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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/15/05 HB 269HJCS/aHFI#1

SHORT TITLE Recycling and Illegal Dumping Act SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			(\$800.0)	Recurring	Tire Recycling Fund
			\$800.0	Recurring	Recycling and Illegal Dumping Fund

(Parenthesis () Indicate Expenditure Decreases)

Companion to HB269

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	(\$800.0)	(\$800.0)	Recurring	Tire Recycling Fund
	\$800.0	\$800.0	Recurring	Recycling and Illegal Dumping Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Office of the Attorney General (AG)
- Department of Environment (DE)
- Corrections Department (CD)
- Department of Transportation (DOT)
- Public Defender Department (PDD)

No comments were received from the Department of Finance and Administration, New Mexico Association of Counties or New Mexico Municipal League at the time this FIR was written.

SUMMARY

Synopsis of House Floor Amendment

The House Floor Amendment would clarify the definition of “illegal dumpsite.”

Synopsis of HJC Substitute for HB269

The original bill would have enacted the Recycling and Illegal Dumping Act and repeal the Tire Recycling Act (Sections 74-11-1 to 74-11-17 NMSA 1978). In particular, the bill would make the following changes to existing statute:

1. Creates the Recycling and Illegal Dumping Alliance, including representatives from state and local government, solid waste authorities, industry waste generators, tribal governments, nonprofit organizations, recycling companies, retailers, and waste management companies. The Alliance would:
 - a. Develop strategies to increase recycling and decrease illegal dumping in New Mexico.
 - b. Create a state recycling plan and update the plan every three years to measure progress and modify strategies.
 - c. Review and make recommendations for funding grant applications from the recycling and illegal dumping fund.
2. Prohibits storing or using in a civil engineering application more than 100 scrap tires without a valid permit from the New Mexico Department of Environment (NMED).
3. Prohibits transport of scrap tires for money to a place other than a tire recycling facility, with specified exceptions.
4. Prohibits a scrap tire generator from releasing scrap tires to a person other than a registered scrap tire hauler or registered commercial waste hauler.
5. Prohibits open burning of tires.
6. Prohibits storage or disposal of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes disease vectors, creates the potential for fire or other health or environmental hazards.
7. Except for agricultural uses as specified, prohibits storing scrap tires or tire-derived products for more than 12 months unless authorized by the NMED cabinet secretary.
8. Prohibits scrap tire haulers from transporting scrap tires without a scrap tire manifest approved by NMED.
9. Allows the NMED secretary or his/her representative to:
 - a. Enter a facility of a scrap tire generator, scrap tire hauler, or tire recycling facility at any reasonable time to make an inspection or investigation of solid waste management practices.
 - b. Take and analyze samples of the facility’s waste, soil, air or water to detect contaminants.
 - c. Conduct monitoring or testing of equipment, contents or surrounding soil, air, surface water or ground water at the facility.
 - d. Conduct weigh stations or other site inspections of scrap tire haulers in coordination with the Transportation secretary.
10. Sets rules regarding confidentiality of records obtained in inspections, including criminal penalties for failure to protect the confidentiality of the records.
11. Adds to the list of rules that shall be adopted by the Environmental Improvement Board

with respect to tire recycling:

- a. Record keeping requirements for tire recycling facilities, scrap tire haulers, and scrap tire generators
 - b. Financial assurance criteria for tire recycling facilities
 - c. Fire rules for storage of scrap tires and tire-derived products that are consistent with those adopted by the State Fire Marshall.
 - d. Requirements and procedures for a scrap tire manifest system
 - e. A fee schedule applicable to scrap tire haulers and tire recycling facilities no to exceed the estimated cost of investigating and issuing permits and registrations and conducting regulatory oversight
 - f. A fee schedule applicable to scrap tire generators not exceeding the estimated cost of conducting regulatory oversight.
12. Requires scrap tire generators who transport scrap tires for specified purposes to complete a scrap tire manifest and to show such manifest when a load is being transported upon demand to an officer of the Motor Transportation Division of the Department of Public Safety.
 13. Increases the potential penalty assessed in a compliance order from \$2,500.00 per day to \$5,000.00 per day of noncompliance with each violation.
 14. Requires reasonable specificity in compliance orders with regard to the nature of the corrective action to be taken and time for compliance.
 15. Allows compliance orders to be issued against an insurer or guarantor of an owner of a tire recycling facility if the owner is in bankruptcy or reorganization or if the jurisdiction in a state or federal court cannot with reasonable diligence be obtained over an owner likely to be solvent at the time of the judgment.
 16. Allows appeals up to 30 days after a compliance order is issued (compared to 15 days under current statute). Provided for judicial review of administrative actions in appellate court based on specified criteria.
 17. Allows local government authorities to issue field citations for minor violations.
 18. Establishes criminal penalties for violations of Section 4 of the Act, including:
 - a. If the violation involves a quantity of scrap tires is less than 5,000 pounds, a misdemeanor
 - b. If the violation involves a quantity of scrap tires that is 5,000 pounds or greater, a fourth degree felony.
 - c. Persons convicted of a second or subsequent violation would be guilty of a third degree felony.
 - d. Persons who knowingly omit substantive information or make false statements would be guilty of a fourth degree felony.
 19. Expands eligibility for grants under this Act to include Indian nations, pueblos, tribes and land grant communities.
 20. Expands eligible expenditures of grants under this Act to include purchase of equipment, marketing, purchasing products produced by a recycling facility, providing educational outreach, developing recycling infrastructure, abating illegal dumpsites and contracting with vendors to promote recycling.
 21. Requires that at least 2/3 of budgeted grant money in each fiscal year be allocated to tire abatement and recycling and the remaining 1/3 be allocated to abatement of illegal dumping and recycling of other solid wastes.
 22. Creates a Recycling and Illegal Dumping Fund to replace the existing Tire Recycling Fund. Expenditures from the Tire Recycling Fund were limited to "abatement of tire dumps, for reprocessing, transportation or recycling of scrap tires, for providing annual

