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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** 2/17/2025
Original **Amendment** **Bill No:** SB264
Correction **Substitute**

Sponsor: Muñoz **Agency Name and Code** New Mexico Environment
Number: Department - 667
Person Writing John Rhoderick

Short Title: Administrative Fee Changes **Phone:** (505) 819-8284 **Email** John.Rhoderick@env.nm.gov

SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Varies by program/fee schedule adopted.	Varies by program/fee schedule adopted.	Varies by program/fee schedule adopted.	Recurring	Special Revenue Funds

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	-	-	-	-	-	-

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 264 (SB264) addresses several fee-based programs within the New Mexico Environment Department (NMED).

1. Solid Waste Bureau (SWB) – Eliminates the \$10,000 fee cap for solid waste facilities and

allows the Environmental Improvement Board to set reasonable fees for the costs of the program implementation.

2. Petroleum Storage Tank Bureau (PSTB) – Allows for an increase in annual storage tank fees and allows the Environmental Improvement Board to set reasonable fees for the costs of program implementation.
3. Environmental Health Bureau (EHB) Food Program – Amends the Food Service Sanitation Act and allows the Environmental Improvement Board to set reasonable fees for the costs of program implementation.
4. Environmental Health Bureau (EHB) Pool and Spa Program – Amends the water recreation facilities fee imposition to authorize the Environmental Improvement Board to set the schedule of fees.
5. Radiation Control Bureau (RCB) Medical Imaging and Radiation Therapy Program – Amends the Medical Imaging and Radiation Therapy Health and Safety Act to clarify the Environmental Improvement Board is able to set reasonable fees for the costs of all program administration needs.
6. Drinking Water Bureau (DWB) Utility Operator Certification Program – Amends drinking water and wastewater operator fee statute to remove fee caps and allows such fees to be set by the Water Quality Control Commission through a rulemaking process.
7. Cannabis and Hemp Bureau (CHB) – Amends the Hemp Manufacturing Act to allow fees to carry out the administration of hemp permitting. Cannabis edible permit fees would be determined by amendment to Amends the Food Service Sanitation Act and allow the Environmental Improvement Board to set reasonable fees for the costs of program implementation.

FISCAL IMPLICATIONS

1. SWB – Currently, solid waste facility permits are capped at \$10,000 (for ten years). The average cost to permit a landfill is \$130,000 which includes review and approval of the landfill permit from the initial application to the end of the permitting process. The cost for permitting a transfer station is estimated at \$87,000. Permit applications are the only specified activity for charging fees in 74-9-8 (I), although there are many other activities the SWB engages in regarding permitted facilities.
2. PSTB – Currently, it costs \$2,149,000 to run the storage tank program but revenues are \$919,000. The revenues are as follows: \$515,000 from the storage tank fees and \$404,000 from a federal grant.
3. EHB Food Program – Currently, it costs at least \$4.8M annually to run the food program but revenues are \$1.6M annually. The revenues are as follows: \$100 - \$200 for annual operating permits and \$25 fee for temporary food event permits. Fees have not increased in 20 years (since 2005).
4. EHB Pool and Spa Program – Currently, it costs at least \$600,000 annually to run the pool and spa program but revenues are \$140,000 annually. Fees have not increased in 21

years (since 2004).

5. RCB Medical Imaging and Radiation Therapy Program – Currently, annual revenue of \$200,000 for the program which cannot support the data system requirements per the Nuclear Regulatory Commission standards for the administration of over 2,000 licenses and associated records.
6. DWB Utility Operator Certification Program – Currently, annual revenues are \$56,000 per year but the expenses are over \$550,000 annually.
7. CHB Hemp Manufacturing Program – Currently, it costs approximately \$725,000 to administer the cannabis and hemp programs, but revenues are \$32,500 annually. The revenues are as follows: \$1,000 for hemp and \$200 for cannabis edible annual operating permits.

