

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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** _____
Correction _____ **Substitute** _____

Date January 19, 2024

Bill No: _____

Sponsor: Elizabeth "Liz" Thomson and
Charlotte Little and Andrea
Romero and Yanira Gurrola
Short Title: Post-Secondary Affirmative
Consent Policies

Agency Name and Code Number: New Mexico State University/954
Person Writing: Clayton Abbey
Phone: 505-239-8821 **Email:** nmsufir@nmsu.edu

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$380	\$380	\$380	\$1,040	Recurring	I&G

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB151 mandates policy and procedure changes surrounding affirmative consent and sexual misconduct prevention at post-secondary educational institutions receiving state funds.

Policies and procedures for the prevention of harassment, sexual assault, stalking, dating and domestic violence are to include:

- An affirmative consent standard;
- A preponderance of the evidence standard (>50% confidence needed for a finding) in determining the outcome of an investigation;
- Confidentiality and privacy, protections for witnesses and complainants, and mandatory trauma-informed training program for relevant employees and contractors;
and
- Requirements for specific elements in initial responses to complaints.

Additional requirements of HB151 include:

- **Internal and external partnerships to provide supportive services to the parties at no cost;**
and
- **Creation of comprehensive and mandatory prevention and outreach programs for students.**

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.

HB151 would require training staff on trauma informed investigations. This would include all police officers, Office of Institutional Equity ("OIE") investigators, administrators identified by the Dean of Students ("DOS"), and anyone else involved in investigations or adjudication, which would likely include

the employees who volunteer as Title IX advisors with OIE. This training would cost approximately \$25,000, and to account for employee turnover would need to occur annually. This bill would require hiring at a minimum:

- A part time Title IX Advocate (approximately \$40,000);
- Two part-time providers in counseling to provide additional services to complainants and respondents separately without a conflict of interest occurring (approximately \$50,000 each);
- An outreach coordinator in OIE to provide the required education (approximately \$60,000); and
- A project coordinator/compliance officer in OIE to maintain policies and oversee compliance (approximately \$80,000).

This bill would also have an impact on operating budgets, due to additional services and the need for greater funding for outreach materials, activities, and training through OIE, DOS, and other campus partners (approximately \$75,000).

SIGNIFICANT ISSUES

NMSU's internal procedures are already in compliance with many of the provisions of HB151, although the university's Administrative Rules and Procedures ("ARP") framework would need to be formally updated. ARP 3.25, the relevant policy, is slated to be updated when OCR releases the promised new Title IX regulations later this year. Some ways in which NMSU is already in accord with HB151 include:

1. NMSU uses an affirmative consent standard when evaluating allegations of sexual misconduct and trains students on this standard;
2. As outlined in ARP 3.25, NMSU Uses a preponderance of the evidence standard for investigations;
3. NMSU's procedures endeavor to protect the privacy and confidentiality of parties and witnesses as outlined by federal regulations and state and federal law;
4. OIE uses a trauma-informed investigative methodology, and trains its investigators in trauma-informed practices through training offered by industry organizations;
5. NMSU provides links for community resources in initial outreach to complaints;
6. NMSU provides supportive services to complainants and respondents, including mental health support and Title IX advisors; and
7. NMSU provides training for athletes, Ras, and other student organizations, in a process of improvement and revision that is still ongoing.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

HB151 would necessitate hiring additional staff and formalizing broad, annual training on trauma-informed investigations (see above).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

1. On page two line one, page five line eight, and page seven line one, the term “dating violence” is used, likely to keep the bill’s wording in line with the Violence Against Women Act (“VAWA”), a federal law. The state of New Mexico does not have a separate statute for dating violence, which is included under the statute and definition for domestic violence. We recommend that, as this is a state law, either the phrase “dating violence” is removed, or that the law inserts into the definitions section that “dating and domestic violence” is in accordance with VAWA and not New Mexico criminal statutes.
2. On page three section D, the assurance for confidentiality and privacy should be clearly aligned with the current Title IX regulations and Clery reporting. For example, witness identities are known by both parties in a complaint, with witnesses speaking at hearings, and types and numbers of reports are disclosed when a Clery crime is alleged in the Clery Report. Nonetheless, NMSU protects identities to the maximum extent allowed by the law. We recommend additional clarification here.
3. Finally, while NMSU provides all available support services to both complainants and respondents, some community partners only provide services to complainants (e.g., rape crisis centers). We recommend clarification be added to Section 1(F)(1), so that it is clear that both complainants and respondents are to be offered the same supports by the university but that some services may not be appropriate to all parties, especially some community partners with very specialized services. An addition of “when possible” to the provision requiring services to be offered to both parties by external partners would add substantial clarity to this section.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS