

LFC Requester:	Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/06/2025 *Check all that apply:*
Bill Number: HB305 Original Correction
 Amendment Substitute

Sponsor: Rebecca Dow, Miguel P. Garcia **Agency Name and Code** General Services Department - 350
Short Title: PUBLIC CONTRACT REIMBURSEMENTS & **Number:** _____
Person Writing Brian Fitzgerald, SPD Attorney
Phone: 505-819-7055 **Email** Brian.Fitzgerald@gsd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NA	NA	NA	NA

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NA	NA	NA	NA	NA

(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	NA	NA	NA	NA	NA	NA

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 305 amends the Minimum Wage Act. Beginning July 1, 2025, new language in HB305 requires state agencies contracting for services include a provision in the contract that increases reimbursement so that contractors and any subcontractors are held harmless for wage increases due to an increase in the minimum wage or cost increase from a change to statutory benefits. The bill also requires that individuals employed under the contract or subcontract who are paid the minimum wage receive wage increases. The bill also adds definitions for contract, services, statutory benefits and subcontract.

FISCAL IMPLICATIONS

There will be a direct impact to the General Services Department, Facilities Management Division. This legislation will increase the cost, depending on the contract the cost could be significant and could have a direct impact on whether a project can be completed.

SIGNIFICANT ISSUES

This proposed new section to the New Mexico Minimum Wage Act, NMSA 50-4-20 *et seq.*, would require that new language be added to all state agency contracts allowing for increased reimbursement commensurate with any minimum wage increases or increased costs mandated by statute. Specifically, to hold harmless any contractor or subcontractor providing services under state contracts affected by an increase in minimum wage or increase in cost. HB305, however, does not define “hold harmless” so that it can be assumed that the State would, at the very least, have an obligation to reimburse and/or pay the contractor or subcontractor for either one of these prospective increases. In legal terms, a hold harmless provision is essentially an indemnification clause, which generally requires both a promise to pay and to provide a legal defense; but without further clarification, it is unclear as to exactly what the state agency would be required to hold harmless and/or to reimburse.

As written, this “new” provision would be in violation of NMAC Procurement Code Regulations - 1.4.1.11(B) which states, in part, “No contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify a contractor or provide a contractor with a limitation of liability or provide a contractor with insurance for non-tort risks.” Based on a recent opinion of the NM Attorney General (2025-5), this duty to reimburse or hold harmless may also be in violation of the “debt” provisions of the NM State Constitution, Article IX, Section 8.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Enforcement and auditing of contractor or subcontractor businesses

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES
OTHER SUBSTANTIVE ISSUES
ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS