

LFC Requester:

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: 02/05/2026

Check all that apply:

Bill Number: SB 257

Original Correction Amendment Substitute

Sponsor: Shannon D. Pinto

Short NMED Prioritize Hazardous
Waste

Agency Name

and Code

667 NM Environment Department

Number:

Person Writing JD Nance

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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
0	0		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or	Fund Affected
FY26	FY27	FY28		
0	0	0		

(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	0	0	0	0		

(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:

Amends the Hazardous Waste Act to provide that the Department of Environment consider whether a disposal facility can accept and prioritize hazardous waste generated in New Mexico. The bill requires the permit application process be modified to require information about waste disposal capacity and requires the department to consider that capacity when issuing, modifying or renewing hazardous waste permits.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SB 257 requires the New Mexico Environment Department (NMED) Hazardous Waste Bureau (HWB) to add an evaluation of capacity for, and prioritization of, hazardous wastes with the point of generation being in New Mexico. This evaluation would be performed during the normal Permit Application review for initial and renewal application submissions, and for any applicable permit modification. The review level of effort on Permit Writers in the HWB to consider these provisions when modifying an existing Resource Conservation and Recovery Act (RCRA) Treatment, Storage, and Disposal Facility (TSDF) permit would be minimal, and would be performed concurrently during the existing review process.

SIGNIFICANT ISSUES

The TSDFs evaluation of potential waste streams need to require the potential New Mexico generator provide estimated volumes from identified waste streams to the TSDF for the evaluation of capacity for those wastes. As the hazardous waste volumes are estimated, the generator reports submitted to the TSDF should at a minimum be updated annually. This information would need to be included in the TSDF's submission of application or Permit Modification Request (PMR).

SB257 may violate the Dormant Commerce Clause of the U.S. Constitution. Section 74-4-4.2(L) (as proposed) explicitly requires the department to "consider a permittee's capacity to accept and **prioritize hazardous waste generated within the state**" when issuing or modifying permits (p.

7 (emphasis added). The prioritization of hazardous waste generated within New Mexico may be considered "facial discrimination" against interstate commerce. The US Supreme Court has long held that hazardous waste is an article of commerce subject to the US Constitution's Commerce Clause. The Dormant Commerce Clause implicitly prohibits states from enacting legislation that would discriminate against or unduly burden interstate commerce, including providing additional protections or benefits to local hazardous waste producers. See *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978); and *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U.S. 353 (1992). Therefore, a state law that would explicitly require NMED to consider whether an applicant for a hazardous waste disposal facility can and will prioritize hazardous waste within New Mexico may be challenged as unconstitutional.

PERFORMANCE IMPLICATIONS

The HWB would need to perform a review of existing Permits that contain a hazardous waste disposal authorization.

ADMINISTRATIVE IMPLICATIONS

Agency issued RCRA Permits may require modification to provide additional detail on the compliance requirements, information submissions, and any reporting that may be needed to satisfy the statute.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Waste Isolation Pilot Plant (WIPP) RCRA permit added language to the permit in the 2023 renewal that the facility must certify annually that they have enough disposal capacity in permitted underground hazardous waste disposal units to dispose of waste from New Mexico generator/storage sites. The provision requires a certification that capacity is available for NM waste and specified that Los Alamos National Laboratory (LANL) waste must be prioritized. However, an enforceable volumetric rate, clearly prioritizing LANL waste over waste from out-of-state generator/storage sites was not included in the permit condition.

This Bill would complement the language existing in one Permit regulated by the Agency, which will provide legal standing for other permits and will allow for NMED to rectify identified shortcomings of no enforceable volumetric rates.

TECHNICAL ISSUES

The use of the word "modify" caused conflict with the current federal and state statutes. Alternate language was provided in Amendments.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will have permitted waste disposal areas reach capacity without required capacity available for New Mexico generated hazardous waste. The New Mexico facilities generating these hazardous wastes could not effectively cleanup and dispose of their hazardous wastes and would

drive disposal costs up for additional out of state shipping if even feasible to ship out of state. The New Mexico waste disposal facilities (TSDFs) may receive other state's waste, causing New Mexico to be the Nation's disposal point. Not passing legislation to have New Mexico generated wastes be prioritized will inhibit in-state clean-up, increase financial burdens of those facilities without the guarantee of in-state disposal, and further promote out-of-state hazardous waste to be shipped to and fill New Mexico's current disposal areas.

Prioritization of New Mexico generated wastes will greatly reduce the need for additional hazardous waste disposal facilities within New Mexico while allowing for the cleanup of known waste volumes already in the state.

AMENDMENTS

In 74-4-4.2A(3), lines 14 through 15, the statement of "and how different waste streams will be managed" is not needed. This is redundant request as generating facilities have to evaluate and plan to manage different waste streams, and disposal facilities have to evaluate and document what wastes they will receive in their permit application under RCRA.

Suggest changing 7.4.4.2A(3) to read:

"for hazardous waste disposal facilities, information on anticipated hazardous wastes streams and estimated volumes to be received with the point of generation in New Mexico."

In 74.4.2 L, including "or modifying" creates a conflict with modification regulations in 40 CFR 270.42 and the NMAC, as only the requested section is opened for review and modification. Suggest the following language for this part:

L. In connection with the operation of hazardous waste disposal facilities, the Department shall evaluate a permittee's capacity to accept hazardous waste generated within the state and consider a permittee's prioritization of those hazardous wastes generated within the state when issuing or renewing a hazardous waste permit.