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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 3/3/2025 *Check all that apply:*  
**Bill Number:** HB73 Original  Correction   
 Amendment  Substitute

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**Agency Name and Code Number:** New Mexico Public Schools  
Insurance Authority 34200

**Short Title:** CHILDHOOD SEXUAL  
ABUSE STATUTE OF  
LIMITATIONS

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

This is a substitute bill from the House Judiciary Committee for House Bill 73 which eliminates the statute of limitations for legal actions seeking damages for childhood sexual abuse. *The New Mexico Public Schools Insurance Authority (“NMPSIA”) maintains that ambiguity regarding the undefined reference to “private individual” and confusing language in Section D creates significant financial impact of potentially hundreds of millions of dollars. Neither the House Consumer & Public Affairs Committee nor the House Judiciary Committee were able to address these concerns within a limited timeframe. NMPSIA, which provides limited insurance coverage to public and charter schools, will face financial consequences and difficulties obtaining excess insurance for public schools. In turn, those expenses will be realized in increased premiums out of public schools’ operating budgets.*

Previously, victims had to file a claim either before their 24th birthday or within three years of disclosing the abuse to a licensed medical or mental health provider. The new law allows victims to file a lawsuit **at any time** against “a private individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any commercial or nonpublic legal entity.” This is “retroactive and applies to all actions not currently pending based on childhood sexual abuse regardless of the date of the childhood sexual abuse and regardless of whether any statute of limitations on such actions expired prior to the effective date of this 2025 act.”

**NMPSIA believes clear, exclusionary language is necessary.**

**FISCAL IMPLICATIONS**

Over the last 14 years, from Fiscal Year 2012 (July 1, 2011 – June 30, 2012) through FY2025 (July 1, 2024—January 31, 2025), 176 sexual abuse and molestation claims (faculty on student, student on student, faculty on faculty) have been reported or investigated, resulting in a total cost in excess of \$100,000,000.00. FY 2022 through FY2025 are considered immature, and NMPSIA expects claims and costs to rise.

The average cost of a claim during this period is \$570,391.00. If all claims are omitted under \$50,000.00, the average claim costs increase to \$1,124,858 during this period. Not all claims reported or investigated result in a settlement or a trial.

The predictability of claims and their cost to NMPSIA is an estimate derived from historical

data. NMPSIA projects that this bill could cost the agency between \$258,729,358.00 and \$510,235,741.00 for claims that may be brought forward going back to 1986.

Unlimited claims against public schools dating back several years and even decades ago present serious financial consequences. Defending such claims would be extremely difficult, and, in many instances, impossible. The cost of defense of such claims is also unquantifiable, but it would be exponentially greater than the cost of defense of sex abuse claims based on incidents that occurred two or three years ago with the presently interpreted statute of limitations.

Notably, there will be a need to increase NMPSIA's self-insured retention. Securing reinsurance and excess insurance will become more difficult when prospective excess insurance companies are told that they will be financially responsible for claims without any reasonable time limit – possibly 30 or 40 years. Essentially, an insurance company offering an annual policy for schools will be told that it must be responsible for claims brought decades after the policy was offered. This increases the insurance company's financial exposure and could quite possibly lead them to a decision not to even offer a policy based on the risk.

Even if an insurance company did decide to offer such policies, the premiums paid by NMPSIA will increase significantly. NMPSIA believes school insurance premiums could increase anywhere from 20-40 percent for member schools. A school district such as the Rio Rancho Public Schools (RRPS) presently pays over \$1,700,000 for annual general liability premiums. A potential 40 percent increase would cost RRPS approximately \$680,000 out of its operating budget.

If the Legislature wants to compensate people who were sexually abused as children by public school employees, then it should consider establishing a victim's compensation fund and related administrative procedures and hiring people to administer it. This would be less costly – both in monetary costs and intangible costs to schools of the time required in defending lawsuits – than allowing civil suits for damages to be brought any number of years after the abuse occurred. This will necessitate a comprehensive look at funding and the cost of creating such a fund.

