

LFC Requester:

Joseph Simon

**NMDOT BILL ANALYSIS
2025 REGULAR SESSION**

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Date Prepared: 2/10/2025

Original **Amendment**

Bill No. HB 146

Correction **Substitute**

Sponsor: Dayan Hochman-Vigil

Agency/ Code: NMDOT - 805 – Transit and Rail

Person Writing

Analysis: William Craven

Short Title Railway Safety Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

None.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
Unknown	Unknown	Unknown		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to:

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown			

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 146 (HB 146) creates a new chapter of New Mexico Statute. HB 146 consists of six sections, described individually below.

Section 1 of HB 146 states the new chapter may be referred to as the Railway Safety Act.

Section 2 of HB 146 defines terms used in the Railway Safety Act, including:

- "dragging equipment detector" means an electronic device or other technology that monitors a passing train to detect and alert operators of the train of the existence of an object dragging from the train;
- "hot bearings detector" means an infrared detector located along railroad tracks that monitors a passing train to detect and alert operators of the train to any overheating of a train's bearings, axles or wheels;
- "railroad corporation" means a corporation incorporated under Chapter 63 NMSA 1978 or a corporation incorporated under the laws of any other state that owns or operates a railroad or train in the state of New Mexico;
- "railroad safety violation" means a violation of a provision of Section 3 of HB 146; and
- "wayside detector system" means an electronic device or a series of connected devices that monitor a passing train to determine whether the train has a defect and includes a hot bearings detector and a dragging equipment detector.

Section 3 of HB 146:

- Requires a railroad corporation operating trains on railroad lines in New Mexico to install and maintain a wayside detector system with a hot bearings detector and a dragging equipment detector at least every ten miles;
- Specifies that if a train receives a defect message from a wayside detector the train must:
 - o stop as soon as practicable without blocking any grade crossings;
 - o inspect the defect from the ground;
 - o remedy the defect immediately if practicable or if the train is not safe for movement;
 - o for trains that have defects that cannot be immediately remedied and that are safe for movement, directs the train to proceed at speeds of no more than 10 mph if carrying a hazardous material or dangerous good, or no more than 30 mph if the train is not carrying a hazardous material or dangerous good;
 - o directs the train to remove and set out any defective car at the earliest opportunity; and
 - o permits the train to operate at the authorized speed only after the defect has been remedied and the next wayside detector indicates that there is no longer a defect.
- Requires railroad corporations to submit to the New Mexico Department of Transportation (NMDOT), before January 1, 2027 and before January 1 of each year thereafter a report that discloses:
 - o the location of each installed wayside detector system;
 - o the type and characteristic of each installed wayside detector system;

- o the operational status of the wayside detector system and all installed hot bearings detectors and dragging equipment detectors; and
- o the details of all defect messages received from a wayside detector system and the corresponding inspection report prepared for each defect message.

Section 4 of HB 146:

- Directs crew members of a railroad corporation to report to NMDOT if the crew member observes a railway safety violation;
- Directs NMDOT to create a uniform protocol for reporting railway safety violations that allows for anonymous reporting;
- Prohibits railroad corporations from direct or indirect retaliation against a crew member that:
 - o reports a railway safety violation;
 - o provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into a railway safety violation; or
 - o objects to or refuses to participate in an activity, policy, or practice that constitutes a railway safety violation.
- Directs NMDOT to promulgate rules to implement the provisions of Section 4 and establish procedures for reporting and investigating alleged retaliation.

Section 5 of HB 146:

- Authorizes NMDOT, after receiving a report of an alleged safety violation, to enter a railroad corporation's lands to investigate the alleged safety violation after giving the railroad corporation due notice prior to entering the railroad corporation property, and prohibits the railroad corporation from denying entry to NMDOT after receiving due notice;
- Authorizes NMDOT to assess fines of not less than \$5,000 and not more than \$25,000 on the railroad corporation if the NMDOT investigation finds that a railroad corporation or an officer, agent or employee of a railroad corporation has omitted a railway safety violation;
- Permits NMDOT to apply to a district court for an injunction restraining a person or railroad corporation from:
 - o committing a railway safety violation;
 - o prohibiting entry onto railroad corporation lands by NMDOT pursuant to investigating reports of alleged safety violations; or
 - o failing or refusing to comply with a rule promulgated pursuant to this section;
- Directs NMDOT to establish a system of administrative penalties on a scale in relation to the severity and frequency of the railway safety violation, after issuing public notice and conducting public hearings;
- Provides a person or railroad corporation aggrieved by a decision the right to appeal to the Administrative Hearings Office (AHO) and, if the appeal is unsatisfactory, to district court pursuant to provisions of Section 39-3-1.1 NMSA; and
- Directs NMDOT to promulgate rules to implement the provisions of Section 5.

Section 6 of HB 146 states that the effective date of the Railway Safety Act is January 1, 2026.

FISCAL IMPLICATIONS

There are several provisions of HB 146 that require NMDOT to incur costs that NMDOT cannot presently estimate:

- NMDOT will be required to provide public notice and conduct a public hearing to establish administrative penalties for railway safety violations;
- NMDOT will be required to promulgate rules to implement the provisions of both Section 4 and Section 5; and
- In the event a railroad corporation chooses to appeal a decision by NMDOT, there will be costs for the appeals process before the AHO and possibly also a district court.

