

LFC Requester:

N/A

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date 1/26/2023

Bill No: HB41HJCS

Sponsor: HJC
Short Clean Fuels Standards

Agency Name
and Code NMED-667

Number: _____

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SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
	TBD	TBD	Recurring	Air Quality Permit Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	\$1,155.0	\$1,225.0	\$2,380.0	Recurring	General Fund / Air Quality Permit Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

The House Judiciary Committee Substitute for House Bill 41 (HB41cs) amends Sections 3, 7, and 8 of the Environmental Improvement Act and creates a new section of the Environmental Improvement Act to provide the Environmental Improvement Board (Board) the authority to adopt rules setting a carbon intensity standard for transportation fuels and requires the New Mexico Environment Department (NMED) to maintain, develop, and enforce the carbon intensity of transportation fuels rules. HB41cs directs NMED to convene an advisory committee with stakeholders from in-state and out-of-state producers of transportation fuels, transportation fuel distributors, local governments, utilities, tribal governments, environmental protection groups, environmental justice groups and other individuals or entities with relevant expertise to provide input and periodically review program rules.

HB41cs defines carbon intensity as “the quantity of fuel lifecycle greenhouse gas emissions per unit of fuel energy” and fuel lifecycle as “an assessment of the aggregate of greenhouse gas emissions based on science-based models or protocols ... including consideration of storage, transportation and combustion.” HB41cs defines transportation fuel as “electricity or a liquid, gaseous or blended fuel...sold, supplied, used or offered for sale to power vehicles or equipment for purposes of transportation.” HB41cs also includes definitions for “low-income” and “underserved community” that mirror the Transportation Electrification Act definitions for investor-owned utilities at Section 62-8-12 NMSA 1978.

HB41cs requires that the Board promulgate rules to implement a clean fuel transportation standard program by July 1, 2026. The rules shall: (1) establish a statewide technology-neutral clean transportation fuel standard; (2) apply the clean transportation fuel standard to reduce the carbon intensity of fuels in the state by at least 20 percent below 2018 levels by 2030 and at least 30 percent below 2018 levels by 2040; (3) establish technology-neutral mechanisms for generating obtaining, trading, selling and retiring credits among transportation fuel producers and market participants; (4) establish mechanisms for market operation, including mechanisms to stabilize and incentivize investment in the clean fuel market, verify compliance obligations and limit consumer costs amongst others; (5) require utilities to invest net credit revenue from clean fuel credit sales into projects that support transportation decarbonization, with at least fifty percent of such revenues supporting low-income and underserved communities and with investor-owned utilities receiving regulatory treatment consistent with Section 62-8-12 NMSA 1978; (6) consider and allow for coordination with program in other jurisdictions; (7) not discriminate against fuels solely on the basis of having originated in another state or jurisdiction; (8) establish a periodic review process that includes input from the advisory committee to review program performance and determine potential adjustments if deemed necessary after review; (9) allow for a deferral of the program based on emergency or forecasted conditions; and (10) establish permits and fees for regulated entities or credit generators to cover and pay for the costs of the department's administration and enforcement of the program.

FISCAL IMPLICATIONS

NMED will require four new full-time equivalents (FTEs) to convene the advisory committee, develop proposed rules, conduct stakeholder and public outreach, petition the Board, and participate in the rulemaking hearing process. Additionally, NMED will need to contract with outside technical experts to conduct additional analyses and assist in the preparation of hearing exhibits and testimony.

NMED's estimated two-year start-up costs are \$2.38 million for staff and contractual services, \$1.155 million in FY24 and \$1.225 million in FY25. NMED's costs for FY24 include \$445,000 for four FTEs; \$100,000 for support from the Administrative Services Division, Office of Information Technology, and Office of General Counsel; and \$610,000 for contractual services. NMED's costs for FY25 include \$445,000 for four FTEs, \$100,000 for support from the Administrative Services Division, Office of Information Technology, and Office of General Counsel; and \$680,000 for contractual services in FY25. The FY24 and FY25 contractual services support the calculation of the carbon intensities of existing regulated transportation fuels; rule-drafting legal assistance, including review of regulations from other states; an economic impact analysis; and the development of market trading rules, software platforms, credit certification, and compliance.

HB41cs allows NMED to recover reasonable costs for the administration and enforcement of rules approved by the Board, which NMED may begin collecting as early as the third and fourth quarters of FY25. Recurring annual revenue needs will be determined after fees are established by the Board and are to be deposited in the air quality permit fund.

SIGNIFICANT ISSUES

When adopted by the Board, the Clean Fuel Standard program, as proposed by HB41cs, allows New Mexico to reduce greenhouse gas emissions in the hard-to-decarbonize transportation sector while driving innovation across the transportation industry, diversifying the state's economy, and creating jobs. This is accomplished by creating a technology-neutral performance measure and a clean fuel credit market. Adelante Consulting's January 2022 analysis conservatively estimates that a Clean Fuel Standard could generate \$470 million in economic job investment in New Mexico from more than 1,600 permanent jobs and 2,300 construction jobs by 2030. The state would also see an additional \$240 million capital investment in production and manufacturing.

Clean fuels generated in New Mexico will (1) be eligible for sale as clean fuels in other states; (2) will complement existing federal credit programs; (3) will provide an additional revenue stream to support transportation electrification work already underway by investor-owned utilities, including for the benefit of low-income and underserved communities; and (4) allow energy companies investing in clean fuels technologies to further benefit from those investments. To date, other states with a clean fuel program have similar carbon intensity reduction requirements for 2030 as proposed in HB41cs.

