

**NMDOT BILL ANALYSIS
2024 REGULAR SESSION**

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 Date 1/27/2024
Correction Substitute Bill No. HB 194

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SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Impact Below	See Fiscal Impact Below	See Fiscal Impact Below	See Fiscal Impact Below	Recurring	State Road Fund & other operating funds

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 194 (HB 194) adds a section to the Minimum Wage Act (NMSA 1978, Section 50-4-19 through 50-4-30) that requires state agencies to include in all public contracts for services provisions for increasing reimbursements and to hold harmless contractors when individuals employed under public contracts for services receive wage increases in accordance with and concurrent with increases of the state minimum wage.

HB 194 adds definitions of “contract” to mean any agreement for the procurement of services; “held harmless” to mean to ensure payment “equivalent to the amount and value of compensation stated in the contract,” after consideration of the impact of an increase in cost due to changes in minimum wage or statutory benefits to the contractor and any subcontractor; “services” to mean “the furnishing of labor, time or effort by a contractor or subcontractor not involving the delivery of a specific end product other than reports and other materials that are merely incidental to the required performance”; “statutory employee benefits” to mean “any benefit that an employer is required by state law to provide to the employer's employees”; and “subcontract” to mean a contract “to procure in whole or in part services to be procured under” the prime contract.

HB 194 does not include an effective date but expressly applies “beginning July 1, 2024.”

FISCAL IMPLICATIONS

NMDOT cannot make a detailed estimate of fiscal implications at this time because it is unknown whether the state minimum wage would increase or by what percentage. Under HB 194, the NMDOT’s contract costs for services could be expected to increase in direct proportion to any minimum wage increases.

SIGNIFICANT ISSUES

While HB 194, Section 1, Sub-section A(2) requires state agencies to add a standard provision to all services contracts regarding the above-referenced increase to reimbursement terms and hold harmless clause, HB 194 does not expressly exclude existing contracts. Because implementing HB 194 to existing contracts may result in an increase in compensation to a contractor for performing services that it is already obligated to perform, Sub-section A(2) might be held unconstitutional. See in relevant part, NM Constitution Article IV, Section 27:

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made....

It is established case law that there is no prohibition under the NM 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. HB 194 may conflict with 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

None at this time.

ADMINISTRATIVE IMPLICATIONS

Implementation of HB 194 to add additional language to its service contracts will have a negligible administrative impact to the NMDOT.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As noted above, if HB 194 applies to existing contracts as of the effective date of the bill, then HB 194, Section 1, Sub-section A(2) may conflict with the New Mexico Constitution, Article 4, Section 27.

HB 194, Section 1, Sub-sections B(1) and (3) may also conflict with the Procurement Code insofar as “services” are not consistent between HB 194 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, HB 194 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, HB 194 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, HB 194 may create confusion as to whether construction is considered “services”.

TECHNICAL ISSUES

HB 194 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.

OTHER SUBSTANTIVE ISSUES

None at this time.

ALTERNATIVES

None at this time.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMDOT will continue to pay for its services contracts based on rates set at the time the contract is entered.

AMENDMENTS

None at this time.