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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/12

SPONSOR Kintigh LAST UPDATED HB 94

SHORT TITLE School Attendance Law Prosecutions SB

ANALYST Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General Office (AGO)
 Children, Youth and Families Department (CYFD)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 94 amends Section 22-12-7 NMSA 1978 and requires parents be given notice of their child’s habitual truancy by regular and registered mail, adds school boards as entitled to investigate and file charges under and enforce the Compulsory School Attendance Law (CSAL). Local school boards may authorize a school district employee to appear and prosecute in Magistrate and Metropolitan courts petty misdemeanor violations of the compulsory school attendance law.

FISCAL IMPLICATIONS

Funding to enforce this bill is deemed to be included in school district and court budgets; however, if the workload significantly increases, it may require an increase in funding. PED states this bill provides an option to local school boards and “if all entities took advantage of this provision the approximate cost to New Mexico public schools would be approximately \$634 thousand annually. However, calculations are not provided as to how this amount was derived.

SIGNIFICANT ISSUES

AGO points out while prosecution by non-lawyers in metropolitan and magistrate courts is not without precedent; however, prosecutions are currently limited to certified law enforcement officers who, while not lawyers, do at least have required training in criminal law and procedure. No such training is provided for the school board appointees contemplated by this bill. This raises concerns about the efficacy of prosecutions by appointees and may raise issues of due process.

PED states this bill “appears to be a legislative attempt to permit lay persons to practice criminal law in the state’s courts. Only the Supreme Court has that authority at this time.” This is found in Rules of the Supreme Court Rule 15-102. PED suggests CYFD could have dedicated staff for prosecuting parents for misdemeanor violation of CSAL.

AODA states “For the DA offices which target truancy and are in a continual push for cooperation with schools and JPPO [Juvenile Probation and Parole Offices] offices to the DA by bringing these cases to our timely attention, this law would undercut that effort if schools choose to “go their own way” and tend them less carefully.” However, AODA adds, for those offices which do not have the time or personnel to handle these cases, this law would be helpful.

CYFD offers expanding the parties authorized to initiate prosecutions for CSAL may result in more parents being prosecuted, lowers the standard for legally initiating a prosecution, and allows the school board to proceed with prosecution even in cases where the probation office has actively declined to make a prosecution referral.

PERFORMANCE IMPLICATIONS

AOC suggest the bill may have an impact on two performance measures: cases disposed of as a percent of cases filed and percent change in case filings by case type.

TECHNICAL ISSUES

PED states certified mail which provides the sender with proof of delivery may be more appropriate for parental notification.

AODA points out the bill gives written notice to parents of students non-complying with the provisions of CSAL. Many children are under the care of grandparents or other guardians whether by formal or informal arrangements.

OTHER SUBSTANTIVE ISSUES

PED suggests CYFD could dedicate staff for enforcing the CSAL.

CYFD suggests Section E of the bill allows for the actual commencement of prosecution, but does not reflect the appropriate probable cause standard, instead it states enforcement may be initiated when it has been determined the student’s truancy “...*may* have been caused by the parent...”