

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 161aa

50th Legislature, 2nd Session, 2012

Tracking Number: .187856.1

Short Title: School Athletics Reporting Requirements

Sponsor(s): Representative Dennis J. Roch and Senator Howie C. Morales and Others

Analyst: David Harrell

Date: February 7, 2012

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The House Education Committee amendment strikes House Floor Amendment No. 1.

House Floor Amendment No. 1 removes “fundraising” and “booster clubs” from the sources of funds for school athletic activities that schools must report.

(In addition, HB 161 as amended by the House was re-referred to the House Education Committee.)

Bill Summary:

HB 161 amends the *School Athletics Equity Act* (SAEA) to reduce the reporting requirements related to athletic programs offered by public schools in grades 7 to 12. The major amendments:

- require data to be reported by program – that is, boys’ basketball and girls’ basketball – rather than by team – that is, boys’ varsity basketball, boys’ junior varsity basketball, and boys’ C team basketball;
- focus the reporting requirements on specific athletic program staff, like coaches and athletic directors, rather than on program personnel in general; and
- eliminate the fiscal reporting requirements for grades 7 and 8.

In addition, HB 161 addresses several practical or technical issues in the reporting requirements of the SAEA. More specifically, the bill:

- changes a reference to the 80th and 120th enrollment reporting dates to the “second and third” reporting dates, to correspond to changes in the *Public School Finance Act* enacted since the enactment of the SAEA in 2009;
- deletes “seasonal” and adds “volunteer” to the options for the employment status of coaches;
- deletes the “staff-to-athlete” ratio as a data point to be reported;
- removes equipment and supplies from the data point related to replacement schedules; and

- strikes “assistance in obtaining scholarships” from the data points to be reported.

Finally, HB 161 is the subject of House Executive Message No. 34.

Fiscal Impact:

HB 161 makes no appropriation.

Substantive Issues:

Endorsed by the Legislative Education Study Committee (LESC), HB 161 reflects the recommendations of an LESK work group that was formed at the request of the Chair of the LESK during the 2011 interim.

At the October meeting, the LESK heard a presentation by committee staff and representatives of the New Mexico Activities Association (NMAA) and the Southwest Women’s Law Center (SWLC) about the reporting requirements under the SAEA. Committee staff reviewed the provisions in federal and state law, the implementation of the SAEA, and concerns that had arisen among districts and schools. The NMAA representative reviewed the role that the NMAA had taken in the implementation of the SAEA, including adapting its MVP Database so that member schools could file their reports. The SWLC representative reviewed the state law within the context of federal Title IX (see “Background,” below).

As explained more fully under “Background,” below, the SAEA requires two phases of reports: the first, which was due by August 31, 2011, covers enrollment, participation, and staffing data; the second, which will be due by August 31, 2012, covers funding sources, expenses, and benefits and services. During the presentation in October, the LESK became concerned about the extensive nature of these reporting requirements and the challenges that school officials have faced in complying with the first phase and the challenges they will face in complying with the second phase, concerns that led to the formation of the work group.

The work group met on November 1, 2011 and reviewed the information from the October LESK meeting, the provisions of the federal Title IX and related regulations, provisions in similar laws in other states, and a list of amendments that had been suggested by the NMAA, the SWLC, the Public Education Department (PED), or the New Mexico Association of School Business Officials.

As the work group discussion proceeded, members raised a wide variety of points and concerns, among them:

- one purpose of the bill is to reinforce the value of athletics in schools, encouraging athletes to be serious students and to ensure their safety; and another is to provide transparency, to illustrate the practices at schools in order to prevent complaints or lawsuits;
- little is known about the extent to which noncompliance with Title IX is an issue in schools throughout New Mexico partly because, according to PED, the department is never involved in any complaints that may be filed; however, some members were aware of problems in particular areas and others noted that the participation rates for girls are generally lower than those for boys;

- the extensive reporting requirements, applicable to all schools regardless of their compliance with Title IX, seem to create the presumption of guilt;
- the SAEA provides no guidance for schools required to report and no enforcement authority or measures for schools not complying with the requirements;
- in the absence of state-level guidance, schools, districts, and their attorneys are interpreting the requirements in different ways;
- the use of two reporting systems – one for NMAA member schools through the association’s software program and the other for non-NMAA members schools through forms developed by PED – results in inequitable and inconsistent reporting; and
- the reporting requirements do not accommodate unusual circumstances, such as the case of several small schools pooling students to create a single football team or one coach working half-time at each of two schools.

