

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Gubbels DATE TYPED: 03/15/01 HB 536/aSCONC
 SHORT TITLE: Business Sensitive Information Confidential SB _____
 ANALYST: Belmares

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General Office
 Department of Environment
 Energy, Minerals, and Natural Resources Department
 Legislative Finance Committee files

SUMMARY

Synopsis of SCONC Amendment

The SCONC amendment deletes the words “business records or” on Page 2, Line 6 of the bill. The bill amendment clarifies what information, provided to the Department of Environment in accordance with the Green Zia program, may be subject to confidentiality.

Significant Issues of SCONC Amendment

The Attorney General Office has indicated the amendment minimizes potential conflict with the Public Inspection of Records Act; however, Section 74-2-11 of the Air Quality Control Act already contains provision for the confidentiality of records under that particular act. The Attorney General Office further asserts, depending on where this new section is to be added (not specified in bill), it may or may not conflict or be redundant of Section 74-2-11 of the Air Quality Control Act (see Technical Issues section below).

Synopsis of Original Bill

House Bill 536 authorizes the Department of Environment to develop and administer a pollution prevention program known as “Green Zia.” House Bill 536 also establishes that information provided to the Department of Environment in accordance with the Green Zia program may be subject to confidentiality if the person furnishing the information demonstrates to the Department of Environ-

ment that the information would divulge confidential business record, methods, or processes entitled to protection as trade secrets.

Significant Issues of Original Bill

The Department of Environment operates the Green Zia program as a pollution prevention initiative. The Green Zia program is a voluntary recognition program used to provide technical assistance, training and assessment tools to assist organizations in developing pollution prevention programs. The program is applicable to small and large businesses and facilities as well as federal facilities.

The Green Zia program is voluntary and participating organizations submit applications to the Department of Environment. Specific business information included in applications to the Green Zia program such as production information, waste information or business processes may be deemed business sensitive or a trade secret and may be held in confidence by the department. The Cabinet Secretary of the Department of Environment makes the determination of confidentiality on a case-by-case basis.

House Bill 536 establishes a process by which the Cabinet Secretary of the Department of Environment would promulgate a determination of confidentiality with an order of confidentiality. House Bill 536 prohibits confidential information from being disclosed to persons other than employees or authorized representatives of the Department of Environment.

DUPLICATION

House Bill 536 duplicates Senate Bill 446.

TECHNICAL ISSUES

The Attorney General Office has expressed concern with Senate Bill 446 (duplicate bill) not specifying where in the Environmental Improvement Act the new material provided in the bill is to be inserted. The Attorney General Office continues, "This program [pollution prevention program] seems to be something that should be added to the Air Quality Control Act starting at Section 74-2-1, instead of the Environmental Improvement Act. Because this bill is so vague it is difficult to determine whether or not it will conflict with Section 74-2-2 and/or Section 74-2-4 which give some jurisdiction over air quality to local authorities."

EB/ar/njw