

LFC Requester:	Rommel, Harry
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 03/05/2025 *Check all that apply:*
Bill Number: HB531 Original Correction
 Amendment Substitute

Sponsor: Tara L. Lujan **Agency Name and Code:** NMSTO 39400
Short Title: Santa Fe College of Osteopathic Medicine Fund **Number:** _____
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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		
	(40,000)			TSPF
	40,000			OMEF

(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		Minimal	Minimal	Minimal		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 531 would create an escrow fund for the establishment of a Santa Fe College of Osteopathic Medicine (SFCOM). It would create the Santa Fe College of Osteopathic Medicine Escrow Fund in the state treasury. The new fund would be managed by the state treasurer and income from the fund would be credited to the tobacco settlement permanent fund biannually. HB531 proposes that the fund be considered an unencumbered escrow and operating reserve fund of the college of osteopathic medicine, and it shall be held in escrow until graduation of the first class of medical students and the full accreditation of the college. When both criteria are met or no later than July 1, 2033, the funds will be transferred back to the TSPF.

The bill requires the state treasurer, the college of osteopathic medicine and the commission on osteopathic college accreditation to enter into an escrow agreement. It also requires the state to enter into an agreement with the access health initiative LLC to guarantee that if the accrediting agency draws against the escrow fund the company will hold the state harmless and contribute the amount withdrawn from the escrow to the TSPF.

The bill requires annual reporting from the college of osteopathic medicine to HED for the first five years of operation.

The bill requires a \$40MM transfer from the TSPF to the new fund on July 1, 2025.

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 Santa Fe College of Osteopathic Medicine is a private/for profit and not a public educational institution. Our assessment would change if the college was a public institution.

Legislation providing financial assistance to a private educational institution likely violates the Anti-Donation Clause of the New Mexico Constitution, Article IX, Section 14. The committee substitute attempts to address this issue by requiring the state to “enter into an agreement with access health initiative LLC to guarantee that if the accrediting agency must draw against the escrow fund, the company shall hold the state harmless by contributing the amount withdrawn from the escrow fund by the accrediting agency to the credit of the tobacco settlement permanent fund.”

To current staff's knowledge, STO has never been required to hold an escrow account, and the State Treasurer has never been required to enter into an escrow agreement with an accreditation commission.

Page 2, line 10 - Language creating the fund as "an unencumbered escrow and **operating reserve fund** of the Santa Fe college of osteopathic medicine", could cause the college to believe that the fund is available to them to draw against if the college runs into financial trouble. Operating reserve funds are typically funds set aside as a resource to fund operations when revenues are short.

Page 3, Section 2 – The date to transfer \$40 million is listed as July 1, 2025. That \$40 mil is an additional 10% that SIC was not expecting to have liquid. This could potentially cause a loss in the TSPF. This is an additional 10% more than what is annually required by statute.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Page 2, lines 6-8, would be inconsistent with best practices. If HB531 is enacted as written it would require biannual interest transfers to the TSPF. These are additional calculations and transfers that would need to be made by STO twice a year. Ideally the interest earned should be deducted from the % that SIC distributes to the tobacco settlement program fund each year.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Page 2, Lines 6-8 – sending "biannually to the tobacco settlement permanent fund" would be better addressed by deducting the interest earned from the percentage SIC has to distribute annually to the tobacco settlement permanent fund.

Page 2, lines 12 -13 – The State Treasurer's Office should not determine when the first class graduates or when full accreditation occurs. That needs to be done by a different agency like HED.

Page 2, line 15 – "balance in the fund **plus interest earned**.... Shall be...."

Page 2, Section C – The Treasurer's Office doesn't enter into agreements.

Page 3, Section 2 --- The date is July 1, 2025 and should be 2026 to give SIC time to liquidate without loss.

OTHER SUBSTANTIVE ISSUES

STO believes there could be an issue with the Anti-Donation Clause of the New Mexico Constitution. While the bill attempts to address the issue by having a third party hold the state harmless, the Santa Fe College of Osteopathic medicine does not meet any exemptions of the Anti-Donation Clause.

There are reasons to believe that this language does not solve the anti-donation issue. First, the anti-donation clause is worded broadly: the clause states that the state shall not “directly or *indirectly* lend or pledge its credit or make any donation to or in aid of” any private entity. (emphasis added). Even with a hold harmless provision, the legislation still appears to be an indirect loan or pledge of credit to aid a private entity. There is no provision in the committee substitute addressing what will happen if Access Health Initiative LLC defaults or breaches its obligation to hold the state harmless. If the accrediting agency still requires a draw on escrow, then the anti-donation issue still arises.

The program here does not appear to qualify for any exception to the anti-donation clause. Furthermore, in general, the exceptions to the Anti-Donation Clause require that any assistance be provided pursuant to “general implementing legislation[.]” This legislation is not general – it’s specific to a single private entity. Even if there was an argument that money could be given for purposes of aiding a private education institution, it would need to be general, rather than specific, legislation.

The Courts have held that contracts between state and local government and private entities do not violate the Anti-Donation Clause, as long as there is some general public benefit from the contract. *E.g., Hotels of Distinction W., Inc. v. City of Albuquerque*, 1988-NMSC-047, ¶ 4, 107 N.M. 257, 755 P.2d 595.

Clearly there is a public benefit in the education of medical professionals in New Mexico. Therefore, it seems that the best way to avoid any anti-donation issues would be to condition the placement of money into the escrow fund on the State, perhaps through HED, and the college entering some contractual agreement in which the college provides additional benefits, such as providing care to the indigent as part of the college’s training program

To transfer funds back to TSPF, STO would need to receive documentation and certification that the conditions set forth in the bill are satisfied. STO does not have the resources or expertise to determine when the conditions are satisfied, specifically when it comes to the accreditation of institutes of learning.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS