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FISCAL IMPACT REPORT

SPONSOR <u>Herndon</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/21/23</u>
SHORT TITLE <u>Clean Truck Incentive Program</u>	BILL NUMBER <u>House Bill 422</u>
	ANALYST <u>Sanchez</u>

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$4,200.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$923.1	\$952.7	\$1,875.8	Recurring	NMED Operating Budget

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Department of Environment (NMED)
New Mexico Attorney General (NMAG)
Department of Transportation (DOT)

SUMMARY

Synopsis of House Bill 422

House Bill 422 proposes to enact the Clean Truck Incentive Act. This act would establish a clean truck incentive program that would offer rebates to subsidize the purchase of trucks that emit zero carbon dioxide and zero criteria pollutants, to be administered by the Department of Environment (NMED). HB422 includes statutory definitions for “eligible vehicle,” “participating dealer,” “rebate certificate,” and “reimbursement application.”

House Bill 422 instructs the Environmental Improvement Board (EIB) to promulgate rules implementing the program and includes language to ensure compliance with federal requirements. NMED would be responsible for applying for federal funding for the program, processing applications, making reimbursement payments, and developing a program website.

NMED would also be required to convene an advisory committee to develop a report with proposals for recommended rules to be transmitted to the EIB.

House Bill 422 would allow prospective truck buyers to apply for a rebate certificate from NMED and as part of the application, attest to using the purchased vehicle for at least one year. The value of certificates would increase proportionally with the weight of the truck, and would include bonus rebates for meeting certain criteria, including:

- Historically underserved community members,
- Small businesses,
- Independent owner-operators,
- Transit authorities, and
- School districts.

The bill stipulates that buyers would be eligible for no more than two bonuses. Once a certificate is issued, the buyer would then present it to a participating dealer, who would deduct the amount of the certificate from the vehicle price, and then apply for a reimbursement based on the amount of the certificate issued by NMED.

House Bill 422 appropriates \$4.2 million from the federal Infrastructure Investment and Jobs Act from money that was transferred to the general fund, to the Department of Environment for the purposes of administering the newly created clean truck incentive program.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The appropriation of \$4.2 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the fund. Although this bill does not specify future appropriations, multiyear appropriations, particularly if used to fund services, create an expectation that the program will continue in future fiscal years; therefore, this cost could become recurring after the funding period.

Analysis from the Department of Environment expressed concerns regarding the long-term costs of eligible rebates under HB422. The department explained it would need at least five full-time employees to administer the program, in addition to staff support from the Office of Information Technology, Office of General Counsel, and the Administrative Services Division. The department estimated these additional staff positions would cost the department approximately \$743 thousand each year (NMED estimates 4 percent growth in this number each year). NMED also explained there would be a minimum \$120 thousand cost for two public hearings required for the department to draft and promulgate the necessary regulations. NMED expressed concerns about its ability to continue supporting the program once the nonrecurring funding appropriated in HB422 is exhausted.

SIGNIFICANT ISSUES

Analysis from the Department of Environment posited that a better approach might be to use an existing fund, such as the air quality permit fund, which would be better suited to leverage indirect and overhead costs while maximizing program outcomes. The department explained that this approach would accomplish the same goal without establishing a new restricted fund, such as the one proposed in HB422. NMED also suggested a participation fee be added to bolster

whichever fund ends up receiving the money associated with the clean truck incentive program.

NMED’s analysis also included a request for clarification as to the intent of the bill and suggested a handful language changes, which it felt would accomplish that goal:

Section 3.C. begins: “Only a vehicle that operates with zero carbon dioxide and zero criteria air pollutant emissions shall be eligible for the clean truck incentive program.” To match the definition of “eligible vehicle” as “a vehicle that operates with zero carbon dioxide and zero criterion air pollutant emissions and that has been approved by the department of environment to participate in the clean truck incentive program” and to help meet New Mexico’s greenhouse gas reduction goals, Section 3.C should state that: “Only a vehicle that operates with zero carbon dioxide equivalent emissions and zero criterion air pollutant emissions shall be eligible for the clean truck incentive program.

Section 3.F. requires the Department to hold two public hearings to collect input on structuring the CITP, which is a redundant requirement considering the Department’s existing regulation promulgation process.

Section 4.E. requires the Department to convene an advisory committee to make recommendations to the EIB on proposed rules. It is not clear if the advisory committee shall be compensated for their participation.

Section 5.A(8) requires the EIB to promulgate rules and standards to implement the CTIP, including compliance with federal requirements. It’s unclear what is meant here, and NMED suggests Section 5.A state: “The environmental improvement board shall promulgate rules and standards in compliance with federal requirements to implement the clean truck incentive program, including:” -- while deleting the existing language of Section 5.A.(8).

Analysis from the Office of the Attorney General identified several concerns, specifically ways the bill describes the process for proposed rules and plans to be transmitted between the Department of Environment and the Environmental Improvement Board, some issues with definitions, and some suggested tweaks to language. See below:

The bill provides that NMED develop a report with proposals for recommended rules and transmit a copy of it the EIB, and requires the EIB to promulgate rules, but does not expressly provide an opportunity for NMED or other interested parties to actually propose rules to the board. In contrast, see the Air Quality Control Act, NMSA 1978 § 74-2-6 (“Any person may recommend or propose regulations to the environmental improvement board or the local board for adoption”); NMSA 1978 § 74-2-5 (the department shall “develop and present to the environmental improvement board or the local board a plan for the regulation, control, prevention or abatement of air pollution”). Although NMED may propose regulations under the general provisions of the Environmental Improvement Act at NMSA 1978 § 74-1-9, it is not clear whether the transmittal of recommended regulations is in lieu of or in addition to such a proposal.