At the November meeting of the LESC, the work group presented its recommendations, which fell into two categories: a number of specific amendments to the SAEA, which are contained in HB 161; and the creation of a smaller work group to draft reporting guidelines for schools. With both kinds of recommendations, the work group attempted to find a way to honor the spirit of the SAEA – to ensure that schools’ athletic programs give equitable opportunities to girls as well as to boys – and to relieve the reporting burden on public schools. The recommendation to form a drafting group has already been implemented through a motion adopted by the LESC; and this drafting group held its first meeting on January 4, 2012.

Background:

Federal Law and Regulations

The reporting requirements in the New Mexico SAEA correspond to federal law and regulations. Applicable to secondary and postsecondary schools alike, the federal Title IX education amendments of 1972 prohibit discrimination on the basis of sex:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance

Although the law does contain a number of exceptions – institutions controlled by religious organizations, social fraternities and sororities, and Boys and Girls State, to name a few – it seeks to ensure, among other things, that girls’ athletic programs are treated equitably with boys’ programs.

The federal regulations make these requirements and expectations more explicit. To illustrate, the regulations require:

- each recipient of federal funds (which includes public schools) to perform a self-evaluation of policies and practices and to modify any that seem out of compliance with law or regulation;
- every application for federal funds to be accompanied by an assurance that the educational program or activity operated by the applicant or recipient is operated in compliance with law and regulation;

- each recipient to designate at least one employee to coordinate its efforts toward compliance; and
- each recipient to consider a number of factors in determining whether the programs are in compliance, factors that are reflected in the New Mexico SAEA.

State Law

The New Mexico SAEA requires that each public school that has an athletics program for grades 7 through 12 “operate its program in a manner that does not discriminate against students or staff on the basis of gender.” The act prescribes two phases of reporting requirements.

- In the first phase, with a deadline of August 31, 2011, the law requires PED to collect, and schools to report, the following data:
 - total school enrollment;
 - student enrollment by gender;
 - total number of students participating in athletics;
 - athletics participation by gender;
 - the number of boys’ teams and girls’ teams by sport and by competition level;
 - the name and gender of each public school’s athletic director;
 - the name, gender, job title, and employment status of each team’s coach and other team personnel;
 - the coach-to-athlete and staff-to-athlete ratio for each team; and
 - the stipend or other compensation paid to coaches of boys’ teams and of girls’ teams.
- In the second phase, with a deadline of August 31, 2012, the law requires PED to collect, and schools to report, the following data:
 - an account of the funding sources, including booster clubs, concessions, gate receipts and cash or in-kind donations, and the teams to which those funds are allocated;
 - any capital outlay expenditures for each school’s athletic programs;
 - the expenditures for each program;
 - the expenditures for individual teams, including such items as travel, meals, lodging, equipment, banquets, publicity, and insurance;
 - replacement schedules for equipment, uniforms, and supplies;
 - practice and game schedules;
 - access to locker rooms, weight rooms, and other facilities; and
 - assistance in obtaining scholarships.

Among its other provisions, the act:

- requires each public school to:
 - make its data available to the public;
 - maintain its data and related materials for at least three years; and
 - submit an assurance of compliance with Title IX to its local school board or governing body, with a copy to PED; and

- requires PED to:
 - publish each school’s data, as well as a list of schools that did not submit fully completed data; and
 - beginning December 1, 2011, report annually to the Legislature and the Governor, including “recommendations on how to increase gender equity in athletics in public schools.”

Related Bills:

None as of February 7, 2012.