

LFC Requester:

Joseph Simon

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/16/2024

Bill No: HB 41

Sponsor: Kristina Ortez, Christine Chandler

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: CLEAN TRANSPORTATION FUEL STANDARDS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB 41 would amend the Environmental Improvement Act to require the EIB to promulgate regulations governing the carbon intensity of transportation fuels. The bill defines “carbon intensity” as “the quantity of fuel lifecycle emissions per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule.” The bill would also provide definitions of “transportation fuel” and “fuel lifecycle.”

HB 41 would further require that the regulations adopted by the EIB meet a number of criteria, including but not limited to: being technology neutral; reducing the carbon intensity of transportation fuels used in the state by 20% from 2018 levels by 2030 and 30% 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. The bill would also empower NMED to maintain, develop, and enforce regulations for the program.

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.

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

Section 4 of HB 41 would require 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

“Utility” is not defined in the bill or the existing Environmental Improvement Act. A cross reference to the definition in NMSA 1978, Section 62-3-3 might be useful if that is the intent.

OTHER SUBSTANTIVE ISSUES

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). HB 41 expressly prohibits regulations that discriminate against fuels originating in other states, which should help avoid commerce clause challenges to the regulations developed under it.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A