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FISCAL IMPACT REPORT

SPONSOR Dixon LAST UPDATED _____
ORIGINAL DATE 3/7/2025
BILL _____
SHORT TITLE Advance Purchase Commitments Program NUMBER House Bill 524
ANALYST Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27 or Future Years	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			\$5,120.0 to \$30,720.0		Recurring	State Road Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill(s) and Senate Bill(s)

Sources of Information

LFC Files

Agency Analysis Received From
General Services Department
Attorney General.

Agency Analysis was Solicited but Not Received From
Department of Transportation

Agency Declined to Respond
Environment Department

SUMMARY

Synopsis of House Bill 524

House Bill 524 (HB524) would require the Department of Transportation (NMDOT) to create a program for awarding advanced purchase commitments to vendors who agree to provide low-emission paving materials. To be eligible for the program, a vendor must demonstrate the product meets proposed federal standards for low-emission paving materials and other technical requirements set by NMDOT and must provide an environmental product declaration, a preliminary environmental produce declaration, or a life cycle assessment. The bill requires NMDOT to prioritize awards based on the amount of greenhouse gas emissions reduced by the product, the suitability of the product for the intended use, the potential for the award to increase availability of the product, and product relying on the utilization or mineralization of carbon dioxide, but only if the use of the product does not lead to positive net carbon emissions.

FISCAL IMPLICATIONS

HB524 would set up an alternative procurement system for purchasing low-emission paving materials for the department of transportation, including cement, concrete, asphalt binder, and asphalt mixtures. NMDOT purchases a wide variety of different types of asphalt, concrete, and other materials that could be covered by HB524. [NMDOT's unit price list for 2024](#) indicated the department purchased 736 thousand tons of “hot mix asphalt SP-IV complete” at an average unit price of \$86.42 per ton, for a total of \$63.7 million, while the department purchased smaller amounts of other types of hot mix asphalt. A review of this, looking for the terms “asphalt,” “concrete,” or “HMA” (hot mix asphalt), show the department spent at least \$128 million in 2024 on these items; however, this list may not cover every potential category that could be covered by HB524

Possible cost increases from the transition to low-emission concrete and other materials are uncertain. The Rocky Mountain Institute, and environmental think tank, [has estimated](#) cost increases for the transition to net-zero cement of between 40 percent and 120 percent, but notes costs would be highly variable. Assuming the current cost of \$128 million, a 40 percent increase would represent additional costs of \$51.2 million. At the higher, 120 percent level the additional costs could be \$153.6 million. However, the timeline for transition is currently unknown and it is unlikely NMDOT would be able to source reduced emission materials for all projects. Assuming between 10 percent and 20 percent of the materials used would qualify under the program and costs would increase by between 40 percent and 120 percent, the program could add between \$5.1 million and \$30.7 million when it becomes effective. However, as the products become more widely used, costs could increase above this total.

While HB524 would require NMDOT to develop a program, nothing in the bill requires the department to use low-emission materials on any particular project. The bill is likely to leave the department flexibility to continue using traditional materials if costs for the product are too high to justify. However, were the bill to pass and become law, it would clearly signal a policy decision to the department, and budget impact listed on page one of this FIR assumes the department would respond by attempting to purchase low emissions materials, at least in part. It should be noted the budget impacts listed are highly dependent on how the department would respond to the program and could be higher or lower, depending on the department's actions. Additionally, the use of a binding advance purchase commitment could allow the current administration to commit a future administration to the future purchase of a product three or more years in the future.

SIGNIFICANT ISSUES

HB524 would require NMDOT to create a program for “advanced purchase commitments,” a type of purchase that attempts to incentivize investments in emerging technologies. Sometimes called “advanced market commitments,” these have been used in medical and technology fields to effectively guarantee investors in an emerging technology that there will be a market for that product once it is developed or brought to scale. Notably, to respond to the Covid-19 outbreak in 2020, the federal government negotiated agreements with five drug manufacturers to develop Covid-19 vaccines. The federal government agreed to pay for these vaccines while the drugs were still in development, although payments were dependent on when and if the drug received approval from the federal Food and Drug Administration.

Analysis from the General Services Department (GSD) notes the risk involved in advance purchase commitments:

The long-term nature of the commitment may expose both buyers (the state) and sellers to price volatility in materials, labor, and energy costs, which could lead to financial and procurement challenges if the costs of low-emission materials increase unexpectedly over time. Advance purchases could negatively impact the state general fund and create legal challenges in complying with procurement requirements. Requests for appropriation would need to be increased for purchases in advance. Increase in individual costs in outline years for goods and services. Additionally, the state may face fiscal difficulties if the needs or projects change over the course of several years, but they are locked into long-term agreements. This could lead to wasted resources if material specifications change, or projects are delayed.

GSD further notes:

Long-term purchase commitments could distort market pricing for low-emission materials, especially if large contracts are awarded to a few producers. This could reduce competition and potentially lead to higher prices in the absence of competitive bidding, which could lead to suppliers going out of business and the state without products. Additionally, the program might be negatively impacted and legally challenged by changing environmental, tax, or trade policies. New regulations could alter the economics of low-emission materials, making long-term agreements less favorable.

Analysis from the Office of the Attorney General notes the bill could conflict with provisions of the Procurement Code:

In general, a government body's purchase of goods or services under the Procurement Code must proceed in one of two ways: (1) solicitation of competitive sealed bids (see Section 13-1-102 NMSA 1978); or (2) an invitation for sealed proposals (see Section 13-1-111 NMSA 1978). The default rule is that all procurements must take place through competitive sealed bids. HB524 does not describe whether the applicants and awards are subject to the Procurement Code.

ADMINISTRATIVE IMPLICATIONS

GSD notes managing and tracking long-term contracts could be administratively complex for agencies. This program could be require additional administrative costs, particularly due to requirements to ensure environmental standards and material suitability for a specific purpose. GSD notes the potential for some companies to engage in “greenwashing,” where companies falsely claim to produce an environmentally friendly material. Additionally, the department notes the state may find it difficult to enforce long-term agreements with private companies as those businesses face changes to market conditions, mergers and acquisitions, or shifts in their market strategy. To limit risk, the state may choose to limit purchases to larger, more viable companies.

TECHNICAL ISSUES

House Bill 524 would require vendors to meet standards established under “Section 458(i)(2) of the Federal Energy Independence and Security Act of 2007.” However, that section does not appear to exist. Federal legislation proposed during the 118th Congress (2023-2024) would have created the Concrete and Asphalt Innovation Act of 2023 and would have added the section cited to the federal law. However, that bill did not pass.

OTHER SUBSTANTIVE ISSUES

H.R. 9136 from the 118th Congress (2023-2024) was introduced to authorize the federal secretary of transportation to establish a similar advance purchase commitment program at the federal level. The program proposed by that resolution largely reflect the requirements outlined in HB524. That bill was not acted upon by the House and the Congressional Budget Office did not produce a cost estimate.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced to limit or reduce carbon emissions, particularly in the transportation sector, including:

- Senate Bill 4, which would set statewide greenhouse gas emission reductions, based on 2005 levels; and
- Senate Bill 83, which would create the innovation in state government fund for agencies to develop master plans to achieve net-zero emissions.

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