HB 146 authorizes NMDOT to assess fines of between \$5,000 and \$25,000 for each railway safety violation. The amount of revenue that this will generate is unknown, as neither the system of administrative penalties nor the frequency that fines will be assessed is known at this time. Also, HB 146 does not specify to which account revenue from the fines will be deposited.

SIGNIFICANT ISSUES

In HB 146, both the definition of a railroad corporation in Section 2, and the requirement placed on the railroad corporation that is running the train to install and maintain the wayside detector systems, are problematic.

- The definition of a railroad corporation excludes both NMDOT and Rio Metro Regional Transit District (RMRTD) from this requirement, as well as Amtrak, which is incorporated in the District of Columbia, which is not a state.
- The definition of a railroad corporation might include the Navajo Mine Railroad, a railroad that is not a common carrier subject to most Federal regulation, and that is also located on tribal land.
- As written, a railroad corporation that operates a train on track that is not owned or maintained by a railroad corporation will be required to install and maintain hotbox and dragging equipment detectors on that track. Thus, BNSF will be responsible for installing and maintaining wayside detector systems on track owned by NMDOT and maintained by RMRTD.
- As written, there will be no requirement for hotbox and dragging equipment detectors to be installed on any line solely used by Amtrak and/or New Mexico Rail Runner, even if this track is owned and maintained by a railroad corporation.

HB 146 does not define what constitutes a defect message from a wayside detector system.

The requirement to place a wayside detector system at least every 10 miles could place a disproportionate burden on New Mexico's Class III railroads. These railroads do not operate with centralized train control (CTC) systems or positive train control (PTC) and will need to install and maintain additional communications infrastructure between the wayside detector system and either the railroad's train dispatcher or the individual train locomotives. Class I railroads in New Mexico typically operate with CTC and/or have PTC already installed, reducing the need for additional communications infrastructure for new wayside detector systems.

The HB 146 requirement that a railroad corporation stop a train after a defect is reported without obstructing a roadway runs counter to railroad special instructions to immediately stop a train to minimize in-train forces when notified of a safety defect. A train continuing to proceed after

receiving notification of a defect until it reaches a location to stop without obstructing a roadway risks a catastrophic failure occurring before the train can stop.

PERFORMANCE IMPLICATIONS

HB 146 authorizes NMDOT to assess fines against railroad corporations that commit safety violations. Adding regulation of state-specific safety rules, including independent investigative authority, the authority to assess fines, and the authority to investigate alleged retaliation by railroad corporations against crew members may create performance implications for the other railroad-related activities conducted by NMDOT, which are essentially cooperative endeavors with railroads. NMDOT, through its Rail Bureau, coordinates with railroads on highway projects with railroad impacts, administers the Federal Highway Administration grade crossing safety improvement program to fund hazard elimination projects at public grade crossings throughout New Mexico, and oversees the joint use agreements in place between NMDOT and multiple railroad corporations that operate trains on NMDOT-owned tracks.

ADMINISTRATIVE IMPLICATIONS

HB 146 requires NMDOT to undertake rulemakings to implement the requirements of Sections 4 and 5, presumably before the effective date of January 1, 2026. The broad scope of this legislation, creating new authorities and responsibilities for NMDOT in railroad safety regulation, will require significant effort by NMDOT staff.

NMDOT will need to either train existing staff to take on the investigation responsibilities of HB 146 or hire additional staff. Similarly, NMDOT will take on additional responsibilities for assessing fines for railway safety violations following investigations, investigating whether a railroad corporation has engaged in retaliation, applying to district court for injunctions, and defending administrative penalties through the appeals process, each of which will either become additional duties for existing staff, possibly requiring additional training, or will require hiring additional staff.

The rulemaking requirement in Section 4 of HB 146 will require NMDOT to establish procedures for reporting and investigating alleged retaliation by railroad corporations against crew members that report safety violations or that provide information to or testimony before NMDOT during the investigation. Investigating allegations of retaliation by employers against employees is not an area in which NMDOT presently has expertise.

HB 146 identifies the AHO as the entity to which appeals of fines issued under Section 5 should be addressed. The duties of the AHO, defined in NMSA 7-1B-1 through 7-1B-10, do not include hearing appeals of fines. It is expected that this statutory authority will need to be revised for AHO to hear these appeals.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Federal preemption of railroad safety under 49 USC 20106 may conflict with the state's railroad safety requirements contained in HB 146. If HB 146 is enacted and a preemption challenge results, a determination whether a conflict exists will need to be made in court.

TECHNICAL ISSUES

HB 146 makes no mention of the authority of the Federal Railroad Administration on railroad safety matters or includes any language that addresses how the statute should be applied considering Federal preemption of railroad safety under 49 USC 20106.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Railroad corporations will not be required to install hotbox detectors and dragging equipment detectors at least every ten miles on their track, or to report on the locations and operability of hotbox detectors and dragging equipment detectors annually to NMDOT.

NMDOT will not be required to establish procedures and initiate rulemakings addressing reporting by crew members of railroad corporation violations involving hotbox detectors and dragging equipment detectors, subsequent investigations of those reported violations, investigating alleged retaliation by railroad corporations against crew members that report these violations or provide information or testimony in support of NMDOT's investigation, determine fines for these violations, or conduct hearings and assess civil penalties against railroad corporations.

The AHO will not be required to modify its statutory authority or administrative rules to hear appeals of fines against railroad corporations.

AMENDMENTS

None proposed.