

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/09
 LAST UPDATED 03/21/09 **HB** _____

SPONSOR SFC _____

SHORT TITLE Septic Tank Replacement Assistance **SB** CS/30/aSFI#1/aHFI#1

ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	Up to \$200.0	Recurring	Liquid Waste Fund
	Unknown	Recurring	Water Quality Management Fund
	Unknown	Recurring	Corrective Action Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Up to \$200.0	Up to \$200.0	Recurring	Liquid Waste Disposal System Assistance Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act

Companion to SB 330/SFCS

SOURCES OF INFORMATION

LFC Files

Response Received From (for SFI#1)
 New Mexico Environment Department (NMED)

Responses Received From (for SB30)
 Department of Finance and Administration (DFA)
 New Mexico Environment Department (NMED)
 New Mexico Association of Counties (NMAOC)

SUMMARY

Synopsis of HFI#1 Amendment

The House Floor Amendment makes funding the new fund permissible but not mandatory. It also removes reference to the wastewater system management assistance fund, a fund that would have been created under Senate Bill 330.

Synopsis of SFI#1 Amendment

The Senate Floor Amendment #1 removes various sources of funding for the new liquid waste disposal system assistance fund:

- Donations;
- Transfers from the water quality management fund; and
- Transfers from the corrective action fund.

FISCAL IMPACT

The amendment leaves appropriations, interest earned, and transfers from the liquid waste fund not to exceed \$200 thousand from the unexpended balance of the fund. NMED provides the following background information on liquid waste fund:

This fund has been used for liquid waste program expenses with very little carryover to the next fiscal year. Liquid waste permit fee revenues have decreased from \$847,700 during FY 06 to \$576,800 in FY 08. Actual fee revenues from July 2008 through February 2009 show that revenues have decreased even further in FY 09, and will amount to about \$465,000 by the end of the fiscal year, a total reduction of approximately 45% over a three year period. It is anticipated that the Liquid Waste Fund will have a \$0 fund balance at the end of this fiscal year.

If revenues do not improve, money to divert to the new fund will be minimal and would not be available to meet budgetary requirements for the department in FY10 if revenues continue to fall.

In order to meet the objectives of this bill and those included in Chapter 74-1-15 NMSA 1978 regarding the liquid waste fund, a fee increase may be necessary.

SIGNIFICANT ISSUES

The decreases in fee revenues are caused by a reduction in liquid waste permits issued for new home construction and for improvements to existing homes. The decreases in construction activity are related to the overall slow down in national economic conditions.

PERFORMANCE IMPLICATIONS

NMED notes that its liquid waste program has met performance measures through the end of FY 08, despite a 32% reduction in permit fee revenues. The agency proposes that “the continued decline in fee revenues during FY 09, coupled with the diversion of fee revenue into the Disposal Fund, however, would decrease program performance with regard to inspections conducted, free

well tests provided and regulation enforcement. Reduction of inspections could increase the number of improper liquid waste systems installed and increase the number and severity of public health and safety hazards that improper systems create. Reduction of free well tests could result in contaminated private domestic wells, and related hazards to public health, remaining undiscovered.”

ADMINISTRATIVE IMPLICATIONS

CS/SB 30/aHFI#1 would require the Environment Department to promulgate procedures and criteria necessary for the administration of the Disposal Fund, including establishing priorities for the disbursement of money and the application and selection process.

Synopsis of Original Bill

The Senate Finance Committee Substitute for Senate Bill 30 would create a “liquid waste disposal system assistance fund” in the State Treasury to be administered by the Department of Environment. Funds would be used to assist qualifying individuals or households to replace failed or improper liquid waste systems; purchase, install or maintain advanced wastewater treatment systems; close or remove failed or improper systems; and connect an individual or household to a centralized wastewater collection or treatment system. The bill provides for funding from appropriations as well as transfers from three other existing funds currently managed by the department: the liquid waste fund, the water quality management fund and the corrective action fund. The bill limits the administrative use of the fund to 5 percent to pay for department costs associated with the management and implementation of fund activities.

FISCAL IMPLICATIONS

The appropriation or transfer from existing funds contained in this bill is a recurring expense. Any unexpended or unencumbered balance remaining at the end of FY10 shall not revert to the fund from which it was transferred. According to NMED, the initial appropriation in \$4.0 million for SB30 would enable the Environment Department to provide assistance to approximately 500 “indigent” individuals or households. Because the department has reported more than 500 systems that may need assistance statewide, the funding of the program would be recurring to adequately address water quality issues. In addition, the agency notes that advanced wastewater treatment systems require periodic maintenance for the life of each system. Since maintenance costs for advanced treatment systems are included in SB 30/SFCS, maintenance will result in recurring costs.

The bill provides for appropriations in future years when general fund may be available. The three funds identified to provide a source of revenue to the new fund are currently used for their statutory purpose and appropriated within the General Appropriation Act to the department. The bill does not specify how much from each fund shall be transferred. Current fund projections are unavailable, although projections for both the liquid waste fund and the corrective action fund are likely to be less than originally expected for FY10 due to the economy. The chart below shows the average revenues and expenditures from each fund:

Fund	Revenues (in thousands)	Expenditures (in thousands)
Liquid Waste Fund (FY02-FY08)	\$602.1	\$675.3
Water Quality Management Fund (FY95-FY08)	\$240.7	\$205.6
Corrective Action Fund (FY95-FY08)	\$15,143.9	\$15,797.3

The bill appropriates transfers directly from the corrective action fund and not from the 30 percent set aside for meeting the state match to federal grants and other operating costs.