## **SIGNIFICANT ISSUES**

Proposed amendments and the House Judiciary Committee Substitute were cognizant to the ramifications of this bill affecting the ability of public institutions to defend and indemnify against potential judgment or settlements. However, the substitute bills vague reference to private individuals and confusing language contained in Paragraph D are problematic for two reasons:

***1. It contains language that could be considered ambiguous and lead to different interpretation unless specific exclusionary language is added.***

The House Judiciary Committee Substitute for House Bill 73 specifically identifies who an action can be brought against as follows:

“[...] a private individual, corporation, business trust estate, trust, partnership, limited liability company, association joint venture or any commercial or nonpublic legal entity.”

The addition of the above language creates ambiguity as to what constitutes a private individual. There are no definitions contained in § 37-1-1 through § 37-1-30, defining who would be

classified as a private individual.

Further, while the list above identifies who an action can be brought against, it lacks any clear exclusions on who it cannot be brought against. By eliminating exclusionary language that would read, “no action against a public entity and/or public employee can be brought pursuant to § 37-1-30” in addition to no definition of who would be classified as a private individual, ambiguity in the language could arguably be interpreted to apply to public employees in the private capacity. The danger in this ambiguity can arise in a situation where the accused is acting in both a private and public capacity. If there is any question about scope of duty, according to *Risk Management Div., Dept. of Finance and Admin., v. McBrayer*, 2000-NMCA-104, then ***NMPSIA would be obligated to provide a defense and satisfy any settlement and/or judgment on behalf of the private individual/public employee dating back to its creation back to 1986.***

## 2. Paragraph D is confusing and can lead to unpredicted outcomes.

Paragraph D provides in pertinent part that:

“[...] and regardless of whether any statute of limitations on such actions expired prior to the effective date of this 2025 act.” (Emphasis added)

By using the above language *without including clear exclusions*, differing interpretations of the applicability of § 37-1-30 to the statute of limitations found at §41-4-15 and §41-4A-7 could arise and lead to various unpredictable outcomes such as an action against a public employee. These differing interpretations could lead to a determination that § 37-1-30 could apply to cases brought under the New Mexico Tort Claims Act and/or the New Mexico Civil Rights Act. Without clear exclusionary language regarding specific causes of action that the new statute of limitations would not apply to, the use of the word “any” in paragraph D could be interpreted to apply to all existing statutes of limitations.

The lack of an explicit exclusion within HB 73 for public institutions and employees raises concerns as it could have dangerous financial implications for public schools. A recent Las Cruces, New Mexico federal court jury verdict in March 2024 for \$44 Million (\$11M for compensatory and \$33M for punitive damages). See the actual verdict below:

**Question No. 1:** In accordance with the compensatory damages instructions given by the Court, we find the total amount of damages caused by Defendant [REDACTED] violations of Plaintiff [REDACTED] constitutional rights to be:

\$ 11 million.

**Question 2B:** In accordance with the punitive damage instructions given by the Court, we find the total amount of punitive damages that should be awarded against Defendant [REDACTED] to be:

\$ 33 million.

The above verdict demonstrates the financial impact of these cases.

## **PERFORMANCE IMPLICATIONS**

Defense of claims against public schools and their employees requires the availability and cooperation of the named defendants and of other current and former school administrators and employees. Some claims require the testimony of other witnesses to particular incidents, including students, parents, or others. In addition, defense of tort claims alleging that the district and its employees had notice of dangerous conditions and failed to take action also requires access to evidence of prior incidents, district policies in effect at the time of the incident at issue, and communications and actions responsive to the prior and litigated incidents. The defense of federal civil rights claims, and presumably NM CRA claims, alleging unconstitutional policies or practices, requires evidence relating to prior events, policies in effect at the time of the alleged events, training relating to such policies (including dates and training materials), information regarding who attended such training, contemporaneous communications (including email and other electronic communications) about the underlying and preceding events, and documentation relating to the incident(s) alleged as well as for any prior but potentially similar events. Documentation and testimony relating to personnel actions, both relating to the defendants, but also of other school employees who were accused of similar actions, is also often required. Whether a particular prior incident was “similar,” or as relevant to state and federal claims, is usually a matter of disagreement between the parties. It is often necessary to produce evidence about prior incidents that the defense may not believe to be similar.

