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FISCAL IMPACT REPORT

SPONSOR Fajardo ORIGINAL DATE 2/12/17
 LAST UPDATED _____ HB 371

SHORT TITLE No False Statements to Environment Dept. SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See narrative			Recurring	NMED AOC, District Attorneys

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 371 (HB371) prohibits false statements to NMED by liquid waste permittees or applicants, owners of unpermitted liquid waste systems, and public water systems, and provides for civil and criminal penalties. The bill provides an exemption from monetary penalties for self-discovered and self-reported violations caused by negligence. Penalties are as follows:

- A civil penalty up to \$10 thousand and any necessary remediation for negligent violations, however, the bill provides an exemption from monetary penalties for self-discovered and self-reported violations caused by negligence;
- A fourth degree felony for a person who knowingly violates or knowingly causes or allows another person to violate provisions of HB371;
- A third degree felony for a second or subsequent violation;
- A third degree felony when knowing violation results in degradation of a water body; and
- A second degree felony when a knowing violation creates a substantial danger of death or serious bodily injury to another person.

FISCAL IMPLICATIONS

This bill provides for penalties, including felonies that could result in imprisonment ranging from 18 months to 9 years. Under the state and federal constitutions, a criminal defendant is automatically eligible for a jury trial if facing a possibility of more than six months in jail. The average cost of a jury trial in the Second Judicial District Court is \$4.7 thousand. District attorneys' offices and the Public Defender Department could experience similar increased costs.

According to AOC:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. Under Subsection 74-1-6(F) of the Environmental Improvement Act, NMED has the power to “enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction.” New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase. AOC is currently working on possible parameters to measure resulting case increase and the costs thereof.

SIGNIFICANT ISSUES

NMED periodically receives information which has been knowingly falsified from persons regulated by NMED in the areas of drinking water and liquid waste. False information submitted to the department can have serious public health consequences, lead to significant costs to innocent individuals and businesses, and compromise NMED's regulatory programs.

False information or omissions can have serious repercussions. NMED receives a large volume of technical information in making decisions under both its drinking water and liquid waste programs and often has to rely upon the correctness of that information. Without accurate information, facilities may be approved for an inappropriate location, activities may be permitted where they would not otherwise have been permitted, and NMED may fail to enforce when it should, compromising public health, safety, and welfare.

TECHNICAL ISSUES

The false statements prohibited by HB371 include oral, written or visual statements, as well as documents. It is not clear if electronic statements are covered.

HB371 criminalizes “allowing” another person to submit a false statement to the department, but does not explain under what circumstances a person could be held criminally responsible for falsehoods submitted by another. While the definitions section of the bill includes agents of a “person regulated by the department,” which inserts a required element of control of or agency over the other person; however, the criminal provisions of HB371 regarding “allowing” another person to violate could include a person's agent with mere awareness of a falsehood who takes no steps to stop or expose the false statement. Beyond agency, the criminal provisions do not specify what the relationship between the persons must be to create criminal liability for “allowing” a violation by another.

The bill does not provide a definition for “a degradation of a water body,” or what degree of degradation is required to constitute a violation classified as a third degree felony.

OTHER SUBSTANTIVE ISSUES

HB371 criminalizes false statements to NMED in the limited area of liquid waste and water systems. Under the Environmental Improvement Act, NMED has the duty to maintain, develop, and enforce rules and standards in many areas in addition to water supply and liquid waste, including food protection, air quality, radiation control, noise control, and hazardous waste. False statements in these other areas of environmental management and consumer protection would seem to be as critical and dangerous as in the areas targeted by HB371. A more general section criminalizing false statements in any area regulated by the department would provide even greater protection.

JA/al/jle