

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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 Prepared:** January 18, 2024

**Bill No:** \_\_\_\_\_

**Sponsor:** Rep. Cates, Lopez, Parajon,  
Sen. Pope

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short Title:** Prohibit Library Book  
Banning

**Person Writing Analysis:** \_\_\_\_\_  
**Phone:** 505-537-7676  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

House Bill (“HB”) 123 would prohibit banning of library materials in public libraries. The bill ties state funding to a public library’s adherence to the American Library Association's Library Bill of Rights, which includes a requirement to not censor materials due to partisan or doctrinal disapproval or the author's race, nationality, gender identity, sexual orientation, or political or religious views or adopt similar rules promulgated by the state librarian.

HB 123 defines the terms “ban,” “challenge,” and “public library” in the context of library materials and ensures that individual challenges to library materials are still permissible under established library policies. The Bill would also prohibit political subdivisions from reducing library funding based on compliance with HB 123.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB 123 may lead to higher administrative expenses for updating policies and training staff, possible legal costs due to policy disputes, and budget modifications for consistent funding. The financial impact may vary with each library’s size and current policies but may be minimized by the bill's flexibility in allowing libraries to adhere to the Library Bill of Rights or the state librarian’s equivalent rules.

**SIGNIFICANT ISSUES**

HB 123 follows similar legislation passed in Illinois and other states outlawing book banning. The bill introduces a condition where state funding for public libraries is contingent upon their adherence to the American Library Association “Library Bill of Rights” reaffirmed on January 23, 1996. [Online]. Available: <http://www.ala.org/advocacy/intfreedom/librarybill>. The bill could raise legal questions about the appropriateness and fairness of using state funding to enforce specific library policies; however, as previously noted, the bill gives libraries a choice between adhering to the Library Bill of Rights or adopting similar rules promulgated by the state librarian. Additionally, the bill does not restrict an individual's right to challenge library materials in

accordance with established library materials challenge procedures.

HB 123 may face challenges due to varied interpretation and application. For example, the bill's use of terms like "partisan or doctrinal disapproval" lacks precise clarity, potentially leading to enforcement difficulties and legal disputes. This ambiguity, particularly in how these terms apply in different scenarios, might result in legal contention, especially if libraries or individuals perceive the bill's language as overly broad or vague.

The Supreme Court case *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), addressed the removal of books from school libraries, focusing on First Amendment rights. The Court's plurality opinion suggested that school boards may not remove books from libraries simply due to disapproval of the ideas within them. This case is relevant to HB 123, which aims to prevent ideological censorship in New Mexico's public libraries, paralleling the "Pico" case's emphasis on protecting access to a diversity of ideas and intellectual freedom.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

HB 123 administrative implications may include revising policies and providing additional staff training.

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

None.

#### **TECHNICAL ISSUES**

None.

#### **OTHER SUBSTANTIVE ISSUES**

None.

#### **ALTERNATIVES**

N/A

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

Status quo.

#### **AMENDMENTS**

N/A