



## FISCAL IMPLICATIONS

PED's analysis states school districts and charter schools reported \$2.7 million in educational fees booked in the uniform chart of accounts object code 41702. The department indicates most, if not all, of these revenues would no longer be allowable under the provisions of the SEC Committee Substitute.

PED notes there are three other object codes that are used for reporting fees charged as follows:

- 41701 – Activities. School districts and charter schools reported collecting \$14.8 million in activities fees in FY13. This includes revenue received for memberships in school clubs or organizations.
- 41705 – User. School districts and charter schools reported collecting \$7.2 million in user fees in FY13. These include revenue from patrons of a school-sponsored activity such as a concert or athletic events.
- 41706 – Summer School. School districts and charter school reported collecting \$925 thousand in summer school fees in FY13. These are revenues from students relating to summer school programs.

PED's analysis cautions that it is possible school districts and charter schools will seek replacement of these lost revenues from the state.

## SIGNIFICANT ISSUES

The bill prohibits public schools from:

- Charging a registration fee to a student;
- Sanctioning a student or withholding a transcript, letter of reference, high school diploma, or diploma of excellence for unpaid school fees.

The “education clause” of the Constitution of the State of New Mexico provides for “A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.” Section 1 of Article XII. Other states with similar constitutional education clauses that guarantee a sufficient, uniform public education to all students have enacted statutory provisions enumerating when a school district or charter school is able to collect a fee and prohibits on collecting certain fees.

It is likely the provisions of the bill are consistent with Article XII, Section 1 of the Constitution of the State of New Mexico. In *Norton v. Board of Education School District Number 16, Hobbs Municipal Schools*, the New Mexico Supreme Court held that the education clause of the Constitution mandates that all courses “sufficient for the education” of students be provided for free. In addition, the Supreme Court also held that it is unconstitutional to charge students fees for books and supplies because the Court considered these items an essential component of a free public school education. The AGO's analysis of the original SB 207 notes that the Supreme Court did also explain that a school *may* charge “reasonable fees” for elective courses which are not integral to a public school education.

The Public Education Department's Analysis states:

Schools that currently charge fees for some classes may elect to eliminate those classes rather than underwrite the excess cost. According to a recent opinion piece by Kim Vesely

(Albuquerque Journal, January 14, 2015), the Rio Rancho school district charges fees for a only few electives, including music, JROTC, and culinary arts. It is important to note that electives are required for graduation. Charging fees for electives that are required for graduation may implicate the "free public education" provisions of the Constitution and state statute.

### **PERFORMANCE IMPLICATIONS**

Depending on how much revenue is lost by each school district or charter school pursuant to the provisions of this bill, student outcomes could be negatively affected if school districts are forced to cut programs.

### **CONFLICT**

Senate Bill 47, also introduced by Senator Brandt, conflicts with this bill.

### **TECHNICAL ISSUES**

Section A on page 1 prohibits a school or school board from charging enumerated fees; however, it only prohibits a governing body of a charter school from charging enumerated fees. It is unclear why the bill does not also prohibit a charter school from charging enumerated fees.

RSG/bb/aml/je