

LFC Requester: _____

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 3/3/2025 *Check all that apply:*
Bill Number: HB 438cs Original Correction
 Amendment Substitute

Sponsor: Rep. Lujan **Agency Name and Code** DFA-341
Short Title: EMPLOYEE PAYMENT FOR UNUSED LEAVE **Number:** _____
Person Writing Mark Melhoff **Phone:** _____ **Email** Marks.melhoff@dfa.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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	0	\$18,000.	\$18,000	\$36,000	Both	All

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB11; HB264; HB446
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

House Labor, Veterans' and Military Affairs Committee Substitute for House Bill 438

- The House Labor, Veterans' and Military Affairs Committee Substitute for House Bill 438 (HB438S) mandates that employees of the state and its political subdivisions be given the opportunity to exchange unused compensatory leave for monetary compensation at least twice a year.

ORIGINAL BILL SUMMARY

Synopsis:

House Bill 438 (HB438) mandates that employees of the state and its political subdivisions must be paid for any unused compensatory time at the end of each calendar year. HB438 effectively prohibits the “banking” of unused compensatory leave, ensuring state and political subdivision employees use or are compensated for their unused compensatory leave yearly. Key points of HB438 include:

- **New Section Enactment:** A new section is added to Chapter 10, Article 7 of the NMSA 1978, which stipulates that employees should receive payment for all unused compensatory leave annually.
- **Conflict with Collective Bargaining Agreements:** If any part of this act conflicts with existing collective bargaining agreements under the Public Employee Bargaining Act, the provisions of this act will not apply.

FISCAL IMPLICATIONS

HB438 requires the payout of all “compensatory leave” each calendar year, which will likely result in increased financial obligations for the state and its political subdivisions. The potential fiscal impacts of HB438 will include:

- **Increased Payroll Costs:** State and political subdivisions will incur additional expenses to pay employees for their unused compensatory leave at the end of each calendar year.
 - **SHARE Projections:** The Department of Finance and Administration (DFA) projects that HB438 will cost the state eighteen million dollars (\$18,000,000) based on current compensatory leave balances and rate of pay contained in the SHARE system as of February 18, 2025.

Base Hrly				
ADMINCOMP	COMPTIME	HOLIDAYACC	HOLIDAYCMP	PREMBANKOT
336.00	-	-	-	-
256.00	-	-	-	-
-	-	-	-	461.63
1,438.08	-	-	-	-
2,603,380.34	5,987,627.88	2,893,471.37	1,329,869.98	4,979,859.63
Total @ Base Hourly Rate				17,794,209.21

Hrlyw/MCOP				
ADMINCOMP	COMPTIME	HOLIDAYACC	HOLIDAYCMP	PREMBANKOT
-	130.70	-	-	-
-	1,442.31	-	-	-
130.96	-	-	-	-
336.00	-	-	-	-
256.00	-	-	-	-
-	-	-	-	461.63
1,438.08	-	-	-	-
2,630,361.27	6,117,209.94	2,929,247.30	1,344,215.10	5,053,319.92
Total @t Base Hourly Rate with MCOP				18,000,893.24

- **Budget Adjustments:** State agencies and political subdivisions likely have not included the payout of “compensatory leave” in their FY26 base budgets. As a result, they may need to adjust their budgets to accommodate the additional financial burden.
 - State Agencies will likely require supplemental appropriations and BAR authority in FY26 to meet the increased financial burden of HB438.
 - Political Subdivisions will likely have to rely upon reserves to meet the increased financial burden of HB438 in FY26.
 - DFA anticipates an increased workload for its State Budget Division and Local Government Division to meet the additional Budget Adjustment requests likely to flow from the passage of HB438.

- **Impact on Employee Behavior:** With all unused compensatory leave paid out annually, employees will begin each calendar year without banks of compensatory leave and will, therefore, slowly accrue leave throughout the year. As such, employees will be unlikely to take leave within the first two quarters of the year.
 - Employees may be less likely to use their compensatory leave, preferring to receive the payout, which could lead to higher payout amounts at the end of the year.

SIGNIFICANT ISSUES

- **Definition of “Compensatory Leave”:** As currently written, HB438 does not define the term “compensatory leave.” However, HB438 requires all state entities and political

subdivisions to pay out unused “compensatory leave” each calendar year.

- Currently, state employees are eligible for and accrue several different types of leave each year. Specifically, employees accrue personal leave, sick leave, administrative leave, annual leave, bereavement leave, holiday leave, voting time, military leave, and jury duty/court leave.
- Each of the leave programs described entitles the employee to compensation for time taken off work under specific circumstances. Without a definition of “compensatory leave” in HB438, it is unclear whether each of these leave programs would need to be paid out each calendar year.
 - Additionally, sick leave payouts are generally governed by §§ 10-7-10 and 10-7-11. To the extent HB438 would define sick leave as “compensatory leave,” it would conflict with §§ 10-7-10 and 10-7-11’s limitations.
- Definition of “full value”: As currently written, HB438 does not define the term “full value.” However, HB438 requires all state entities and political subdivisions to pay out “full value” for unused compensatory leave each calendar year.
 - Without a specific definition of “full value,” state entities and political subdivisions will be unable to calculate the compensation rate due to employees for unused compensatory leave.
 - State entities and political subdivisions will be forced to choose between an employee’s base rate and an employee’s base rate with Multiple Components Of Pay. This may lead to potential litigation to determine the legislative intent behind “full value.”
- **Differing Branch Compensatory Accrual Rates:** As currently written, HB438 does not account for the differences in definition and leave accrual rates for employees of the three branches of state government and potentially 600 plus political subdivisions.
 - Executive Branch classified employees are subject to the accrual rates detailed in N.M.A.C. §§ 1.7.7.1 – 1.7.7.19. A maximum of 240 hours of annual leave can be carried forward after the last pay period beginning in December. Annual leave must be authorized before it is taken and cannot be used before it is accrued.
 - Employees with less than three years of cumulative employment accrue annual leave at a rate of 3.08 hours per pay period.
 - Employees with three years or more but less than seven years of cumulative employment accrue annual leave at a rate of 3.69 hours per pay period.
 - Employees with seven years or more but less than eleven years of cumulative employment accrue annual leave at a rate of 4.61 hours per pay period.
 - Employees with eleven years or more but less than fifteen years of cumulative employment accrue annual leave at a rate of 5.54 hours per pay period.
 - Employees with fifteen years or more of cumulative employment accrue

