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FISCAL IMPACT REPORT

ORIGINAL DATE 2-8-07

SPONSOR Nava, C. LAST UPDATED HB

SHORT TITLE Replacement of Liquid Waste Disposal Systems SB 702

ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$200.0	Recurring	Corrective Action Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$200.0		Recurring	Liquid Waste Assistance Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$25.0	\$25.0	\$50.0	Recurring	See Fiscal Impact

Conflicts with SB 920, HB 859

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
Office of the State Treasurer (OST)
Attorney General's Office (AGO)
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Bill

Senate Bill 702 appropriates \$200.0 thousand from the corrective action fund for the purpose of establishing a liquid waste system assistance fund to be administered by the New Mexico Environment Department.

FISCAL IMPLICATIONS

The appropriation of \$200.0 thousand contained in this bill is a recurring expense to the corrective action fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall not revert to the corrective action fund.

Continuing Appropriations language (if applicable)

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

NMED notes that SB 702 would require the agency to develop qualification criteria for indigent households and persons and to administer the liquid waste assistance fund. While SB 702 does not provide additional staff or funding to NMED, the probable recurring nature of the fund suggests that the program would be ongoing beyond the initial \$200.0 thousand appropriation, making a program expansion likely. This expansion is estimated at .5 FTE, which may be funded from either the corrective action fund or from general fund.

SIGNIFICANT ISSUES

The purpose of the fund is to assist indigent individuals or households with wastewater systems that potentially could to impair groundwater quality. The fund would be used to

- Replace a cesspool or other improper liquid waste system;
- Purchase, install or maintain and advanced treatment system; or
- Hook up to an existing wastewater management system.

According to NMED, failed or improperly installed septic systems and illegal cesspools is the leading source of groundwater pollution and have also impaired 355 river miles in the state. Indigent residents and households may not have the financial resources to replace or treat substandard liquid waste systems or the have ability to hook up to wastewater management systems when those systems are available.

PERFORMANCE IMPLICATIONS

SB 702 would reduce the amount of ongoing water-quality degradation caused by substandard liquid waste systems.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 702 relates to with House Bill 859, which proposes a \$4.0 million appropriation to a new “cesspool elimination assistance fund.”

SB 702 relates to with Senate Bill 920, which proposes to establish a “liquid waste revolving loan fund” with a \$5.0 million appropriation.

TECHNICAL ISSUES

NMSA § 74-6B-7(A) provides that “[t]he legislature may appropriate up to thirty percent of the annual distribution to the [corrective action] fund pursuant to Section 7-1-6.25 NMSA 1978 to the department to match federal funds, for underground contamination cleanup, and to address water needs.” AGO states that although the appropriation provided in the bill addresses water needs, a clarifying amendment either to § 74-6B-7 or to the bill may be useful to avoid controversy as to whether the appropriation is permitted by § 74-6B-7(A).

Additional technical issues provided by the AGO are as follows:

1. The concept stated in the last sentence of Section 1(A) (page 1, lines 24-25, beginning with “Balances”) is stated with more specificity in the last sentence of the bill (page 3, lines 6-8).
2. Section 1(B)(1) (page 2, lines 14-17) refers to a “primary treatment system,” but does not define that term. Presumably, it refers to primary treatment as defined in NMAC 20.7.3.7(P)(6), although no reference is made to the Environment Department’s regulations.

OTHER SUBSTANTIVE ISSUES

The AGO notes that a reduction of \$200.0 thousand in the corrective action fund could possibly impact the ability of that fund to fulfill its direct statutory purpose of cleanups.

ALTERNATIVES

A revolving loan fund is an option.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Substandard liquid waste systems owned by indigent persons and households will continue to degrade water quality, resulting in hazards to public health and interference with property rights and welfare.

POSSIBLE QUESTIONS

1. Would \$200.0 thousand be sufficient to address the wastewater problem posed by those who would qualify for the fund?
2. How would the applications be prioritized?
3. How would the public outreach be successfully implemented to reach the target group?
4. How would the money be disbursed in accordance with the anti-donation clause?

MA/nt