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## FISCAL IMPACT REPORT

SPONSOR Foley DATE TYPED 2/16/05 HB 645

SHORT TITLE Basis For Adoption Of Certain Rules SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

HB 645 limits the Environmental Improvement Board (EIB), the Water Quality Control Commission (WQCC), and the Oil Conservation Commission (OCC) from adopting rules unless certain criteria are met and it is proven that property or pecuniary damages will be avoided or mitigated. Language is deleted that gives weight to the interference with health, welfare, animal and plant life, property and the environment; social, economic and cultural value and effects; and reducing or eliminating environmental degradation.

#### Significant Issues

The NMED reports HB 645 would give the District Court and Court of Appeals the authority to overrule scientific decisions of the EIB, WQCC, and OCC and would be limited to considering testimony from scientific experts as expert witnesses and providing of scientific facts. NMED is concerned that Boards and Commissions may lose the authority to protect public health and the environment, and would be limited to protecting property and/or capital.

The NMED believes the consideration of human health and environmental issues should be taken into consideration before the adoption of environmental rules. HB 645 may prevent citizens from participating in the environmental rule-making process by not considering the viewpoints of non-technical witnesses.

## **PERFORMANCE IMPLICATIONS**

The NMED is concerned EIB, WQCC, OCC and the executive agencies may not be able to adequately protect public health, ground water, surface water, air quality and the environment if the main basis for adopting rules is whether property or pecuniary damages will be avoided or mitigated.

## **FISCAL IMPLICATIONS**

HB 645 will make it easier for commercial and private interests subject to environmental regulations and fines to appeal by presenting scientific facts and expert witnesses to support a claim of property and/or pecuniary damages.

Federal EPA regulations implement programs regulating air quality, underground injection of wastes, water quality (proposed), hazardous waste, workplace safety, radiation exposure, and underground storage tanks. The NMED report New Mexico needs to adopt rules as stringent as the federal rules to be able to retain program approval from federal agencies to avoid higher fines and permit fees.

The NMED anticipates additional staff time and resources to provide additional studies and demonstration projects to support the adoption of rules.

## **ADMINISTRATIVE IMPLICATIONS**

The NMED reports HB 645 may be in conflict with the federal Clean Air Act and the New Mexico Air Quality Control Act which requires the board to adopt rules that are protective of air quality, not to solely mitigate property or pecuniary damages.

## **TECHNICAL ISSUES**

HB 645 is unclear as to the definition of a scientific expert or expert witness.

HB 645 is unclear as to the definition of a scientific fact and whether the social sciences apply.

## **ALTERNATIVES**

An amendment stating any adoption of environment rules will take into consideration the protection of human health and the environment in addition to the avoidance of property and pecuniary damages.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The current rulemaking procedures of the Oil and Gas Act, Water Quality Act and Environment Improvement Act will remain.

**AHO/lg**