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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 03/03/2025

SPONSOR Block/Dow

BILL

SHORT TITLE No Sexually Explicit Material in Schools BILL NUMBER House Bill 558

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PED	No fiscal impact	Indeterminate but minimal	No fiscal impact	Indeterminate but minimal	Nonrecurring	General Fund
NMCD	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	General Fund
Counties	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Regional Educational Cooperative (RECA)

Administrative Office of the District Attorneys (AODA)

New Mexico Attorney General (NMAG)

Agency Analysis was Solicited but Not Received From

Public Education Department (PED)

Albuquerque Public Schools (APS)

SUMMARY

Synopsis of House Bill 558

House Bill 558 enacts a new section of the Public School Code (Section 22 NMSA 1978), seeking to protect children from sexually explicit material that is not part of “sexual education and biology material,” defined as material meeting Public Education Department (PED)-approved academic content and appropriate for age. “Sexually explicit information”, on the other hand, is defined as other sexual and biological information that would not be considered suitable for broadcast on radio or television, which might include nudity, sexual intercourse or related acts, sexual exploitation or rape.

Sexually explicit information would be prohibited in schools and is not to be made available by a school employee, volunteer, or contractor, on penalty of termination or discharge. PED is

required to seek a fine from school districts or charter schools that fail to comply with this law.

Section 2 of the bill modifies Section 30-37-5 NMSA 1978, which deals with defenses and exclusions from prosecution for making sexually oriented material available to minors. Defenses include the alleged perpetrator having been presented with a document stating (truly or falsely) that a child was over 18 years of age, if a parent/guardian is present and waives provisions of the bill, or where the “person” is a bona fide museum or public library or an employee of one of those or a retail outlet serving the educational purposes of a museum or library.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 558. PED may incur some costs in writing and promulgating regulations. The bill does not create a new crime or penalty and therefore, this analysis assumes, would have no fiscal impact to the state’s criminal justice system.

SIGNIFICANT ISSUES

House Bill 558 would bar the presentation of sexually explicit material to school children less than 18 years of age, broadly and explicitly defining “sexually explicit material,” but excluding medically and scientifically accurate information used for the purposes of sexual education or study of science.

NMAG comments that:

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.

TECHNICAL ISSUES

The Administrative Office of the District Attorneys points out that:

39-37-5 EXCLUSIONS—DEFENSES states “no person shall be guilty of violating the provisions of” House Bill 558 is not a criminal statute but a civil enforcement statute with penalties against employment and fines. There is a different burden of proof standard for civil enforcement vs criminal enforcement.