

LFC Requester:

Sunny Liu

AGENCY BILL ANALYSIS - 2025 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: 02/21-02/22/2025

Check all that apply:

Bill Number: HB 558

Original Correction
Amendment Substitute

Sponsor: Rep. John Block; Rep.
Rebecca Dow

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

Person Writing

Analysis: Autumn Bergh

Short Title: NO SEXUALLY EXPLICIT
MATERIAL IN SCHOOLS

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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
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:

HB 558 Section 1 proposes a new section of the Public School Code and Section 2 proposes amendments to Section 30-37-5 NMSA 1978.

Section 1

Chapter 22 NMSA 1978, except Article 5A, is known as the Public School Code. HB 558 proposes adding new material to the Code: “PROTECTION OF STUDENTS FROM SEXUALLY EXPLICIT MATERIAL--DEFINITIONS--PROHIBITED MATERIAL AND ACTIVITIES—ENFORCEMENT.”

Definitions are provided for "sexual education and biology material" [Section 1(A)(1)] and "sexually explicit material" [Section 1(A)(2)(a)-(d)]. Sexual education and biology material is defined as “medically or scientifically accurate material or content that has educational value and meets department-approved academic content and performance standards for age-appropriate sexual education, health, biology or related science courses.” The definition of "sexually explicit material" is “material or content, in any format, that is not sexual education and biology material or suitable for broadcast on radio or television in accordance with federal law or rules and regulations promulgated by the federal communications commission,” and goes on to enumerate some forms of sexually explicit material.

The amendments:

- prohibit sexually explicit materials at public schools and provide that sexually explicit material “shall not be used by a school employee or a public school contractor or volunteer in curricula, instruction or extracurricular activities.” Section 1(B)
- provide that a “school employee or a public school contractor or volunteer shall not knowingly provide, recommend or otherwise make available sexually explicit material to a student at a public school or an extracurricular activity.” Section 1(C)
- provide that the “department shall promulgate rules for local school boards and charter school governing bodies to enforce the provisions of this section in accordance with the following:”
 - Unlicensed school employees who violate Subsection B or C shall be subject to termination or discharge under the School Personnel Act

- Licensed school employees who violate Subsection B or C “shall be subject to termination or discharge and denial, suspension or revocation of a department-issued license pursuant to the School Personnel Act and the Uniform Licensing Act”
- a public school contractor or volunteer who violates Subsection B or C “shall have the contractor's or volunteer's privilege of accessing a public school revoked” Section 1(D)(1)-(3)
- provide that the department shall seek a fine from a school district or charter school that violates Subsection B or C or fails to comply with Subsection D. Section 1(E)

“Department” is currently defined in Section 22-1-2(D) NMSA 1978 as the public education department.

Section 2

Section 30-37-5 provides exclusions and defenses to crimes relating to disseminating sexually oriented material to minors.

Some of the amendments proposed for Section 30-37-5 appear to be for the purpose of clarification. For instance, where referring to a minor’s age, replacing “his eighteenth birthday” with “eighteen years of age.”

Other amendments change the use of “this act” to “Chapter 30, Article 37 NMSA 1978.” For example, the proposed amendments change the language of Section 30-37-5 from “No person shall be guilty of violating the provisions of this act” to “No person shall be guilty of violating the provisions of Chapter 30, Article 37 NMSA 1978.”

The bill also proposes to limit the scope of the exclusions and defenses. Currently, Section 30-37-5(D) provides that no person will be guilty of violating the act “where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.” The proposed amendments remove “school,” expanding the scope of those subject to criminal prosecution.

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

The bill would ban non-obscene material from public school curricula, which would raise free speech concerns under the First Amendment. *See Roth v. United States*, 354 U.S. 476, 487 (1957) (“[S]ex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest. The portrayal of sex, e.g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press.”). In *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982), a plurality of the Supreme Court recognized that the First Amendment imposes some limits on public schools to remove materials from school libraries. Although *Pico* has not been overturned, it was a fractured decision and it is unclear how the

current Court would construe it.

PERFORMANCE IMPLICATIONS

HB 558 could expand the scope of criminal violations that the Attorney General has prosecutorial jurisdiction over and could require additional resources from the Special Prosecutions Division.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB 258. SB 258 includes proposals regarding comprehensive human sexuality education in health education courses in middle school and high school.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

In HB 558, the definition of "sexually explicit material" includes "gratuitous depictions or descriptions of sexual violence, exploitation or abuse, including rape, incest, pedophilia or other nonconsensual sexual acts." Section 1(A)(2)(d). Consider the potential effect(s) of the use of "or other nonconsensual sexual acts," and the possibility of confusion. For example, "incest" often refers to sexual intercourse between blood relatives of a certain degree of relation, which may or may not be consensual. For instance, Section 30-10-3 NMSA 1978 provides "Incest consists of knowingly intermarrying or having sexual intercourse with persons within the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews."

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.