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FISCAL IMPACT REPORT

SPONSOR <u>House Judiciary Committee</u>	LAST UPDATED <u>1/26/2024</u>
SHORT TITLE <u>Clean Transportation Fuel Standards</u>	ORIGINAL DATE <u>1/19/2024</u>
	BILL NUMBER <u>CS/House Bill 41/HJCS</u>
	ANALYST <u>Torres, J.</u>

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but Substantial		Recurring	State Air Quality Permit Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED	No fiscal impact	\$1,155.0	\$1,225.0	\$2,380.0	Recurring	General Fund/Air Quality Permit Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Original Bill Agency Analysis Received From
 Department of Environment (NMED)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Office of the Attorney General (NMAG)

Original Bill Agency Analysis was Solicited but Not Received From
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HJC Substitute for House Bill 41

The House Judiciary Committee substitute for House Bill 41 proposes several amendments to the Environmental Improvement Act (EIA), Section 74-1-1 NMSA 1978. These amendments would provide the Environmental Improvement Board (EIB) with the necessary statutory authority to draft and enforce a statewide clean transportation fuel standard. The substitute bill amends existing definitions in the law to include “carbon intensity;” “fuel lifecycle;” and “transportation

fuel” and creates a new section of law that would require EIB to monitor carbon intensity of transportation fuels and would establish requirements for registration and related fees.

The bill would require EIB to promulgate rules to implement a clean fuel transportation standard program no later than July 1, 2026. Prior to promulgating those rules, the secretary is to convene an advisory committee composed of stakeholders from various communities, industry sectors, tribal nations, and areas of expertise to contribute to the drafting of a clean transportation fuel standard. Half of revenue generated under the bill would be used to support low-income and underserved communities, which are also defined.

The bill also would empower the Environment Department (NMED) to maintain, develop, and enforce program regulations.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

House Bill 41 does not contain any appropriations for the development and implementation of a clean transportation fuel standard by EIB.

NMED indicates it will need 4 new full-time FTE to convene the advisory committee, develop proposed rules, conduct stakeholder and public outreach, petition the board, and participate in the rulemaking hearing process and will need to contract with outside technical experts to conduct additional analyses and assist in the preparation of hearing exhibits and testimony.

In analysis of the original bill, NMED provides the following breakdown of their two-year estimated start-up costs:

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 thousand for 4 FTE; \$100 thousand for support from the Administrative Services Division, Office of Information Technology, and Office of General Counsel; and \$610 thousand for contractual services. NMED’s costs for FY25 include \$445 thousand for 4 FTE, \$100 thousand for support from the Administrative Services Division, Office of Information Technology, and Office of General Counsel; and \$680 thousand 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.

NMED also notes:

HB41 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.

In analysis of the original bill, EMNRD states the bill will have no fiscal impact on the agency.

The House Judiciary Committee substitute for House Bill 41 clarifies that additional credit opportunities will involve projects that support the reduction or removal of greenhouse gas emissions. At least 50 percent of these revenues are to support low-income and underserved communities.

SIGNIFICANT ISSUES

The committee substitute bill requires that EIB regulations meet a number of criteria, including:

- Reducing the carbon intensity of transportation fuels used in the state by 20 percent from 2018 levels by 2030 and 30 percent by 2040;
- Allowing for trading of credits among regulated entities and producers and others;
- Taking into consideration equivalent rules in other jurisdictions and coordinating as appropriate;
- Requiring utilities to invest net credit revenue from the program into transportation infrastructure and projects;
- Considering adoption of additional mechanisms;
- Not discriminating against fuels based on state or jurisdiction of origin; and
- Establishing appropriate permits and fees.

In analysis of the original bill, NMED states, if adopted by EIB, the clean fuel standard program as proposed by the bill would allow New Mexico to reduce greenhouse emissions while driving innovation. They note a study by Adelante Consulting in 2022 that conservatively estimates 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 and an additional \$240 million capital investment in production and manufacturing.

In the analysis, EMNRD states implementation of HB41 would lead to increased investment in alternative fuel production and distribution infrastructure, including gas stations providing ethanol, hydrogen fuel cells, and charging stations for electric vehicles. Additionally, EMNRD notes, “These infrastructure investments would, as well as encouraging clean vehicle adoption by New Mexico residents, enable New Mexico to more easily comply with federal law and New Mexico’s clean energy goals.”

In the original analysis, the New Mexico Attorney General notes regulations similar to those required by the bill have been challenged on federal preemption and dormant commerce clause grounds but those challenges have failed. See *Am. Fuel & Petrochemical Manufacturers v. O’Keeffe*, 903 F.3d 903 (9th Cir. 2018). *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, (9th Cir. 2013). HB41 expressly prohibits regulations that discriminate against fuels originating in other states, which should help avoid commerce clause challenges to the regulations developed under it.

ADMINISTRATIVE IMPLICATIONS

In analysis of the original bill, NMED provided the following:

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. HB41 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.

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

- developing and reporting on program metrics and program guidance;
- reviewing and approving fuel pathways and carbon intensity;
- conducting workshops and meetings with 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.

In analysis of the original bill, NMAG notes:

Section 4 of HB41 would require that the mandated rules be promulgated by July 1, 2026, and only after the secretary convenes and considers recommendations from an advisory committee composed of 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. Given the technical complexity of the issues, the broad stakeholder interests that must be considered, and time-intensive processes inherent in rulemaking, the July 1, 2026 deadline will create implementation challenges.

TECHNICAL ISSUES

In analysis of the original bill, NMAG states “utility” is not defined in the bill or in the Environmental Improvement Act. A cross reference to the definition in Section 62-3-3 NMSA 1978 might be useful if that is the intent.

JT/hg/ss