

LFC Requester:

Harry Rommel

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: 3/5/2025

Check all that apply:

Bill Number: HB531

Original Correction
Amendment Substitute

Sponsor: Rep. Tara Lujan

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

Person Writing

Short Title: Santa Fe College of Osteopathic Medicine Fund

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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:

Section 1 of the Act creates the Santa Fe College of Osteopathic Medicine Escrow fund, which consists of transfers, gifts, grants, donations and investment income.

1A: Describes how the fund is created, and provides conditions for investment, in accordance with the Uniform Prudent Investor Act in consultation with the state board of finance; provides for the investment income to be credited to the fund.

1B: Provides for the fund to be held in escrow to be used as an unencumbered reserve fund until two things happen (or July 1, 2032, whichever is earlier): graduation of the first class of medical students from the College of Osteopathic Medicine and full accreditation of the College. Note: there is no detail as to what would constitute “full accreditation.” When these conditions are met, or on July 1, 2032 (whichever is earlier), the balance of the fund would revert to the Tobacco Settlement Permanent Fund.

1C: Requires the state treasurer, the college and the Commission on Osteopathic College Accreditation (COCA) enter an escrow agreement. This subsection also mandates that the state enter an agreement with Access Health Initiative LLC to guarantee COCA must draw against the escrow fund. And further that the “company” hold the state harmless by contributing the amount withdrawn by COCA to the “credit of the tobacco settlement fund”

1D: The College of Osteopathic Medicine is required to keep statistics and submit annual reports to the higher education department including data on applications, acceptances, returning students, graduation rates and residency placements.

Section 2: Provides for an appropriation of \$40 million from the Tobacco Settlement Permanent Fund to the escrow fund described in Section 1.

FISCAL IMPLICATIONS

HB531 proposes to transfer \$40 million from the Tobacco Settlement Fund to a new for-profit Santa Fe college of osteopathic medicine.

SIGNIFICANT ISSUES

The Attorney General is tasked with enforcing the Master Settlement Agreement (MSA) entered into by New Mexico, with major tobacco companies in 1998. The Attorney General is also responsible for maintaining or preserving the annual payment by the tobacco companies through ongoing litigation regarding the NPM Adjustment as specified in the MSA, in which the Attorney General is required to prove that the State has diligently enforced the Escrow Statute.

The Tobacco Settlement Permanent Fund consists of money from the MSA. Pursuant to the Settlement Agreement, tobacco companies make an annual payment to each Settling State. This money is placed in a “tobacco settlement permanent fund.” NMSA § 6-4-9(A). Every year, 4.7% of the average year end market value of the permanent fund from the past five years is placed in the Tobacco Settlement Program Fund, which funds various educational and public health initiatives. NMSA § 6-4-9(B) and § 6-4-10. If the amount appropriated to a Program fund is insufficient to cover the programs for a given year, then each appropriation is reduced accordingly.

1. The main issue regarding this bill is the transfer of \$40 million from Tobacco Settlement Permanent Fund to the for-profit college of osteopathy. The Permanent Fund is not a reserve fund, as was recently stated in the 2024 Amendments to NMSA Section 6-4-9(A), and can only be used as provided for in the statute. The statute allows for two ways of spending the money. First, as noted above, 4.7% of the average market value is deposited into the Tobacco Settlement Program Fund. Second, the Permanent Fund can be used as a fund of last resort if the general fund and all reserve funds are exhausted, to prevent an unconstitutional deficit. NMSA Section 6-4-9(C). Thus, there is no provision that would allow for transferring monies to a for-profit college. NMSA Section 6-4-9(A) specifically provides “[m]oney in the fund shall not be expended for any purpose, except as provided in this section.” emphasis added. This bill is in direct contradiction to the Tobacco Settlement Permanent Fund Statute.

2. The bill would violate the anti-donation clause of the New Mexico Constitution. The anti-donation clause at Article IX, § 14 of the New Mexico Constitution provides that neither the state nor any county, school district or municipality, except as otherwise provided in the constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.

A donation is defined as a “gift, an allocation or appropriation of something of value without consideration to a person, association, or public or private association.” Village of Deming v. Hosdreg Co. 1956 NMSC 111 ¶ 36, 62 NM 18, 3033 P2d 920. The fact that a donation to a private entity may also serve some public good is insufficient to remove it from the application of the anti-donation clause. See, eg. Letter of Jennifer Salazar to Representative Bill McCamley, Dec. 23, 2014, Re: Opinion Request – Publicly Funded Meal (Citing Harrington V. Atteberry, 1915-NMSC-058 ¶ 6 (donations to county fair association violates clause); Hutcheson v. Atherton, 1940 NMSC-001 ¶ 35 (county pledge of credit to private corporation in furtherance of public celebration of Coronado violates clause)).

Transferring \$40 million to a for-profit college to be used as an “operating reserve fund of the college” would likely be determined unconstitutional pursuant to the anti-donation clause of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is in conflict with NMSA § 6-4-9, § 6-4-10 and §13-1-28.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Subsection 1(C) is written in such a way that it will likely be challenged for vagueness.

Also in Subsection 1(C), the mandate that the State “shall” enter into an agreement with a private corporation, i.e. Access Health Initiative LLC, a Florida limited liability company (could not find evidence that it is registered to do business in New Mexico), potentially violates and is in conflict with the Procurement Code, NMSA §13-1-28 et sq.

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established in NMSA §2-19-1. TSROC is required by statute to monitor use of the MSA settlement revenue, prepare recommendations of program funding levels and to make necessary recommendations for changes in legislation regarding use of the tobacco settlement revenue. HB536 completely circumvents this statutory mandated responsibility of TSROC.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS