

LFC Requester:	Joseph Simon
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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: 3/13/25 *Check all that apply:*
Bill Number: HB 438 Original Correction
 Amendment Substitute

Sponsor: Lujan, Caballero **Agency Name and Code** 995 NMC
Short Title: Employee Payment for Unused Leave **Number:** _____
Person Writing Hannah Kase Woods
Phone: 505-820-8102 **Email** hwoods@nmcounties.org

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						

(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

Requires that an employee of the state or of a political subdivision be paid the full value of all unused compensatory leave at the end of each calendar year.

FISCAL IMPLICATIONS

The Fair Labor Standards Act (FLSA) allows government employers to manage overtime costs by providing nonexempt employees paid time off instead of overtime pay for hours worked in excess of 40. Compensatory time (comp time) accrues at a rate of at least 1.5 hours of comp time for each overtime hour worked.

Under the FLSA, employers may allow nonexempt employees to accrue up to 240 hours of comp time, except for employees working “in a public safety activity, an emergency response activity, or a seasonal activity,” who may accrue up to 480 hours. 29 C.F.R. § 553.21. Once these caps are reached, an employer must pay the overtime premium pay. An employee must be permitted to use comp time on the date requested unless doing so would “unduly disrupt” the operations of the agency. 29 C.F.R. § 553.25. FLSA comp time may not be subject to a “lose it or use it” policy or converted to sick or vacation leave. Simply put, it may not be forfeited. 29 C.F.R. § 553.27.

Upon termination, employers must pay out any accrued comp time “at a rate of compensation not less than—

(A) The average regular rate received by such employee during the last 3 years of the employee’s employment, or

(B) The final regular rate received by such employee, whichever is higher.” 29 C.F.R. § 553.27.

The immediate impact of this bill, if passed, is the risk that employees will immediately cash out all their comp time. Santa Fe County reported that as of March 6, 2025, it has approximately 17,137.38 hours of compensatory leave on the books with a cash out cost around \$566,570.51 (plus FICA taxes). The cumulative fiscal impact on all counties for these cash outs will likely be in the millions. Given the effective date of the bill (June 20, 2025), most of the cash outs will be unbudgeted.

In the long term, this bill will effectively eliminate comp time as a tool to manage overtime costs. Because employees may randomly seek a payout twice a year, employers will have little ability to determine budget savings from comp time utilization. Instead, employers will simply have to budget the projected overtime costs. Law enforcement and detention budgets are likely to be hit the hardest. This will decrease available money for raises and adversely affect county budgets.

Although under no FLSA obligation to do so, some counties provide a comp time benefit to their FLSA exempt/salaried employees with often lower caps and use or lose it requirements. If this bill passes, it can be expected that these benefits will be eliminated to avoid the cost of the cash payouts.

It should be noted that public employers were not subject to the FLSA until the Supreme Court ruled in *Garcia v. San Antonio Metro Transit Auth*, 469 U.S. 528 (1985) that the FLSA applied to state and local government workers. The National League of Cities, the U.S. Conference of Mayors and the National Association of Counties — sought relief from Congress, claiming it would cost them more than \$1 billion in overtime pay in the next year. See *Public Workers’*

Overtime, CQ Almanac 1985; https://library.cqpress.com/cqalmanac/document.php?id=cqal85-1146891#_=_

Fearing that local governments might be able to press Congress into drastically revising the FLSA, union officials met with local government representatives and struck a deal creating the existing comp time provisions which were passed into law in 1985. *Id.*

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS