

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Bill Number:** HB 151 – HJC Sub *Check all that apply:*  
 Original  Correction   
 Amendment  Substitute

**Sponsor:** Marianna Anaya **Agency Name and Code Number:** New Mexico Public Schools Insurance Authority-34200  
**Person Writing Analysis:** Martin R. Esquivel, NMPSA GC  
**Short Title:** CHILDHOOL SEXUAL ABUSE TIME LIMITATIONS **Phone:** 505-469-5541 **Email:** Dominique.williams@psia.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis ( ) indicate revenue decreases)

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

	<b>FY26</b>	<b>FY27</b>	<b>FY28</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**

**BILL SUMMARY**

Synopsis:

HB 151 proposed to amend NMSA 37-1-30 by vastly extending how long childhood sexual abuse claims may be filed against public schools and charter schools going forward and by reopening claims that were already time-barred under prior law. These changes have significant fiscal and legal consequences for NMPSIA and public schools.

**First fundamental change — retroactive revival of barred claims**

The bill creates a three-year window, from July 1, 2026, through June 30, 2029, during which claims that were previously extinguished by prior statutes of limitation are revived and may be filed notwithstanding that they were legally time-barred before the Act’s effective date.

**Second fundamental change — prospective expansion of time to sue:**

The bill allows a survivor to bring a civil action until age 58, or within three years of first disclosure to a licensed medical or mental health provider, whichever is later, and makes this rule the exclusive time and procedural limitation for these claims, displacing other statutes of limitation, such as the New Mexico Tort Claims Act, for public entities. ***This will affect ability to secure reinsurance and excess insurance, and/or likely increase public school general liability premiums.***

***On February 9, 2026, the House Judiciary Committee accepted and passed a Committee Substitute for HB 151 (the “Bill”) with certain changes addressing the administrative and appellate process, which conflict with provision of the New Mexico Tort Claims Act and raise other legal and financial issues.***

**FISCAL IMPLICATIONS**

The Committee Substitute for HB 151 pairs an unprecedented extension of the statute of limitations for childhood sexual abuse claims with the creation of a Survivors’ Justice and Compensation Fund and an adjudicatory commission. In doing so, it does not resolve but instead amplifies core legal conflicts, particularly those involving the New Mexico Tort Claims Act (NMTCA), due-process rights, and insurance exposure. Although the bill is framed as offering a “non-litigation” alternative, its structure creates a hybrid system that functions like tort adjudication without honoring the statutory and constitutional protections that apply to tort claims for public bodies and public employees. Under NMSA 1978, § 41-4-4, public entities

retain a mandatory duty to defend and indemnify employees for acts alleged to have occurred within the scope of duty—even decades after employment ends. This turns every “individual” lawsuit into a shadow lawsuit against the school district, forcing defense costs and potential judgments back onto public insurance pools regardless of the existence of the fund.

### **A. Legal and Fiscal Issues Created by the Adversarial Fund Claims**

The Bill presently refers to liability “...by an act of public employee or by the negligence of a public body” to be proven by a “preponderance of the evidence.” This is problematic for several reasons.

First, the bill directly conflicts with the NMTCA by expanding liability exposure while expressly declaring that Section 37-1-30 is the “only statutory time or procedural limitation” for childhood sexual abuse claims—even when the claims involve public bodies or employees. This language effectively attempts to override notice requirements, repose principles, and immunity limitations embedded in the Tort Claims Act without amending that statute. This creates a statutory collision: one law tightly controls when and how public entities may be sued, while HB 151 simultaneously removes those controls for a single class of claims. Courts are left to reconcile irreconcilable statutes, inviting constitutional challenges based on the separation of powers.

Second, the bill’s compensation fund and process are not truly non-adversarial, despite being labeled as such. The commission is granted subpoena power, authority to compel testimony, and the obligation to make written findings of fact regarding abuse, negligence, and damages—classic hallmarks of adjudication. Yet the process allows only a one-sided presentation, with no public employee or public body as a party, no defense rights, and no meaningful opportunity to contest allegations that may later be used for reputational or political purposes. This directly conflicts with the concern that adjudicating liability without adverse parties triggers due-process, reputational-liberty, and Fifth Amendment concerns, especially where the bill authorizes criminal referrals to district attorneys based on commission proceedings.

