

LFC Requester:	Weber, Mark
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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
Bill No: HB189

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 SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund 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 or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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 bill, if enacted, would criminalize the act of making false statements and similar actions to the New Mexico Department of Environment and would impose civil 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 most likely challenge to this bill is vagueness.

In several of its sections, the bill would criminalize the act of “allow[ing]” 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 circumstances could constitute that conduct.

The civil penalty in Section F, while designated for negligent acts as opposed to intentional (and therefore criminal) acts, could be deemed to violate substantive due process as it permits the assessment of a \$10,000 fine for each day following a negligent falsehood until the penalty is “imposed.” A civil penalty must reflect the seriousness of the violation. There is no justification for extending a daily penalty based on the date a penalty is imposed by a court, which is dependent on many factors unrelated to the violator’s conduct. Generally, civil penalties are assessed based on the number of days the violation has occurred. *See, e.g.,* NMSA 1978, 74-4-10(B) (civil penalties under Hazardous Waste Act are assessed “per day of

noncompliance for each violation”).

Some of the environmental statutes for which criminal penalties are established for making false statements in HB 189 already have provisions making such actions or similar actions criminal. *See, e.g.*, NMSA 1978, 74-4-11(A)(3) (making criminal knowingly omitting material information or making a false statement in various documents filed under the Hazardous Waste Act; NMSA 1978, 74-2-14(F) (making criminal knowingly making a false statement in various documents filed under the Air Quality Control Act).

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.

Civil penalties should be calculated based upon the occurrence of a violation, not when a penalty is ‘imposed.’

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

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