

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 47

51st Legislature, 2nd Session, 2014

Tracking Number: .195424.1SA

Short Title: School Truancy Identification & Penalties

Sponsor(s): Representative Larry A. Larrañaga

Analyst: Kevin Force

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Bill Summary:

HB 47 proposes to amend the *Compulsory School Attendance Law* and the *Motor Vehicle Code* in several respects. A section-by-section synopsis follows:

Sections 1 through 4 would amend the *Compulsory School Attendance Law*.

Section 1. [Requirements for withdrawing from school; suspension or denial of driving privileges]:

- A school-age person subject to the requirements of the attendance law shall not withdraw from school unless:
 - the student's parent provides written documentation that the student is enrolled in another public, private, or home school;
 - the school receives written documentation that the student is ill, or needs to work full-time to help support his or her family;
 - the school receives a court order from a court with jurisdiction over the student; or
 - at an exit interview:
 - the student, his or her parent, and the school principal meet to discuss the student's withdrawal;
 - the student and the parent sign an acknowledgement that withdrawal from school is likely to diminish the student's long-term employment and earning potential; and
 - the principal agrees to the withdrawal and also signs the acknowledgement.
- Beginning with school year 2014-2015, when a student in grades 8 through 12 withdraws from school without meeting the requirements noted above:
 - a school may provide the student's parent with a notice of noncompliance with the *Compulsory School Attendance Law*, containing:
 - the student's name, birth date, and address;
 - a statement of noncompliance with the attendance law, due to withdrawal from school that does not meet requirements; and

- notice of a chance to meet with the school principal or head administrator within two weeks to:
 - ✓ commit to returning to school; or
 - ✓ provide evidence that the student is no longer subject to the *Compulsory School Attendance Law*;
- a school district or state-chartered charter school may provide the parent and the Motor Vehicle Division (MVD) certification of noncompliance with the *Compulsory School Attendance Law* within 30 days of the date when the notice of noncompliance is sent to the student's parent if the student remains noncompliant;
- upon receipt of the certification of noncompliance, the MVD must suspend or deny the issuance of an instruction permit, driver's license, or provisional license to the student, until he or she is 18 years old; and
- after suspension or denial of driving privileges, the student may:
 - request a hearing from the district or charter school for the student to provide evidence supporting notice from the district or charter to the MVD that the student is either no longer subject to, or in compliance with, the attendance laws;
 - appeal the district's or charter school's finding of noncompliance by requesting a hearing and final decision from the Public Education Department (PED); and
 - appeal the department's final decision to the district court.

Section 2. [Suspension or denial of driving privileges, and appeals]:

- Beginning with school year 2014-2015, when a student in grades 8 through 12, accumulates 10 or more absences (habitual truancy):
 - a school may give the student's parent a notice of noncompliance with attendance laws;
 - a school district or state-chartered charter school may provide the parent and the MVD certification of noncompliance within 30 days of when the notice of noncompliance was sent to the parent, if the student remains noncompliant;
 - upon receipt of the certification of noncompliance, the MVD must suspend or deny the issuance of an instruction permit, driver's license, or provisional license to the student; and
 - after suspension or denial of driving privileges, the student may:
 - request a hearing from the district or charter school for the student to provide evidence supporting notice from the district or charter to the MVD that the student is either no longer subject to, or in compliance with, the attendance laws;
 - appeal the district or charter school's finding of noncompliance by requesting a hearing and final decision from PED; and
 - appeal the department's final decision to the district court.

Section 3. [Early identification and notice and immediate interventions system, unexcused absences and withdrawal risk factors]:

- PED must develop the identification, notice, and intervention systems for implementation by the school districts.

- After five unexcused absences, the school must meet with the student’s parents to discuss:
 - the reason for the absences;
 - immediate interventions to prevent further absences;
 - parental involvement; and
 - potential consequences of continued absence.
- For each student who demonstrates any risk factor that may lead to withdrawal, schools shall provide:
 - immediate intervention, aligned to the student’s next step plan; and
 - for the parents and the district, a record of each risk factor demonstrated by the student and the interventions taken to address it.
- “Risk factors” include:
 - multiple discipline referrals;
 - third grade reading scores below proficiency;
 - habitual truancy in grades 6 through 9;
 - failing a course in grades 6 through 9; or
 - a grade point average of 1.5 or lower in ninth grade.

