

**LFC Requester:****Davidson****AGENCY BILL ANALYSIS  
2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:****Analysis.nmlegis.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}**Check all that apply:***Original**    ☐    **Amendment**    ☒  
**Correction**    ☐    **Substitute**    ☐**Date** 3/17/2025**Bill No:** HB140**Sponsor:** Chandler**Agency Name  
and Code  
Number:**NMED - 667**Person Writing  
Analysis:**Rick Shean (Director, RPD)**Short  
Title:**    HAZARDOUS WASTE ACT  
CHANGES (note this update)**Phone:** 505-629-6494    **Email**    rick.shean@env.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	\$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**

A friendly House Floor amendment to House Bill 140 added “discarded aqueous film-forming foam containing (AFFF) intentionally added per- or polyfluoroalkyl substances (PFAS)” to the statutory definition of a hazardous waste. This addition gives direct authority for New Mexico to regulate discarded AFFF containing PFAS as a hazardous waste. In addition, House Bill 140 also authorizes the Environmental Improvement Board (EIB) to adopt rules limited to the discarded AFFF containing PFAS. The New Mexico Environment Department (NMED) envisions this rulemaking authority could be used for disposal and destruction requirements related to discarded AFFF containing PFAS. House Bill 140 is consistent with 21 other states that sought greater protection from industry-specific hazardous wastes impacting their communities.

The friendly House floor amendments to House Bill 140 also removes the originally proposed definition of “hazardous waste constituent or hazardous constituent” from the bill, along with all uses of that term in the bill. The revisions limit the EIB to only evaluating discarded AFFF containing PFAS. In addition, the amendments reiterate a federally listed exemption for agricultural waste by fully stating the federally listed exemption. This does not change the already existing agricultural exemption; however, it further solidifies the acknowledgement in State law protecting New Mexico’s agriculture industry from discarded AFFF containing PFAS. Lastly, House floor amendments ensure that if the federal government was to declare discarded AFFF containing PFAS was not a hazardous waste, New Mexico’s law would remain in effect. This is accomplished by enshrining the current federally listed hazardous wastes as of July 1, 2025 remain in State law.

**FISCAL IMPLICATIONS**

The U.S. Environmental Protection Agency (EPA) has not yet finalized a national rule listing discarded PFAS as a hazardous waste despite its toxicity and impacts to community drinking water and agriculture. NMED has sought funding from the New Mexico Legislature while using its own permitting funds and emergency response funds to address PFAS impacting communities. In total, NMED estimates it has spent over \$12M to establish the extent of the contamination that the U.S. Department of Defense has avoided paying. In contrast, in the State of Texas, the U.S. Department of Defense has amicably agreed to address PFAS contamination around one such U.S. Air Force Base as the Texas Commission on Environmental Quality has broader authority than NMED. House Bill 140 will correct this inequity that puts New Mexicans

at greater risk than Texans.

NMED does not anticipate any costs to the general fund due to this bill. It is likely the passage of House Bill 140 will save money once rules are adopted.

### **SIGNIFICANT ISSUES**

Under a primacy agreement between the U.S. EPA and the State of New Mexico, NMED implements the Hazardous Waste Act (NMSA 1978, § 74-4-1). States that receive final authorization from EPA, must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. This means that House Bill 140 will not grant NMED the authority to regulate any waste inconsistent with laws and rules. Such wastes currently excluded from federal hazardous waste regulation and therefore state hazardous waste regulations include: scrap metals, agricultural wastes, mining wastes, oil and gas wastes, etc.

### **PERFORMANCE IMPLICATIONS**

House Bill 140 will provide certainty for NMED's authority to regulate the cleanup of discarded AFFF containing PFAS from impacted sites across the state, while strengthening NMED's cases against the U.S. Department of Defense for the remediation of contamination of soil and groundwater around its installations across the State.

### **ADMINISTRATIVE IMPLICATIONS**

House Bill 140 provides direct authority to NMED to enforce cleanup of discarded AFFF containing PFAS at sites across the State.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Not applicable.

### **TECHNICAL ISSUES**

None.

### **OTHER SUBSTANTIVE ISSUES**

None.

### **ALTERNATIVES**

None.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Not enacting this legislation means the U.S. Department of Defense is unlikely to clean up PFAS contamination impacting Clovis, New Mexico, Alamogordo, New Mexico, Albuquerque, New Mexico, or Santa Fe, New Mexico thus passing remedial costs to New Mexico. Further, it will result in greater expense for New Mexicans in terms of medical costs, clean-up costs, loss of property values, and potentially shorter lifespans from acute and chronic conditions, etc.

### **AMENDMENTS**

None.