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| <b>LFC Requester:</b> | <b>Mark Weber</b> |
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**AGENCY BILL ANALYSIS  
2013 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** 01/24/2013 02/05/2013  
**Bill No:** HB189 (CS)--305

**Sponsor:** Brian F. Egolf                      **Reviewing**    Attorney General's Office  
**Short**            NO FALSE STATEMENTS            **Person Writing**    Trevor A. Rigler, AAG  
**Title:**            TO ENVIRONMENT DEPT.            **Phone:** 5052229013    **Email** trigler@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY13          | FY14 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY13              | FY14 | FY15 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY13</b> | <b>FY14</b> | <b>FY15</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

This committee substitute, if enacted, would criminalize the act of making false statements to the New Mexico Department of Environment and would impose penalties.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

Because this bill creates new criminal offenses, its enactment could result in an increase in criminal matters investigated and subsequently filed and prosecuted in courts of jurisdiction.

**SIGNIFICANT LEGAL ISSUES**

The House Energy and Natural Resources Committee substitute for the original bill narrows its applicability to persons “regulated by the department”, provides a clear set of definitions for that phrase, and creates a threshold requirement that the department rely upon a tampered record in order for such a falsification to be criminally actionable.

These changes focus the bill’s impact.

However, in several of its sections, the substitute bill, like the original, would criminalize the act of 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. As written, a person with mere awareness of a falsehood who takes no steps to stop or expose the false statement could be charged criminally.

Section D criminalizes the act of making or a allowing a false statement to the department which results in “adverse environmental impact”, but does not provide a definition for this phrase.

~~The phrase “conducting business with the department” is not clearly defined and instead refers to other areas of existing environmental law without explaining what could constitute that conduct.~~

~~The civil penalty in Section F, while clearly designated for negligent acts as opposed to intentional (and therefore criminal) acts, could be deemed overly burdensome as it permits the assessment of a \$10,000 fine for each day following a negligent falsehood and the actual~~

~~assessment of the penalty.~~

#### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

None

#### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

None

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

None

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

None

#### **OTHER SUBSTANTIVE LEGAL ISSUES**

None

#### **ALTERNATIVES TO ENACTING THIS BILL**

~~Amend the existing laws listed in Section G with language similar to that of Section 4 of the Recycling and Illegal Dumping Act (§§74-13-4, -16 NMSA), which criminalizes knowingly omitting substantive information or making false statements in conjunction with information required pursuant to that law.~~

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

#### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

Clarify what sort of conduct involving *allowing* others to submit falsehoods to the department could be criminally actionable (for example, a supervisor knowingly allowing a subordinate to make a false statement).

Clarify that the ~~civil~~ penalty in Section F could also apply to a corporation or business which negligently permits an employee to submit a falsehood to the department.

~~Provide for time and use limitations on the civil penalty found in Section F.~~

Provide a clear definition for the phrase “adverse environmental impact”.

~~Improve the recursive definition for the phrase “conducting business with the department”.~~