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FISCAL IMPACT REPORT

CS/CS/House Bill 153/HENRCS/

BILL NUMBER: HAFCS

SHORT TITLE: Low-Carbon Construction Material Rebate Act

SPONSOR: House Appropriations and Finance Committee

LAST

ORIGINAL

UPDATE: 2/14/26

DATE: 1/27/26

ANALYST: Davidson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

| Agency/Program | FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|------|------------------------|------------------------|------------------------|-----------------------------------|---------------------|
| NMED | | Up to \$2,969.0 | Up to \$2,387.0 | Up to \$5,707.0 | Recurring and Nonrecurring | General Fund |
| EDD | | Up to \$1,900.0 | Up to \$1,961.0 | Up to \$3,861.0 | Recurring | General fund |
| Total | | Up to \$4,869.0 | Up to \$4,348.0 | Up to \$9,568.0 | Recurring and Nonrecurring | General Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to the House Appropriations and Finance Committee substitute for House Bills 2 and 3, House Bill 152, and House Bill 320.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Energy, Minerals and Natural Resources Department

Environment Department

Economic Development Department

State Ethics Commission

Agency or Agencies That Were Asked for Analysis but did not Respond

Department of Finance and Administration

SUMMARY

Synopsis of HAFCS Substitute for HENRC Substitute for House Bill 153

The House Appropriations and Finance Committee (HAFCS) substitute for the House Energy, Environment and Natural Resources Committee (HENRC) substitute for House Bill 153 (HB153) creates the Low-Carbon Construction Material Rebate Act (managed by the Environment Department) for the purpose of providing rebates and other financial incentives for low-carbon construction material purchased by material buyers.

The bill also would enact the Environmental Product Declaration Act, providing definitions for

covered materials, embodied carbon, environmental product declaration, and global warming potential. The act would task the Environment Department (NMED) with assisting manufacturers of materials specified in the act with the creation of environmental product declarations, as well as tasking NMED with analyzing and researching the data gathered from the implementation of the act.

HB153 also enacts the Industrial Carbon Reduction Act, creating a carbon reduction incentive program and a subsequent grant program, all within the Economic Development Department (EDD). The bill directs EDD to promulgate the rules and structure of the carbon reduction programs with the New Mexico Environment Department (NMED), outlining the application process, eligibility, and criteria for qualification for the incentives and grants the bill creates.

The bill requires the first application period for both programs to be held 18 months after the effective date of the bill. The bill further directs NMED to promulgate rules about carbon intensity of eligible products in 12 months. The bill also asks for EDD and NMED to prepare and submit annual reports on the implementation of the bill.

The effective date of this bill is July 1, 2026.

FISCAL IMPLICATIONS

NMED estimates the agency would need a total of \$1.9 million in additional nonrecurring funding for two program staff, one legal staffer, one staffer for administrative support, consultant rulemaking support and program development, equipment, travel, and public and tribal engagement.

NMED analysis predicts implementation of HB153 could require significant staff, from the promulgation of the rules to the establishing and operation of the programs and then the monitoring of the grant and incentive programs.

In addition to nonrecurring funding, NMED estimates the agency will need \$1.9 million in additional recurring funding for three program staff, legal staff, two personnel for administrative support, consultant rulemaking support and program development, equipment, travel, and public and tribal engagement. NMED notes the fund affected would be the carbon reduction production and investment fund, although the bill does not specify if NMED or EDD could use the fund for this purpose. Therefore, absent specific authorization to use funds from the carbon reduction production and investment fund, the estimate above assumes the funding source for administrative staff is from the general fund.

EDD notes its responsibilities under the bill for rulemaking, administration, and reporting would create additional work. EDD did not provide an estimate for the potential costs of implementation but did, along with NMED, note the bill does not include additional funding for implementation for either agency nor does it carve out a portion of the \$50 million appropriation for administrative costs. LFC analysis, based on the estimates from NMED, estimates EDD could also need up to \$1.9 million, similar to NMED's analysis in additional funding.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3 (the General Appropriation Act) includes \$25 million for NMED to serve as funding for the incentive programs.

Although HB153 does not specify future appropriations, establishing a new rebate program could create an expectation the program will continue in future fiscal years; therefore, it is possible the cost could recur in years beyond the forecast period.

SIGNIFICANT ISSUES

HAFCS's committee substitute for HB153 is a combination of House Bill 152, which establishes the Environmental Product Declaration Act and sets up the Environmental Product Declaration Program within NMED, and House Bill 320, which creates programs for incentivizing industrial carbon reduction.

Frameworks

EDD notes the impact of the bill is dependent on market conditions and on the how the rulemaking for the program will impact implementation. EDD notes some qualifying entities may have limited in-state or regional supply, which could impact participation in the program and possibly concentrate benefits within a certain group of suppliers. EDD points to potentially prioritizing state-based manufacturers which could support in-state supply chain development.

Energy, Minerals and Natural Resources Department (EMNRD) analysis notes existing green building frameworks, such as LEED v5, already provide clear performance thresholds that projects can follow to earn points toward certification of environmental product declarations and designations. EMNRD also points out LEED v5's framework has a broader, project-wide pathway:

Instead of evaluating each material separately, it allows projects to demonstrate global warming potential reductions through a project-average approach, awarding even greater credit when the overall material package achieves a 20 percent or 40 percent reduction in global warming potential.

Due to an already existing framework for projects to take advantage of financial incentives to utilize green building materials, creating an additional state program could be duplicative and could be not as broad or project-wide as the existing framework.

