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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>House Energy, Environment and Natural Resources Committee</u>	<b>LAST UPDATED</b> <u>03/07/2025</u>
<b>SHORT TITLE</b> <u>"Hazardous Waste Constituent" Definition</u>	<b>ORIGINAL DATE</b> <u>02/11/2025</u>
	<b>BILL NUMBER</b> <u>CS/House Bill 140/HENRCS/aHfl</u>
	<b>ANALYST</b> <u>Chilton</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Environment Department (NMED)

New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of the HFI#1 to House Bill 140

The House floor amendment to the substituted bill makes a number of changes:

1. It changes the title of the bill to include authorizing the Environmental Improvement Board (EIB) to adopt rules for per- and polyfluoroalkyl substances designated hazardous waste.
2. It changes the definition of “hazardous waste” in Section 1 of the bill to specifically include “discarded aqueous film-forming foam containing intentionally added per- or polyfluoroalkyl substances” and any solid wastes designated currently as hazardous waste by the federal Environmental Protection Agency.
3. It removes the added Environmental Improvement Board (EIB) rule-making authority for hazardous constituents and hazardous wastes.
4. It tasks EIB with the adoption of rules regarding intentionally added per- and polyfluoroalkyl substances.

### Synopsis of the HENRC Substitute for House Bill 140

The House Energy, Environment and Natural Resources Committee substitute for House Bill 140 (HB140) modifies the Hazardous Waste Act (Section 74-4 NMSA 1978.) Section 1 of the bill adds a new definition to Section 74-4-1 for a “hazardous waste constituent”, defined as a substance meeting the (existing) definition of “hazardous waste” and identified by the federal

environmental protection agency as “having toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms” or being subject to corrective action under the Hazardous Waste Act.

Section 2 of the bill adds to EIB’s duties the making of rules regarding these hazardous waste constituents, removing a section of statute that currently limits EIB’s jurisdiction when a solid waste has not been listed by the federal Environmental Protection Agency (EPA) as a hazardous waste. The remainder of the list of EIB duties and responsibilities remains unchanged.

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

## **FISCAL IMPLICATIONS**

There is no appropriation in House Bill 140. The New Mexico Environment Department (NMED) expects no fiscal impact of this bill except possibly a savings of money once rules are finalized, protecting the state from costly cleanup of certain waste. NMED gives an example, noting that polychlorinated biphenyls (PCBs) and polyfluoroalkyl (PFAS) products, which the agency asserts would be included under HB140’s definition of “hazardous waste constituent”, are not subject to a federal EPA listing and that NMED has had to spend \$12 million to:

Establish the extent of the contamination that the US Department of Defense has avoided paying [for PFAS contamination cleanup]. In contrast, in the State of Texas, the U.S. Department of Defense amicably agreed to address PFAS contamination around one such U.S. Air Force Base, as the Texas Commission on Environmental Quality has broader authority than NMED. HB140 will correct this inequity that puts New Mexicans at greater risk than Texans.

## **SIGNIFICANT ISSUES**

The federal EPA notes that PCBs “have significant toxic effects in animals, including non-human primates. PCBs can affect an animal’s immune system, reproductive system, nervous system, and endocrine system. These compounds were widely used until 1979.” The EPA also notes that current scientific research suggests that exposure to certain PFAS may lead to adverse health outcomes.

NMED further clarifies the relationship between that agency and the federal EPA:

Under a primacy agreement between the U.S. EPA and the State of New Mexico, NMED implements the Hazardous Waste Act (NMSA 1978, § 74-4-1). States that receive final EPA authorization must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. This means that HB140 will not grant NMED the authority to regulate any waste inconsistent with laws and rules. Such wastes currently excluded from federal hazardous waste regulation and therefore state hazardous waste regulations include: scrap metals, agricultural wastes, mining wastes, oil and gas wastes, etc.

## **OTHER SIGNIFICANT ISSUES**

NMAG’s analysis of House Bill 140 points out concerns over definitions and with federal

regulations included in the Resource Conservation and Recovery Act (RCRA):

Federal regulations define “hazardous waste,” 40 C.F.R. § 261.3, but they do not explicitly define “hazardous waste constituent[s]” or “hazardous constituents.” Neither does RCRA. Federal regulations list hazardous constituents that the EPA has identified in Appendix VIII to 40 C.F.R. Part 261. Though not an explicit definition, the federal regulations explain that “[s]ubstances will be listed on appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.” 40 C.F.R. § 261.11(a); see also EPA, Frequently Asked Questions About Hazardous Waste Identification: RCRA Hazardous Constituent, available at <https://www.epa.gov/hw/frequent-questions-about-hazardous-waste-identification> (last visited Jan. 29, 2025) (describing its list of hazardous constituents as “comprised of chemicals that have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms,” and characterizing them as “the universe of chemicals of concern under RCRA”). New Mexico HWA regulations incorporate federal RCRA regulations by reference. See, e.g., 20.4.1.100–200 NMAC (incorporating 40 C.F.R. parts 260 and 261 by reference).

HB140’s proposed definition may cause confusion because it does not actually define what a “hazardous waste constituent” is, other than by equating it with the HWA’s definition of “hazardous waste” and by reference to the EIB’s corrective action authority. Defining “hazardous waste constituent[s]” based on whether the EIB has identified a constituent as being subject to corrective action is somewhat circular, because the HWA defines corrective action as action that must be taken to clean up hazardous waste or hazardous constituents. See § 74-4-3(C) (defining “corrective action” as “an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment”); § 74-4-4.2(B) (permits must require corrective action “for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this section” (emphasis added)); see also 42 U.S.C. 6924(u) (“Standards promulgated under this section shall require . . . corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter.” (emphasis added)).