

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: 02/17/2025

Check all that apply:

Bill Number: SB391

Original Correction
Amendment Substitute

Sponsor: Sen. Larry Scott, Sen. James
Townsend, Sen. David
Gallegos, Sen. Candy Ezzell.

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

Person Writing

Short Title: Air Quality Control Act Civil
Penalties

Analysis: J. Spenser Lotz

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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
Total						

(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

This bill would amend NMSA 1978, Section 74-2-12.1, regarding civil penalties for violations of the Air Quality Control Act. The bill would provide that no civil penalty would be based on a permittee’s ability to pay, and that self-reporting violators and violations caused by equipment malfunctions would not be subject to penalty, provided that the polluter was actively pursuing “appropriate measures” to prevent future harm and correct any environmental damage.

FISCAL IMPLICATIONS

N/A.

SIGNIFICANT ISSUES

New Mexico’s Air Quality Control Act (AQCA) is the state’s codification of the delegation of Clean Air Act, authority from EPA to New Mexico. *See* 42 U.S.C. §§ 7401 *et seq.* Currently, NMED and the Air Quality Board (AQB) rely on enforcement policy documents to provide factors to calculate what amount of a civil penalty to seek, including the permittee’s ability to pay, whether the permittee acted in good faith to mitigate a violation, and whether the permittee self-reported, among other factors. This policy is in accordance with EPA’s guidance on CAA enforcement. This bill would eliminate certain factors from consideration and codify outcomes in a way that may conflict with EPA guidance and the CAA.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

Under the ACQA, NMSA 1978, Section 74-2-12.1(C), the attorney general represents NMED in any action to enforce the Act. Changes to the penalty structure under the Act may result in additional legal duties for NMDOJ, through litigation or legal analysis.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A.

TECHNICAL ISSUES

N/A.

OTHER SUBSTANTIVE ISSUES

N/A.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.