

LFC Requester:	Becerra
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**AGENCY BILL ANALYSIS
2021 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 **Amendment**
Correction **Substitute**

Date 2/4/2021
Bill No: HB142

Sponsor: Rep. Elizabeth "Liz" Thomson
Short Title: SCHOOL TASK FORCE ON SEXUAL MISCONDUCT

Agency Name and Code PED - 924
Number: _____
Person Writing: John Sena
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Relates to: House Bill 83, Change Graduation Requirement

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 142 (HB142) would create a new section that requires the Public Education Department (PED) to adopt detailed, trauma-informed policies and trauma-informed responses for the investigation of and disciplinary procedures addressing allegations of sexual assault, domestic violence, dating violence, and harassment or stalking involving a student, faculty member, employee, school volunteer, or contractor both on and off campus. All policies and procedures would be required to: reference an affirmative consent standard in the determination of whether consent was given by all parties to sexual activity; confirm that it is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of all other participants engaged in the that sexual activity; confirm that affirmative consent has included certain requirements; and confirm that the existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

HB142 also would require the above-referenced policies to include a provision addressing how the school will provide appropriate protections for the privacy of individuals involved; provision that an individual who participates as a complainant or witness in an investigation will not be subject to disciplinary sanctions for a violation of the school's student conduct policy at or near the time of the incident; description of the role of the school staff supervision; and provision for a comprehensive, trauma-informed training program for school officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and harassment or stalking cases. The bill also details procedures schools must undertake related to such cases.

Finally, the bill would amend Section 22-13-1.1 NMSA 1978, relating to graduation requirements, to require each student to take a course in health education prior to graduation. Current statute allows school districts to determine whether to require health education in middle school or high school. HB142 would require health education courses to include a standard of affirmative consent. The provisions of HB142, specifically pertaining to graduation requirements, would apply to students entering the ninth grade in the 2021-2022 school year and subsequent school years. The bill allows students who passed a health education course prior to the implementation of the provisions of the bill to have the health education course count toward the students' graduation requirements.

The PED's analysis will focus on the provisions of the bill that impact public school

students.

FISCAL IMPLICATIONS

HB142 does not contain an appropriation.

Provisions of the bill could be accomplished with existing staff and resources.

SIGNIFICANT ISSUES

HB142 defines “affirmative consent” as “an affirmative, conscious and voluntary agreement to engagement in sexual activity” and emphasizes that:

- 1) it is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of all other participants engaged in that sexual activity;
- 2) affirmative consent cannot be implied, assumed or inferred from silence or lack of protest or resistance;
- 3) affirmative consent is ongoing throughout a sexual activity and can be revoked at any time;
- 4) the existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never be assumed to be an indicator of consent; and
- 5) affirmative consent can never be given by a person who is asleep, unconscious, incapacitated due to the influence of drugs, alcohol or medication or unable to communicate due to a mental or physical condition.

According to the [2019 Youth Risk and Resilience Survey](#), 9.4 percent of New Mexico high school students reported ever being physically forced to have sexual intercourse compared with 7.3 percent nationally.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

PED would need to amend administrative regulation, [6.29.1 NMAC](#), relating to educational standards and expectations for all students attending public schools, to include affirmative consent. PED would also have to amend the course description in the Student Teacher Accountability Reporting System (STARS) to incorporate the affirmative consent requirement in the health education class.

The short-term impact of HB142 would include policy adoption by PED. To adopt policies regarding sexual assault, domestic violence, dating violence and harassment or stalking, the department may need to collaborate with other agencies, such as the Children, Youth and Families Department, New Mexico State Police, the New Mexico Office of the Attorney General, and other agencies charged with ensuring the safety and well-being of school-aged youth.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB142 relates to HB83, Change Graduation Requirements.

TECHNICAL ISSUES

Although statute allows school districts to determine whether health education is to be required in middle school or high school, the bill says the provisions would apply to students entering the ninth grade in the 2021-2022 school year. The sponsor of the bill may consider changing the applicability of the bill to students entering middle school or high school.

The bill misspells “resistance” on page 23, line 20.

OTHER SUBSTANTIVE ISSUES

HB142 would require the creation of a “task force on sexual misconduct” to exist through FY23. The bill does not list PED as a required member of the task force.

[California Senate Bill 967](#), signed into law September 2014 and commonly referred to as the “Yes means Yes Law,” is substantially similar to HB 142 in that it requires post-secondary institutions to adopt policies and procedures concerning sexual assault, domestic violence, dating violence, and stalking with an affirmative consent standard. New York and Illinois have similar laws.

Per the [Elementary and Secondary Education Act, reauthorized as the Every Student Succeeds Act, Section 8546 \(U.S.C. 7926\)](#), “each local educational agency shall have in place a policy in effect that prohibits any individual who is a school employee, contractor, or agent from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such a school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.”

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A