (Section 74-4 NMSA 1978), the Water Quality Act (Section 74-6 NMSA 1978), and the Solid Waste Act (Section 74-9 NMSA 1978).

SB296 increases the maximum civil penalty under the New Mexico Mining Act, implemented by the Energy, Minerals and Natural Resources Department (EMNRD), from \$10 thousand to \$20 thousand per day for each violation, including violations of a rule of the Mining Commission, an order of the director, a permit condition, and an order resulting from a hearing.

SB296 increases the Environment Department's (NMED) penalty authority for violations of the Air Quality Control Act, the federal Clean Air Act, air quality permits, emission limits, and regulations from \$15 thousand per day per violation to \$30 thousand per day per violation.

The bill also increases NMED's penalty authority under the Hazardous Waste Act as follows:

- For violations of permits, orders requiring corrective actions, and storage tank requirements from \$10 thousand per day to \$20 thousand per day;
- For violations of a compliance order from \$25 thousand per day to \$50 thousand per day; and
- For violations of a compliance order requiring corrective actions to address imminent hazards and protect health and the environment from \$5 thousand per day to \$10 thousand per day.

Under the Water Quality Act, also enforced by NMED, SB296 increases the limits on:

- Enforcement penalties for violations of state or federal water quality permits from \$15 thousand per day to \$30 thousand per day;
- Enforcement penalties for other violations, including violations of a rule or water quality standard, from \$10 thousand per day to \$20 thousand per day;
- Enforcement penalties for violations of a compliance order from \$25 thousand per day to \$50 thousand per day;
- Civil penalties for violations of state or federal water quality permits from \$15 thousand per day to \$30 thousand per day of noncompliance; and
- Civil penalties for other violations, including violations of a rule or water quality standard, from \$10 thousand per day to \$20 thousand per day for each violation.

Finally, SB296 increases NMED's penalty authority for violations of the Solid Waste Act, Solid Waste Rules, or solid waste permit conditions from \$5,000 per day to \$10 thousand per day, and for violations of a compliance order under the Solid Waste Act from \$10 thousand per day to \$20 thousand per day.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

EMNRD reports that penalties collected under the Mining Act are infrequent and do not provide a significant amount of revenue.

Penalties imposed under the Air Quality Control Act and the Water Quality Act are credited to the general fund, and the proposed increases to these penalty limits is projected by NMED to increase recurring general fund revenue by \$6 million.

The proposed increases to Hazardous Waste Act penalty caps are projected by NMED to increase recurring revenue to the hazardous waste emergency fund by \$150 thousand. This fund is managed by NMED and is used for emergency response and remediation activities to immediately prevent exposure of the public to hazardous substances and to prevent releases into the environment.

NMED projects increasing penalty limits under the Solid Waste Act will increase recurring revenue to the solid waste facility grant fund by \$17 thousand. This fund supports grant awards to communities for local infrastructure projects that improve safe solid waste management at solid waste facilities.

SIGNIFICANT ISSUES

NMED states that increasing penalties creates a strong deterrent and encourages compliance with laws and regulations. Improved compliance with environmental regulations benefits the state's natural resources and public health as well as NMED itself by minimizing the resources required for high-cost administrative enforcement proceedings.

New Mexico has not increased its hazardous waste civil penalties since the Hazardous Waste Act was enacted in 1978, nor has it increased its solid waste penalties since the Solid Waste Act was enacted in 1990. Similarly, civil penalties have not been revised for the Air Quality Control Act since 2006 or for the Water Quality Act since 1993. SB296 will modernize the penalty structures for these environmental laws to account for inflation.

PERFORMANCE IMPLICATIONS

NMED has several performance measures related to compliance with the environmental laws amended in SB296, and the agency expects stronger penalties to improve those compliance rates.

ADMINISTRATIVE IMPLICATIONS

EMNRD would need to revise the Mining Act Rules, 19.10.11 NMAC, addressing enforcement and penalties, to incorporate SB296's change in penalties. The rules include a system for calculating penalty amounts for each violation, and the penalty schedule is based on the current maximum amount. The rule change would be implemented through the New Mexico Mining Commission. NMED will also need to revise penalty policies.

CW/sb