SIGNIFICANT ISSUES

1. SWB – The bill removes the \$10,000 cap for reimbursable costs incurred to the SWB for activities performed while permitting solid waste facilities, as well as for the reimbursable costs to other departments or agencies for permitting-related activities. Removing this cap allows SWB to begin funding its own activities, making it less dependent on the General Fund. The fee cap that is proposed for elimination in the Solid Waste Act was enacted in 1991, and it did not consider all of the administrative time and effort that continues to go into a solid waste landfill permit over the course of its existence.
2. PSTB – The bill removes the one hundred dollars (\$100) fee for each storage tank owned or operated and provides a schedule of fees sufficient to defray the reasonable and necessary costs of (1) reviewing and acting upon applications for the registration of storage tanks; (2) reviewing and acting upon applications for the certification of tank testers; and (3) implementing and enforcing provisions of the Hazardous Waste Act applicable to storage tanks, tank installers and tank testers, including standards for the installation, operation and maintenance of storage tanks and the certification of tank installers and tank testers.
3. EHB Food Program – This program is not meeting federal Food and Drug Administration (FDA) standards for the minimum number of inspections of food establishments each year. With current funding, NMED can only inspect each food establishment once per year; but the FDA standard requires 2-4 inspections per year for high-risk establishments. Additionally, NMED cannot meet FDA standards for the number of food inspections expected per Full Time Equivalent (FTE). According to FDA standards, the Department's inspectors have almost twice the number of facilities assigned to a person.
4. RCB Medical Imaging and Radiation Therapy – The bill ensures the Medical Imaging and Radiation Therapy Program can set reasonable fees for all program costs per the Nuclear Regulatory Commission (NRC) requirements.
5. DWB Utility Operator Certification Program – New Mexico's fees for utility operator certification examinations and certification renewals are the lowest of any of the states in

the region. Federal grant funds would increase if the current set-aside was no longer needed to run the program.

6. CHB Cannabis and Hemp Programs – With limited funding, the majority of cannabis and hemp facilities go unvisited by NMED staff. Each of the CHB inspection staff currently inspect 11 hemp facilities that extract hemp and manufacture hemp-derived products and 18 cannabis facilities that manufacture edible cannabis products per year and conduct an average of eight plan reviews and facility openings per year. Staff, in collaboration with the Regulation and Licensing, Cannabis Control Division, have also investigated and issued 30 Notices of Violations to cannabis edible manufacturers operating without proper permitting and have conducted two product hold/market removal orders to conduct further laboratory testing to ensure products meet safety and labeling requirements.

PERFORMANCE IMPLICATIONS

All fee increases are subject to administrative rulemaking through a board or commission. A standard rulemaking cost is \$40,000 per hearing but can increase if the hearing is contested by industry, environmental groups, or receives significant public interest. If a new fee schedule is adopted by a board or commission, the Department will collect the funds and use them for the purpose of implementing that program. Per the Legislative Finance Committee, a fund balance must remain at 50% of the cost to run the program so not all fees collected are available to the Department in a given fiscal year. Therefore, all special revenue funds will include a balance which is not unspent money available to the Department but a required balance for accounting and budgeting purposes.

NMED anticipates requesting a flat budget in FY27 if SB264 is enacted provided no new duties are assigned to the Department outside of its existing program areas. Further, enacting SB264 will improve performance with Legislative Finance Committee performance measures and deliver better and more certain services for businesses and communities across the state.

ADMINISTRATIVE IMPLICATIONS

SB264 utilizes existing state laws to set fee schedules through public rulemakings that are adopted pursuant to the Environmental Improvement Board or the Water Quality Control Commission. This allows the Department to work with respective stakeholder groups to establish fair fee schedules paid for by the regulated community vs. all New Mexicans subsidizing these entities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Department and Executive requested a flat budget in FY26 in anticipation of passing a bill to increase fees.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Department and Executive requested a flat budget in FY26 in anticipation of passing a bill to increase fees. If SB264 is not enacted, the Department will expect certain programs will struggle in FY26 and may need additional funding during the 30-day session or in FY27. Implications are as follows:

- 1) The SWB will rely on general fund increases from the Legislature to fully fund the program. The current \$10,000 cap on permit fees has not kept up with the actual cost of staff salary costs and overhead/inflation costs. The SWB will need to continue to ask facilities to conduct their own permitting process in lieu of the SWB.
- 2) The PSTB will reduce 50% of the Prevention Inspection staff and reduce the number of inspections completed. NMED would move these staff to more solvent programs in the Department.
- 3) The EHB will seek general fund increases from the Legislature to fully fund the program. Such funds are necessary to alleviate delayed license issuance, reduced consultation services, and meeting FDA inspection standards, etc.
- 4) The DWB will continue to subsidize utility operator certification program costs with funding that could otherwise be used for technical and compliance assistance for local water systems.
- 5) The CHB will rely on general fund increases from the Legislature to fully fund the program. Such funds are necessary to alleviate delayed license issuance, regular inspections to ensure product safety, and reduced consultation services, etc.

AMENDMENTS

None.