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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/15/11

SPONSOR     Kintigh     LAST UPDATED                      HB   369  

SHORT TITLE     Student Public Assistance Requirement     SB                     

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ANALYST     Haug    

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		See Narrative	See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 369 would amend the Compulsory School Attendance Law to:

- 1) Require school districts and charter schools to report students not meeting attendance requirements, as defined by law, to the Human Services Department (HSD);
- 2) Require HSD to cancel all state public assistance to a parent who is receiving the public assistance for a student if that student is not meeting school attendance requirements. A student is not meeting the attendance requirements if the student is a) a habitual truant; b) has three unexcused absences in a grading period; c) is not attending school as required in Section 22-12-2 NMSA 1978; or d) has one or more unexcused absences during the time period covered by an intervention plan as provided in Subsection B of Section 22-12-7 NMSA 1978;
- 3) Define what constitutes an “excused absence;”
- 4) Require public, charter, and private schools to report, within 14 days, students not meeting attendance requirements to the school district, or governing body, and HSD;
- 5) Require public, charter, and private schools to notify parent(s) of students in violation of the Compulsory School Attendance Law, and requiring the parent(s) to meet with school officials in order to develop an intervention plan;
- 6) Require public, charter, and private schools to report to HSD the outcome of the meeting with the parent(s); furthermore, if the intervention plan is agreed upon by both the parent(s) and the school, HSD will not terminate state public assistance to the parent(s). If

the parent(s) failed to attend the meeting or the school and parent(s) were unable to develop an adequate intervention plan, then the school will notify HSD and state public assistance to the parent will be terminated;

- 7) Require public, charter, and private schools to report to HSD any unexcused absences of a student with an intervention plan which will result in HSD terminating state public assistance to the parent.
- 8) Establish criteria for parent(s) to regain eligibility for state public assistance.

## **FISCAL IMPLICATIONS**

House Bill 369 contains no appropriation. The PED notes additional reporting requirements for schools as proposed by HB 369 would result in increased staff responsibilities and duties for which additional staffing needs may be required. These requirements include providing for reporting of students not meeting attendance requirements to HSD, progress reporting to HSD once an intervention plan has been established between the school and the parent(s), and increased reporting requirements to the Public Education Department (PED), which could result in additional data reporting fields to STARS, based on the criteria that would be established through HB 369 in regard to school attendance requirements and HSD sanctions.

## **SIGNIFICANT ISSUES**

The PED states

Currently school districts report attendance data to STARS four times a year on the 40<sup>th</sup>, 80<sup>th</sup> and 120<sup>th</sup> days, and at the end of the school year. District reporting would have to be on a daily basis to assure that any student who has violated the compulsory school attendance law is detected. This may require a change in the Compulsory School Attendance Rule.

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. HB 369 would require public schools to share personally identifiable student education records with HSD, which is not a public educational agency. This would appear to be a FERPA violation unless schools were to receive written permission from each parent in the school in order to release any information from a student's education record.

Additionally, even with parental consent, the requirements of HB 369 may require Memoranda of Understanding among PED, HSD and public, charter, and private schools in order to establish roles and responsibilities of each entity in relation to sharing of student data.

HB 369 requires HSD to cancel all state public assistance to a parent who is receiving public assistance for a student if that student is not meeting school attendance requirements. If the family is receiving assistance for multiple siblings, this would result in sanctions for *all* children in the family for the truancy of one student.

HB 369 defines excused absences in law as:

- (1) personal illness, as evidenced by a note from a doctor or other health professional;
- (2) a family emergency, for a period not to exceed 30 days;

- (3) participation in or attendance at cultural and religious activities and the student has parental consent to attend such activities; or
  - (4) the student being a parent of a child under 12 weeks of age.
- Excused and unexcused absences are currently defined at the local level.

Requiring parents to get medical notes for student illness could be costly to parents. Not every illness requires a visit to a medical professional. For example, in 2009 the Department of Health recommended parents keep children home if displaying signs of flu and to only contact a health care professional under certain circumstances.

HB 369 would deprive recipients of public assistance without due process, a principle established by the U.S. Supreme Court in the seminal case of *Goldberg v. Kelly*, 397 U.S. 254 (1970), (The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires an evidentiary hearing *before* a recipient of certain government benefits (here welfare) can be deprived of such benefits.). Under the state Public Assistance Appeals Act [27-3-1 to 27-3-4 NMSA 1978] deprivation of public assistance requires due process. This bill has a mandatory intervention requirement which would not qualify as due process.

The bill poses other equal protection issues, namely, it treats children of a parent entitled to receive public assistance differently than children of a parent who do not receive public assistance. It does this on page 4 lines 24-25 in which a medical note is required to justify an absence of child whose family is receiving public assistance. This is disparate treatment.

GH/svb