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FISCAL IMPACT REPORT

SPONSOR Diamond LAST UPDATED 2/10/2023
ORIGINAL DATE 2/8/2023
BILL
SHORT TITLE Public Contract Payments NUMBER Senate Bill 98
ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant, estimated from \$0-\$51.6 million	Significant, estimated from \$0-\$51.6 million	Estimated up to \$103.2 million see fiscal implications	Recurring	Various including general, federal, and other funds

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Relates to similar legislation introduced in 2020 (HB196), 2021 (HB259), and 2022 (HB137).

Also relates to the following current bills:

HB25 WAGE INCREASE & INDEXING

HB28: STATE MINIMUM WAGE COST-OF-LIVING INCREASE

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)

General Services Department (GSD)

Early Childhood Education and Care Department (ECECD)

Human Services Department (HSD)

Department of Transportation (NMDOT)

No Response Received

Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 98

Senate Bill 98 requires all public contracts for services executed after July 1, 2023, include a provision that a contractor or subcontractor who pays an employee the state minimum wage shall pay that employee the current state minimum wage. It also states that the state shall reimburse

the contractor and subcontractor for any increase in the employee's wage due to state minimum wage increases or for any change to statutory benefits.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Each agency will have to determine what wages are being paid under their contracts and subcontracts and determine what additional funding will be needed to complete the services. This could be significant depending upon the current wages of contractors and subcontractors.

Previously HSD stated that the department has many contracts with various entities across the state. These contracts are required to comply with state law, including minimum wage requirements. Therefore, SB98 would require an increase in funding for any contract where a minimum wage increase results in additional costs to the contractor. If the budget was not increased through the appropriation process, the department would be forced to purchase fewer services to allow the contractor to address minimum wage and be held harmless.

The breadth of services this bill would impact across state agencies is unquantifiable at this time but is likely extensive. If enacted, state agencies in collaboration with the Department of Finance and Administration would need to re-evaluate many state services to determine increases as provided by this bill.

For example, ECECD has an FY23 budget for childcare assistance of \$327 million. This funding is distributed by state childcare contracts. Should employees of childcare contractors receive the minimum wage, SB98 may entitle them to receive an increase in their contracts from the state. Currently childcare rates are set in regulation, it is unclear if the state would then have to increase rates set in these regulations to meet the requirements of this bill. Similarly, the Aging and Long-Term Services Department offers senior employment and other senior service programs and the Department of Health provided services for those with developmental disabilities that generally provide employment at minimum wage. Requiring the agency to reimburse contractors in the case of a wage increase would increase costs to the agency and reduce the funding available for services.

This year, as agencies asked to respond to the bill did not quantify the likely fiscal impact of SB98 on their contract expenditures, LFC staff used research previously mentioned by HSD to calculate an estimate. Assuming a 10 percent minimum wage increase, which will increase contractual costs between 0.2 percent and 0.3 percent, this bill could impact the state by at least an estimated \$34.4 million. This is the conservative estimate. Costs may increase by as much as \$51.6 million if SB98 was enacted and the minimum wage increased by 10 percent.

In past analysis of similar legislation from 2019, in 2021 HSD's Medical Assistance Division cited a study conducted by the University of Leicester (Lemos, 2005) that found that a 10 percent increase in the minimum wage resulted in 0.2 percent to 0.3 percent increase in prices overall.

Estimated Calculation shown below:

Estimated Impact of a 10 Percent Minimum Wage Increase Across All State Contracts and Agencies

	FY22 Actual Expenditures Related to Contracts and Contractual Services	Low Multiplier and Estimate	High Multiplier and Estimate
Contractual services	\$2,498,753,980		
Care & Support	\$10,028,708,079		
Grants -Higher Ed (in CAFR)	\$69,072,244		
Grants To Individuals	\$9,178,871		
Grants To Local Governments	\$277,921,548		
Grants to Native American Indians	\$16,202,396		
Grants to Other Agencies	\$121,142,481		
Grants To Other Entities	\$33,776,635		
Grants To Public Schools & Univ	\$4,038,523,960		
Rent Of Equipment	\$13,146,315		
Rent Of Land & Buildings	\$79,936,681		
Total Actual Expenditures	\$17,186,363,191		
Low Multiplier		0.2 percent	0.3 percent
Total Estimated Cost for 10 percent Minimum Wage Increase to State		\$34.4 million	\$51.6 million

Note, there may be additional impacts beyond direct contracts as subcontractors are also held harmless.