Third, HB 151 creates a structural loophole that undermines its stated goal of protecting public entities from litigation exposure. While the bill revives time-barred claims only against individuals and requires claimants to waive claims against public bodies if they accept compensation, it explicitly preserves lawsuits against individual public employees. Under NMSA 1978, § 41-4-4, public entities retain a mandatory duty to defend and indemnify employees for acts alleged to have occurred within the scope of duty—even decades after employment ends. This turns every “individual” lawsuit into a shadow lawsuit against the school district, forcing defense costs and potential judgments back to the school district and NMPSIA pool regardless of the existence of the fund.

Fourth, by combining an expanded statute of limitations with the creation of an adversarial victims’ compensation commission, the legislation attempts to graft an administrative-style appeal onto what is, in substance, a quasi-judicial tort determination. The bill provides for review in state district court under Section 39-3-1.1, yet it is unclear who the parties are, what standard of review applies, and what record the district court is reviewing. This ambiguity is not technical—it goes to the heart of due process and judicial authority. On appeal, the commission effectively becomes the appellee, defending its own findings in district court, despite the fact that it never litigated the underlying liability, never presented a defense, and

never represented the interests of the public entities or employees whose conduct is being evaluated.

Finally, these legal contradictions directly translate into insurance and fiscal instability. Because HB 151 preserves individual lawsuits while expanding exposure windows to age 58, insurers and reinsurers must price coverage based on the worst-case litigation scenario—not the existence of a capped fund. Insurance markets will treat the fund as illusory protection, leading to higher premiums, higher retentions, or withdrawal of coverage altogether. This defeats the bill’s stated fiscal purpose and confirms the central warning: HB 151 offers a front-door shield while leaving the back door wide open, creating long-term financial risk for school districts and taxpayers rather than resolving it.

## **B. Fiscal Implication of Extending the Statute of Limitations to 58**

As of February 2026, New Mexico's HB 151 proposed expansion of the statute of limitations to 58 is the most aggressive age-based cap in the United States, exceedingly even the most progressive states. By way of illustration, *a 10-year-old student today could bring a civil claim as late as 2074, creating a liability window approaching half a century from the date of the alleged conduct.* Global reinsurers—the entities that provide the excess and catastrophe protection necessary for public risk pools to function—generally refuse to underwrite liability tails longer than approximately 20–25 years, because such horizons are actuarially unpriceable and require capital to be locked up for decades. Against that backdrop, extending the SOL to age 58 would place New Mexico far outside accepted insurance norms and signal a level of long-tail risk that the reinsurance market is structurally unwilling to absorb.

Extending the civil statute of limitations for childhood sexual abuse claims prospectively to age 58 would materially and permanently alter the risk profile of the New Mexico Public School Insurance Authority (NMPSIA) and other public risk pools, even without a look-back window. From a legislative perspective, this proposal converts what is currently a finite, actuarially manageable exposure into an ultra-long-tail liability that remains open for four to five decades. Reinsurers and excess insurers rely on predictable claim reporting patterns and the ability to close policy years; a 40-plus-year tail undermines those assumptions and signals regulatory instability. The foreseeable market response is not simply higher premiums but also reduced reinsurance capacity, higher attachment points, narrower coverage, and potential withdrawal from the public-entity market, leaving school districts and other members to absorb greater risk directly through higher contributions or self-insurance.

Based on current insurance market conditions where sexual abuse and molestation claims represent one of the most volatile and rapidly expanding areas of liability nationwide, New Mexico Public School Insurance Authority (NMPSIA) projects that extending the statute of limitations would drive member premium increases in the range of 30–40 percent. This projection reflects not speculation, but active market signals: reinsurers and excess carriers are already constraining capacity, increasing attachment points, imposing sublimit or exclusions, and demanding materially higher pricing for abuse-related exposure. Even without a revival window, a longer SOL dramatically expands the exposure horizon, forcing insurers to price for decades of uncertainty, compounded by social inflation and claim aggregation risk. As reinsurance costs rise or capacity declines, those costs flow directly to NMPSIA members in the form of higher contributions through premiums.

