

LFC Requester:

Connor Jorgensen

**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 19, 2024

Bill No: HB 151

Sponsor: Reps. Thomson, Little,
Romero, Gurrola, Chasey

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

Short Title: Post-Secondary
Affirmative Consent
Policies

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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)

	FY24	FY25	FY26	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

House Bill (“HB”) 151 would require post-secondary educational institutions that receive state funds for student financial assistance to adopt trauma-informed policies and trauma-informed responses for the investigation of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, contractor or regent.

Section 1 of the bill provides that the required policies and procedures shall (i) reference an affirmative consent standard in the determination of whether consent was given by all parties prior to sexual activity, (ii) shall confirm that it is the responsibility of each party involved in such activity to ensure that the party has any such affirmative consent, (iii) shall confirm that the affirmative consent can not be given by a party that is asleep, unconscious, incapacitated or unable to communicate due to mental or physical condition, cannot be implied, assumed or inferred from silence or lack of protest or resistance, and can be revoked at any time; and (iv) shall confirm that the existence of a dating relationship between the parties, or the fact of past sexual relations between them, shall never, by itself, be assumed to be an indicator of consent.

Policies shall include provisions that protect the privacy of the parties involved, including confidentiality, and that parties who participate as a complainant or witness will not be subject to disciplinary sanctions for a violation of a student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including an action placing the health or safety of a party at risk or which involves plagiarism, cheating or academic dishonesty. Policies must also include provisions for appropriate training for any of the institution’s employees or contractors involved in investigating or adjudicating sexual assault, domestic violence, dating violence and harassment or stalking cases.

Procedures must include an initial response by the institution which is to include providing written notification to the complainant with regard to on-campus and community-based resources, services and law enforcement.

The subject educational institutions would be required to enter into agreements with on-campus and community-based organizations including rape crisis centers to make various services, including counseling, health care, legal assistance and related services to the responding party and the complainant at no cost.

The subject institutions would also be required to implement prevention and outreach programs

designed to raise awareness and reduce the risk of such incidents. Such awareness and outreach efforts must make students aware of the institution's applicable policy, of the various rights and responsibilities under the policy, and be part of every incoming student's orientation.

As defined in the bill, a "post-secondary educational institution" is any "public, private, nonprofit or for-profit educational institution chartered, incorporated or otherwise organized in this state that is legally authorized to award a vocational or technical certificate or a degree at an associate level or above with a physical presence in" New Mexico.

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.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

None to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

The bill refers to the requirement that policies address privacy and confidentiality.

NMSA 1978, Section 32A-4-3 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.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

N/A