Section 4. [Unexcused absences, truancy, withdrawal and attendance policies]:

- Each school district and charter school must provide for the early identification and notice and intervention system, for keeping habitual truants, or students with other risk factors, in an educational setting, without out-of-school suspension or expulsion.
- Once per semester, each school shall report to the school district, and once per year, each school district shall report to PED, the number of students who:
 - have five or more unexcused absences;
 - have 10 or more unexcused absences;
 - withdrew from school under the provisions of this bill, with or without an exit interview;
 - stopped attending school during the semester; or
 - failed to return to school after a break.

Finally, in Section 5, HB 47 proposes a new section of the *Motor Vehicle Code* to provide MVD with authority to:

- suspend or postpone a student’s driver’s license, instructional permit, or provisional license without a preliminary hearing upon receipt of certification of noncompliance with attendance laws from a school district, state-chartered charter school, or PED, until the person is 18 years old;
- upon receipt of certification that the student is in compliance with, or no longer subject to, the *Compulsory School Attendance Law*, grant or reinstate the student’s instructional permit, driver’s license, or provisional license; and
- adopt rules to implement these provisions.

Fiscal Impact:

HB 47 does not contain an appropriation.

Fiscal Issues:

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC):

- Requirements of immediate intervention for each student who demonstrates any risk factor associated with withdrawal from school may be costly to school districts, although the bill does not specify required interventions.
- Neither the budget recommendation from the LFC or the executive includes an appropriation pertinent to the provisions of this bill, although PED notes in its analysis that, because mechanisms for enforcement of these provisions are already in place, most of the requirements of this bill should be achievable with current resources.
- PED will be required to promulgate rules at least for the determination of a school-age person's truancy and the administration of hearings and appeals. Depending upon the number of such appeals, PED may be significantly burdened, as LFC staff note that PED is currently understaffed by 70 FTE, or about 30 percent.
- There may be increased administrative costs to PED and MVD.

The Administrative Office of the Courts (AOC) notes that:

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- additional fiscal impact on the judiciary would be proportional to the enforcement of this law; and
- new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Technical Issues:

- The title of HB 47 includes a reference to a hearing conducted by the MVD, which should be stricken, because this bill places the responsibility for hearings regarding noncompliance with attendance laws on school districts and state-chartered charter schools, with recourse to PED and, finally, the district court for appeals.
- Provisions in the *Public School Code* that would be amended by the bill (Sections 1-4) state that, upon certification of noncompliance with the *Compulsory School Attendance Law*, the MVD *shall* suspend or deny driving privileges, while the section of the bill that proposes to amend the *Motor Vehicle Code* (Section 5) merely "authorizes" the MVD to suspend or deny driving privileges.
- LFC staff note that:
 - Compliance decisions regarding students of locally chartered charter schools appear to take place at the local district level. It is unclear in the case of students of the state's two virtual charter schools whether the deciding entity will be the authorizing school district or the district of a student's residence.
 - SB 44 proposes to amend a number of sections of the *Public School Code* by replacing various terms used to refer to the "General Equivalency Diploma" ("GED")

with “high school equivalency credential.” While sections of law addressed by SB 44 do not include those amended in HB 47, LFC staff have suggested that SB 44 should amend additional sections, including one of those addressed by the instant bill, HB 47. In the event that both these bills pass as introduced, there would be a conflict between the provisions of the two bills, at Section 22-12-2(A) NMSA 1978.¹

- The bill establishes a time period in which the school district or charter school must wait before sending a notice of noncompliance to the MVD in order to suspend or postpone the student’s driving privileges, but it does not establish any timeline for potential hearings and appeals.
- Currently, HB 47 only allows the noncompliant school-age person to request a hearing or appeal from the decision resulting in suspension of driving privileges, but not the student’s parents.
- Suspension of driving privileges appears to only apply to students of public schools, but students of private schools, home schools and state institutions are also subject to the *Compulsory School Attendance Law*.
- Sections 3 and 4 of the bill appear to address requirements only to school districts and omit charter schools. LFC staff suggest amending the bill to solve the discrepancy.

The Administrative Office of the District Attorney (AODA) notes that the bill fails to capitalize the “I” in *Compulsory School Attendance Law* at page 5, line 19, at 22-12-2(E)(4)(a) NMSA 1978.

