

LFC Requester: _____

**NMDOT BILL ANALYSIS
2025 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 2/25/2025

Bill No. SB 348

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Agency/ Code: NMDOT - 805 - OGC

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Short Title Payments in Lieu of Taxes for Real
Property Acquired

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

None.

REVENUE (dollars in thousands)

None.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund Road Fund

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 348 (SB 348) requires the state agencies to pay a recurring fee to any “political subdivision of the state that imposed and received revenues from property tax,” for any real property acquired either through purchase or condemnation. The fee is set at the amount equal to the property taxes collected prior to the acquisition of the property. Such payments are to be made annually so long as the state owns the property. Payments are made to the state treasurer’s office and deposited into an account created by SB 348. The funds are then to be distributed back to the

political subdivision by the property tax division of the New Mexico Taxation and Revenue Department (TRD). TRD will promulgate rules regarding how the monies deposited will be handled and distributed. There is a specific exemption for property purchased by the New Mexico Department of Transportation (NMDOT) for purposes of a public road or highway.

FISCAL IMPLICATIONS

Passage of SB 348 would have a significant fiscal impact on the NMDOT and how it conducts business. Both the U.S. and State Constitutions require that the State, including the NMDOT, pay “just compensation” for any property purchased or taken for any purpose. Just compensation includes payment for any damage to the remainder of the property not taken. Damage to the remainder includes, but is not limited to, payment for lost or reduced access and lost revenue to businesses located on the property. Frequently this means that it is cheaper to pay the property owner for the entire parcel than for the small section used for the road plus the damage to the portion of the parcel that falls outside of the roadway footprint. The portion not used, called a Non-Right of Way (NRW), is then held by the NMDOT until it can use or dispose of the NRW remainder after the project is finished.

NRWs are also acquired because the acquisition of real property is usually the first step in a road construction or improvement project. Because the final footprint of the road is not known until the project is complete property acquisition includes parcels that may not be used in the final project.

Currently, the NMDOT is holding an estimated 251 parcels totaling approximately 615 acres of NRW property. Passage of SB 348 would require NMDOT to pay a property tax replacement fee on these parcels which would vary, depending on the value and location of the property, but would reasonably be estimated at several million dollars annually.

There is a specific exemption in SB 348 for NMDOT property purchased for the purpose of a public highway or road. SB 348 is silent as to if this exemption would apply to property taken through the eminent domain process. SB 348 also does not provide a definition of “public roadway” or “highway”. Much of the property acquired by the NMDOT for highway projects is for shoulders, clear zones, bridges, retention ponds, culverts or for other drainage purposes. The NMDOT also acquires property for rest areas, patrol yards, ports of entry and other non-roadway related purposes. If these other purposes are not exempted, this would result in significant tax replacement fee liability.

SB 348 makes the tax replacement fee a recurring annual cost to the agency. It is silent as to whether the tax replacement fee is retroactive. Many NMDOT properties subject to this fee have been NMDOT property for decades. If the fee were applied retroactively there would be an immense one-time cost to the NMDOT.

SIGNIFICANT ISSUES

A significant portion of the NMDOT budget is federally funded. Part of the federal funding is for the acquisition of property. There is no federal subsidy for future taxes, or tax replacement fees. These new costs would have to be fully absorbed by the NMDOT.

Furthermore, federal funding for property acquisition comes with federal mandates, and restrictions, on how the property is used. This potentially places the NMDOT in a position where

it is required to purchase a property even though it exposes the NMDOT to this tax replacement fee liability.

In addition to federal funding, the NMDOT receives a significant amount of funding from the State Road Fund. The State Road Fund, created by Art. IX, Sec. 16 of the New Mexico Constitution, can only be used for specific purposes. Payment of tax replacement fees is not one of the legal uses for the Road Fund, so an annual appropriation from the General Fund would be required to make the payments.

In Sec. 1 A, SB 348 states that all political subdivisions that collect property taxes are eligible for receiving tax replacement fee funding. In contrast, Sec. 1 B of SB 348 suggests that only counties, not municipalities or other special districts, are eligible to benefit from the tax replacement fee.

Section 1 C of SB 348 makes payment of tax replacement fee contingent on legislative appropriation. If sufficient appropriation is not made the fees are suspended for the year. This creates an all or nothing situation and does not allow for partial appropriations.

PERFORMANCE IMPLICATIONS

NMDOT owns property in every county and many localities in the State. Each of these political subdivisions has a separate property tax rate. The NMDOT would need to determine how much property is subject to the fee in each political subdivision and then the property tax division of the TRD would need to compute the tax replacement fee, including any adjustment for changed use, using the political subdivision's tax rate. This would be an additional workload on both the NMDOT and TRD, with the benefits flowing to the political subdivisions.

ADMINISTRATIVE IMPLICATIONS

Currently there is no single NMDOT property inventory; roadways are tracked in the road inventory; rest areas and patrol yards are included in a separate inventory and NRWs are tracked through a separate system. SB 348 would require the creation of a single property database. Creation of the database would be complicated because different divisions of the NMDOT are responsible for different property inventories. The Right of Way division tracks NRWs but district maintenance offices maintain the road inventory.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

Art. VIII, Sec. 3 of New Mexico's Constitution states:

The property of the United States, **the state** and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof **shall be exempt from taxation.**

The Courts are likely to find that the Property Tax Replacement Fee is simply a property tax and find the entire law unconstitutional.

OTHER SUBSTANTIVE ISSUES

SB 348 penalizes agencies that acquire real property and rewards agencies that lease office space or property.

ALTERNATIVES

The legislature can make a direct appropriation to the Counties, and/or other political subdivisions and not tie it to lost property tax revenues.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None.