AGENCY BILL ANALYSIS  
2019 REGULAR SESSION  

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:  

LFC@NMLEGIS.GOV  

and  

DFA@STATE.NM.US  

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}  

SECTION I: GENERAL INFORMATION  
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}  

Check all that apply:  

Original  X  Amendment  ____  
Correction  ____  Substitute  ____  

Date  2/18/19  
Bill No:  SB540  

Agency Name and Code  
Number:  924 PED  

Person Writing  Daniel Manzano  
Phone:  505-670-3820  Email  Daniel.Manzano@state.nm.us  

SECTION II: FISCAL IMPACT  

APPROPRIATION (dollars in thousands)  

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Recurring or Nonrecurring</th>
<th>Fund Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY19</td>
<td>FY20</td>
<td></td>
</tr>
<tr>
<td>NFI</td>
<td>$200.0</td>
<td>Nonrecurring</td>
</tr>
<tr>
<td></td>
<td></td>
<td>General</td>
</tr>
</tbody>
</table>

(Parenthesis ( ) Indicate Expenditure Decreases)  

REVENUE (dollars in thousands)  

<table>
<thead>
<tr>
<th>Estimated Revenue</th>
<th>Recurring or Nonrecurring</th>
<th>Fund Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY19</td>
<td>FY20</td>
<td></td>
</tr>
<tr>
<td>NFI</td>
<td>NFI</td>
<td>NFI</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nonrecurring</td>
</tr>
<tr>
<td></td>
<td></td>
<td>N/A</td>
</tr>
</tbody>
</table>

(Parenthesis ( ) Indicate Expenditure Decreases)
### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

<table>
<thead>
<tr>
<th></th>
<th>FY19</th>
<th>FY20</th>
<th>FY21</th>
<th>3 Year Total Cost</th>
<th>Recurring or Nonrecurring</th>
<th>Fund Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>NFI</td>
<td>NFI</td>
<td>NFI</td>
<td>N/A</td>
<td>Nonrecurring</td>
<td>General</td>
</tr>
</tbody>
</table>

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Bill 133(HB133) and House Bill 133 House Floor Amendment 1 (HB133hfla)
Duplicates/Relates to Appropriation in the General Appropriation Act: None as of 2/15/19

### SECTION III: NARRATIVE

#### BILL SUMMARY

Senate Bill 540 (SB540) appropriates $200.0 from the general fund to the office of the state auditor for the purpose of investigating public school compliance with statutory requirements and rules regarding sexual education.

#### FISCAL IMPLICATIONS

There are no fiscal implications for the Public Education Department (PED).

#### SIGNIFICANT ISSUES

SB540 does not identify the specific “statutory requirements and rules regarding sexual education in public schools” that would be investigated for compliance by the office of the state auditor.

New Mexico State Statute 22-13-1.1, “Graduation Requirements”, requires that students complete a course in health education, that includes training on sexual assault and abuse prevention training, prior to graduation. A corresponding rule is New Mexico Administrative Code (NMAC) 6.29.6.10, “Content Standards with Benchmarks and Performance Standards for Health Education, Grades 9-12” which includes a graduation requirement for students to complete 0.5 units of health education. NMAC 6.29.6.10 further requires the teaching of certain sexual education concepts such as human reproduction, sexuality, abstinence or birth control methods to prevent pregnancy, prevention of sexually transmitted infections, avoiding health risk behaviors related to sexual activity, and more that would likely be part of the compliance investigation required by SB540.

Source: [http://164.64.110.134/parts/title06/06.029.0006.html](http://164.64.110.134/parts/title06/06.029.0006.html)

The compliance investigation identified in SB540 may also include ensuring the compliance of public schools to implement exemption policies as identified in NMAC 6.29.6.11. NMAC 6.29.6.11 addresses sexuality performance standard exemptions and requires districts and charter schools to “Implement a policy that will insure [sic] that parents have the ability to request that their child be exempted from the parts of the health education curriculum that address sexuality performance standards.” The NMAC also includes provisions for how the policies are to be developed, and what they are to include.

Source: [http://164.64.110.134/parts/title06/06.029.0006.html](http://164.64.110.134/parts/title06/06.029.0006.html)
NMAC 6.12.2.10 “Human Immunodeficiency Virus (HIV)” requires instruction in New Mexico schools around HIV and related issues including ways to reduce the risks of getting HIV/AIDS, with an emphasis on abstinence. NMAC 6.12.2.10 also has requirements around the development of policies and the review of instructional materials related to HIV instruction. SB540 may require compliance investigation regarding HIV instruction.
Source: [https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/SHSB_NMAC6-12-2-10_HIV.Rule_.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/SHSB_NMAC6-12-2-10_HIV.Rule_.pdf)

Subparagraph (a) of Paragraph (7) of Subsection 6.29.1.11 NMAC requires “age appropriate sexual abuse and assault awareness and prevention training that meets department standards” for students and may also be a part of the sexual education requirements for compliance investigation identified in SB540.
Source: [http://164.64.110.134/parts/title06/06.029.0001.html](http://164.64.110.134/parts/title06/06.029.0001.html)

**PERFORMANCE IMPLICATIONS**
None

**ADMINISTRATIVE IMPLICATIONS**
Though there are no administrative implications for the PED from SB540, it is unclear which agency (if any) would be responsible for ensuring that any deficiencies identified from compliance investigations are ameliorated.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**
SB540 may necessitate compliance investigations into HB133’s and HB133hfla’s requirement for affirmative consent education in the health education course required for graduation.

**TECHNICAL ISSUES**
None

**OTHER SUBSTANTIVE ISSUES**
None

**ALTERNATIVES**
None

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**
Compliance of schools with statutory requirements and NMAC related to sexual education would continue to remain under the purview of the PED.

**AMENDMENTS**
None