SIGNIFICANT ISSUES

The current minimum wage in New Mexico is \$12 per hour and has been raised incrementally for the last several years and it is unclear when the next increase to the minimum wage will occur. Due to this uncertainty, it is unclear if or how much additional funds may need to be allocated to agencies to comply with this bill if passed. However, because the minimum wage increases are generally known in advance, contractors may have the opportunity to build in an increased labor cost assumptions into state contracts. WSD analysis previously noted no other private employers are provided an automatic increase from the state to offset the cost of increasing the minimum wage and notes SB98 creates a subsidy for government contractors.

According to NMAG:

Section (B)(3) defines “statutory benefits” and it refers to “any” benefit required by state law but does not distinguish between a public sector employer-employee benefit and a private sector employer-employee benefit. This may raise some confusion if a change to state law involving public sector benefits, such as retirement benefits, is meant to apply within the ambit of Section (B)(3) when appears that SB 98 appears to be solely focused on wage compensation issues.

According to GSD:

It is unclear whether SB98 will apply to current service based statewide price agreements. The Bill includes the terms “reimbursement” and “the contractor and any subcontractor to that contract are held harmless for any wage increase....” It is unclear what the State or its agency would be reimbursing or holding harmless. While it is clear in Section 1, paragraph A(2) that any increase in payment to employees of the contractor or subcontractor will track the state minimum wage laws, Section 1, paragraph A(1), may be confusing, in particular the concept that the state would hold any contractor harmless. Is the State penalizing a contractor for failure to provide adequate compensation or is it the State indemnifying the contractor et al for any liability in failure to increase the minimum wage in accordance with State law?

The bill may be unconstitutional, as it would, in essence indemnify a contractor for future cost increases. The agency would agree in the contract to spend money that has not yet been appropriated by the legislature.

NMDOT states:

It is established case law that there is no prohibition under the New Mexico Constitution, Article IV, Section 27, on increasing compensation for services rendered because the additional compensation was for extra work and services for which the contractor was not originally obligated to perform, *State ex rel. Sedillo v. Sargent*, 1918-NMSC-042, 24 N.M. 333, 171 P. 790. SB98 may be contrary to the New Mexico Constitution, Article IV, Section 27 because it would provide an increase of reimbursement for work that is not extra work and is already obligated to be performed by the contractor under the original terms of the contract.

PERFORMANCE IMPLICATIONS

Costs are generally factored into contract agreements and/or are amended as necessary.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Similar legislation was introduced in 2020 (HB196), 2021 (HB259), and 2022 (HB137).

SB98 also relates to two current bills this session:

HB 25: WAGE INCREASE & INDEXING

HB28: STATE MINIMUM WAGE COST-OF-LIVING INCREASE

NMDOT points a potential conflict with the state procurement code:

SB98 Section B(1) and (2) may also conflict with the Procurement Code insofar as “services” are not consistent between SB98 and the Procurement Code. See, e.g., the definition of “contract,” NMSA 1978, Section 13-1-41, and “services,” NMSA 1978, Section 13-1-87.

First, SB98 uses a different definition of “contract” from the Procurement Code definition, generally tracking the Procurement Code definition except for excluding the purchase of tangible personal property and more so, construction.

Second, SB98 uses a different definition of “services” from the Procurement Code definition, generally tracking the Procurement Code definition with the exception of omitting the part of the “services” definition that includes the furnishing of insurance and also excludes construction, along with the services of employees of a state agency or local public body. By not excluding construction as done by the Procurement Code, SB98 may create confusion as to whether construction is considered “services”.

TECHNICAL ISSUES

According to NMDOT:

SB98 does not provide guidance about how a state agency is to assess escalation of salary tied to pre-negotiated service, including to determine or calculate an increase so as to

“hold harmless” a contractor or subcontractor for any increase in the applicable state minimum wage or cost increase resulting from a change to statutory benefits

ALTERNATIVES

Contracts may be amended to factor in cost increases (depending on budget availability).

SD/al/ne