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## FISCAL IMPACT REPORT

SPONSOR Vigil DATE TYPED 2/23/05 HJM 66

SHORT TITLE Transportation Dept. Contract Requirements SB \_\_\_\_\_

ANALYST Moser

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI				

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 66 would require the NMDOT to study its contracts “to ensure that contractor employees are afforded full access to the salaries, wages and benefits” available through the contractor, then to report findings to the LFC by 10-1-05.

#### Significant Issues

This memorial requires NMDOT to study all its contracts, including construction contracts, professional service agreements, vendor contracts, etc., for possible unpaid benefits to those who work for the contractors. The NMDOT indicates that it has in excess of 700 contracts in force, not including construction contracts, at any given time. The term “benefits” has not been defined, and could include various types of insurance information, per diem and travel allowances, retirement plans, etc. The NMDOT may have a difficult time obtaining much of this information, and some of the records, or portions thereof, may contain confidential information (e.g., social security numbers, health/medical information, etc.) to which the department would not have access.

The language customarily included in NMDOT contracts requires the contractors to make their records available for audit purposes. The purpose of an audit is to verify the obligations between

the NMDOT and its contractors rather than obligations between contractors and their employees. The purpose of the proposed study extends beyond audit purposes outlined in current contracts. The department indicates that the existing contract language would not require contractors to cooperate in this study and contracts perhaps would need to be renegotiated.. Consequently, there is no requirement under NMDOT's current contracts for contractors to participate in this study.

Although the NMDOT has remedies against its contractors for violations of contract provisions, the NMDOT does not have actual enforcement power over the "salaries, wages and benefits available through the contractor" to its own employees. There are other entities, such as the US Department of Labor and the NM Department of Labor, that have enforcement power with respect to wages and working conditions of private employers. Similarly, there are state and federal agencies that address complaints of discrimination and equal pay issues, such as the US Equal Employment Opportunity Commission and the NM Human Rights Commission. Additionally, if contractor employees are represented by a union the union has jurisdiction for processing and investigating these types of complaints. Employees who believe that they are not being paid salaries, wages or benefits as provided by law can file complaints with those agencies, which would then be able to actually conduct investigations, which would include the authority to compel disclosures and compliance.

In contrast, the NMDOT indicates that it has no actual authority to "ensure" that the contractor is providing "full access" to employees of its salaries, wages and benefits. Any attempt by the NMDOT to require that private contractors provide those salaries, wages and benefits may constitute an interference with the contractual relationship between the contractor and its employees.

Workers for NMDOT contractors now have an array of statutory wage and benefit protection. The Fair Labor Standards Act, Little Miller Act, Davis Bacon Act, Public Works Minimum Wage Act, Title VII and New Mexico Human Rights Act are all available to protect New Mexico workers.

## **PERFORMANCE IMPLICATIONS**

Assembling this data will require a significant investment in time and resources.

## **FISCAL IMPLICATIONS**

The precise fiscal impact cannot be ascertained.

## **ADMINISTRATIVE IMPLICATIONS**

Assembling this data will require a significant investment in time and resources. However, the precise administrative impact cannot be ascertained. It may be that the NMDOT will have to hire a consultant to conduct the study, particularly with a study/submission deadline of October 1, 2005.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

With respect to construction contracts, this memorial duplicates federal and state requirements already in place for verification of wages and benefits by means of contractor furnished certified payrolls for its workers.

**OTHER SUBSTANTIVE ISSUES**

This memorial requires NMDOT to inject itself into the private relations between a contractor and its workers, and gather data that may not be readily obtainable for all contracts. Workers by law already have an array of labor protections, as noted above.

GM/yr