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FISCAL IMPACT REPORT

SPONSOR	<u>HENRC</u>	LAST UPDATED	<u>2/27/2023</u>
		ORIGINAL DATE	<u>2/27/2023</u>
SHORT TITLE	<u>Plastic Waste Reduction Act</u>	BILL NUMBER	<u>CS/House Bill 432/HENRCS</u>
		ANALYST	<u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED (rulemaking by 1/1/24, and enforcement)	No fiscal impact	\$176.4	\$116.4	\$292.8	Recurring	NMED operating (General Fund)

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses to Original Bill Received From
Regulation & Licensing Department (RLD)
New Mexico Attorney General (NMAG)
New Mexico Environment Department (NMED)

SUMMARY

Synopsis of HENRC Substitute for House Bill 432

The House Energy, Environment and Natural Resources Committee Substitute for HB432 (HB432/HENRCS) proposes to enact the “Plastic Waste Reduction Act” (act).

More specifically,

Sections 1 and 2 cite the new act and define a number of terms used in the act, including for what constitutes plastic, recyclable material, and retail sales.

Section 3 prohibits single use plastic checkout bags, or bags or boxes that are not reusable or recyclable. This section includes exemptions for non-handled bags that: 1) protect items from damage or contamination; 2) package loose items (and gives examples), uncooked meat, poultry or seafood, or prepared takeout foods; 3) are used for laundry, dry cleaning or garments; 4) contain multiple bags for waste; 5) contain or transport live animals; 6) transport caustic chemicals at the retail level; 7) transport partially-consumed wine; 8) are bags used to protect delivered newspapers from weather; or 9) are determined by NMED to be exempt.

Section 3 allows food providers to refuse a customer's reusable carryout or recycled bag or box to transport food items.

Lastly, Section 3 allows a county or municipality to pass an ordinance to prescribe penalties for violations of the act. If a county or municipality chooses not to, NMED may do so, up to \$25 per day. This section requires NMED to promulgate rules to implement the provisions of the act.

The effective date of this bill is January 1, 2024.

FISCAL IMPLICATIONS

RLD anticipates no fiscal impact for the department.

HB432/HENRCS designates rulemaking authority to NMED. The promulgation of new rules by January 1, 2024 may be too soon, given that the agency's budget for FY24 is still undetermined. However, the House Appropriations and Finance Committee Substitute for HB2 includes a general fund transfer of \$22.6 million to NMED. Although the appropriation was less than the agency's request of \$23.7 million, it was 11 percent higher than the agency's FY23 operating budget.

HB432/HENRCS allows counties or municipalities to prescribe a penalty for violations of the act. If counties or municipalities choose not to, NMED may impose violations up to \$25 per day. NMED believes revenues from this penalty would not cover the cost of enforcement. The operating budget table reflects \$116.4 thousand for one FTE to manage enforcement actions. NMED also notes costs for rulemaking and communicating the new regulations in FY24 would be an additional \$60 thousand for staff time and advertisement costs, not including overhead.

HB432/HENRCS does not identify a fund to receive revenues from penalties, should NMED choose to impose violations. In its analysis for the original bill, NMED suggested the solid waste facility grant fund, which provides grants to counties and municipalities for solid waste facilities. This fund at NMED is nonreverting and is also not subject to appropriation by the Legislature.

SIGNIFICANT ISSUES

HB432/HENRCS would reduce waste from single-use plastic bags by promoting the use of reusable bags and non-plastic carryout options, and reduce the improper disposal of plastic bags. NMED explains the minimum recycled-content requirement for allowable bags in the bill is expected to encourage market development for packaging made from recycled and post-consumer materials.

NMED commented that the cities of Santa Fe, Las Cruces, and Silver City have local single-use plastic bag prohibitions. Additional counties and municipalities may enact similar ordinances.

NMAG noted that eight states - California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont - have banned single-use plastic bags. In 2014, California became the first state to enact legislation imposing a statewide ban on single-use plastic bags at large retail stores.

PERFORMANCE IMPLICATIONS

NMED also noted that the bill supports Section 74-9-2(G) NMSA 1978 of the New Mexico Solid Waste Act to “promote source reduction, recycling, reuse, treatment and transformation of solid waste as viable alternatives to disposal of those wastes by landfill disposal methods.”

ADMINISTRATIVE IMPLICATIONS

NMED would pursue any enforcement action based on complaints received from the public.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB432/HENRCS nearly duplicates SB243/SCONCS except, to accommodate restaurants, adds a definition for “food provider” which is “a business whose primary product is food prepared for consumption on site or for takeout and that is not a retail sales establishment.” HB432/HENRC also adds an exemption for plastic bags used to protect newspapers from inclement weather.

TECHNICAL ISSUES

Paragraph D of Section 3 provides: “the department of environment may assess a penalty in an amount not to exceed twenty-five dollars (\$25.00) per day of violation.” This provision does not identify against whom the violation would be assessed, for example the individual store, or the company or corporation owning the store. This could be clarified in regulation, but NMED believes specificity would ensure consistency between the various ordinances and regulation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Retailers will continue to distribute single-use plastic bags, which end up as litter that does not biodegrade.

AHO/rl/ne/al