

LFC Requester:	Chenier
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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: 2/12/2025 *Check all that apply:*
Bill Number: HB355 Original Correction
 Amendment Substitute

Sponsor: <u>Reps. Tara Lujan and Dayan Hochman-Vigil</u>	Agency Name and Code Number: <u>General Services Department - 350</u>
Short Title: <u>OVERDOSE PREVENTION PROGRAM</u>	Person Writing: <u>Andrew Magida</u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(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	Unknown	Unknown	Unknown	Recurring	Public liability fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Similar to 2023 HB 263
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 355 would amend the Harm Reduction Act to provide safe spaces for narcotics users to consume illicit substances under the supervision of personnel who are trained to detect overdoses and administer treatments to treat them. The bill would provide protections against criminal and civil liability for those who facilitate or utilize these drug consumption locations.

FISCAL IMPLICATIONS

HB 355 is likely to substantially increase the number and severity of claims against the Department of Health. Illicit drug use is a dangerous activity even with harm reduction services such as those called for in HB 355; even with strict adherence to all rules, deadly or grievously injurious overdoses are likely to occur on these premises, and that will likely lead to claims against the state. RMD has a legal obligation to provide legal defense on any claims state agencies and its employees (i.e., Department of Health), and to pay any settlement or damage award ordered.

Unfortunately, medical and other professionals sometimes fall below the standard of care and fail to adhere to applicable rules when providing services. The liability shield contained in HB 355 would be easily overcome should a claimant be able to demonstrate that a person or entity failed to act, “in accordance with all rules promulgated pursuant to the act...” To the extent that a claimant can make out an argument that the Department of Health operated the premises called-for in HB 355, the public liability fund would be relied upon to defend and indemnify against those claims.

The costs are impossible to estimate as the following are unknown: the number of safe drug-use sites that will be opened and operated; the number of persons who will daily be served; whether or to what extent the Department of Health would operate these centers; the defense and indemnification requirements of prospective contractors; and what type of security and safety measures would be in place at these centers.

Note: This analysis assumes the liability shield will operate as intended (i.e., no civil liability for any person or entity “reasonably acting in good faith” and in accordance with the rules promulgated pursuant to the act...). The costs would be far higher if the liability protections function less effectively than intended.

SIGNIFICANT ISSUES

The liability shield can be overcome when a person or entity providing these services fails to adhere to any rules promulgated by the Department of Health. Considering the frequency of medical malpractice claims, the protections in Section 5 of HB 355 are likely to present a low bar to liability.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Safe drug use sites reduce the number of emergent drug overdoses in hospitals. A drug overdose patient in the emergency department diverts resources from other patients who need medical care, and it increases costs and liabilities for those hospitals and providers.

AMENDMENTS