From an actuarial perspective, a projected 30–40 percent premium increase is consistent with the mechanics of long-tail liability expansion in a stressed market. NMPSIA cannot retroactively adjust premiums for prior years and must fund increased exposure prospectively across current members. When reinsurers require higher capital charges for ultra-long-tail risk—or decline participation altogether—the pool must either retain more risk or purchase more expensive excess coverage. Both outcomes translate into substantial, immediate premium increases for school districts. Legislatively, this means the cost of an expanded SOL is not theoretical or deferred; it is borne now by public schools and taxpayers, reducing funds available for classrooms and educational services while weakening the long-term stability of the public risk pool system.

Using the following as a sample, increased annual premiums at a 30-40 percent increase for General Liability coverage would be as follows:

<b><u>Member</u></b>	<b><u>GL</u></b>	<b><u>GL +30%</u></b>	<b><u>GL +40%</u></b>
Las Cruces Public Schools	\$1,845,377	\$2,398,990	\$2,583,528
Rio Rancho Public Schools	\$1,637,656	\$2,128,953	\$2,292,718
Gallup-McKinley County Public Schools	\$903,609	\$1,174,692	\$1,265,053
Los Lunas Public Schools	\$855,716	\$1,112,431	\$1,198,002
Gadsden Independent Schools	\$798,166	\$1,037,616	\$1,117,432
Santa Fe Public Schools	\$779,508	\$1,013,360	\$1,091,311
Hobbs Municipal Schools	\$776,392	\$1,009,310	\$1,086,949
Farmington Municipal Schools	\$771,420	\$1,002,846	\$1,079,988
Clovis Municipal Schools	\$528,949	\$687,634	\$740,529
Española Public Schools	\$426,358	\$554,265	\$596,901
Moriarty Municipal Schools	\$176,772	\$229,804	\$247,481
Silver Consolidated Schools	\$170,693	\$221,901	\$238,970
Truth or Consequences Municipal Schools	\$94,594	\$122,972	\$132,432

School insurance premiums are paid directly from school district operating funds, the same funds used to cover teacher salaries, classroom instruction, student services, and day-to-day operations. As premiums increase, districts have no separate revenue source to absorb those costs, meaning higher insurance expenses necessarily divert limited operating dollars away from educational programs and personnel.

## **SIGNIFICANT ISSUES**

The New Mexico Tort Claims Act is not just a statute of limitations; it is a conditional waiver of sovereign immunity that defines *when* and *how* the government may be sued, including notice requirements and specific limitations. The argument is that HB 151’s language, making it the “sole time and procedural limitation” for these claims, cannot override the carefully constructed conditions of the Tort Claims Act without creating tension with the Act’s exclusivity and waiver framework. In short, the legislature cannot indirectly expand governmental liability beyond the terms under which immunity was waived. It is also possible that the New Mexico Civil Rights Act would need to be amended.

HB 151 exemplifies legislative log-rolling by forcing together two fundamentally different policy decisions that should be evaluated independently. Extending the statute of limitations for childhood sexual abuse claims to age 58 is a sweeping change to civil liability law with long-term consequences for courts, insurers, public entities, and constitutional protections. Creating a victims’ compensation fund, by contrast, is a separate policy choice about whether and how the state should provide remedial relief outside the tort system. By combining these measures, the bill pressures legislators to accept an unprecedented expansion of liability in order to obtain a compensation program, undermining transparent lawmaking and preventing informed consideration of either policy on its own merits. The fund then becomes a political justification for the SOL expansion, presented as a mitigating safeguard even though the two mechanisms operate independently and the fund cannot reliably offset decades of expanded litigation exposure.