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.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

NMED notes that failed or improper liquid waste systems pose a significant threat to water quality in New Mexico. Specifically, the agency reports that illegal cesspools and improper septic systems are the leading source of groundwater pollution and have impaired 355 river miles in the state. In addition, the agency suggests that cesspools, which have been illegal since 1973, also can pose public safety hazards related to entrapment, asphyxiation, and drowning.

The department points out that if the appropriation is considered non-recurring, because the maintenance of advanced wastewater treatment systems will create recurring costs, it is possible that indigent individuals or households will eventually become responsible -- but will be unable to pay -- for the maintenance of the advanced systems purchased and installed with the assistance fund. Failure to properly maintain advanced wastewater systems can result in hazards to public health and water quality.

ADMINISTRATIVE IMPLICATIONS

SB 30/SFCS would add another program to the Water and Wastewater Infrastructure Development (WWIDD) Program to administer. In the original bill, the department did not quantify or describe the affect of adding another program would have on the program’s workload. Thus, it is assumed that the bureau would be able to assimilate this new program with its current staff structure. However, the bill does allow for up to a 5 percent administrative fee to carry out the objectives of the fund, which would presumably pay for any additional FTE or contractual services needed to fulfill the bill’s mission.

The statutory purpose for each of the funds is noted below:

Liquid Waste Fund	Chapter 74-1-15 NMSA 1978	Collection of liquid waste system, modification, construction, treatment fees, certification, re-inspection and variance fees. Used to cover associated operational costs.
Water Quality Management Fund	Chapter 74-6-5-2 NMSA 1978	Collection of discharge permit fees. Revenues used to cover costs associated with the Ground Water Quality Bureau's Discharge permitting activities Petroleum products loading fees. Revenue is used to cover cleanup of above- and below-ground petroleum storage tanks and bureau operating costs. 30% is used for the state's share of federal leaking underground storage tank grants and other grants/operating costs related to water quality.
Corrective Action Fund	Chapter 74-6B-7 NMSA 1978	

COMPANIONSHIP

SB 30/SFCS is a companion bill to SB 335/SFCS that creates a new fund to provide assistance to water and wastewater systems.

TECHNICAL ISSUES

NMED made the following suggestions to amend the original bill, as follows (updated to track with the Substitute Bill):

“Amend SB 30 to limit the use of the fund to purchase, install or maintain an advanced wastewater treatment system to areas where a centralized management entity exists to provide maintenance. The following amendment to SB 30 is suggested:

Page 2, line 20, add: “(2) to purchase, install or maintain an advanced treatment system as required by the Environmental Improvement Act or regulations issued pursuant to that act, provided that a centralized management entity agrees to provide ongoing operation, monitoring and maintenance;”

Page 3, line 24, add: “(4) “centralized management entity” means a federal, state, tribal or local government agency, special purpose district, or public or private utility that is responsible for the proper operation, maintenance and monitoring of advanced wastewater treatment systems within a specific geographic area;”

Amend SB 30/SFCS to limit receipt of assistance to indigent persons and to authorize NMED to recover a portion of the costs should a recipient of assistance sell the property shortly after it is improved. The following amendments to SB 30/SFCS are suggested to effect this change:

Page 2, line 10, change: “...indigent individuals or households...” to “...indigent persons...”

Page 2, line 25, after the word “connect” change: “...an individual or household...” to “...a

residential structure...”

Page 3, line 21, and replace: “(3) “indigent person” means a person whose total annual household income meets the criteria established by the department.”

Page 3, line 24, after paragraph (4) above, and add:

“E. No person other than a person meeting the criteria for an indigent person shall be eligible to receive assistance from the liquid waste disposal system assistance fund.”

“F. The department is authorized to place a self-expiring lien on a property that is improved with funds from the liquid waste disposal system assistance fund. If such a lien is placed on a property it shall automatically expire within the time specified within the terms of the lien. The department shall establish criteria for the appropriate duration of a self-expiring lien.””

OTHER SUBSTANTIVE ISSUES

SB 30/SFCS may raise an anti-donation issue because it would confer a benefit to a property owner. NMED states that the bill survives the anti-donation question for two reasons:

“(1) It is limited to areas where there is a real or potential negative impact to public health or water quality. Thus the state receives consideration for its expenditure in the form of increased public health or protected ground water.

(2) It is limited to indigent individuals or households. However, receipt of assistance from SB 30/SFCS funds should be expressly limited to indigent persons, though the definition of persons may include the household. Further, SB 30/SFCS should enable NMED to recover a portion of the costs should a recipient of assistance sell the property shortly after it is improved.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 30/SFCS is not enacted, indigent persons will continue to be exposed to the public health and safety hazards caused by substandard liquid waste systems.

MA/mc:svb