

LFC Requester:

Graeser

AGENCY BILL ANALYSIS
2025 REGULAR SESSION

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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:

Date 2/28/2025

Original Amendment
Correction Substitute

HENRC Sub for HB
Bill No: 392

Sponsor: Lujan

Agency Name and Code Environment Department 667

Number:
Person Writing Shirlene Sitton

Short Title: Single-Use Plastic Bag Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	\$280	Recurring	General Fund
0	0	0	0

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0	0	0
0	0	0	0	0

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$280	\$280	\$840	Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB243 Plastic Waste Reduction Act 2023
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HENRC Substitute for HB392 creates the Single-use Plastic Bag Act to prohibit retailers from providing a customer with a single-use plastic bag or other bag or box that is not a reusable carryout bag, recycled content paper bag or recyclable cardboard box for transporting their purchases. Like the original, it requires retailers to charge customers a ten-cent fee for every carry-out recycled content paper bag provided. Contains a list of nine exceptions to the plastic-bag prohibition. Retailers may retain 3 cents from every paper bag fee charged.

HENRC Substitute for HB392 preserves the intent of the original to create a Single-use Plastic Bag Act to prohibit retail establishments from providing single-use plastic bags to customers at the point of sale, and further to prohibit those establishments from providing carry-out recycled-content paper bags unless they charge a ten-cent fee per bag. It clarifies the definition of an allowable reusable bag.

FISCAL IMPLICATIONS

This substitution 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. Revenue projections for the state are based on a local governance of the program and would only occur if local entities fail to pass ordinances related to the fees. Projections for the state’s revenue from the HENRC substitute for HB392 are currently incalculable. 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.

The amount of enforcement required by the NMED depends on how many municipalities and counties choose to enforce the prohibition. 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 will need staff to incorporate these duties into other non-discretionary duties mandated by state law and rules. NMED estimates two full-time equivalent (FTEs) will be required. 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. NMED estimates staff would be involved in twelve to twenty-four compliance inspections annually based on tips and complaints that the NMED would work with local governments to resolve or directly enforce. NMED estimates this cost to be \$280,000 annually starting in FY26.

SIGNIFICANT ISSUES

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 the 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 twelve minutes, but a single plastic bag has a life expectancy of up to 1,000 years. Many of these bags become visible litter in our communities, contaminate recycling streams, and are the main item landfills must remove pursuant to litter control permit requirements.

Eleven 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.

Some 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 provides seven cents per paper bag for funding local governments efforts to educate retailers and consumers about the prohibition, and waste reduction projects and programs. Local governments, if they choose, can also adopt ordinances that are 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.

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.

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.

The bill establishes a bag fee of a minimum of ten 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 for 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

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.

ADMINISTRATIVE IMPLICATIONS

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill complements other recycling and circular economy bills, as well as existing laws and rules.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

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 have to ultimately be handled at end-of-life.

ALTERNATIVES

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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Single use plastics will continue to be a major source of litter, contaminating recycling materials, and photodegrading in the environment to become microplastics, causing harm to humans and wildlife. Without the fee collected, large and small communities will still not be incentivized to address this litter problem.

AMENDMENTS

None identified.