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FISCAL IMPACT REPORT

SPONSOR Lara **LAST UPDATED** _____
ORIGINAL DATE 2/21/23
SHORT TITLE Clean Fuel Standard Act **BILL NUMBER** House Bill 478
ANALYST Sanchez

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
No fiscal impact	Indeterminate but minimal	Indeterminate but substantial	Recurring	Clean Fuel Standard Fund

Parentheses () indicate revenue 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	\$545.0	\$545.0	\$1,090.0	Recurring	NMED Operating Budget (4 FTE)
	No fiscal impact	\$1,290.0	Remainder from FY24	\$1,290.0	Nonrecurring	NMED Operating Budget (Contract Staff)
Total		\$1,835.0	At least \$545.0	At least \$2,380.0		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 426

Sources of Information

LFC Files

Responses Received From

Department of Environment (NMED)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 478

House Bill 478 (HB478) proposes enacting a new “Clean Fuel Standard Act” and making one amendment to Section 74-1-8 NMSA 1978, the Environmental Improvement Act, which would require the Environmental Improvement Board to promulgate rules and standards under the new Clean Fuel Standard Act.

HB478 would establish standards for transportation fuel, applicable to fuel providers, to decrease the carbon intensity by at least 20 percent below 2018 levels by 2030 and 30 percent by 2040. The bill includes definitions for “board,” “carbon intensity,” “clean fuel standard,” “credit,” “deficit,” “department,” “disproportionately impacted communities,” “dyed fuel,” “fuel lifecycle emissions,” “fuel pathway,” “greenhouse gas,” “motor vehicle,” “provider,” and “transportation fuel.”

HB478 defines carbon intensity as the life cycle emissions of the fuel per unit of fuel energy. The bill also provides several criteria and requirements for rules created under the act including:

- A standard-setting process that does not discriminate based on the fuel’s state or jurisdiction of origin;
- Use of nationally recognized models or protocols to determine lifecycle emissions;
- Establishment of a process for obtaining and retiring credits as a compliance option;
- Establishment of processes for generating credits from a variety of industries in the supply chain of fuel production;
- Registration and fee requirements for any person generating credits;
- Establishment of a market trading program managed by the Department of Environment;
- Requirements for annual third-party verification of applications, fuel transactions, and carbon intensity data;
- Prioritization of mechanisms for credit generation benefitting “disproportionately impacted,” “environmental justice,” and “rural communities;” and
- Requirements for electric utilities generating credits under the program to spend at least half of the revenue generated from credits on certain investments to further reduce emissions in the transportation sector.

House Bill 478 would require the Department of Environment to petition the Environmental Improvement Board to promulgate rules implementing the provisions of the bill no more than 12 months after the bill’s effective date. HB478 assigns responsibility for the implementation of the program to NMED.

Finally, HB 478 would create the Clean Fuel Standard Fund at the State Treasury which will serve as the receiving fund for any fees collected from the regulation of transportation and dyed fuels under the provisions of the act. NMED would be permitted to use the fund to cover costs associated with the administration of the Clean Fuel Standards Act and any costs associated with its implementation.

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

House Bill 478 does not contain any appropriations for the development and implementation of a clean fuel standard by the Environmental Improvement Board (EIB). NMED estimates that there will be recurring costs of approximately \$545 thousand to cover the salaries for three technical staff (3 FTE) and one legal staff positions (1 FTE) to develop draft rules and guidance, conduct stakeholder and public outreach, and petition the board. The recurring costs will include the salaries listed above during the lead-up to the necessary public hearings and during the implementation of the rules once approved by the EIB. Additionally, NMED indicates they will need \$1.29 million to contract with outside technical experts to conduct additional market-based analyses and assist in the preparation of hearing exhibits and testimony. NMED’s analysis

makes reference to a \$3.5 million special appropriation which is currently included in the House Appropriations and Finance Committee Substitute for House Bill 2.

Also of note, House Bill 478 provides for “the assessment of a reasonable annual registration fee for providers and any person generating credits that is sufficient to cover the reasonable costs of the department’s administration and enforcement of the Clean Fuel Standard Act and implementation of rules,” which are to be deposited in the clean fuel standard fund.

Although analysis from NMED cites a January 2022 analysis which estimated implementing a clean fuel standard could generate \$470 million in economic job investment in New Mexico and an additional \$240 in capital investment in production and manufacturing, the agency analysis did not estimate the amount of revenue that would be generated by permits and fees.

SIGNIFICANT ISSUES

Analysis from the Department of Environment indicated that over time, other states have seen a reduction in the cost of heavier fuels such as diesel of different blends. However, there was no estimate included in the agency’s analysis regarding the anticipated effect on fuel prices in New Mexico due to the implementation of a clean fuel standard.

Analysis from the Office of the Attorney General noted:

...legal challenges are most likely to be brought against a rule promulgated under the act, for any alleged deficiencies in the rule. Oregon has a conceptually similar program for low carbon fuels that was upheld in a challenge by industry groups, where the court found that the program did not violate the commerce clause of the U.S. Constitution and was not pre-empted by the federal Clean Air Act. *Am. Fuel & Petrochemical Manufacturers v. O’Keeffe*, 903 F.3d 903 (9th Cir. 2018). California’s low carbon fuel program also withstood commerce clause challenges. *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, (9th Cir. 2013). HB 478 requires standards that do not discriminate against fuels originating in other states, which should help avoid commerce clause challenges to the regulations developed under it.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Analysis from NMAG noted, that House Bill 478:

Conflicts with HB426, which would require similar carbon-intensity standards for transportation fuels and implementation using a credit system, but which establishes different parameters for the program and which would modify the Environmental Improvement Act rather than enacting a stand-alone Act.