Section 3(F) of the bill provides: “Before approving a vehicle or application, the department of environment shall convene at least two public hearings to gather feedback and allow stakeholders, experts and community members to provide input and recommendations on the development of the clean truck incentive program.” This may cause confusion because it ties the requirement for public hearings to the implementation

of the rule, rather than to the earlier development of recommendations for the EIB. Under the bill as drafted, NMED could theoretically convene its advisory committee without public hearings; make its recommendations to the Board, the Board could adopt the regulations, but then before approving the first vehicle or application, NMED would be required to convene two public hearings.

It is not clear from the language of the bill whether the program is meant to include light duty trucks such as pickups, or heavy duty trucks such as tractor trailers, or both. The bill defines “eligible vehicle” as a “vehicle that operates with zero carbon dioxide and zero criterion air pollutant emissions and that has been approved by the department of environment to participate in the clean truck incentive,” but nowhere is “truck” defined. Although the EIB is empowered to define key terms in its regulations, it may be desirable to provide parameters for the definition of truck within the statute, as it is a fundamental aspect of the program.

Subsection 3(D) of the bill provides: “As part of the requirements for a rebate certificate, a buyer shall swear in writing that the buyer will put a purchased vehicle into service for at least one year to reduce air pollutant emissions. If a buyer is found to have violated this provision, the buyer shall be liable to pay back to the department of environment the full amount of the rebate certificate deducted from the vehicle's cost.” The clause “put a purchased vehicle into service” is unclear as to whether a certain level of service is required, or whether it simply means the purchaser shall not sell or otherwise dispose of the vehicle within the first year.

Subsection 5 B provides: “The environmental improvement board may promulgate rules specific to repowered vehicles and rules otherwise necessary for the successful implementation and administration of the clean truck incentive program.” “Repowered vehicle” is another term that is not defined in the statute and does not have an unambiguous meaning in everyday use in this context.

TECHNICAL ISSUES

According to the analysis from the Office of the Attorney General, the term “criterion pollutants” might need to be revised to “criteria pollutant” which is a more commonly used term in environmental regulations.

Analysis from the Department of Environment included the following:

NMED is unclear if Section 2.A, which states that “a vehicle operates with zero carbon dioxide and zero criterion air pollutant emission”, refers to a vehicle that does not emit exhaust gas or other pollutants from the onboard source of power from the tailpipe.

NMED is unclear of what “repowered vehicle” means in Section 5.B.

In Section 7, NMED is unsure if a portion of New Mexico’s funds within the carbon reduction program from the federal Infrastructure Investment and Jobs Act is allowed to be earmarked for the CTIP. NMED is also unsure of what happens to the CTIP if funds from the federal Infrastructure Investment and Jobs Act are not available.

ALTERNATIVES

The Department of Environment’s analysis of HB422 included several suggested amendments:

Section 2.A "eligible vehicle" means a vehicle that ~~operates with zero carbon dioxide and zero criterion air pollutant emissions~~ does not emit exhaust gas or other pollutants from the onboard source of power and that has been approved by the department of environment to participate in the clean truck incentive program vehicle.

Section 3.A. The department of environment shall establish the "clean truck incentive program" to support the purchase of zero emission ~~electric~~ trucks and buses for fleets, and associated fueling infrastructure, in New Mexico.

Section 3.C: Only a vehicle that operates with zero carbon dioxide equivalent emissions and zero criterion air pollutant emissions shall be eligible for the clean truck incentive program.

Section 3.F: Before the environmental improvement board promulgates rules and standards to implement the clean truck incentive program, ~~approving a vehicle or application~~, the department of environment shall convene at least two public hearings ~~meetings~~ to gather feedback and allow stakeholders, experts and community members to provide input and recommendations on the development of the clean truck incentive program.

Section 4.E. ~~convene an advisory committee to develop a report with proposals for recommended rules for the clean truck incentive program, a copy of which shall be transmitted to the environmental improvement board.~~ convene an advisory committee composed of stakeholders from disproportionately impacted communities, industry sectors, government, Indian nations, tribes and pueblos, environmental groups and other individuals with relevant expertise to provide input to the secretary and department on program design.

“SECTION 5. [NEW MATERIAL] ENVIRONMENTAL IMPROVEMENT BOARD DUTIES AND POWERS.—

A. The environmental improvement board shall promulgate rules and standards in compliance with federal requirements to implement the clean truck incentive program, including:

- (1) setting eligibility requirements for zero-emission vehicles, participating dealers, rebate certificates and bonus rebates;
- (2) determining rebate levels for each vehicle based on vehicle class;
- (3) determining criteria for bonus rebates;
- (4) developing an application and certification process;
- (5) developing processes for voucher approval, voucher redemption and reimbursement application and payment;
- (6) establishing reporting requirements and enforcement mechanisms for a person who purchases a vehicle through the program and a participating dealer that sells through the program; and
- (7) defining key terms; ~~and~~
- (8) ~~compliance with federal requirements”~~