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FISCAL IMPACT REPORT

SPONSOR M. Sanchez DATE TYPED 03/14/05 HB _____

SHORT TITLE Stringency of Hazardous Waste Act Rules SB 668/aSCONC/aSJC

ANALYST Hadwiger

APPROPRIATION (in \$000s)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
Energy, Minerals and Natural Resources Department (EMNRD)
Department of Environment (NMED)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment strikes Senate Conservation Committee amendment #3. This has the effect of restoring language in existing law that requires the Environmental Improvement Board to find that federal regulations are not sufficient to protect public health and the environment before adopting rules for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations. The Senate Conservation Committee language allowing the adoption of more stringent regulations upon the adoption of supporting findings of fact and conclusions of law is removed by the amendment.

Synopsis of SCONC Amendment

The SCONC amendment restores language in existing statute allowing the Environmental Improvement Board (EIB) to adopt rules for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations after a notice and hearing

pursuant to Section 74-4-5 NMSA 1978. The EIB would be required to adopt findings of fact and conclusions of law to support its decision.

Synopsis of Original Bill

Senate Bill 668 would require the EIB to adopt rules for the management of hazardous waste that are at least as stringent as federal regulations adopted by the Environmental Protection Agency (EPA). Current statute requires the EIB to adopt rules that are equivalent to and no more stringent than the federal regulations. The bill would also delete a section of statute that allows the EIB to adopt rules for hazardous waste that are more stringent than federal regulations if the board determines, after public hearings, that the federal regulations are not sufficient to protect public health and the environment.

Significant Issues

The Department of Environment (NMED) indicated that this bill addresses concerns about pending changes in federal regulations that could allow dumping of radioactive wastes in landfills, as well as other potential “rollbacks” of federal environmental protections. According to NMED, the EPA has issued an “advance notice of a proposed rule” that would allow dumping of radioactive waste in any landfill permitted to take hazardous (i.e., chemical) waste. Under the state’s Hazardous Waste Act (74-4 *et seq.*) as currently written, New Mexico would be forced to accept such a rule, even though radiological hazards are vastly different from those posed by chemical hazards, and the design of landfills to accommodate their disposal should be concomitantly different. The EIB, with the new language, could adopt regulations more stringent than federal regulations if these regulations are relaxed to a point that New Mexicans health and their environment were endangered.

NMED noted that the Act currently contains language at 74-4-4.D. that authorized EIB to adopt “more stringent” regulations if the Board makes a finding that not doing so would not be protective of human health and the environment. SB668 would delete this provision, allowing the Board to adopt more stringent rules without making such a finding.

The SCONC amendments to SB668 were introduced to alleviate concerns that the original bill would eliminate public involvement should the EIB decide to adopt any hazardous waste management rule that is more stringent than federal regulations. Public participation, notice, and hearing provisions for all rules governing hazardous waste management in New Mexico are found in Section 74-4-5 NMSA 1978. SB668 does not change those provisions. The SCONC amendments make clear that in the case of a rule that may be more stringent than a federal rule, those provisions will still be followed.

FISCAL IMPLICATIONS

No significant fiscal impact is anticipated.

OTHER SUBSTANTIVE ISSUES

NMED noted that the bill does not address 74-4-4.C, which authorizes the EIB to adopt rules for the management of underground petroleum storage tanks that are “...equivalent to and no more stringent than federal regulations.” NMED suggested that page 9, line 1 be amended to delete

“equivalent to and no more stringent than” and insert in lieu of “at least as stringent as”.

POSSIBLE QUESTIONS

1. Why is the current procedure for allowing the EIB to adopt state regulations more stringent than the federal standards inadequate to address NMED’s concerns with regard to the proposed federal radioactive waste regulations?

DH/lg