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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	House Energy, Environment and Natural Resources Committee	<b>LAST UPDATED</b>	
		<b>ORIGINAL DATE</b>	03/03/25
		<b>BILL NUMBER</b>	CS/House Bill 392/HENRC
<b>SHORT TITLE</b>	Single-Use Plastic Bag Act	<b>ANALYST</b>	Graeser

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines	\$0	See fiscal implications				Recurring	Recycling and Illegal Dumping Fund
Bag Fees	\$0					Recurring	Retailers
	\$0					Recurring	Municipalities and Counties

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect the most recent analysis of this legislation.

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>NMED</b>		<b>\$280.0</b>	<b>\$280.0</b>	<b>\$560.0</b>	Recurring	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect the most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Environment Department (NMED)

#### Agency Analysis was Solicited but Not Received From

Department of Justice (DOJ)

Taxation & Revenue Department (TRD)

## SUMMARY

### Synopsis of HCECD Substitute for House Bill 392

House Energy, Environment and Natural Resources Committee Substitute for House Bill 392 (CS/HB392) would impose a single use plastic bag ban statewide and require retail establishments – primarily food stores – to charge \$.10 per bag for paper bags with 40 percent recycled content. The bill provides exemptions to the ban and to the imposition of the paper bag fee. This fee would split \$.03/bag to the retailer and \$.07/bag going to the sponsoring municipality or county to be used towards outreach on waste and litter reduction. A municipality

or county may require a higher fee for each paper carryout bag, but only \$.03/bag of the fee may go to the retail establishment. The act would be enforced by a municipality or county that chooses to enforce the prohibition and by the Department of Environment (NMED).

Section 6 allows a municipality or county to seek injunctive relief against violators and impose fines of \$500 for a second violation and \$1,000 for the third and subsequent violations. If these civil penalties are collected by NMED, the bill directs these fines to the recycling and illegal dumping fund.

The effective date of this bill is January 1, 2026. NMED is requested (“may”) to promulgate rules no later than December 31, 2025.

## FISCAL IMPLICATIONS

The bill seeks to divert or “earmark” fine revenue. LFC has concerns with including continuing distribution language in the statutory provisions for funds because earmarking reduces the ability of the Legislature to establish spending priorities.

According to estimates by NMED and the New Mexico Recycling Coalition, New Mexicans use at least 330 million single-use plastic bags per year. Based on this number, the fines and fees contained in HB392 will likely generate some amount of revenue for localities, retail establishments, and the state. However, predicting the actual amount of revenue is exceedingly difficult. No data is available on the percentage of existing single-use plastic bags that would be exempted from the ban. Further, predicting the rates at which retail establishments and consumers will trade plastic bags for paper and at which retail establishments will violate the ban is impossible without additional data.

CS/HB392 requires that, absent a local ordinance, the entire seven-cent balance per bag be remitted to the Environment Department. Remitted fees are directed to the Recycling and Illegal Dumping Fund, to potentially be granted to local governments for recycling infrastructure and illegal dumping abatement. If there is a local ordinance, that amount goes to the local government, and no revenue goes to the department. Fees must be remitted quarterly, and only after the retailer accumulates at least twenty dollars owed. The intent of the bill is for local governments to enact and enforce the bag ban, and to benefit from the bag fees to cover any costs associated with this enactment.

NMED is charged with promulgating regulations and enforcing the provisions of the single use bag ban:

The amount of enforcement required by NMED will depend on how many municipalities and counties choose to enforce the prohibition, but it is potentially significant. In addition, NMED will need to educate the public and local governments, answer questions and work with stakeholders. Other states with similar legislation provide outreach toolkits for local governments, especially smaller municipalities and sparsely populated counties and retailers with posters for display at point-of-sale, employee training documents, and other images.

NMED’s Solid Waste Bureau will need staff to incorporate these duties into other non-discretionary duties mandated by state law and rules. The bureau estimates 2 full-time equivalents will be required. As local governments implement their own programs, these FTEs will work with retail establishments to assist in waste minimization, recycling, and

food waste management; moving toward circular economy goals; and updating public education materials on a regular basis. In addition, NMED estimates staff would be involved in twelve to twenty-four compliance inspections annually based on tips and complaints that NMED would work with local governments to resolve or directly enforce. NMED estimates this cost to be \$280 thousand annually starting in FY26.

## SIGNIFICANT ISSUES

NMED notes:

The substitute differs in material ways from the original, particularly in the matter of governmental authority and discretion to enforce the act or local ordinances, as follows:

- Rulemaking to implement the act by the Environment Department is discretionary, not mandatory.
- Local ordinance: Municipalities have discretion in enforcing the act. The municipality or county may enact an ordinance to assess and collect a fee, but the act is silent on the amount it may assess; however, it must be as stringent or more stringent than that in the act. The original explicitly allowed the local government to assess a higher fee. Localities that enact an ordinance must use the revenue for waste and litter reduction programs. Without an ordinance, the balance of the fee is remitted to the Department's RAID fund, and a municipality will not receive revenue.
- The substitute replaces the provision that each retail sales transaction would constitute a separate violation with a "per day" violation.

According to estimates by NMED and the New Mexico Recycling Coalition, New Mexicans use at least 330 million single-use plastic bags per year. Plastic bags are used for an average of 12 minutes, but a single plastic bag has a life expectancy of up to 1,000 years. Many of these bags become visible litter in communities, contaminate recycling streams, and are the main item landfills must remove pursuant to litter control permit requirements.

