

**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      X      Amendment    \_\_\_\_\_  
Correction    \_\_\_\_\_    Substitute    \_\_\_\_\_

Date 1/25/2024  
Bill No. SB 133

Sponsor: Carrie Hamblen

Agency/ Code: NMDOT - 805 - CCRB

DOT Disadvantaged

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**SECTION II: FISCAL IMPACT**

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	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**

Senate Bill 133 (SB 133) will require at least thirty (30) percent of all federal funds allocated by the Federal Highway Administration (FHWA) for Federal Highway Construction projects to be spent on Disadvantaged Business Enterprises (DBE) firms.

SB 133 defines “certified disadvantaged business enterprise” to mean “a business certified pursuant to federal law by the department as a small business” that (1) performs or seeks “transportation-related work”; (2) that is fifty-one (51) percent owned by socially and economically disadvantaged persons or fifty-one (51) percent of stock is owned by economically disadvantaged persons; and (3) whose management and daily business is controlled by socially disadvantaged persons. SB 133 also defines “federally assisted contract” to mean a contract funded in whole or in part with assistance from the U.S. Department of Transportation (including letters of credit or loan guarantees) and specifically excepting contracts solely to purchase land.

There is no effective date. If enacted, SB 133 would be effective 90 days after conclusion of the Session, May 16, 2024.

## **FISCAL IMPLICATIONS**

New Mexico Department of Transportation (NMDOT) cannot make a detailed estimate of fiscal implications at this time because the cost of the additional FTE that would be necessary to implement SB 133 is unknown.

SB 133 may result in fewer contractors submitting bids as they are not able to meet the project specific goals or overall DBE goals resulting in an overall increase in the costs of projects and a decrease in the amount of federal funds.

## **SIGNIFICANT ISSUES**

The NMDOT holds a 16.99% DBE Utilization Rate for Federal Fiscal Year (FFY) 2023, 27.98% for FFY 2022, and 18.13% in FFY 2021. The increase in DBE Utilization will require a large use of Disadvantaged Businesses Enterprises which may be unattainable based on previous years data.

New Mexico is currently a Race/Gender Neutral state and does not set DBE project specific goals. Past project data reflects a range of 3% to 7.5% DBE project goals; with the enactment of this legislation NMDOT would need to set larger DBE goals on projects to attain the 30%. SB 133 may result in fewer contractors submitting bids as they are not able to meet the project specific goals.

In the last semi-annual report submitted to FHWA on November 29, 2023, one hundred eighty-eight (188) subcontractors were awarded federal dollars; of those one hundred eighty-eight subcontractors, fifty-one (51) were DBEs, resulting in a 28% DBE utilization rate. In the same reporting cycle, twenty (20) prime contractors were awarded federal dollars; of those twenty contractors, three (3) went to DBEs, resulting in a 4.9% utilization rate. The total dollars to DBE contractors (both prime and subcontractors) equal 15.4% DBE utilization. SB 133 may result in fewer contractors submitting bids as they are not able to meet the DBE goals resulting in an overall increase in the costs of projects.

Currently, NMDOT sets the overall DBE goal based on Federal Highway Administration (FHWA) DBE Goal Setting Methodology requirements pursuant to 49 CFR 26.45(b). FHWA requires that overall DBE goals are based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on NMDOT federally assisted contracts. NMDOT has determined the base figure for the relative availability of DBEs using its bidder's list and potential DBEs identified from Small Business Administration's 8(a) program. SB 133 does not use FHWA DBE Goal Setting Methodology and may result in a loss of federal funds.

## **PERFORMANCE IMPLICATIONS**

None at this time.

## **ADMINISTRATIVE IMPLICATIONS**

With an increase in DBE Utilization, this would require an additional FTE to recruit and certify DBEs to meet this goal.

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

None.

## **TECHNICAL ISSUES**

The NMDOT may not be able to certify a sufficient number of DBEs to complete the anticipated number of projects in FY 24 and beyond. SB 133 does not provide guidance if the Department fails to meet the 30% requirement, but such failure to comply may result in a decrease in bidders on necessary projects as well as a loss of federal funds.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

None.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMDOT will continue to utilize FHWA DBE Goal Setting Methodology to determine DBA goals and will allocate federal monies as in previous years.

## **AMENDMENTS**

None at this time.