EMNRD recommends aligning the potential state benchmarks to the existing LEED v5 framework could help in ensure "consistency, market clarity, and a strong foundation for accelerating embodied carbon reductions across the built environment in New Mexico."

EMNRD also points to existing programs in the agency that work to reduce emissions from the building sector and incentivize green building practices, such as the Community Energy Efficiency Development Program (CEED), Energy Savings Performance Contracts (ESCO), the Energy Efficiency Revolving Loan Fund (EERLF), Home Energy Efficiency Rebates (HEAR), Home Efficiency Rebates (HER), and the Sustainable Buildings Tax Credit (SBTC). While EMNRD finds the bill could build on these programs, there is also the potential the program could be underutilized, due to existing private frameworks in place and the multitude of existing state programs.

HB153 aligns with state and federal efforts to encourage industrial decarbonization and incentivize reductions in greenhouse gas emissions. By offering grants and incentives for

facilities that achieve significant emissions reductions or invest in clean technology, the bill has the potential to promote economic and environmental benefits.

However, the effectiveness of the program depends on industry participation and enforcement. Ensuring that emissions reductions are verifiable and permanent will require robust oversight from NMED. Facilities may face technical and financial barriers to achieving the required 40 percent reduction in emissions, limiting eligibility.

Other states have similar incentive programs for decarbonization of the industrial sector, whether it be cap-and-trade or reduction targets or other forms of incentive. Colorado, Massachusetts, and Maine each have emission reduction targets for specifically the industrial sector and 13 other states have enacted legislation creating economy-wide emission reduction targets, but no specific carve out for the industrial sector. There are also emission cap-and-trade programs with multiple states in the Northeast, though the system is limited to the power sector. Due to how new some of these programs are, it is still not clear as to how effective they have been in either reducing emissions or broadly incentivizing industry participation.

Engagement with Anti-Donation Clause

Analysis from the State Ethics Commission (SEC) notes the bill’s Carbon Reduction Production Incentive Program is potentially restricted by the state’s Anti-Donation Clause:

The (bill’s) 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.

SEC notes the state Supreme Court has consistently found, regardless of the intent or purpose of the transfer of public funds, if it is deemed a donation, it is in violation of the Anti-Donation Clause:

The courts do not focus on whether the transfer is generally in the public interest and the courts have never held that a transfer of public funds is exempt from the Anti-Donation Clause simply because it is in the public interest. Indeed, the New Mexico Supreme Court has explicitly stated that “[t]he constitution makes no distinction as between “donations,” whether they be for a good cause or a questionable one. It prohibits them all.

The court has also found in previous instances that potential or anticipated downstream public benefits created by the transfer of public funds does not convert them into a “constitutionally permissible exchange.”

Taking this into account, SEC notes the Carbon Reduction Production Incentive Program and Carbon Reduction Investment Grant Program both include:

Several structural features that appear designed to condition the receipt of funds on performance, including:

- Eligibility thresholds requiring at least a 40 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.

SEC also notes, without an “ultimate constitutional analysis”—which takes into account how the programs created by the bill are implemented in both rule and contract and how the grants, incentives, application parameters, and enforcement of guardrails are enacted—it cannot be definitively determined if the programs created by the bill are in violation of the Anti-Donation Clause. SEC concludes it is an open question as to whether the bill and its use of public funds are sufficiently in the public’s interest and, therefore, unaffected by the Anti-Donation Clause’s anti-subsidy scope. SEC notes to determine this, further consideration could be warranted.

The State Ethics Commission (SEC) further suggests the bill’s rebate program raises concerns with the state’s Anti-Donation Clause. Specifically, SEC notes:

It raises concerns under the Anti-Donation Clause because it would provide a rebate from public funding of up to \$500 thousand per construction project to private individuals, without the private individuals providing something of value to the state and without an apparent applicable exception under the Anti-Donation Clause for this funding.

SEC offers multiple ways as to how the bill’s rebate program can be interpreted. SEC argues the rebate program created by the bill could be viewed as program that creates downstream benefits that flow to the public through the purchase of low- instead of high-carbon construction materials. However, SEC notes the anticipated benefits from these purchases are unlikely to provide adequate value to the state or public through its existing contract laws. SEC provides yet further interpretation of the program, noting the program could be deemed to be sufficiently conditional in its awarding, if the buyers of low-carbon construction materials are in line with the conditions the program and state demand, resulting in the rebate being viewed as more analogous to a unilateral contract the “state” offers, as opposed to a donation or an unconditional subsidy.

Negating this positive view, SEC analysis notes the bill does not have clear conditions on the buyers of the materials except that they must buy the materials and later submit the necessary documentation. SEC notes:

It is questionable as to whether the purchase of low-carbon construction materials alone and the submission of verification documentation certifying the materials are low-carbon would constitute sufficient consideration under New Mexico law to prevent the rebate from being a donation because the purchase of these materials by buyers and the submission of certification documentation do not form a contractual relationship between the buyers and the state, where the state would receive something of value specifically because of the implementation of the rebate program.

SEC provides a possible solution to the issues it highlights, noting if the funding in the bill were to be provided under a sufficient grant structure, the necessary consideration could be taken to avoid some of the conflicts the Anti-Donation Clause.

HAFCS’s committee substitute for the bill includes language that more specifically ties awarding of rebates to the value it provides to the state, potentially creating greater alignment with the

Anti-Donation Clause.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB153 is closely related to House Bill 152, which establishes the Environmental Product Declaration Act and sets up the Environmental Product Declaration Program within NMED.

HB153 is closely related to House Bill 320, which enacts the Industrial Carbon Reduction Act, creates a carbon reduction incentive program and a subsequent grant program.

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