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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/28/25

SPONSOR Campos

BILL

SHORT TITLE Attorney General Services for Agencies **NUMBER** Senate Bill 385

ANALYST Chavez

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
NMAG Legal Fees	No fiscal impact	\$0.0 to \$5,400.0	\$0.0 to \$5,400.0	\$0.0 to \$5,400.0	\$0.0 to \$5,400.0	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
State Agencies	No fiscal impact	\$0.0 to \$5,400.0	\$0.0 to \$5,400.0	\$0.0 to \$10,800.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)
 Department of Finance and Administration (DFA)
 General Services Department (GSD)
 Administrative Office of the Courts (AOC)

Agency Declined to Respond

Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Senate Bill 385

Senate Bill 385 (SB385) amends section 8-5-2.1 NMSA 1978, the statute governing legal service fees, charged by the New Mexico Attorney General (NMAG), for services on behalf of state agencies. SB385 would allow NMAG to charge state agencies for legal services, in noncriminal cases, based on rates that would reflect the fees established in the contract between the Risk

Management Division of the General Services Department (GSD) and counsel providing legal services to that division. The statute, in its current standing, has NMAG charging fees reflective of the fee schedule approved by the Department of Finance and Administration (DFA).

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Section 8-5-2.1 NMSA 1978, in its current form and in the proposed amendments, has language that NMAG **may** charge state agencies for providing legal services. NMAG currently does not charge any state agencies fees for providing legal services but could do so if they choose to. Because NMAG does not have to charge fees for their legal services, the floor of the fiscal implication would be \$0 in revenue and in operating expenses for state agencies seeking legal services from NMAG. If NMAG were to start charging legal fees upon the onset of the bill, there would be a revenue generation of up to \$5.4 million to NMAG and a subsequent operating cost of the same magnitude to all state agencies that seek legal services. If NMAG were to begin charging for their legal services, it could create large operating costs for agencies that rely on these services.

The ceiling of \$5.4 million in revenue generation and operating costs is based off a preliminary request to include new language for budget adjustment requests (BAR) for NMAG. The proposed BAR language would have read as follows:

Office of Attorney General

The internal service/interagency transfers appropriation to the legal services program of the New Mexico department of justice include five million four hundred thousand dollars (\$5,400,000) from fees for legal services collected from state agencies, including any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and every office or officer thereof, for noncriminal cases under fee schedule from the Risk Management Division pursuant to Section 8-5-2.1 NMSA 1978.

The preliminary BAR language request refers to the same statute and fee schedule as SB385. Because the language puts a ceiling of \$5.4 million on the transfer, NMAG assumes that would be the most they could gain from their current legal services practices.

DFA provides the following related to the legal services rates the General Service Department's Risk Management Division pays and the legal services they receive from NMAG:

- The General Service Department, Risk Management Division uses the following rates in legal services agreements:
 - Attorneys – Standard Litigation/Assist/Consult Assignments:
 - 0 to 1.99 years of experience: \$150.00 per hour,
 - 2 to 4.99 years of experience: \$175.00 per hour,
 - 5 to 9.99 years of experience: \$200.00 per hour, and
 - 10+ years of experience: \$225.00 per hour.
 - Paralegals – Standard Litigation/Assist/Consult Assignments:
 - Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State

- Bar Association or Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants: \$80.00 per hour
- Law Clerks – Standard Litigation/Assist/Consult Assignments:
 - Law Clerks who are in an ABA-accredited law school: \$60.00 per hour
 - Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico: \$80.00 per hour
 - As an example of potential increased costs, in FY24, the State Board of Finance (BOF) reviewed approximately 50 capital projects for funding with severance tax bonds. Historically, the BOF has reviewed more than 1,000 capital projects each fiscal year. This occurred when capital projects were primarily funded with bond proceeds. NMAG provided a review of around 15 percent of those projects.
 - While the Attorney General does not currently charge the BOF fees, should it elect to do so, it is assumed it would charge the BOF at the Standard Litigation/Assist/Consult Assignments rate of \$200 per hour for an attorney or attorneys with five to 9.99 years of experience.
 - This would have resulted in additional legal expenses of up to \$208 thousand for FY24.
 - State agencies may need to adjust their budgets to accommodate the new rates for legal services, which could impact their overall financial planning and resource allocation

SIGNIFICANT ISSUES

Currently NMAG does not charge state agencies legal fees for their legal services but could do so. There are various state agencies that have legal council in-house to provide legal services wherever they are needed. While not every state agency seeks legal services from NMAG, there are some state agencies or divisions that do not have in-house legal counsel or cannot fill their legal council positions because of the difficulty recruiting and retaining legal professionals in the state.

DFA provides the following:

- Application of Fees
 - SB385 amends Section 8-5-2.1 NMSA 1978 to allow the Attorney General’s Office to charge state agencies legal fees based on the General Services Department’s Risk Management Division’s legal contract rates.
 - As mentioned above, the Attorney General’s Office has not requested approval from the Department of Finance and Administration for the legal services fee schedule. The Department of Finance and Administration is unaware of the Attorney General’s Office charging state agencies for legal services.
 - Additionally, neither SB385 nor any other relevant statute defines the scope of “noncriminal cases requested by the agencies.” A reasonable interpretation of SB385 would be to authorize the Attorney General’s Office to charge state agencies for civil legal services provided to boards, commissions, districts, and committees of government as required by statute.
 - Many statutes require state entities to request legal services from

the Attorney General’s Office. It is unclear whether such requests are based on statutory requirements such as “the provision of legal services in noncriminal cases requested by the agencies.”

- Under § 8-5-2, NMSA 1978, the Attorney General has the unilateral authority to prosecute and defend any civil action in which the state, or any state officer, or head of state department, board, or commission, or employee in their official capacity may be a party or interested in.
 - It is unclear whether SB385 would authorize the Attorney General’s Office to charge state agencies for civil legal services rendered in accordance with its authority under § 8-5-2

The Administrative Office of the Courts (AOC) provides the following:

- 1) Currently, the Risk Management Division (RMD) does not obtain reimbursement from state agencies for representing them at the outside counsel rates paid by RMD. The proposal for compensation to the attorney general would raise a disparity in how the two entities are funded and raise the question of why charging entities for services is appropriate for the attorney general and not for RMD.
- 2) Instead of being limited by the schedule published by GSD, NMAG will charge agencies the rate charged by private counsel when contracted by RMD. The rate needs to be clarified in order to discuss the impact of the proposed change to the existing statute.
- 3) Outside counsel contracting with RMD have to pay taxes on income from RMD, overhead (rent, etc.), CLE and Bar dues for attorneys, and otherwise compensate in their rates for expenses with which the attorney general is not burdened. Therefore, the RMD rates assessed to agencies may be higher than can be justified by actual costs to the attorney general.

ADMINISTRATIVE IMPLICATIONS

State agencies who could be using legal services from NMAG may need to adjust budgeted funding to be able to pay for legal services if NMAG decides to start charging legal fees. Agencies may also request legal positions or request funding to expand contract funding if the cost to use legal services from NMAG becomes too high for the sustainability of the agency’s budget.

OTHER SUBSTANTIVE ISSUES

DFA provides the following:

- Publication of Applicable Rates:
 - Currently, the General Services Department Risk Management Division does not set legal services rates based on rule-making authority or publish applicable rates.
 - Without rules governing the process for setting legal services rates and/or publication of applicable rates, state entities will struggle to budget anticipated legal costs.