Even when lawsuits are brought two or three years after the precipitating event, the people who are named in the lawsuit and other people whose testimony is needed for the defense may no longer be employed by the district and may be difficult to reach. It is not uncommon for the school employees named in a lawsuit, or otherwise involved in the underlying events, to have retired or changed jobs. Some of them leave New Mexico. Documents, particularly electronic communications and current versions of policies may no longer be available. The people whose testimony on various issues is necessary may not recall details of past policies, practices or events. These problems could be unsurmountable in lawsuits relating to events that occurred many years ago. The potential exposure to NMPSIA and its insureds from adopting of HB 73 is huge – hundreds of millions of dollars – and contrary to the public policy recognized in TCA § 41-4-2(A) recognizing the limits of financial exposure to state entities.

## **ADMINISTRATIVE IMPLICATIONS**

NMPSIA does not provide unlimited insurance for such lawsuits. Since the early 2000s, annual aggregate policy coverage for public schools has been between \$15,000,000 to \$45,000,000. An aggregate policy limit is the maximum amount of money that an insurance policy will pay over a specific period of time.

With respect to these aggregate policy limitations, the reality is:

Aggregate annual policy limits for public schools over five years ago may have already been exhausted based on prior claims, settlements and defense costs. This means that no insurance would be available to defend or resolve such cases from NMPSIA.

If no insurance is available, then school districts may be financially responsible for the

defense of claims out of their operating budgets, including payment of settlement proceeds or a multi-million-dollar judgment if the case went to trial or NMPSIA would be forced to absorb the loss.

Cases brought against older perpetrators also include claims against the schools arguing that the school knew or should have known about the abuse. Defending a school against such claims going back decades is simply not realistic.

Claims exceeding the aggregate policy limits would have to be absorbed either by NMPSIA or the individual school districts. This could have very devastating financial consequences.

## **OTHER SUBSTANTIVE ISSUES**

It should be noted that NMPSIA has aggressively sought to prevent these claims over the last several years through a number of efforts designed to discourage ethical misconduct through policy, training and emphasizing a heightened duty for school staff to report perceived misconduct. It has provided training as well as created an anonymous reporting system for students and staff called StopIt Solutions. worked in lockstep with Rep. Debra Sarinana to pass HB 128 back in 2019 which has been a very significant effort to educate and prevent sexual abuse in our schools. NMPSIA attaches to this analysis a summary of its preventative actions since 2018.

## **ALTERNATIVES/PROPOSED AMENDMENT**

As stated, an amendment specifically excluding claims against public entities would allow private causes of actions to proceed while protecting public entities from unlimited financial exposure. Assuming this bill is only aimed at private entities and individuals, this is the most practical solution to allow this bill to move forward.

### **New paragraph (2) at page 2:**

**May be commenced at any time if the action is against a private individual, corporation business trust, estate, trust partnership, limited liability company, association, joint venture or any commercial entity, excluding public entities and public employees.**

### **New paragraph D. at page 2:**

**This section is retroactive and applies to all actions not currently pending based on childhood sexual abuse regardless of the date of the childhood sexual abuse and regardless of whether any statute of limitations on such actions expired prior to the effective date of this 2025 act, excluding NMSA 1978, §41-4-15 and NMSA 1978, and NMSA 1978, § 41-4A-7.**

NMPSIA would be glad to discuss these options with the sponsor.