

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 202a

50th Legislature, 1st Session, 2011

Tracking Number: .182678.4

Short Title: Private School Student Activity Program Unit

Sponsor(s): Representatives James R. J. Strickler, Dianne Miller Hamilton and Others

Analyst: Peter B. van Moorsel

Date: February 28, 2011

AS AMENDED

The House Consumer and Public Affairs Committee amendment defines activities as athletics, co-curricular and extracurricular activities sanctioned by the New Mexico Activities Association (NMAA).

Original Bill Summary:

HB 202 creates a new section in the *Public School Finance Act* of the *Public School Code* to create, beginning in school year 2011-2012, a private school student activities program unit in the public school funding formula.

Among its provisions, HB 202:

- determines the private school student activities program unit by multiplying the number of private school students who are participating in school district activities governed by the New Mexico Activities Association (NMAA) by a cost differential factor of 0.1;
- requires funding to be paid to the school district in which it is generated; and
- provides that a private school student:
 - is eligible to participate in three school district activities at the public school in the attendance zone in which the student resides, according to the NMAA guidelines; and
 - is only permitted to participate in school district activities that the student's private school does not offer. The school district must verify each private school student's academic eligibility to participate in school district activities.

Fiscal Impact:

HB 202 does not contain an appropriation.

However, because the proposed legislation adds a factor to the public school funding formula, if enacted, HB 202 will have a fiscal impact. If no money is appropriated to cover the cost of the additional units generated as a result of the private school activities cost differential, the unit value will decrease.

Substantive Issues:

The Public Education Department (PED) notes several constitutional issues in its analysis of HB 202:

- The provisions of the bill may run counter to the anti-donation clause in the Constitution of New Mexico.

Article IX, Section 14 of the state's constitution provides that "[n]either the state nor any county, school district or municipality, except as otherwise provided in this 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..."

- The provisions of the bill may also run counter to Article IV, Section 31, which states that "[n]o appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state," including private schools. PED notes that although HB 202 does not make a direct appropriation to a private school, identifiable General Fund dollars would be directed to school districts through the participation of private school students participating in public school activities.
- PED adds that, although HB 202 does not specifically mention faith-based/religious schools, the bill may be problematic because its provisions may provide state funds to fund the activities of students attending private faith-based schools.

Background:

- In 2005, legislation was enacted (Laws of 2005, Chapter 97) to require school districts and the NMAA to allow charter school students in grades 7 through 12 to participate in extracurricular activities in the public school in the attendance zone in which the students live, if those students meet eligibility requirements other than enrollment in a particular public school. The bill, when introduced, included home school students; however, that portion of the bill was amended out prior to the enactment of the legislation.
- In 2006, Laws of 2006, Chapter 94 added a charter school student activities program unit (cost differential factor of 0.1) for charter school students participating in school district activities governed by the NMAA, payable to the school district in which the program unit is generated.
- In 2007, Laws of 2007, Chapter 365 added a home school student activities program unit (cost differential factor of 0.1) for home school students participating in school district athletic activities governed by the NMAA, payable to the school district in which the program unit is generated. 2009 legislation provided that home school students are eligible to participate in up to three athletic activities.
- Formed in 1921 and incorporated in 1964, NMAA is a voluntary, nonprofit organization of approximately 300 New Mexico public, private, and parochial junior/middle and senior high schools. The NMAA has as its principal purpose the regulation, direction,

administration, and supervision of all interscholastic activities in the state of New Mexico. Current statute requires that NMAA rules be approved by PED.

- PED notes that currently, the NMAA recognizes the following activities:
 - Athletic Training Challenge;
 - Bowling;
 - Business Pros of America;
 - Chess;
 - Choir;
 - Concert Band;
 - DECA Marketing Education;
 - Drama / One Act Play;
 - English Expo;
 - FCCLA (Family, Career and Community Leaders of America);
 - FFA Agriculture Education;
 - HOSA (Health Occupations Student Assoc);
 - JROTC;
 - Mock Trial;
 - Rodeo;
 - Scholastic Publications;
 - Science Fair;
 - Science Olympiad;
 - Skills USA;
 - Speech and Debate;
 - Student Council; and
 - TSA (Technology Student Assoc).

Related Bills:

HB 201a *Adjusting Home School Program Units*