

LFC Requester:

Rachel Mercer-Garcia

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: 2/20/2025

Original X Amendment

Bill No. HB 305

Correction Substitute

Sponsor: Rebecca Dow and Miguel P. Garcia

Agency/ Code: NMDOT - 805 - OGC

Public Contract

Person Writing Analysis: Ken Swain

Short Title Reimbursements and Wages

Phone: 505-231-3869 Email: Ken.Swain@dot.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Not applicable.

REVENUE (dollars in thousands)

Not applicable.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Table with 7 columns: FY26, FY27, FY28, 3 Year Total Cost, Recurring or Nonrecurring, Fund Affected. Row 1: See Fiscal Impact Below, See Fiscal Impact Below, See Fiscal Impact Below, See Fiscal Impact Below, Recurring, State Road Fund & other operating funds.

(Parenthesis ( ) Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 305 (HB 305) adds a section to the Minimum Wage Act (NMSA 1978, Section 50-4-19 through 50-4-30) that requires state agencies to include in all public contracts for services provisions for increasing reimbursements and to hold harmless contractors when individuals employed under public contracts for services receive wage increases in accordance with and concurrent with increases of the state minimum wage.

HB 305 adds definitions of "contract" to mean any agreement for the procurement of services; "services" to mean "the furnishing of labor, time or effort by a contractor or subcontractor not involving the delivery of a specific end product other than reports and other materials that are

merely incidental to the required performance”; “statutory benefits” to mean “any benefit that an employer is required by state law to provide to the employer's employees”; and “subcontract” to mean a contract “to procure in whole or in part services to be procured under” the prime contract.

HB 305 does not include an effective date but expressly applies “beginning July 1, 2025.”

## **FISCAL IMPLICATIONS**

NMDOT cannot make a detailed estimate of fiscal implications at this time because it is unknown whether the state minimum wage would increase or by what percentage. Under HB 305, the NMDOT’s contract costs for services could be expected to increase in direct proportion to any minimum wage increases.

## **SIGNIFICANT ISSUES**

HB 305 does not expressly exclude existing contracts. Implementing HB 305 to existing contracts may result in an increase in compensation to a contractor for performing services that it is already obligated to perform. In this context, HB 305 might be held unconstitutional. See in relevant part, NM Constitution Article IV, Section 27:

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made....

It is established case law that there is no prohibition under the New Mexico Constitution, Article IV, Section 27, on increasing compensation for services rendered because the additional compensation was for extra work and services for which the contractor was not originally obligated to perform, *State ex rel. Sedillo v. Sargent*, 1918-NMSC-042, 24 N.M. 333, 171 P. 790. HB 305 may conflict with the New Mexico Constitution, Article IV, Section 27, because it would provide an increase of reimbursement for work that is not extra work and is already obligated to be performed by the contractor under the original terms of the contract.

## **PERFORMANCE IMPLICATIONS**

None at this time.

## **ADMINISTRATIVE IMPLICATIONS**

Implementation of HB 305 to add additional language to its service contracts will have a negligible administrative impact to the NMDOT.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

As noted above, if HB 305 applies to existing contracts as of the effective date of the bill, then HB 305 may conflict with the New Mexico Constitution, Article 4, Section 27.

HB 305 may also conflict with the Procurement Code insofar as “services” are not consistent between HB 305 and the Procurement Code. See, e.g., the definition of “contract,” NMSA 1978, Section 13-1-41, and “services,” NMSA 1978, Section 13-1-87.

First, HB 305 uses a different definition of “contract” from the Procurement Code definition, generally tracking the Procurement Code definition except for excluding the purchase of tangible personal property and more so, construction.

Second, HB 305 uses a different definition of “services” from the Procurement Code definition, generally tracking the Procurement Code definition with the exception of omitting the part of the “services” definition that includes the furnishing of insurance and also excludes construction, along with the services of employees of a state agency or local public body. By not excluding construction as done by the Procurement Code, HB 305 may create confusion as to whether construction is considered “services”.

HB 305 also relates to HB 119, Contract Adjustments Under the Procurement Code. HB 119 provides that contractors may request amendment to the terms of the applicable contract, when the benefits and compensation of contractor employees or agents under the contract are subject to change by state statute, and the state agency must respond to the request in writing. This creates a potential conflict insofar as the “provision” in HB 305 may not align with the discretion set forth in HB 119.

#### **TECHNICAL ISSUES**

HB 305 does not provide guidance about how a state agency is to assess escalation of salary tied to pre-negotiated service, including to determine or calculate an increase so as to “hold harmless” a contractor or subcontractor for any increase in the applicable state minimum wage or cost increase resulting from a change to statutory benefits.

#### **OTHER SUBSTANTIVE ISSUES**

None at this time.

#### **ALTERNATIVES**

None at this time.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMDOT will continue to pay for its services contracts based on rates set at the time the contract is entered.

#### **AMENDMENTS**

None at this time.