11 states have state-wide single-use plastic bag bans that include single-use plastic bags. Various ordinances are in place that ban single-use plastic bags in the City of Carlsbad, the City of Las Cruces, the Town of Silver City, and the City of Santa Fe. Santa Fe County and Bernalillo County also have bans which include other single-use plastics. Albuquerque adopted a single-use plastic bag ban in 2020, but it was suspended and then repealed. The Town of Taos adopted a plastics ban but it has not yet been implemented.

Grocers and retailers may oppose this bill. Further, local governments may be challenged to enforce the ban. However, there are local governments in New Mexico that have successful plastic bag bans in place. National grocers and big box retailers know how to comply and can do so. This bill would provide funding for local governments to promote the prohibition, but the language of the bill does not authorize a local government to use the funds for enforcement of the prohibition. Local governments, if they choose, can also adopt an ordinance that is more stringent than what is in this bill.

Plastic bags are an environmental nuisance and can create microplastics. According to Keep America Beautiful's 2020 national Litter Study, an estimated 325 million plastic bags were littered along United States roadways and waterways. This bill provides significant potential cost savings for local governments, landfills, and state litter collection programs by reducing

the amount of plastic bags used in New Mexico.

Contaminants constitute an average of thirty percent of the recycling stream sent to be sorted at recycling materials recovery facilities (MRFs) from collection programs. MRFs that accept curbside and commercial recycling cite plastic bags as constituting eighty percent of these contaminants. When these bags wrap around sorting equipment, they can shut down the whole operation for hours and often must be removed by hand, a dangerous and risky procedure. These bags are not recyclable pursuant to these programs and become trash that must “take the long route” to the landfill. It is estimated that between landfill costs and labor and plant downtime, banning plastic bags could save \$3.8 million per year for recycling processors. Additionally, by offering a cleaner recycling stream, we could potentially attract more recyclers to New Mexico, helping to build a circular economy, keeping our resources here to make new products.

The bill establishes a bag fee of a minimum of 10 cents per paper bag. Seven cents must be transmitted to the local government for education, with the retailer keeping three cents. There are varying formulas for the bag fees in other similar bans. The Colorado state ban on plastic bags and polystyrene is four cents to the retailer and six cents to the local government. Santa Fe implemented a ten-cent fee, and the formula is one cent to the retailer and nine cents to the city. Las Cruces also has a ten-cent fee, but that formula is five cents each to the retailer and to the city. The formula in the bill should provide enough revenue potential to local governments but adjustments may need to be made to the formula over time. If the formula is too lucrative for the retailers, they may not have enough incentive to ask the customer if they want a bag or not but just provide a bag and charge the fee.

Establishing public outreach materials and assisting local governments to enact ordinances will take additional staff time in the Solid Waste Bureau. The bureau anticipates it would receive numerous inquiries from the public, local governments, and retailers. Being prepared with a thorough informational website and toolkits for governments and retailers before the effective date will help reduce staff time; however, they will likely be a period of intense focus on implementing this program.

## PERFORMANCE IMPLICATIONS

NMED notes the following:

This bill does not establish goals and metrics, but data to measure its success could be implemented by tracking fees paid at the local level, and asking Clean and Beautiful Programs and/or local governments to report litter data. This complements the state’s beautification and anti-litter efforts, so devising tracking data through cleanup programs at the local and state level (i.e., Department of Transportation roadside litter collection) would be a key measurement of the outcomes of implementation.

## TECHNICAL ISSUES

Pursuant to Article XII, Section 4 of the New Mexico Constitution, all fines and forfeitures must be covered into the current school fund. The provision of CS/HB392 which directs fines to the recycling and illegal dumping fund may violate this.

DOJ points out two technical issues:

Section 4: Consider specifying that the Environmental Improvement Board (EIB), and not NMED, would promulgate the rules under the Act. Section 4 states that “the *department* shall promulgate rules for the implementation of the provisions of the [Act].” However, the Environmental Improvement Act specifies that the promulgation of rules is one of the duties of the EIB. *See* § 74-1-5 (“The *board* shall promulgate all regulations applying to persons and entities outside of the department.” (emphasis added)). NMED’s duties include “recommend[ing] and propos[ing] regulations for promulgation by the board,” § 74-1-6(H), and “enforc[ing] the rules, regulations and orders promulgated by the board . . . ,” § 74-1-6(F). This note applies to per Section 3(B)(9) where the “department” is referenced as well.

Section 6/7: The purpose of the phrase “Except as provided in Section 7” at the beginning of Section 6 is unclear. Does it mean, for example, that local governments can impose greater civil penalties than those specified in Section 6, because they can “enact, implement or enforce any ordinance that is as stringent or more stringent than the Single-Use Plastic Bag Act”?

Section 7: Section 7(B) states that civil penalties collected by NMED will go to the recycling and illegal dumping fund, but it does not state where civil penalties collected by *local governments* would go.

## OTHER SUBSTANTIVE ISSUES

NMED notes:

Encouraging consumers to bring their own bag is a behavior change that is often difficult for even well-meaning people to institute. Additionally, supplies of alternative materials may be more difficult or costly for retailers; and sometimes local entities run out of compliant supplies.

However, in Santa Fe, both residents and retailers have accepted the “Bring Your Own Bag” program as a normal way of conducting business. The city does not need to do much enforcement, but vigilant residents do report violations. Retailers have not registered significant complaints about the fee, or the proportion of the fee that they keep.

The Single-Use Plastic Bag Act will not produce perfect results in either the behavior of consumers or retailers; but the overall results will reduce the amount of plastics and litter that must ultimately be handled at end-of-life.

## ALTERNATIVES

NMED points to alternative programs:

Other ways to reduce these kinds of single use plastics do exist. For example, California has instituted a packaging law that does not ban specific items as much as it requires recyclability targets, increasing over time. If the manufacturers of these items cannot find ways to increase their recyclability, they will not be allowed to continue to sell or provide them in the state.