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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Thomson/Little/Romero, A/Gurrola/Chasey	<b>LAST UPDATED</b>	
		<b>ORIGINAL DATE</b>	1/26/24
<b>SHORT TITLE</b>	Post-Secondary Affirmative Consent Policies	<b>BILL NUMBER</b>	House Bill 151
		<b>ANALYST</b>	Jorgensen

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Higher Education Institutions	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From

- Attorney General’s Office (NMAG)
- Higher Education Department (HED)
- New Mexico Association of Independent Community Colleges (NMICC)
- New Mexico Institute of Mining and Technology (NM Tech)
- New Mexico State University (NMSU)
- University of New Mexico (UNM)

## SUMMARY

### Synopsis of House Bill 151

House Bill 151 (HB151) requires post-secondary institutions that receive state funds to adopt trauma-informed policies and responses for the investigation of allegations of sexual assault, domestic and dating violence, stalking, and harassment involving a student, faculty member, employee, contractor, or regent.

The bill stipulates policies and procedures shall reference affirmative consent as the standard to determine whether consent to sexual activity was given by all parties and states that existence of a dating relationship or past sexual relations shall never, by itself, be assumed to be an indicator of consent. The bill further states that complainants and witnesses will not be subject to disciplinary sanctions for violations of student conduct policies unless the violation could have put the health or safety of any other party at risk or involves plagiarism, cheating, or academic dishonesty. HB151 requires the policy to use a preponderance of the evidence as the standard to determine whether the elements of the complaint have been demonstrated.

HB151 requires affected post-secondary institutions to enter into an agreement with existing on-campus or community-based organizations to make services including counseling, health care, mental health care, complainant advocacy, and legal assistance available to both complainants and responding parties at no cost. Additionally, HB151 requires post-secondary educational institutions to implement comprehensive prevention and outreach programs that include programming for students, staff, and faculty regarding awareness of sexual assault, domestic and dating violence, stalking and harassment. Programming must also include primary prevention, bystander intervention and empowerment and risk reduction.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## FISCAL IMPLICATIONS

Estimating the potential cost of HB151 is difficult as much of the cost is determined by the policies and procedures already in place at the individual higher education institutions and the existing resources available to provide services. Because many institutions will be able to absorb the costs of the bill, the estimated impact is listed as indeterminate but minimal. However, the impact could vary by institution and may impose steeper burdens on some.

A number of responding institutions note that their current policies fulfill many of the requirements of HB151 but note that HB151 may lead to additional costs, particularly for training. UNM reports that “Post-secondary educational institutions that receive federal financial aid or funding are already required to provide trauma informed policies and response and primary prevention pursuant to the Violence Against Women Act (VAWA) amendments to the Jeanne Clery Act (Clery Act) (20 U.S.C § 1092 and regulations at 34 CFR 668.46). However, providing trauma-informed training to those that investigate and adjudicate allegations of sexual assault, domestic and dating violence, stalking and harassment [...] can be costly, particularly for in-person training opportunities.” NMSU noted similar cost concerns and reports that additional staff would need to be hired as well.

San Juan College noted the impact would be minimal as the college already complies with the stipulations of HB151. The institution will need to realign their student handbook and employee handbook with the definitions provided in HB151.

The bill requires institutions to “make services available to parties, including counseling, health care, mental health care, complainant advocacy, legal assistance and resources for the responding party and the complainant *at no cost*.” New Mexico Tech notes: “In order to provide these services at no cost to the responding party and the complainant, the institution will need to pay or subsidize the cost of these services.” New Mexico Tech states that “This bill will have a significant fiscal impact on the institution if it is not fully funded by the state.”

## SIGNIFICANT ISSUES

HED reports that “Each institution would need to do analysis to ensure that existing institutional policies for Title IX of the Education Amendments of 1972, the Violence Against Women Act (VAWA) of 2021, and The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics (Clery) Act of 1990 are consistent with the policies called for in HB151, including the use of affirmative consent as a standard of practice.”

UNM notes:

The requirements of this bill reflect the current “Gold Standard” or benchmark that UNM has already adopted. Moreover, UNM created the SMART (Sexual Misconduct & Assault Response Team) about a decade ago, which includes both on-campus and community-based organizations.

A more detailed description of a comprehensive, trauma-informed response training program is needed and the frequency of this training or advanced training in this area should be included. Better description of institutions providing continued active training on affirmative consent policies. It should also be noted that approximately 800 public institutions have adopted the affirmed consent standard since 2014.

## TECHNICAL ISSUES

The definition of student is “a person who is enrolled in a **credit-bearing** program [...]” NMICC suggests the definition should include students or trainees in non-credit programs as well.

## OTHER SUBSTANTIVE ISSUES

NMAG states:

Section 32A-4-3 NMSA 1978 imposes a mandatory child abuse or neglect reporting requirement applicable when a person knows (or has a reasonable suspicion that) that a child (i.e. person under 18) has been abused or neglected. It is possible that some students attending a post-secondary institution could be under 18, if they graduated high school early or are attending college under an advanced placement program. Because of this potential, the bill should clarify that school policies must provide for the privacy and confidentiality of post-secondary students subject to mandatory reporting requirements established by state law.

CJ/ss/ne/ss