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## FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 03/06/01 HB \_\_\_\_\_  
 SHORT TITLE: Amending Air Quality Control Act SB 264/aSCONC  
 ANALYST: Belmares

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Fiscal Implications section below.		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 278

### SOURCES OF INFORMATION

LFC Files  
 Department of Environment (DOE)

### SUMMARY

#### Synopsis of SCONC Amendment

The Senate Conservation Committee amendment eliminates the cap of \$200,000 for civil penalties associated with air quality permit violations. Additionally, the amendment specifies the time a compliance order may be issued as being one year from the time the department or local agency becomes aware of the violation. The amendment also makes technical and grammatical modifications. See Technical Issues section below.

#### Synopsis of Original Bill

Senate Bill 264 proposes to change the definition of potential emission rate (PER) which is used to determine the applicability of the Department of Environment's air quality construction permit program to a facility. Senate Bill 264 also would prevent the Department of Environment from issuing a compliance order for a violation that occurred more than one year prior, except with approval from the Attorney General and the Cabinet Secretary, preventing the Department of Environment from issuing a compliance order for a civil penalty greater than \$200,000, and creating a five year statute of limitation for judicial actions for civil penalties.

### FISCAL IMPLICATIONS

Penalties collected by the Department of Environment are deposited into the general fund. Possible reduction in penalties collected pursuant to Senate Bill 264 would be reflected in a corresponding reduction in general fund. The Department of Environment asserts restrictions on administrative enforcement actions could result in a corresponding increase in judicial actions, which may require more departmental resources to prosecute.

### **ADMINISTRATIVE IMPLICATIONS**

Senate Bill 264 would require the Department of Environment to modify its regulations to incorporate the new definition of potential emission rate.

### **RELATIONSHIP**

Senate Bill 264 relates to House Bill 278. The amendments to Senate Bill 264 duplicate the amendments to House Bill 278.

### **OTHER SUBSTANTIVE ISSUES**

#### Potential Emission Rate

The Department of Environment indicates the proposed definition of “potential emission rate” is substantially equivalent to the federal Clean Air Act definition of “potential to emit” and is not substantially different from the current definition as interpreted and applied in the current air quality regulations. Additionally, the Department of Environment claims the PER definition change would not provide any more opportunity for facilities to avoid the permit review process by netting emissions (the term “netting emissions” means the process by which a facility takes credit for emission reductions to offset increases in emissions without obtaining enforceable requirements for the reductions).

#### Administrative Restrictions

The proposed language in Senate Bill 264 would prevent the Department of Environment from bringing any administrative action for a violation which began more than 12 months prior to the initiation of the administrative action, even if the violation were ongoing at the time of discovery. The Department of Environment has expressed concerns regarding a possible reduction in enforcement actions stemming from the resource burden placed on the agency in filing a court case as opposed to filing an administrative action for civil penalties.

The federal act states “any such determination by the Administrator and the Attorney General shall not be subject to judicial review.” The Department of Environment has also expressed concern regarding the language in the bill not providing exclusion from judicial review similar to the exclusion allowed for in the federal Clean Air Act.

#### Judicial Restrictions

The language contained in Senate Bill 264 results in a five-year statute of limitations for judicial enforcement actions, which is similar to the federal general statute of limitations. The Department of

Environment has indicated that unlike the federal language which allows for some opportunity for temporarily halting the statute of limitations clock, the proposed language in the bill does not. Additionally, the Department of Environment has indicated the statute of limitations clock should begin at the time the violator discloses the violation to the Department of Environment

**TECHNICAL ISSUES**

The Department of Environment has indicated language may be required to clarify the applicability of the amendments to the administrative and enforcement restrictions established in the bill; however, the department did not offer specific language changes.

EB/prr:ar