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FISCAL IMPACT REPORT

ORIGINAL DATE 3/03/17

SPONSOR Youngblood LAST UPDATED _____ HB 427

SHORT TITLE Prohibit Hazing at Schools SB _____

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB200, SB115

SOURCES OF INFORMATION

LFC Files
Legislative Education Study Committee (LESC) Files

Responses Received From

Public Education Department (PED)
Higher Education Department (HED)

SUMMARY

Synopsis of Bill

House Bill 427 creates a new section of Chapter 21 NMSA 1978, which relates to state and private education institutions, and the Public School Code requiring every educational institution in New Mexico to adopt, post, and enforce a hazing prevention policy. The bill further defines the act of hazing, requires notice of specific hazing prevention policies, and creates a few exemptions from hazing prevention policies.

FISCAL IMPLICATIONS

The bill does not make an appropriation; however, costs of implementing provisions of this bill are expected to be insignificant and should not pose any additional operating costs on existing budgets for educational institutions. Costs may include printing new school handbooks.

SIGNIFICANT ISSUES

The bill requires every educational institution to adopt, post, and enforce a hazing prevention policy. The bill defines hazing as any intentional, knowing or reckless act committed by a student, whether individually or in concert with other persons, against another student and in which both of the following apply:

- a. the act was committed in connection with an initiation into, an affiliation with, or the maintenance of membership in any organization that is affiliated with an educational institution; and
- b. the act contributes to a substantial risk of potential physical injury, mental harm, or personal degradation or causes physical injury, mental harm, or personal injury.

While defined within the bill, examples of what constitute hazing and the specific penalties for violating this policy are left to the local authority of the individual educational institution. According to PED, this is similar to how districts and schools are currently required to set school safety policy, inclusive of anti-bullying requirements. Each educational institution's hazing prevention policy must be printed in every student handbook for distribution to parents and students and include:

- the definition of hazing;
- statements prohibiting hazing or any involvement with hazing;
- a statement that victims consenting to or acquiescing in a hazing activity does not preclude it from being considered a violation;
- a statement requiring students, teachers, and staff to take reasonable measures to prevent hazing;
- procedures for reporting, filing complaints, and investigating a violation;
- penalties for violations.

The hazing prevention policy covers individuals who are enrolled, or intending to enroll within the next 12 months, at the educational institution. However, violations of hazing prevention policies do not include:

1. customary athletic events, contests, or competitions that are sponsored by an educational institution or
2. an activity or conduct that furthers the goals of a legitimate educational curriculum, a legitimate extracurricular program, or a legitimate military training program.

The bill does not specify any potential criminal act associated with violations of a hazing prevention policy. However, the bill does require educational institutions to describe circumstances under which a violation of the policy must be reported to a law enforcement agency. Within the PED's Student Teacher Accountability Reporting System (STARS), schools are required to record student infractions and dispositions, including those infractions where the disposition results in the referral to law enforcement or the juvenile justice system. Current assault laws, of which hazing may be considered as one, are defined in New Mexico as one of three different behaviors: attempting to commit a battery upon someone else; threatening or displaying menacing conduct, which causes the alleged victim to reasonably believe that he or she will be subject to battery; or using assaulting language to another which might harm his honor or his reputation.

The National Collaborative for Hazing Research and Prevention defines hazing as “any activity expected of someone joining or participating in a group that humiliates, degrades, abuses or endangers them, regardless of a person’s willingness to participate.” The bill’s definition of hazing does not refer to a person’s willingness to participate, but requires a statement in the student handbook noting that it is not a defense to a violation of the hazing prevention policy if the hazing victim consented to or acquiesced in the hazing activity.

LESC provides the following analysis:

According to StopHazing, an organization that promotes safe schools and campuses, and develops data-driven strategies for hazing prevention, 44 states and the District of Columbia currently have anti-hazing laws. Six states do not: Alaska, Hawaii, Montana, South Dakota, Wyoming, and New Mexico. Penalties in anti-hazing states run from no criminal sanctions, to low fines with some jail time, to large fines and prison sentences for felony-level hazing. HB427, however, does not criminalize hazing, instead merely requires schools and postsecondary institutions to adopt anti-hazing policies to be enforced at the school level. InsideHazing.com provides statistics on hazing:

- More than 1.5 million high school students and 250 thousand college students are subjected to hazing each year;
- 91 percent of all high school students belong to at least one organization, 48 percent of those students reported being hazed;
- 5 percent of all college students admit they were hazed;
- 40 percent of those who were hazed reported that a coach or advisor was aware of the practice;
- 50 percent of female NCAA Division I athletes report being hazed;
- More than 20 percent of female NCAA athletes are subjected to alcohol hazing;
- 6 percent to 9 percent of female NCAA athletes who reported being hazed stated sexual conduct was part of the hazing;
- More than half of hazing acts are posted on the Internet for others to see;
- Many students believe that hazing is part of campus culture;
- 36 percent of students would not report activities because of a “no tell” policy within their organization; and
- 27 percent feel that adults would not be able to handle a hazing situation properly.

The University of Maryland notes that since 1970, there has been at least one hazing-related death per year, although the lack of a universal definition for hazing, or a centralized system for tracking hazing, makes it difficult to compile a comprehensive national list of such incidents.

HED notes while most postsecondary institutions in New Mexico have anti-hazing policies, the bill would compel some standardization and would ensure that those institutions without such policies would adopt, post, and enforce them.

ADMINISTRATIVE IMPLICATIONS

PED may need to provide technical assistance and guidance to schools, districts, higher education institutions, and law enforcement agencies. Adjustments to databases and additional communication to affected parties would need to be made.

RELATIONSHIP

This bill relates to HB200, which enacts an anti-hazing act, and SB115, which requires school districts to develop and implement bullying prevention policies and programs.

TECHNICAL ISSUES

LESC notes The exception to what might be considered hazing created for an activity that “furthers a legitimate” extracurricular or military program is vague and recommends amending the bill to define or clarify what is meant by “legitimate.”

OTHER SUBSTANTIVE ISSUES

Since 2007 public schools and local and state charter schools have been required to implement bullying prevention programs and processes pursuant to the New Mexico Administrative Code (NMAC). Bullying prevention, as defined in Section 6.12.7 NMAC, is any “repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events.” Currently, the definition for bullying in Section 6.12.7 NMAC includes hazing, harassment, intimidation or menacing acts of a student, which may be based on the student’s race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation. PED promulgates comprehensive guidance to all schools for developing these policies, and requires a Safe School Plan to be written and submitted to every three years from all public and state-chartered charter schools.

The code requires each New Mexico school to develop and implement a policy that addresses bullying. The policy must include, but is not limited to:

- Definitions;
- An absolute prohibition against bullying (including cyberbullying as of the 2013-2014 school year);
- Staff training on cyberbullying;
- A method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- Procedures for reporting incidents of bullying, inclusive of hazing, and cyberbullying, which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident; and
- Consequences for bullying and cyberbullying, which include consideration of compliance with state and federal Individuals with Disabilities in Education Act requirements;
- Consequences for knowingly making false reports pursuant to the anti-bullying policy;
- Procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy; and
- Requirements that teachers and other school staff report any incidents of bullying.