retread rebates and for carrying out the provisions of the Tire Recycling Act.” The new fund is less restrictive, allowing expenditures for abatement of illegal dump sites generally, as well as for processing all recycling materials. The annual retread rebates are not included in the new text.

23. Specifies that regulations enacted pursuant to the Tire Recycling Act would continue in force until amended or repealed. Repeal of that act would not affect prior violations and permits and registrations issued pursuant to that act would remain in effect until they expire, are suspended, revoked or otherwise modified.

The House Judiciary Committee Substitute for HB269 makes the following changes from the original bill:

1. Deletes the findings portion.
2. Eliminates specified exemption of “construction projects that impact water courses or wetlands” in the definition of “agricultural use.”
3. Excludes persons who generate scrap tires in agricultural operations from the definition of “scrap tire generator.”
4. Modifies the tire recycling facility exemption to include specified businesses where tires are kept in an enclosure.
5. Changes NMED employee access to a facility of a scrap tire generator to any “reasonable time for the purpose of making a routine inspection or investigation of scrap tire management practices based on reasonable evidence of a violation of the Act.”
6. Specifies composition of the Recycling and Illegal Dumping Alliance to include one member from each state government, local government, a solid waste authority, an industry waste generator, a tribal government, a nonprofit organization, a recycling company, a retailer, an agricultural producer, a soil and water conservation district, a waste management company, and the public at large.
7. Sets two-year terms for members of the Alliance with no compensation from the state.
8. Allows NMED to contract for abatement of illegal dumpsites located within a solid waste authority.
9. Deletes the provision that would have allowed compliance orders to be issued against an insurer or guarantor of an owner of a tire recycling facility if the owner is in bankruptcy or reorganization or if the jurisdiction in a state or federal court cannot with reasonable diligence be obtained over an owner likely to be solvent at the time of the judgment.
10. Provides for appeals per Section 39-3-1.1 NMSA 1978 (which details agency responsibilities for reporting the final decision, as well as right to appeal to the district court.)
11. Eliminates the penalty for persons convicted of a second or subsequent violation.
12. Makes solid waste authorities eligible for grants under the Act.
13. Sets the first priority for funding from grants as abatement of illegal scrap tire dumpsites and recycling of scrap tires.
14. Allows qualified entities to apply for grants to public landfills to offset the cost of collecting or recycling tires or to submit competitive bids for loans for specified costs related to recycling and illegal dumpsite abatement.
15. Allows funds in the Recycling and Illegal Dumping Fund to be used by public landfills to offset the cost of collecting or recycling tires.

Significant Issues

According to NMED, HB269 supports one of three recommendations stemming from the *Strate-*

gic Plan to Transform the Economics of Recycling which was prepared in response to a 2004 House Joint Memorial. Significant issues include the expanded focus on all recycling, thereby providing improved infrastructure for recycling and providing for the abatement of illegal dumpsites in New Mexico. HB269 provides the beginning of a strategic and coordinated approach to resource protection and conservation through improved recycling and the abatement of illegal dumpsites.

According to the Office of the Attorney General, HB269 provides that all records obtained by NMED pursuant to the Recycling Act are public unless deemed confidential by NMED pursuant to the provisions of USCA Section 1905. As drafted it is unclear whether HB269 wishes to adopt the provisions of 18 USCA Section 1905 and make it a criminal offense under state law to disclose confidential information. As drafted 18 USCA Section 1905 would not be applicable at this is federal law and only applies to the disclosure of confidential information by officers or employees of the United States government.

FISCAL IMPLICATIONS

Continuing Appropriations

This bill creates a new fund, the Recycling and Illegal Dumping Fund to replace the existing Tire Recycling Fund, and provides for continuing appropriations. The LFC is concerned about including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

NMED anticipates HB269 could be administered within the existing structure and staff of the agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB142/SJCS is similar to HB269/HJCS.

OTHER SUBSTANTIVE ISSUES

The Corrections Department does not anticipate a significant impact on the number of people incarcerated from the penalties included in this bill.

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