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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Ortez</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/20/25</u>
<b>SHORT TITLE</b> <u>Efficiency &amp; Mercury Standards For Products</u>	<b>BILL NUMBER</b> <u>House Bill 409</u>
	<b>ANALYST</b> <u>Graeser</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines	\$0	\$0	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	Current School/ General Fund

Parentheses ( ) indicate revenue 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
EMNRD	Up to \$100.0	Up to \$350.0	Up to \$300.0	Up to \$750.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

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

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Attorney General (NMAG)

Energy, Minerals and Natural Resources Department (EMNRD)

Department of Health (DOH)

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

New Mexico Environment Department (NMED)

## SUMMARY

### Synopsis of House Bill 409

House Bill 409 (HB409) proposes to enact the Efficiency and Mercury Standards for Products and Lighting Fixtures Act and requires the Energy, Minerals and Natural Resources Department (EMNRD) to adopt rules to prohibit the sale, offering for sale, lease, or rent of certain products and appliances unless they meet energy or water efficiency standards set by EMNRD. The bill also requires EMNRD to adopt provisions for the testing, certification and labelling of these products. Additionally, HB409 requires EMNRD to adopt rules prohibiting the sale of general-purpose compact fluorescent lamps and general-purpose linear fluorescent lamps. Such rules must “be in alignment” with similar prohibitions adopted in other states.

The new standards promulgated by EMNRD will apply to new products sold or leased in New Mexico. The standards would not apply to:

- 1) Products manufactured in New Mexico and sold outside New Mexico;
- 2) Products manufactured outside New Mexico and sold at wholesale inside New Mexico for final retail sale and installation outside New Mexico;
- 3) Products installed in mobile homes at the time of construction; or
- 4) Products designed expressly for installation and use in recreational vehicles.

Before July 1, 2025, EMNRD is required to promulgate rules to implement the provisions of HB409. On and after January 1, 2027, all products for sale must meet or exceed the standards. On and after January 1, 2028, all products installed must meet or exceed the standards.

Finally, HB409 sets the penalties for violating the Act:

- 1) First violation: warning issued by the EMNRD.
- 2) Second violation: civil penalty up to \$100
- 3) Third and subsequent violations: civil penalty up to \$250.

Each covered product sold in violation of the act is a separate violation, and that each violation may constitute a separate offense and each day that such violation occurs may constitute a separate offense.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted.

## **FISCAL IMPLICATIONS**

The administrative/fiscal implications for EMNRD would be significant. EMNRD would be required to establish energy and water efficiency standards. This requires research, outreach and rulemaking. HB409 would also entail establishing a new regulatory framework, which would require staff, monitoring, tracking, and compliance. EMNRD would also be responsible for regularly updating these standards and the regulatory framework as new products are launched and pricing mechanisms change.

EMNRD would need to develop an enforcement program, including hiring staff who would conduct periodic inspections and issue notices of violation, an electronic infrastructure for accepting reports of violations, development of compliance materials, and undertaking educational outreach to targeted suppliers. EMNRD does not currently have the staffing or expertise to implement such a program. This will require initial IT support to build the website and tracking tools and 2 to 3 permanent FTEs.

## **SIGNIFICANT ISSUES**

EMNRD is charged with the duty of regulating and enforcing the provisions of the act. EMNRD points out encouraging energy efficiency is well with the mission of the department.

National appliance standards save the typical U.S. household about \$320/year on energy bills. In addition to huge energy bill savings, the typical new refrigerator uses one-quarter the energy than its equivalent from 1973—despite offering 20 percent more storage capacity and being available at half the retail cost. Since 1990, additional efficiency gains in household

appliances include:

- New clothes washers use 75 percent less energy;
- New dishwashers use more than 53 percent less energy;
- New air conditioners use about 50 percent less energy; and
- New furnaces use about 10 percent less energy.

According to the U.S. Environmental Protection Agency (EPA), in addition to saving energy and saving customers money, appliance and equipment standards help reduce greenhouse gas emissions and other air pollution.

States have historically led the nation in the development of new efficiency standards, with nineteen states currently applying at least one standard.<sup>1</sup>

Issues for EMNRD to contemplate while it establishes this new enforcement program include:

- Addressing online purchases, including purchases from overseas;
- Impacts to retailers in New Mexico;
- Analysis of the upfront costs of certain products compared to lifetime savings (including recommendations for incentives to ease any burdensome upfront costs).
- Health impacts;
- Impacts to the electrical grid (including adopting “smart” and “connected” products wherever feasible, to unlock further savings on utility bills);
- Clarifying whether the act applies to residential products, commercial products, industrial or all three;
- Defining “general purpose” and/or contemplating exceptions in the case of the film industry, theater and arts, and other special lighting situations such as jails or operating rooms where fluorescents may be the only acceptable product;
- Defining “computer server power supply units” to protect operations of the high-performance supercomputer at national labs and military bases and of in-state data centers, where appropriate; and
- When and how to regularly update standards.

The Attorney General (NMAG) warns of possible issues in implementing the provisions of HB409:

Possible Federal Preemption

Some of the standards contemplated by the bill may be preempted by federal law, though further analysis would be needed to determine which, if any, standards are preempted. As summarized on the U.S. DOE’s website, “Congress has mandated through various statutes that the DOE is to implement energy conservation standards and test procedures for residential products and commercial and industrial equipment. DOE has published regulations in the Code of Federal Regulations for more than seventy categories of appliance and equipment types.” <https://www.energy.gov/eere/buildings/statutory-rules-and-authorities>. A list of consumer products covered by 42 U.S.C. § 6292 is included in the agency analysis. DOE is also authorized to classify any other type of consumer products or industrial equipment as covered. 42 U.S.C. § 292 (a)(20); 42 U.S.C. § 6311 (1)(L).

