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FISCAL IMPACT REPORT

ORIGINAL DATE 3/8/17

SPONSOR HTPWC LAST UPDATED _____ HB 537/HTPWCS

SHORT TITLE Public Peace, Health, Safety & Welfare SB _____

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	See Fiscal Impact

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB421 and SB422

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Department of Transportation (DOT)

SUMMARY

Synopsis of HTPWC Substitute

House Bill 537 (HB537) authorizes the collective bargaining representative for each craft of railroad worker, and the state director for each craft, to monitor the public safety practices and operations inspections of each railroad operating in New Mexico. Inspections may include taking photos and conducting examinations and investigations on railroad property to determine compliance with safety laws and rules and the presence of any safety hazard.

HB537 requires a minimum crew for operation of a railroad train or locomotive in New Mexico to consist of at least two persons.

HB537 also requires a penalty for a railroad or railroad supervisor who violates subsection A, section 4, stating that “a class 1 or class 2 railroad shall not allow the operation of a railroad train or locomotive in New Mexico that is used in the movement of freight without a crew composed of at least two persons.”

FISCAL IMPLICATIONS

HB 537 states that a railroad supervisor who violates the provisions outlined in Subsection A. HB537 shall be subject to a civil penalty of up to one thousand dollars (\$1,000) for the first violation and a civil penalty of up to five thousand dollars (\$5,000) for each subsequent violation.

SIGNIFICANT ISSUES

The Public Regulation Commission (PRC) is a participant in the Federal Railroad Administration (“FRA”) - State Safety Participation Program. That program allows the State Agency having railroad safety jurisdiction under state law to participate in investigative and surveillance activities with respect to federal railroad safety laws, rules, orders, or standards. The FRA recognizes the PRC as the state agency in New Mexico having railroad safety jurisdiction. The PRC currently has two trainees in the program.

The following significant issues were provided by the Department of Transportation:

HB 537 does not limit its application only to those railroads which have agreements with collective bargaining units. Therefore, it could be read to allow representatives of any collective bargaining unit for railroad workers to monitor, inspect and report to the PRC on the safety practices of any railroad operating in New Mexico, regardless of whether an individual railroad has an agreement in place with that collective bargaining unit. The majority of railroads in New Mexico do not have collective bargaining agreements with their work forces, including NMRX, the railroad owned by the Department of Transportation (NMDOT). Nevertheless, their operations would be subject to potential monitoring by collective bargaining units. Furthermore, the presence of collective bargaining unit representatives from one railroad on a different railroad’s property also poses safety implications for that railroad, as each railroad has its own safety rules and certifies its own workers for these rules; accordingly, such persons would not be certified to be present on another railroad’s rights of way.

HB 537 suggests that collective bargaining unit representatives would be able to make determinations as to whether a railroad is in compliance with safety laws and rules. Determinations of noncompliance would then be reported to the PRC, even though the Federal Railroad Administration (FRA) is the only entity that has statutory authority to make such determinations about a railroad.

HB 537 includes no description as to what “examinations and investigations on railroad property” may occur to support the monitoring and inspection of railroad safety practices. This could result in collective bargaining unit representatives interfering with the operations of trains, track workers, signal maintainers, etc. in the course of these examinations or investigations, with both safety and financial impacts for the railroad. Collective bargaining unit representatives could also cite this language to justify examining railroad documents that railroads do not ordinarily share with their collective bargaining units in advance of filing a report, with no requirement either to prove relevance of the documents to the unsafe practice or to subsequently file a report.

ALTERNATIVES

DOT suggests the following:

HB537 could be modified to expressly limit the authority of collective bargaining units to monitor, inspect, and report on compliance with safety laws and regulations solely to the railroad that the collective bargaining unit has an agreement.

HB537 could also be modified to expressly state the collective bargaining unit cannot make a final determination of compliance with safety laws and rules, e.g., (1) revise line 25 on page 1 of the bill by replacing the word “determine” with the word “document”; and (2) revise line 3 on page 2 of the bill by replacing the word “noncompliance” with the phrase “documentation of suspected noncompliance.”

Finally, HB537 could also be modified to more clearly define what “examinations and investigations on railroad property” are permitted. This could include limitations on physical interference with railroad operations by collective bargaining unit representatives and protections against involuntary examinations of railroad documents by collective bargaining unit representatives that would ordinarily require a judge’s order.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Railroad operations and railroad safety enforcement in New Mexico would continue as they do presently.

JM/sb