

LFC Requester:

Austin Davidson

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/13/2025

Check all that apply:

Bill Number: HB 392

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Tara Lujan, Rep. Andrea Romero, and Sen. Elizabeth Stefanics.

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

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		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

HB 392 would create a new section of the Environmental Improvement Act to prohibit, with several exceptions, the use of single-use plastic bags in the State.

Section 1: gives the short title of the Act as the “Single-Use Plastic Bag Act.”

Section 2: provides definitions for the Act. Notably, it defines a “single-use bag” as “a carryout bag made from plastic that is provided to a customer at a point of sale for the purpose of transporting groceries, food or other goods that is made predominantly of plastic derived from natural gas, petroleum or a biologically based source, such as corn or other plant sources, and is not specifically designed for or manufactured for multiple uses.”

Section 3:

- Subsection (A) prohibits “retail establishment[s]” from “provid[ing] a single-use plastic bag or other bag or box that is not a reusable carryout bag, recycled content carryout bag, recyclable cardboard box or recycled corrugated paper box to carry groceries, food or other goods from the point of sale in a retail establishment.”
- Subsection (B) creates exceptions for single-use bags provided to customers for: “loose or bulk products, produce, meat or fish”; “separating items to avoid contamination or prevent damage from moisture or for sanitary, public health or environmental protection purposes”; takeout food “with a potential for leakage”; pharmacists or veterinarians; laundries and dry cleaning; transportation of live animals; chemical pesticides or other “toxic chemicals sold at retail establishments”; newspaper covers for inclement weather; manufacturers’ packaging; and any items that the New Mexico Environment Department (NMED) determines are similar.

Section 4: requires NMED to promulgate rules to implement the Act by December 31, 2025.

Section 5:

- Subsection (A) requires retail establishments to charge customers ten cents per paper bag unless the customers are recipients of “a voucher or electronic benefits card issues under the women, infants and children program, and emergency food assistance program, the temporary assistance for needy families program or the federal supplements nutrition assistance program.” It also allows counties and

municipalities to charge a higher fee if they pass an ordinance to that effect.

- Subsection (B) requires retail establishments to show the carryout bag fees on the customer's receipt.
- Subsection (C) prohibits the retail establishments from refunding the fee "directly or indirectly."
- Subsection (D) provides that seven cents of each bag fee shall be transmitted to the municipality or county where the retail establishment is located "for use in outreach efforts for education on waste and litter reduction." If an establishment charges a higher fee, any extra must be passed to that fund—it may only keep three cents per fee.
- Subsection (E) provides for a quarterly remittance schedule for fees collected by a retail establishment.

#### Section 6:

- Subsection (A) allows local governments to bring enforcement actions against retail establishments for violations of the Act within their jurisdiction.
- Subsection (B) provides for enforcement actions in the form of injunctive relief and/or civil penalties up to \$500 for a second violation and \$1000 for a third violation.
- Subsection (C) allows enforcement but not a civil penalty for a first violation of the Act.
- Subsection (D) authorizes NMED to enforce a violation of the Act if the local government does not do so.
- Subsection (E) specifies that "each retail sales transaction in which a violation" of the Act is committed "constitutes a single violation of this section."

#### Section 7:

- Subsection (A) provides that, starting January 1, 2026, a local government "may enact, implement or enforce any ordinance that is as stringent as or more stringent than" the Act.
- Subsection (B) provides that NMED may enforce the Act starting January 1, 2026, and should deposit penalties into the recycling and illegal dumping fund.

Section 8: provides an effective date of January 1, 2026, for provisions of the Act.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Section 4: Consider specifying that the Environmental Improvement Board (EIB), and not NMED, would promulgate the rules under the Act. Section 4 states that "the *department* shall promulgate rules for the implementation of the provisions of the [Act]." However, the Environmental Improvement Act specifies that the promulgation of rules is one of the duties of the EIB. *See* § 74-1-5 ("The *board* shall promulgate all regulations applying to persons and entities outside of the department." (emphasis added)). NMED's duties include "recommend[ing] and propos[ing] regulations for promulgation by the board," § 74-1-6(H), and "enforc[ing] the rules, regulations and orders promulgated by the board . . .," § 74-1-6(F). This note applies to per Section 3(B)(9) where the "department" is referenced as well.

Section 6/7: The purpose of the phrase “Except as provided in Section 7” at the beginning of Section 6 is unclear. Does it mean, for example, that local governments can impose greater civil penalties than those specified in Section 6, because they can “enact, implement or enforce any ordinance that is as stringent or more stringent than the Single-Use Plastic Bag Act”?

Section 7: Section 7(B) states that civil penalties collected by NMED will go to the recycling and illegal dumping fund, but it does not state where civil penalties collected by *local governments* would go.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

#### **TECHNICAL ISSUES**

Section 8 sets the effective date of the act to be January 1, 2026, but Section 4 requires rules to be promulgated by December 31, 2025, before the act takes effect. There is no authority to promulgate rules if the authorizing statute is not in effect.

The title of Section 6 refers to “compliance orders,” but compliance orders do not appear in the body of the section.

The title of Section 7 uses the word “preemption” in its title, but it is unclear what part of the section constitutes preemption.

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

#### **AMENDMENTS**

N/A