- annual leave at a rate of 6.15 hours per pay period.
- Part-time employees and employees on furlough who work at least eight hours in a pay period accrue annual leave on a prorated basis.
- Judicial Branch employees are subject to the accrual rates detailed in N.M.J.B.P.R. §§ 5.01 – 5.17.
 - Employees with less than three years of cumulative employment accrue leave at a rate of 9.0 hours per pay period.
 - Employees with three years or more but less than seven years of cumulative employment accrue annual leave at a rate of 10.0 hours per pay period.
 - Employees with seven years or more but less than eleven years of cumulative employment accrue annual leave at a rate of 11.0 hours per pay period.
 - Employees with over fourteen years or more cumulative employment accrue leave at a rate of 12.0 hours per pay period.
 - Legislative Branch employees are subject to the following accrual rates:
 - Employees with less than three years of cumulative employment accrue annual leave at a rate of 4.62 hours per pay period.
 - Employees with three years or more but less than seven years of cumulative employment accrue annual leave at a rate of 5.54 hours per pay period.
 - Employees with seven years or more but less than fifteen years of cumulative employment accrue annual leave at a rate of 6.46 hours per pay period.
 - Employees with fifteen years or more of cumulative employment accrue annual leave at a rate of 7.39 hours per pay period.
 - As currently written, HB438 would entitle employees of the judicial and legislative branches to higher annual compensatory leave payouts based upon their employment in a given branch rather than any meritorious distinction.

PERFORMANCE IMPLICATIONS

N/A.

ADMINISTRATIVE IMPLICATIONS

Overall, while HB438 aims to provide fair compensation for unused compensatory leave, it will require significant administrative efforts to implement and maintain compliance.

- **Payroll System Updates:** State agencies and political subdivisions will need to update their payroll systems to track and calculate the payment for unused compensatory leave accurately. This may involve software upgrades or modifications to the SHARE system at the state level.
- **Training and Education:** Human resources and payroll staff will require training to understand the new requirements and ensure proper implementation.

- **Policy and Procedure Changes:** State agencies and political subdivisions will need to revise state personnel office rules, internal policies, and internal procedures to align with HB438. This includes updating employee handbooks, leave policies, and any relevant documentation.
- **Increased Administrative Workload:** The requirement to pay out unused compensatory leave at the end of each calendar year will increase the administrative workload of state agencies in general and DFA’s central payroll division in particular.
 - State payroll staff will need to calculate the value of unused leave, process payments, and ensure compliance before the “end of the calendar year.”
 - However, HB438 does not provide a specific payment or calculation date. As such, state entities and local political subdivisions will be required to choose between December 31st and the last full payroll of the calendar year to calculate the value of unused leave and process payments.
- **Record-Keeping:** Enhanced record-keeping will be necessary to track compensatory leave accruals and payouts accurately. This may involve more detailed documentation and regular audits to ensure accuracy and compliance.
- **Coordination with Collective Bargaining Agreements:** Entities with collective bargaining agreements will need to review and possibly renegotiate terms to ensure they do not conflict with the new law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB438 likely conflicts with the terms and conditions of HB11, HB264, and HB446. Specifically, HB438 allows for payment of the full value of all unused compensatory leave each calendar year. HB438 does not define full value or compensatory leave. As such, as currently written, if HB11, HB264, HB446, and HB438 were to pass, state and political subdivision employees would be required to be paid out the full value of all unused paid medical and parental leave.

TECHNICAL ISSUES

N/A.

OTHER SUBSTANTIVE ISSUES

- **FLSA-Exempt Employees.** Under Federal law, employers are not required to compensate Fair Labor Standards Act (FLSA)--exempt employees for more than eight hours worked per day or more than forty hours worked per week.
 - Many state entities allow employees to track time and allow FLSA-exempt employees to offset hours worked over eight per day or forty per week through the future compensatory time (i.e., award the FLSA-exempt employee an equal amount of administrative time for overtime hours worked).

- HB438 provides a disincentive for this practice, as employees would be encouraged to bank these hours and take a payout at the end of the calendar year rather than take time off.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A.

AMENDMENTS

HB438S removes HB438's requirement to pay out all unused compensatory leave each calendar year and replaces it with the obligation to offer state and political subdivision employees the opportunity to exchange their unused compensatory leave for monetary compensation at least twice a year.

- HB438S does not address the concerns raised above with respect to the Definition of Compensatory Leave, Differing Branch Compensatory Accrual Rates, and FLSA-Exempt Employees.