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## FISCAL IMPACT REPORT

SPONSOR	<u>Hochman-Vigil</u>	LAST UPDATED	<u>2/28/2025</u>
		ORIGINAL DATE	<u>1/29/2025</u>
SHORT TITLE	<u>Railway Safety Act</u>	BILL NUMBER	<u>House Bill 146</u>
		ANALYST	<u>Hanika-Ortiz</u>

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines from NMDOT		Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	Other State Funds

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
NMDOT		Indeterminate, moderate at first	Indeterminate but minimal		Recurring	Other State Funds
AHO		\$174.0	\$174.0	\$348.0	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 Administrative Hearings Office (AHO)

Department of Transportation (NMDOT)

### Agency Analysis was Solicited but Not Received From

Workforce Solutions Department (WSD)

## SUMMARY

### Synopsis of House Bill 146

House Bill 146 (HB146) enacts the Railway Safety Act (Act) to mandate the use of wayside detector systems to monitor passing trains for mechanical issues and safety hazards. Additionally, the bill requires the reporting of safety violations and prohibits retaliatory action against a railway worker for reporting. Further, the bill provides for administrative penalties.

By January 12, 2027, and annually thereafter, a railroad must submit a report that discloses the location of each detector and details of any defect messages along with inspection reports.

The bill includes definitions, for “railroad corporation” which is incorporated under Chapter 63 NMSA 1978 or a corporation incorporated under the laws of any other state that owns or operates a railroad or train in New Mexico; “dragging equipment detector” to refer to a device that alerts a train operator of an object dragging from a passing train; “hot bearings detector” to refer to a device that alerts an operator to any overheating of a passing train’s bearings, axles, or wheels; and “wayside detector system” to refer to a system that determines whether a passing train has a defect and includes both a dragging equipment detector and a hot bearings detector.

The effective date of this bill is January 1, 2026.

## **FISCAL IMPLICATIONS**

The New Mexico Department of Transportation (NMDOT), after receiving a report alleging a safety violation, may investigate with due notice and assess fines up to \$25 thousand, to presumably deposit in the general fund although the bill is silent in that regard, NMDOT noted. NMDOT may also apply to district court for an injunction to restrain a railroad corporation from; committing a future safety violation, prohibiting entry by NMDOT to investigate an alleged violation, or refusing to comply with any rules that NMDOT promulgates to enforce the act.

The Administrative Hearings Office (AHO) states given the sophistication of the railroad industry, federal regulations, and fine amounts, there could be a substantial amount of appeals involving lengthy hearings. AHO reports it is at or near its hearing capacity limit with existing staff and resources. Given the potential increase in caseload, AHO believes another hearing officer is necessary to adjudicate these cases timely. The table above reflects that cost which will likely require additional budget. The agency’s current appropriation in House Bill 2 and its operating fund balance does not suggest there is sufficient funding for more complex hearings.

## **SIGNIFICANT ISSUES**

The bill requires a railroad to install a wayside detector system with a hot bearings detector and dragging equipment detector every 10 miles. If a train receives a defect message, the railroad operator must stop, inspect, and remedy the defect. If the defect cannot be immediately remedied and the train is safe to move, the operator may proceed at a low speed, especially if carrying hazardous materials. The bill requires the operator to set aside any defective car before resuming only after the defect is remedied. The bill will require operators to submit inspection reports.

NMDOT would create a protocol to allow the crew to anonymously report safety violations. The bill prohibits any retaliatory action against the crew for reporting a violation; testifying as part of an investigation; or for refusing to participate in any activity that constitutes a safety violation.

A railroad corporation aggrieved by an adverse decision may appeal to the AHO. A railroad that continues to be aggrieved even after the AHO’s decision may appeal to district court.

## **PERFORMANCE IMPLICATIONS**

NMDOT suggests that state authorization for the department to investigate, assess fines, and investigate alleged retaliation against crews, may create implications for cooperative endeavors

with railroad corporations. NMDOT explains it coordinates with railroads on highway projects that impact railroads, hazard elimination projects at roadways where railroad tracks intersect, and joint use agreements with multiple railroads that operate their trains on NMDOT-owned tracks.

The Federal Railroad Administration (FRA) under the federal Department of Transportation enforces railway safety, including establishing criteria for track maintenance, inspections, and speed limits. The Occupational Safety and Health Administration establishes safety standards for workers. The FRA conducts regular safety audits and inspections. Railroads must submit accident reports and comply with investigations. FRA may impose penalties for noncompliance.

## **ADMINISTRATIVE IMPLICATIONS**

NMDOT will propose procedures for reporting and investigating an alleged retaliation through rulemaking which also includes implementing an administrative penalty and hearing provision. If the department issues an administrative penalty, it may be challenged at a hearing before AHO. AHO would work with NMDOT on procedures for referring cases and appeals. Further, the Administrative Hearings Office Act may need an amendment to permit these hearing types.

NMDOT reports the bill requires significant efforts related to assessing fines following investigations, investigating whether a railroad corporation has retaliated against crew members that report a safety violation or testify during an investigation, applying to district court for an injunction to require a railroad to either do or stop doing a specific action, and defending administrative penalties in an appeals process, which may require additional staff and resources.

AHO believes the bill's hearing provisions may lack specificity as to the applicability of rules of evidence, rules of procedure, timeline for conduct of the hearing, decision deadline, or the nature of decision. The Administrative Hearings Office Act currently only contains general hearing provisions related to tax hearings, motor vehicle code hearings, and Healthcare Authority hearings. Therefore, its statutory authority to hear appeals of fines might need to be revised.

## **TECHNICAL ISSUES**

Federal preemption of railroad safety under 49 USC 20106 may conflict with HB146. If a preemption challenge results, NMDOT suggests a determination will need to be made in court.

NMDOT advises on provisions that may be out-of-keeping with current practice:

- 1) A railroad corporation that operates a train on track not owned or maintained by a railroad corporation will be required to install and maintain hotbox and dragging equipment detectors on that track. Thus, BNSF will be responsible for installing and maintaining those systems on track owned by NMDOT and maintained by RMRTD. There will also be no requirement for hotbox and dragging equipment detectors on any line solely used by Amtrak or New Mexico Rail Runner, even if owned and maintained by a railroad corporation.
- 2) HB146 does not define what constitutes a defect message from a wayside detector system. The requirement for one every 10 miles could disproportionately burden Class III railroads in New Mexico. These railroads do not operate with centralized train control or positive train control systems and will need additional communications infrastructure.
- 3) The requirement to stop a train after a defect is reported without obstructing a roadway

runs counter to immediately stop a train to minimize in-train forces. A train continuing to proceed after notification of a defect, until it reaches a location to stop without obstructing a roadway, risks a catastrophic failure before that train can stop.

The bill also allows NMDOT to promulgate rules to implement the hearing provisions. However, AHO asks to write those regulations since AHO is tasked with conducting those hearing.

The bill could add clarification as to what account revenue from fines will be deposited.

## **OTHER SUBSTANTIVE ISSUES**

Overall, there appears to be no nationwide mandate to require wayside detectors, presumably for some of the performance implications that have been concerning for NMDOT. The adoption of such systems appears to remain largely at the discretion of railroads and state legislatures.

AHO/sgs/hg/sgs/rl/SL2/hg/sgs