A clean fuel credit, as constructed in HB41cs, is a real market-based value equivalent to a metric ton reduction of carbon dioxide. The predictable schedule of the decreasing carbon intensity standard allows for a business to fund projects based on the clean fuel market. The clean fuel market process allows the project that delivers the greatest reduction in carbon intensity to be most valued.

Gas prices, which are naturally subject to price fluctuations, have not been measurably affected by the establishment of a Clean Fuel Standard program. According to a recent Bates White Economic Consulting report that evaluated actual market conditions, the fluctuating cost of clean fuel credits on the clean fuels market does not correspond to the fluctuating retail cost of gasoline. A recent ICF Resources study for the state of Colorado¹ states “the precise impact [of a Low Carbon Fuel Standard (LCFS)] on fuel prices is hard to estimate and predict due to the range of factors that affect fuel price, including but not limited to crude oil prices, regional demand, and other regulatory policies...Over time, credit and revenue generation through an LCFS has the potential to deliver lower consumer prices for lower carbon fuels.” In Oregon, a gallon of Biodiesel 20 (20% blend) is cheaper than a gallon of Biodiesel 5 (5% blend). In California in October 2023, the difference in pump price between renewable diesel and crude oil diesel was only a few cents.

Despite this data, HB41cs requires numerous provisions to ensure that any effect on consumer cost whatsoever is addressed in the program. Specifically, HB41cs requires a Clean Fuel Standard program to: (1) “establish mechanisms, including cost containment measures...”; (2) establish a periodic review process that includes input from the advisory committee ...to provide input on program rules...and performance and determine potential adjustments if deemed necessary after review; and (3) allow for a deferral of the program based on emergency or forecasted conditions.

PERFORMANCE IMPLICATIONS

NMED is responsible for administering and enforcing regulations promulgated by the Board to improve air quality throughout New Mexico, as described in NMED’s “Performance Measure 4.2: Percent of days with good or moderate air quality index.” According to a recent American Lung Association report, nearly 1 in 7 New Mexicans suffers from a respiratory disease such as asthma or COPD, which in turn increases health costs for New Mexicans. According to the National Institutes of Health, the average cost of asthma annually per person is \$3,266. Currently, there are several counties, including Bernalillo, Doña Ana and Eddy Counties, that are exceeding the thresholds for federal and state ground-level ozone – a pollutant that can trigger and exacerbate a variety of respiratory issues. HB41cs lowers the greenhouse gas emissions from transportation fuels which also can reduce corresponding air contaminants. The result is improved air quality, which may increase the number of days with an air quality index of moderate or good. Better air quality improves the health of all New Mexicans, and especially those who are most vulnerable, including children, the elderly, and those with respiratory system diseases such as asthma and bronchitis.

In conjunction with the Energy, Minerals, and Natural Resources Department, NMED is responsible for implementing the Governor’s [Executive Order 2019-003 Addressing Climate Change and Energy Waste Prevention](#), which seeks to reduce statewide greenhouse gas emissions by at least 45 percent by 2030. In 2018, 14 percent of New Mexico’s greenhouse gas emissions were attributed to the transportation sector. The Clean Fuel Standard requires the carbon intensity of transportation fuels to decrease by 20 percent by 2030. This will remove 16.2 million metric tons of carbon dioxide equivalent emissions by 2030, which is the equivalent of taking 2 million vehicles off the road for one year. By 2030, the Clean Fuel Standard alone helps achieve 6 percent of Governor Lujan Grisham’s target of reducing the state’s greenhouse gas emissions by at least 45 percent from 2005 levels.

¹ Low Carbon Fuel Standard Feasibility, ICF Resources, L.L.C., 2020

ADMINISTRATIVE IMPLICATIONS

Once rules are promulgated, NMED will administer the program with responsibilities including:

- establishing an advisory committee to inform the creation of the program;
- developing and reporting on program metrics and program guidance;
- reviewing and approving fuel pathways and carbon intensity;
- conducting workshops and meetings with Indian Nations, Tribes, and Pueblos, regulated parties and stakeholders;
- responding to programmatic questions from regulated parties;
- maintaining the program registration and reporting platform;
- calculating and collecting fees;
- responding to public comments;
- evolving regulatory and programmatic needs; and
- enforcement of the Clean Fuel Standard including holding credit clearance markets.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

The states of California, Washington and Oregon have already adopted a Clean Fuel Standard. Numerous other states across the country, including Colorado, Illinois, Michigan, Minnesota, Nebraska, New York, and Ohio, are evaluating the adoption of such programs. Early adoption of a Clean Fuel Standard provides an opportunity to attract low-carbon intensity fuel businesses to New Mexico that will have growth markets when other states adopt similar programs.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB41cs is not approved, New Mexico will need to seek alternative strategies to reduce greenhouse gas emissions from the transportation sector to meet the state's greenhouse gas emission reduction target for 2030 and beyond. Other strategies may not bring the estimated \$470 million in economic investment and more than 1,600 permanent jobs to New Mexico.

If HB41cs is not passed, the corresponding decrease of ground-level ozone may not be realized, which will contribute to a risk of non-attainment under the Clean Air Act for areas of the state that exceed ground-level ozone levels. Non-attainment status increases restriction criteria for air permits.

If HB41cs is not passed, New Mexico may lose public and private investment in clean fuel opportunities as innovation and development become diverted elsewhere.

If HB41cs is not passed, the cost of future damages resulting from emitting approximately 80.8 million metric tons of greenhouse gases through 2040 is conservatively estimated between \$12.6 and \$32.6 billion, based on 2.5% and 1.5% discount rates. NMED derived these estimates using the preferred Dynamic Integrated Climate-Economy model.

AMENDMENTS

None identified.