F I S C A L   I M P A C T   R E P O R T

SPONSOR	Reps. Cates, Parajon and Figueroa/Sens. Pope and Sedillo Lopez	**LAST UPDATED**	
		ORIGINAL DATE	1/31/24
SHORT TITLE	Prohibit Library Book Banning	**BILL NUMBER**	House Bill 123
		ANALYST	Torres, J.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	Other state funds

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
New Mexico Attorney General (NMAG)
Department of Cultural Affairs (DCA)

SUMMARY

Synopsis of House Bill 123

House Bill 123 (HB123) prohibits the banning of public library materials. In order to receive state funding, libraries must comply with the American Library Association's (ALA) Library Bill of Rights (LBR). Library materials cannot be proscribed or removed for the reasons stated under Section 1(A)(1). In the alternative, libraries can adopt a written policy that prohibits book banning as set forth in Section 1(A)(2). Political subdivisions may not reduce public library funding due to this prohibition against book banning. Individuals may challenge library materials by following applicable procedures. Ban means the removal of library materials. Challenge means the attempt to remove said materials. Public library pertains to those required to submit an annual New Mexico public library survey.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

HB123's fiscal impact is difficult to determine but appears to be minimal.

NMAG states:

> HB123 may lead to higher administrative expenses for updating policies and training staff, possible legal costs due to policy disputes, and budget modifications for consistent funding. The financial impact may vary with each library's size and current policies but may be minimized by the bill's flexibility in allowing libraries to adhere to the Library Bill of Rights or the state librarian's equivalent rules.

SIGNIFICANT ISSUES

NMAG notes that HB123 follows similar legislation passed in Illinois and other states that prohibit book banning:

> The bill could raise legal questions about the appropriateness and fairness of using state funding to enforce specific library policies; however, the bill gives libraries a choice between adhering to the Library Bill of Rights or adopting similar rules promulgated by the state librarian.
>
> The bill does not restrict an individual's right to challenge library materials in accordance with established library materials challenge procedures.
>
> This bill may face challenges due to varying interpretation and application of terms such as "partisan or doctrinal disapproval." Its lack of precise clarity could lead to enforcement difficulties and legal disputes. The Supreme Court case *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), addressed the removal of books from school libraries, focusing on First Amendment rights. The Court's plurality opinion suggested that school boards may not remove books from libraries simply due to disapproval of the ideas within them. This case is relevant to HB123, which aims to prevent ideological censorship in New Mexico's public libraries, paralleling the *Pico* case's emphasis on protecting access to a diversity of ideas and intellectual freedom.

DCA expresses concern that the ALA's LBR may change and affect the future intent and application of this bill. Removing reference to the ALA LBR in favor of individual library policies provided for under Section 1(A)(2) may be preferable.

> Section 1(A)(2) may contain ambiguous language. Clarification should be considered to ensure legislative intent is captured correctly. The LBR is clear in its two-fold prohibition against the banning of books based on 1) partisan or doctrinal disapproval of the content of the library material; and 2) the author's race, nationality, gender identity, sexual orientation or political or religious views. As drafted, this same distinction is unclear in Section 1(A)(2). The bill's definition of "ban" could cause confusion as there are several legitimate reasons for a book to be removed from a library, including due to condition, age, and outdated content.

ADMINISTRATIVE IMPLICATIONS

DCA states:

> NM Administrative Code (NMAC) requires state-funded libraries to submit collection development policies every five years. Passage of this bill will require the state library to amend the NMAC related to such policies to include adoption of the American Library Association's Library Bill of Rights, or a policy prohibiting banning of library materials,

and a process for individuals to challenge library materials. Affected public libraries will be required to submit updated compliant policies within one year of the law taking effect.

ALTERNATIVES

DCA recommends the following:

Amend Page 1, lines 17 to 25 and page 2 lines 1 to 5 to read: 'A. A public library shall not be eligible to receive state funds unless the library adopts a written policy prohibiting the practice of banning books or other library materials within the library or library system on the basis of partisan or doctrinal disapproval of the material's content or the author's race, nationality, gender identity, sexual orientation or political or religious views pursuant to rules promulgated by the state librarian.'

Amend Page 2, lines 15 to 16 to read: ''ban' means the act of removing or prohibiting the addition of materials from a public library on the basis of partisan or doctrinal disapproval of the material's content or the author's race, nationality, gender identity, sexual orientation or political or religious views.'

JT/al/ne/ss