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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/21

SPONSOR Thomson LAST UPDATED _____ HB 142

SHORT TITLE School Taskforce on Sexual Misconduct SB _____

ANALYST Becerra

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Impact					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)

No Response Received

Public Education Department (PED)

Albuquerque Public Schools (APS)

Regional Education Cooperatives (REC)

SUMMARY

Synopsis of Bill

House Bill 14 (HB142) creates a taskforce on sexual misconduct, requires public schools and all post-secondary educational institutions to adopt policies and procedures addressing affirmative consent and prevention of sexual assault, domestic violence, dating violence, harassment and stalking, and requires these institutions conduct a biennial sexual misconduct climate survey. It amends the public school code to include a requirement to set affirmative consent as the standard for sexual activity.

HB142 defines sexual misconduct to be an incident of sexual violence, dating violence, domestic violence, gender-based violence, race-based sexual violence, violence based on sexual orientation or gender identity or expression, sexual assault or harassment or stalking, as defined by each public or private post-secondary educational institution in its code of conduct.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB142 contains no appropriation.

The extensive provisions of the bill might potentially create a significant impact on necessary staff within higher education institutions, the Higher Education Department, the Public Education Department and public school districts that might result in a request for funding in subsequent years.

In their analysis of the bill, the Higher Education Department notes that they would have administrative costs and staffing implications.

SIGNIFICANT ISSUES

Taskforce on Sexual Misconduct. HB142 creates the temporary taskforce on sexual misconduct that, if enacted, will exist through fiscal year 2023.

Membership. The taskforce will be composed of nine members appointed by the governor:

- the chair of the taskforce will be the secretary of higher education or the secretary's designee from the Higher Education Department;
- A Title 9 coordinator from a public or private post-secondary educational institution;
- Three students from a multicultural-, diversity- or advocacy-related group or organization from a four-year public or private post-secondary educational institution;
- Two students from a multicultural-, diversity- or advocacy-related group or organization from a community college;
- A representative from a coalition of sexual assault programs in New Mexico; and,
- A researcher of statistics, data analytics or econometrics with experience in the development, design and analytics of climate surveys

Duties. The primary duty of the taskforce is to develop a sexual misconduct climate survey for distribution to public and private postsecondary educational institutions and provide the institutions with any related recommendations concerning the content, timing and application of the survey. When developing the survey, the taskforce should utilize best practices from peer-reviewed research and consult with experienced individuals in the field, review developed and implemented sexual misconduct surveys, and consult with any individual, professional or organization that may enhance the efficacy and content of the survey.

The task force is required to deliver its sexual misconduct climate survey and related recommendations to each public and private post-secondary educational institution by September 30, 2022. Thereafter, the task force will remain in effect until the end of fiscal year 2023 to provide support, as needed.

Sexual Misconduct Survey. Provisions of HB142 specify what information the sexual misconduct survey must gather, in relation to public and private post-secondary institutions. Provisions specify that the following must be collected:

- Number of reported and unreported incidents of sexual misconduct
- When and where incidents of sexual misconduct occurred
- Student awareness of institutional sexual misconduct policies and procedures
- Whether a student reported a sexual misconduct incident and where it was made
- Whether a student was informed of or referred to appropriate victim support services

- Whether a student was provided with the option of protection from retaliation, school-based accommodations and criminal justice remedies
- Contextual factors of the attack
- Demographic information
- Perceptions of campus safety
- Withdrawal, leave of absence or transfer following a complaint or allegation of sexual misconduct
- Other information

Institutional Policies and Procedures. HB142 requires that all post-secondary educational institutions that receive state funds for student financial assistance adopt detailed, trauma-informed policies and trauma-informed responses for the investigation of allegations of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, contractor or regent both on and off campus. These institutions must also enter into memoranda of understanding, agreement or collaborative partnership with existing on-campus and community-based organizations to refer students for assistance or make appropriate services available to students at no cost.

Public Education. HB142 amends the high school graduation requirement to ensure that age-appropriate prevention and awareness of sexual abuse and assault includes a standard of affirmative consent defined as an affirmative, conscious and voluntary agreement to engage in sexual activity. These changes are applicable to students entering the ninth grade in the 2021-2022 school year and subsequent school years.

Existing Policies. HB142 requires institutions to develop internal procedures regarding sexual misconduct in addition those already required of institutions as mandated by Title IX of the Education Amendments of 1972. The higher education department notes that careful analysis would need to be done at each higher education institution to ensure that existing institutional policies for Title IX compliance are consistent with the policies required by HB142 and if there are any discrepancies or gaps not currently in place.

PERFORMANCE IMPLICATIONS

HB142 does not outline specific performance measures, however, if enacted, the higher education department may develop specific reporting measures derived from the mandated survey of higher education institutions.

ADMINISTRATIVE IMPLICATIONS

The majority of the provisions require the administration of the higher education department. those who do not, require the collaboration of the higher education department with higher education institutions and the public education department.

MB/rl