# FISCAL IMPACT REPORT

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| **SPONSOR** | House Labor, Veterans and Military Affairs Committee | **LAST UPDATED** | |
| | | **ORIGINAL DATE** | 3/3/2025 |
| **SHORT TITLE** | Employee Payment for Unused Leave | **BILL NUMBER** | CS/House Bill 438/HLVMCS |
| | | **ANALYST** | Simon |

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT***
**(dollars in thousands)**

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **State Agency Personnel Costs** | | **$17,794.2 to $18,000.9** | **$17,794.2 to $18,000.9** | **$35,588.4 to $36,001.8** | Recurring | General fund, other state funds, and federal funds |

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 200 and 409

### Sources of Information

LFC Files

Agency Analysis of Original Bill Received From
Department of Finance and Administration
State Personnel Office

Agency Analysis was Solicited but Not Received From
Municipal League
New Mexico Counties

## SUMMARY

### Synopsis of HLVMC Substitute for House Bill 438

House Labor, Veterans and Military Affairs Committee Substitute for House Bill 438 (HB438) would require the state or political subdivision allow employees to cash out unused compensatory leave at least twice per year and require those employers to pay employees for the full value of unused compensatory leave at the end of each calendar year.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

The Department of Finance and Administration (DFA) reports current balances of compensatory leave at between $17.8 million and $18 million, depending on the interpretation of "full value." The $17.8 million total is based on employees' base pay rate. However, in some cases state employees receive a supplement to their hourly rate, known as "multiple components of pay." These supplements include "temporary recruitment differentials" that allow agencies to grant additional pay for someone to fill a critical position, "temporary retention differentials" for agencies to keep a current employee in a critical position, or "temporary salary increases" for employees who temporarily accept duties beyond their current job description. It is unclear if the intent of HB438 would be to pay out the value of leave including these temporary differentials or only at the employee's base pay. DFA may need to adopt rules regarding the implementation to clarify at what rate employees are paid out.

State agencies may be able to limit potential costs of HB438 by altering policies on granting compensatory leave. DFA notes agencies are not required to grant compensatory leave for employees exempt from the federal Fair Labor Standards Act (FLSA). However, it is current practice of many agencies to grant employees additional compensation for time worked beyond their regular schedule. HB438 could lead these agencies to reconsider their policies and stop granting compensatory leave for FLSA-exempt employees. As a result, HB438 could leave many state employees receiving a less generous benefits package than they currently receive today.

In addition to the state, HB438 would also apply to employees of the state's political subdivisions. HB438 will almost certainly have a fiscal impact on those governments; however, it is unclear what the total impact of the bill would be.

## SIGNIFICANT ISSUES

DFA reports state employees are eligible for several types of compensatory leave. These include:

- Compensation time granted for hours worked over an employee's regular work schedule. DFA estimates the cost of paying out accrued balances at $6 million.
- Administrative compensation time granted at the discretion of the employee's agency head. DFA estimates the cost of paying out accrued balances at $2.6 million. Current rules of the Personnel Board allow an agency head to grant up to five consecutive workdays of leave "when it is in the best interests of the agency to do so." Some agencies have used this leave provision to provide employees with an incentive for certain actions. For example, the Department of Transportation has granted three days of leave to employees who refer someone who is not a current employee of the department to a job at the department. HB438 could require NMDOT to covert this time to a cash payout. However, requiring that agencies pay out for this leave could reduce their willingness to grant such leave.
- Holiday accrued time granted when an employee with an alternate work schedule has a holiday fall on their regularly scheduled day off. Because current policy is to give employees a paid day off on the holiday, this leave allows the employee to effectively shift the holiday to another day. HB438 could allow employees to receive a cash payout in lieu of an additional holiday, which could be an incentive for people to seek alternate work schedules that are more likely to lead to holiday accrued time (for example, by having Monday as a day off because four of 11 current holidays are always observed on a Monday and in 2024 six of 11 holidays were observed on Monday). DFA estimates the cost of paying out this leave at $2.9 million.
- Holiday compensation time granted to employees who work on holidays, allowing for a

paid day off on another day. DFA estimates the cost of paying out accrued balances at $1.3 million.

- Premium bank overtime granted to employees who work more than their regularly scheduled hours but are not exempt from the federal Fair Labor Standards Act and are eligible for overtime. This time is granted as time and a half. DFA estimates the costs of paying out accrued balances at $5 million.

DFA notes HB438 does not define the term compensatory leave, which makes it unclear which types of leave will be covered by the payout. While DFA does not include calculations of accrued annual or sick leave in the calculation of the fiscal impact, the department states it is unclear if these programs are meant to be covered by the payout provisions. If so, DFA notes both the legislative and judicial branches allow employees to accrue more leave than classified employees in the executive branch, which could lead to possible pay inequities.

The bill would provide, if a current collective bargaining agreement conflicts with HB438, the provisions of the bill would not apply. Analysis from the State Personnel Office (SPO) notes this is unnecessary because state law already provides that a collective bargaining agreement prevails if it provides “greater rights, remedies, and procedures.” (See Section 10-7E-17 NMSA 1978). However, this provision of HB438 could allow for a collective bargaining agreement with provisions regarding payouts for compensatory leave that are lesser than those proposed by HB438 to remain in effect.

## ADMINISTRATIVE IMPLICATIONS

Analysis from SPO notes the provisions of HB438 could have operational impacts on state agencies. This could include the inability to fill vacancies due to budget uncertainty around leave payouts. DFA anticipates increased workload for the State Budget Division and Local Government Division, as those entities file budget adjustment requests to account for unanticipated leave payouts.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB438 relates to Senate Bill 200, which creates a new holiday on the date of a general election, and Senate Bill 409, which creates a new holiday on the second Monday in February.

JWS/hj/hg/SL2