

LFC Requester:

Sunny Liu

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/23/26

Check all that apply:

Bill Number: SB49

Original X Correction
Amendment Substitute

Sponsor: Sen. Anthony L. Thornton

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

Short Title: SCHOOL-AGE APPROPRIATE FILTERING PROJECT

Person Writing Analysis: Lancee Whetman
Phone: 505-645-5980
Email: Fir.request@nmdoj.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)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

Synopsis:

SB49 creates a new section of the Public School Code that would create a three-year school age-appropriate filtering and evaluation pilot project in the public education department (“PED”).

Section 1 would establish the pilot program—the School-Age Appropriate Filtering and Evaluation Project (the “Project”)—which seeks to determine the suitability of school library materials based on a particular age of children and local norms and expectations. Subsection (A) defines the terms “age appropriateness,” “library materials,” “participant,” “project,” “school district,” “survey,” and “year.” Subsection (B) outlines the Project’s purpose, which is to demonstrate that a voluntary library-materials rating system “increase[s] parent engagement and preserve[s] trust between parents and public schools . . . while protecting intellectual freedom and academic integrity.” Subsection (C) would select twenty (20) participants geographically distributed across the state to implement the Project in one elementary, high, and potentially junior high school. Subsection (C) does not apply to charter or small rural school districts that have a combined school. Subsection (D) would require participants to implement a library-material rating system and, once the rating system is published, to survey and solicit feedback from parents. Subsection (E) would grant selected participants a first \$25,000 upon being selected and a second \$25,000 once a participant completes the survey requirement. Subsection (F) would task PED with, before August 1, 2026, developing guidance for rating systems, developing a survey that each participant should use, and beginning to accept applications from prospective participants. Subsection (F) also outlines a timeline for PED to select participants, provide a preliminary report to the legislative education study committee (the “committee”) regarding the Project, annually compile and analyze participant surveys, and submit a final report to the Governor and the committee. Subsection (F) additional requires PED to comply with Section 22-8-23.13, which is the statute creating the Public Education Reform Fund (“the Fund”).

Section 2 provides for an appropriation of \$3,210,000 from the Fund, which would be allocated to PED in fiscal years 2027 to 2029 for the Project and would limit expenditures for grants and administration in each fiscal year to one-third the total expenditure. Section 2 also reverts unused funds at the end of FY29 to the Fund.

FISCAL IMPLICATIONS

None for NMDOJ.

SIGNIFICANT ISSUES

There is some ambiguity in the bill as currently written that creates some confusion regarding the intention of the pilot project. Although the purpose is stated as demonstrating that a *rating* system will increase parental engagement and preserve trust while protecting intellectual freedom and academic integrity, the title indicates that, beyond rating, there may also be a filtering of certain materials. The First Amendment protects most speech, including works that may be or are deemed controversial, and courts have expressed concern about laws that create a “chilling effect.” The implied filtering may raise First Amendment concerns regarding access to materials in public libraries.

Similarly, the language in the bill about implementing an aged-based ratings system based on “local norms and expectations” may trigger concerns that the school library endorses or favors particular viewpoints, values, or beliefs, potentially restricting access based on subjective judgments about what is deemed appropriate for various audiences or otherwise violates the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853, 870-71 (1982) (holding school boards may not exercise, “in a narrowly partisan or political manner,” their discretion to determine the content of their school libraries); *Book People, Inc. v. Wong*, 692 F. Supp. 3d 660 (W.D. Tex. 2023), *aff’d in part, vacated in part, remanded*, 91 F.4th 318 (5th Cir. 2024) (finding Texas’ READER vendor-rating system—which aimed to keep “sexually explicit” material out of school libraries and required parental consent for any “sexually relevant” material by requiring third-party sellers to rate library materials before they can sell them to public schools—likely infringed upon vendors’ First Amendment rights and was not a rating system that was part of an essential government operation); *see also Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011) (determining a ban on the sale of violent videogames to minors was unconstitutional for violating the First Amendment, as children should not be shielded from ideas merely because the ideas are uncomfortable).

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 65, titled Management of Public School Libraries also creates a new section of the Public School Code. SB 65 seeks to establish policies regarding the management of public school libraries and the administration of library programs and services. Specifically, SB 65 Section 1(C) grants discretion to school districts to “remove a library resource from a public school library’s permanent collection.” A school district may only remove library resources—i.e., printed, digital or electronic book or other educational media—according to adopted, uniform processes and standards, among other enumerated reasons. SB 65, § 1(C)(1).

SB 45, titled Academic Library Management Policies, would establish substantially the same policies and procedures for public post-secondary educational institutions in New Mexico as SB 65, so it bears some attenuated relationship as well.

TECHNICAL ISSUES

The definition of “participation” is in relevant part “a school district or charter school.” The definition of “school district” is simply “includes charter schools.” It is unclear, when considering these definitions together, whether participants may only be charter schools or may also include other school districts. Generally, definitions that use the word “includes” but do not indicate whether the list that follows is exhaustive, are unclear and often lead to litigation. It seems from Section 1(C) that a participant may well include school districts beyond charter schools (in stating that “this requirement shall not apply to charter schools or small or rural school districts with a combined school”), but clarifying what the definition of “school district” is, beyond simply “includ[ing] charter schools” would provide helpful clarity.

OTHER SUBSTANTIVE ISSUES

Many school libraries take advantage of federal telecommunications discounts under the E-rate program. The E-rate program, established under the federal Children's Internet Protection Act (CIPA), 47 U.S.C.A. § 254, conditions receiving federal telecommunication funding on the installation of internet filtering software and implement internet safety policies designed to protect children from material that is “obscene” or “harmful to minors.” Because a Subsection A of SB49 defines “library materials” to include a “digital or electronic books or other media,” the scope of SB49 may overlap with the scope of CIPA. Special care will likely be required to harmonize the practices required under SB49 with the internet safety polices required under CIPA to avoid risking access to the E-rate program funding.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A