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FISCAL IMPACT REPORT

ORIGINAL DATE 2-20-07
 SPONSOR Nava LAST UPDATED 2-27-07 HB _____
 SHORT TITLE Solid Waste Facility Permit Renewal Review SB 1093
 ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 880 and HB 888

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League (NMML)
 Department of Finance Administration (DFA)
 Department of Health (DOH)
 New Mexico Environment Department (NMED)

Response Pending

Attorney General's office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 1093 adds a new section to the Solid Waste Act for the purpose of protecting public health. The added regulations would:

- Provide for an independent public health assessment to determine any deleterious or negative health impact in surrounding communities to a solid waste facility seeking permit renewal;
- Allow stakeholders in the permit renewal process to provide information regarding public health issues;
- Provide authority to refuse to issue a permit if certain negative public health impacts are demonstrated in an assessment;
- Require the applicant to pay the cost of the public health assessment; and
- Assure that no permits would be issued until proposed regulations are adopted.

FISCAL IMPLICATIONS

NMED anticipates it would require at least two FTEs to manage this effort of implementing the rules, coordinating activities with involved parties such as the DOH, and determining a method for appropriate review and consideration of the public health assessment.

This bill may also have substantial impacts on local entities or economies if the new regulations delayed permitting or resulted in denial of permitting for solid waste facilities found to have "public health impacts." The cost of transporting solid waste can be substantial.

SIGNIFICANT ISSUES

From the 2000 Solid Waste Annual Report:

The New Mexico Solid Waste Act (Act), passed in 1990, required the development of a comprehensive solid waste management program by December 1, 1992 with implementation by July 1, 1994. The Act charged the Environment Department (NMED) with overseeing the majority of the requirements in the Act and the development of a comprehensive solid waste plan. The result was the New Mexico Solid Waste Management Plan that detailed statewide protocol addressing solid waste regulations, recycling, source reduction, transformation, and landfill disposal.

The regulatory mandates of the Act and the federal Resource Conservation and Recovery Act (RCRA) are implemented in New Mexico through the Solid Waste Management Regulations (20 NMAC 9.1). These regulations became effective on August 17, 1994 and the U.S. Environmental Protection Agency approved New Mexico's solid waste program on December 23, 1994.

New solid waste facilities are required to be permitted prior to construction and operation. According to the 2006 Solid Waste Bureau Report, New Mexico currently has 22 permitted landfills. Other permitted facilities include two special waste landfills, 13 transfer stations, five recycling facilities, two compost facilities, and one permitted processing facility. In 2005, two solid waste facilities were permitted, one solid waste permit review was completed, 5 landfill closures plans were approved, and 11 landfill plans were verified.

New Permitting

According to NMED, HB 1184's proposed amendment to the Solid Waste Act would stop the permit renewal process for at least eleven facilities until new regulations are promulgated because a "grandfathering" provision is not included. Those applicants have complied with the applicable regulations and the majority of those are at or very near the end of the review process. All nine renewals are scheduled to have hearings before December 31, 2007.

NMED maintains that this revision of the review process would not only pose an undue fiscal and regulatory burden to those applicants, it may initiate legal challenges by those applicants as a retroactive application of law, as this new requirement would be placed upon applications long after the legal date of filing the permit application. A response from the AGO has been requested.

Permit Renewal

SB 1093 would require an independent “public assessment” to be carried out at when solid waste facilities are seeking permit renewal to determine any negative health impact in surrounding communities resulting from a solid waste facility. It would also prohibit the permit from being reissued by NMED if "public health impacts" are demonstrated in the assessment.

Community Impact

DOH expresses a concern that citizens and nongovernmental officials in several communities believe that current regulations do not permit stakeholders to present evidence regarding potential harm to communities about solid waste disposal facilities. However, NMED states that stakeholders, including residents in communities surrounding solid waste facilities, are currently given opportunities to present information regarding quality-of-life issues as part of permit-hearing process, including concerns about public health. This emphasis follows the decision of the New Mexico Supreme Court in the Rhino landfill case (*Colonias Development Council v. Rhino Environmental Services, Inc.*, 138 N.M. 133, 117 P.3d 939 (2005)). In *Rhino*, the Environment Department was forced to reevaluate a decision because it failed to consider evidence on community impacts and cumulative impacts.

NMED also maintains that public health and epidemiological studies and assessments can and have been undertaken at the request of a community by the Centers for Disease Control or New Mexico Department of Health.

NMED’s Solid Waste Bureau is the first department to promulgate Environmental Justice provisions in permitting regulations. Those regulations will become effective June 2007. Those requirements stipulate specific procedures to evaluate clusters and other factors as part of the permit consideration process.

Environment Justices is defined as follows:

The State of New Mexico is committed to affording all of its residents, including communities of color and low-income communities, fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies regardless of race, color, ethnicity, religion, income or educational level;

The State of New Mexico is further committed to promoting the protection of human health and the environment, empowerment via public involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies, and the dissemination of information related to the environment to inform and educate, especially in people of color and low-income communities. (E.J. E.O. 2005-056)

PERFORMANCE IMPLICATIONS

Groundwater quality and public health may be improved by the extra public scrutiny of the solid waste projects.

The effective date of rulemaking is specified as no later than June 30, 2007. NMED maintains that this timeline is most likely unrealistic and specifies that amending the Solid Waste Act to require a public health assessment would require a significant period of time (about 18 months) to complete an appropriate stakeholder process, develop rules, hold an Environmental Improvement Board hearing and develop findings of fact. NMED bases its estimate of 18 months on the recent experience relative to the stakeholder process used to create modifications to the Solid Waste Regulations to include Environmental Justice criteria. If enacted with these timelines, the Governor's performance measure A24 for NMED that streamlines the solid waste facility permit hearings would be negatively impacted.

ADMINISTRATIVE IMPLICATIONS

Several responding agencies point out the difficulty of administering the intent of the bill without clear definitions for key components of the bill, such as "public health assessments," "community", or "surrounding". Thus administering the intent could be open to subjective interpretation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 880 and HB 888 (duplicate), which propose the enactment of the Environmental Health Act.

OTHER SUBSTANTIVE ISSUES

DFA notes that the bill does not define the term "public health impacts" and, unlike many other licensing and regulation situations, also does not appear to offer any sort of appeal process for facility operators or any opportunity to take corrective action to resolve public health impacts that are identified.

NMED notes that some facilities are nearing capacity for existing permitted solid-waste-disposal cells and timely and fair consideration of the permit renewal is imperative to provide adequate disposal services. Insufficient capacity may lead to illegal dumping, with accompanying risks to public health and groundwater quality.

In addition, NMED maintains that additional delays for permit renewals will have significant negative fiscal and operational impacts for those applicants. Some applicants have a significant fiscal investment of hundreds of thousands of dollars to complete engineering designs, complete on-site investigations, prepare expert testimony, prepare the permit package consisting of many volumes, and conduct responses for additional information.

DFA points out that the overly broad standard set by the undefined term of "public health impact" makes it likely that this legislation could result in litigation and instances where agency actions may be overturned by alternate interpretations made by various courts.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED will continue its current permitting process for solid waste facilities and implement its new rules for the permitting process that include Environmental Justice concepts.