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<sup>1</sup> State Standards | ASAP Appliance Standard Awareness Project

State laws, including testing and labeling requirements, concerning energy efficiency, energy use, or water use of products covered by federal standards are preempted and therefore not effective, subject to certain exceptions. *See* 42 U.S.C. § 6297(a)-(c). One exception is a rule for which a waiver has been granted to the state. 42 U.S.C. § 6297(c)(2). The process and criteria for obtaining a waiver are set out in 42 U.S.C. § 6297(d).

In general, the categories of products that would be subject to standards under HB409 do not appear to overlap with categories for which DOE is mandated to adopt standards and therefore may not be preempted. However, there is some overlap, for example showerheads, water closets, and urinals. Standards for these categories would appear to be federally preempted unless a waiver is obtained. The categories of “commercial” products do not appear to overlap and be preempted by any standards that DOE is statutorily mandated to issue standards under 42 U.S.C. § 6311. However, more research would be needed to ensure any equipment classified as “commercial” under HB409 has not been addressed by DOE standards for “industrial” equipment. In addition, if EMNRD establishes standards for products not listed in the Act, as authorized by Section 4, those standards would be preempted if they cover products subject to DOE standards.

#### Possible Constitutional Issues under the Interstate Commerce Clause

The “dormant” Commerce Clause is the negative implication of the Commerce Clause: states may not enact laws that discriminate against or unduly burden interstate commerce.” *HW Premium CBD, LLC v. Reynolds*, 742 F. Supp. 3d 885, 904 (S.D. Iowa 2024). Section 3(B)(1) & (2) of the bill provide exemptions for products manufactured in New Mexico but sold outside the state. While this is different from a typical protectionist act that seeks to keep products manufactured outside of the state from being imported, it may raise dormant commerce clause concerns. An argument could be made these provisions are discriminatory because they allow New Mexico manufacturers to export products that New Mexico deems unsuitable for sale within the state to another state, while denying a manufacturer in that state the reciprocal right to import such products into New Mexico. Moreover, because the regulations contemplated by the Act regulate sales, not manufacturing, it is not clear that such exemptions are necessary.

The Department of Health also identifies significant issues:

HB409 would lead New Mexico to join at least nine other states, including Vermont, California, Colorado, and Washington in enacting state regulations or bans of fluorescent and mercury vapor lamps, as well as regulate the selling of other fixtures and products that are energy inefficient:

- Colorado requires appliances meet or exceed a set of efficiency standards; establishes the phase-out of the sale of fluorescent light bulbs that contain mercury.
- Vermont prohibits sale of mercury-containing fluorescent lightbulbs.<sup>2</sup>
- Washington State phased-out sale of mercury-containing lighting products and House Bill 1619 updated existing appliance standards. This is estimated to save consumers and businesses \$2 billion in energy and water costs.<sup>3</sup>
- Hawaii phased-out of fluorescent light bulb sales and creates efficiency standards for energy and water efficiency for a set of appliances sold in the state.<sup>4</sup>

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<sup>2</sup> <https://dec.vermont.gov/news/new-vermont-fluorescent-lightbulb-restrictions-begin-2024>

<sup>3</sup> Appliance Standards – Washington State Department of Commerce

<sup>4</sup> Bill Text: HI HB192 | 2023 | Regular Session | Amended | LegiScan and Hawaii-2023-SB691-Amended

LED bulbs are mercury-free and have a longer lifespan than fluorescent lights. Transitioning to LED lights would bring residents and businesses significant savings in their utility bills and reduce energy consumption. Regulating the sale of light fixtures and other products containing mercury will reduce the amount of improperly disposed-of mercury that can lead to environmental contamination, which can negatively impact human health if a person is exposed to mercury through water, soil, or air.

All residents of New Mexico would be served by this bill. However, very young children and fetuses are at greater risk of negative health outcomes due to exposure to mercury according to the World Health Organization. This is due to the early stage of development of the central nervous system in children, and their smaller body size being disproportionately affected by any dose of exposure. Even small amounts of mercury exposure can lead to nervous, digestive, and immune system damage. This bill would decrease the risk of exposure to mercury for all New Mexicans, which would positively benefit those at greater risk of organ development damage from mercury exposure.

In the United States, recycling rates of fluorescent lamps are reported as 23 percent.<sup>5</sup> While these products often contain small amounts of mercury, exposure can occur if the product is accidentally broken during installation, use, transportation, storage, recycling, or disposal, which can easily occur. Removal of mercury from products removes the risk of exposure to this heavy metal. Improper disposal of these products can lead to mercury contamination of water, soil, and the air, threatening human health. This bill would lead to a decrease in risk of mercury exposure to New Mexico residents.

## ADMINISTRATIVE IMPLICATIONS

EMNRD points out significant impacts to rule, implement and enforce the provisions of HB409. LFC staff have attempted to translate the needs into operating budget terms in Table 2.

In addition, EMNRD will need to broaden its in-house expertise from electrical appliances to include water usage and commercial kitchens.

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<sup>5</sup> 2022: Fluorescent lamps: A review on environmental concerns and current recycling perspectives highlighting Hg and rare earth elements – ScienceDirect