

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/08/2007

SPONSOR Stapleton LAST UPDATED _____ HB HM 77

SHORT TITLE Study School Funding for Employee Legal Costs SB _____

ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Non- Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Memorial 77 requests that staff from the Public Education Department (PED) and the Legislative Education Study Committee (LESC), in consultation with staff from the Legislative Finance Committee (LFC) and Legislative Council Service (LCS), identify and analyze the legitimacy of the expenditure of state funds by school districts for the purpose of defending the districts and their school boards and employees in legal actions alleging misconduct.

FISCAL IMPLICATIONS

There will be an undetermined cost to the general fund to conduct this study. PED and LESL are requested to conduct this study, in consultation with LFC and LCS.

SIGNIFICANT ISSUES

House Memorial 77 focuses on the following:

- that certain recent controversies in New Mexico public school districts have brought public attention to alleged misconduct in New Mexico school districts;
- that those controversies have lead to litigation in which school districts use state funds channeled through the public school funding formula to finance litigation expenses for lawsuits brought against school districts and their school boards and employees;

House Memorial 77 – Page 2

- that decision-making at the school district level regarding expenditure of state funds for legal expenses may not be reviewed or approved by PED;
- that by constitution and practice, school boards in New Mexico have a great deal of autonomy in handling their own affairs, including controversies that may arise regarding alleged misconduct by teachers, administrators and other employees; and
- that in order to exercise properly its oversight powers, the Legislature should gather information on the expenditure of state funds by school districts for the purposes of paying attorney fees and other legal expenses in defense of alleged misconduct by teachers, administrators and other employees.

HM 77 requires that staff from PED and LESC, in consultation with staff from LFC and LCS, be requested to identify and analyze the legitimacy of the expenditure of state funds by school districts for the purpose of defending the districts and their school boards and employees in legal actions alleging misconduct.

HM 77 specifies that the study must include research on:

- the existing criteria in New Mexico public school districts for evaluating the merits of legal actions against districts and their employees and whether to expend funds in defense of those legal actions;
- the amount of attorney fees and legal expenses expended by each of the state's school districts annually for the last 10 years in addressing legal questions for the district and its school board and employees, including any cases of particularly outstanding controversy or expense;
- whether school districts impose limits on the expenditure of funds for attorney fees and litigation expenses;
- any elements that may keep the legal expenses of certain school districts consistently low; and
- the practices of school districts and state governments in surrounding states and comparable jurisdictions with regard to the expenditure of state funds by school districts to defend the districts and their school boards and employees against legal action.

HM 77 also states that PED, LESC, LFC and LCS present a report on their research and findings to LESC and LFC no later than November 1, 2007.

PED states that this memorial would ask the PED, the LESC, the LFC and the LCS to study in-depth an area which has raised many issues as of late.

Significantly, PED recently amended PED rule 6.20.2 to address this very issue. 6.20.2.23 (B) specifies that “no district funds shall be used for payment of personal legal fees, including attorney’s fees and costs, of any school district or charter school employee or local school board member,” and that “any payment of legal fees must serve a clearly identifiable public interest.”

ADMINISTRATIVE IMPLICATIONS

PED staff will need to be assigned to conduct this study, as well as, staff from LFC, LESC and LCS.

BS/nt