

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 2/10/2026

Check all that apply:

Bill Number: HB 320Original Correction Amendment Substitute

Sponsor: Representative Meredith A. Dixon,
Representative Kristina Ortez, and
Representative Nathan P. Small.

Short Industrial Carbon Reduction
Act

Agency Name**and Code**State Ethics Commission (410)**Number:****Person Writing**Aurora Arreola**Phone:** 505-554-7706**Email** Aurora.Arreola@sec.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
50,000		Nonrecurring	General Fund transfer to Carbon Reduction Fund

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

House Bill 320 enacts the Industrial Carbon Reduction Act, creating two major state programs administered by the Economic Development Department (EDD), in consultation with the Department of Environment (NMED):

1. A Carbon Reduction Production Incentive Program, providing an \$85-per-ton incentive for eligible industrial entities that reduce carbon intensity at least 40% below industry benchmarks.
2. A Carbon Reduction Investment Grant Program, providing grants equal to 10% of qualified expenditures, up to \$5 million per project.

House Bill 320 establishes the Carbon Reduction Production and Investment Fund, a non-reverting fund in the state treasury, and transfers \$50 million from the general fund into the new fund on July 1, 2026. The programs operate through 2036, with fund reversion scheduled for FY2046.

FISCAL IMPLICATIONS

This legislation has a fiscal impact because of the \$50 million that will be transferred from the general fund to the Carbon Reduction Protection Fund. Fiscal impacts depend on the certifications issued through the Carbon Education Production and Investment Funds, the amount of industrial production, and verified carbon-intensity reductions.

SIGNIFICANT ISSUES

House Bill 320 establishes two state-administered incentive mechanisms—the Carbon Reduction Production Incentive Program and the Carbon Reduction Investment Grant Program—funded through a direct appropriation from the general fund. These programs authorize direct transfers of public funds to eligible private entities in the form of production incentives and capital investment grants. As such, the programs implicate Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause), which restricts the State’s ability to make donations to private entities unless a recognized exception applies.

The New Mexico Supreme Court has consistently held that whether a transfer of public funds violates the Anti-Donation Clause does not turn on whether the expenditure serves a public purpose, but rather on whether the transfer constitutes a “donation.” *State ex rel. Sena v. Trujillo*, 1942-NMSC-044, ¶ 22. Courts have emphasized that anticipated downstream public benefits—such as economic development, job creation, or environmental improvement—do not, by themselves, convert a transfer of public funds into a constitutionally permissible exchange.

Courts analyzing Anti-Donation Clause issues have focused on whether the public entity receives adequate consideration in exchange for the transfer. This inquiry often sounds in contract principles and examines whether the transfer is conditioned on specific, enforceable performance

obligations owed to the State, as opposed to an unconditional or loosely conditioned subsidy. Where the State receives measurable commitments or performance in exchange for payment, the transfer may be characterized as a bargained-for exchange rather than a donation.

HB 320 includes several structural features that appear designed to condition the receipt of funds on performance, including:

- eligibility thresholds requiring at least a forty-percent reduction in carbon intensity below industry benchmarks;
- annual reporting and verification requirements tied to actual production volumes and emissions reductions;
- limits on incentive payments to verified, incremental reductions;
- competitive application processes;
- funding caps tied to available appropriations; and
- clawback provisions in the investment grant program if recipients fail to meaningfully meet projected performance estimates.

These conditions may be relevant to an Anti-Donation Clause analysis insofar as they link payment to measurable outcomes and ongoing compliance. The Commission has previously concluded:

Government grant agreements often include the essential elements of a contract (including consideration) and establish what is ordinarily regarded as a contractual relationship between the government and a grantee. In exchange for grant funds, grantees ordinarily agree to: (i) performance of a specific project that the government desires; (ii) prudent management of grant funds; and (iii) satisfaction of conditions required by the grant award instrument, including reports to the government on the use of grant funds. That set of promises by the grantee is value that government receives in exchange for the grant funds, and the formation of a contract between the government and grantee allows the government, if necessary, to sue to enforce the conditions of a grant agreement. Where the contemplated agreements meet the requirements of a contract, [a state agency] would receive something of value in exchange for the funds, and therefore the exchange would not be a “donation” violative of the Anti-Donation Clause.¹

However, the ultimate constitutional analysis would depend on how the programs are implemented in rule and contract, including the specificity and enforceability of recipient obligations and the degree to which payments are contingent on verified performance rather than projected or estimated benefits.

Finally, any Anti-Donation Clause analysis must also consider the exceptions provided for in Subsections A through H. Those enumerated exceptions provide the categories of those subsidies

¹ State Ethics Comm’n Adv. Op. 2024-06 (Dec. 13, 2024) (available at <https://nmonesource.com/nmos/secap/en/item/19122/index.do>) (footnotes omitted) (citing *Henke v. U.S. Dept. of Commerce*, 83 F. 3d 1445, 1450 (D.C. Cir. 1996); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 609 (5th Cir. 1980)).

that the people of New Mexico have deemed as sufficiently in the public's interest to remove them from the Clause's anti-subsidy scope. However, it is not clear that any of those exceptions would apply in this instance. Whether the programs fall within an existing exception, or whether they rely instead on a contractual-exchange theory to avoid classification as a donation, may warrant further consideration.

PERFORMANCE IMPLICATIONS

HB 320 has multiple mechanisms to support performance and accountability. The industry benchmark resets every five years, requires annual reporting on emissions reductions and economic outcomes, has fund caps limiting certifications to available funding, and has provisions for grant recipients failing to meet estimates.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If House Bill 320 is not enacted, New Mexico would neither establish this structured incentive framework nor create the Carbon Reduction Production Incentive Program, which is intended to reduce industrial carbon intensity through production subsidies and capital investment.

AMENDMENTS