This log-rolling also creates statutory and fiscal confusion, thereby weakening the defensibility of both policies. A compensation fund is typically justified as a non-adversarial alternative to litigation, while an expanded SOL expressly invites more litigation; enacted together, they send conflicting signals about legislative intent and invite judicial reinterpretation. The combination obscures unresolved conflicts with existing liability statutes, including sovereign immunity, notice requirements, damage caps, and defense and indemnification obligations, shifting the burden of reconciliation to courts and insurers. It also prevents honest fiscal analysis by pairing an immediate, capped appropriation with a long-tail, insurance-driven expansion of liability whose true costs will emerge over decades. Finally, bundling these distinct policies invites heightened judicial scrutiny, as each measure inherits the legal vulnerabilities of the other, rather than standing on a clear and defensible legislative foundation.

## **PERFORMANCE IMPLICATIONS**

Defending claims alleged to have occurred 30 to 50 years ago carries serious performance implications for public schools and risk pools, especially where no applicable historical insurance policies can be located and key parties, witnesses, and decision-makers are deceased or impossible to find. Records that would ordinarily form the backbone of a defense—personnel files, incident reports, prior policies, and physical exhibits—may no longer exist due to lawful retention and destruction practices, leaving institutions to litigate with little documentary footing. The combined effect is a costly, resource-intensive defense effort that diverts administrative attention and legal resources away from current educational priorities while forcing schools to defend historical events with diminished evidence and heightened litigation risk.

## **ADMINISTRATIVE IMPLICATIONS**

NMPSIA is not a commercial insurer; it operates as a public risk pool funded by annual contributions from school districts, charter schools, and other educational entities, as well as investment income and limited excess insurance and reinsurance. Member premiums are paid using school operating funds.

Extending the statute of limitations (SOL) to age 58 significantly alters the risk profile faced by the New Mexico Public School Insurance Authority (NMPSIA). This change transforms closed, actuarially finite risk into an unbounded, long-tail liability, putting government entities at risk for claims they have not reserved and cannot secure reinsurance coverage for. As a result, claims involving self-insured retention, specific dollar amounts that must be paid before an insurance policy's coverage begins, must be funded from current operating budgets. Meanwhile, reinsurance and excess insurance markets react with exclusions, prohibitive premium terms, or complete withdrawal. These developments lead to fiscal instability, weaken the risk pool, and shift costs across generations, all of which compromise a public entity's ability to pay claims and undermine the core principles of public insurance and self-insurance programs.

Administratively, the expansion of long-tail liability would require NMPSIA to reassess whether its current self-insured retention levels remain viable in light of increased exposure that may no longer be transferable to reinsurance or excess carriers. This reevaluation would likely coincide with significant premium increases necessary to fund higher retained risk and anticipated defense and claim costs, which in turn must be passed through to school districts and charter schools. The process of recalibrating retention levels, re-pricing coverage, and communicating these changes to members would place additional administrative burdens on the pool while forcing local educational agencies to absorb and plan for materially higher insurance costs within already constrained operating budgets.

## **ALTERNATIVES**

A constitutionally defensible and fiscally responsible approach is to separate compensation from adjudication and to cap, budget, and prospectively fund the exposure, rather than reopening decades-old tort liability against public employees and schools. The presently proposed administrative appeal is rife with problems and would likely confuse the state district courts on appeal.

A workable compensation fund is a legislatively created, non-adversarial program designed to provide limited, predictable financial compensation to individuals who allege past sexual abuse, while avoiding the reopening of decades-old tort liability against public institutions and employees and protecting public finances. This would also not involve an appeal into state courts.

The New Mexico Tort Claims Act governs when the State adjudicates fault and imposes liability on public entities or employees. A victim compensation fund serves a different purpose. If designed as non-adversarial, it provides prompt, humane compensation without determining negligence, fault, or wrongdoing, and without naming or accusing specific public actors. Because no liability is adjudicated, the Tort Claims Act is never triggered, and its carefully balanced immunity, defense, and indemnification provisions remain intact.