Substantive Issues:

The provisions of HB 47 align with research from The National Dropout Prevention Center/Network that identifies 15 effective strategies that have the most positive impact on the dropout rate.² These strategies have been implemented successfully at all education levels and environments throughout the nation.

According to the PED analysis:

- HB 47 makes clear what is considered a legal withdrawal from school.
- The bill allows for multiple opportunities to support students in avoiding withdrawal from school and attendant consequences, as well as allowing truant students to be referred directly to the courts, as is the case under current law.
- The provisions of the bill are modeled after an Indiana program³ that saw a “significant reduction” in the dropout rate after implementation.
- Research shows that early intervention involving parents can prevent truancy and harsh consequences such as the suspension or postponement of driving privileges.
- Requiring school districts to comply with the provisions of HB 47 would allow for consistent application of the *Compulsory School Attendance Law*.

¹ “Except as otherwise provided, a school-age person shall attend public school . . . or receive[d] a *general educational development certificate*. (Emphasis added.)

² See <http://www.dropoutprevention.org/effective-strategies>.

³ See Indiana Code 20-33-2-11 “Habitual truants ineligible for operator’s license or learner’s permit; minimum definition of ‘habitual truant’”, and IC 9-24-2-1 “Truants, suspended and expelled students, and dropouts”. See, also, generally, IC 20-33-2 “Compulsory School Attendance.”

- PED would need to enhance current mechanisms or develop, in collaboration with the Juvenile Probation Office of the Judicial District and the MVD, a systematic method for referral, reporting, and monitoring the reporting of school-age persons in violation of the *Compulsory School Attendance Law*.
- The department would need to amend 6.11.2 NMAC, “Rights and Responsibilities of the Public Schools and Public School Students” to be in compliance with the provisions of the bill.
- PED and MVD have already begun coordinating on the most appropriate way to ensure proper implementation of the provisions of the bill by schools, districts, PED, and MVD.

According to the AOC, judges currently use driving privileges as a tool in juvenile dispositions, but it is unclear from the provisions of the bill whether a Children’s Court judge would receive this potentially useful information about the status of a school-age person’s driving privileges.

According to the AODA, the provisions of the bill may be open to a due process challenge, as HB 47 contemplates the revocation of an already-granted privilege, which would require that adequate notice and opportunity to be heard be afforded the person affected by the revocation. Specifically, under HB 47:

- The student receives neither notice of noncompliance, nor notice of a certificate of noncompliance sent to the MVD. Rather, those notices go to the parent, who may request a meeting before driving privileges are suspended. No remedies are available to the actual school-age person/driver until after driving privileges are suspended; it is at that point that the driver may request a hearing, and has a right to an appeal from an adverse decision.
- Revocation may not be, in all cases, the fault of the school-age driver, but rather the result of a parent’s failure to provide appropriate documentation of compliance or explanation of properly excused absences. Thus, HB 47 may unfairly impact school-age drivers whose parents are absent or uninvolved or otherwise unable to understand or comply with the bill’s requirements.
- Currently, failure to comply with the *Compulsory School Attendance Law* may result in an order by the Children’s Court suspending driving privileges. HB 47 would remove that discretion from the court and make suspension automatic upon transfer of a certificate of noncompliance to the MVD.

Background:

The *Compulsory School Attendance Law* defines the term “habitual truant” as a student who has accumulated the equivalent of 10 or more days of unexcused absences in a school year. An “unexcused absence,” according to this law, means an absence from school or classes for which the student does not have an excuse allowed under either the law, or the rules of the local school board, the governing authority of a charter school, or a private school.

During the 2012 interim, the Center for Education Policy Research, at the University of New Mexico, testified before the Legislative Education Study Committee that more than 51,000 students in the state’s elementary, middle, and secondary schools were habitual truants in school year 2011-2012. Maps presented as part of this testimony illustrated that truancy rates vary widely among schools within given districts. This testimony also provided an overview of the

entities that may take action in the enforcement of penalties for habitually truant students, including:

- the school of the truant student;
- PED;
- the Probation Services Office of the Children, Youth and Families Department (CYFD);
- the district attorney; and
- law enforcement agencies.

This testimony added that truancy is a symptom of three general factors:

- individual challenges, such as low academic performance, low educational aspirations, boredom with school, drug use, or pregnancy;
- relational challenges, such as a lack of caring adults, bullying, or a lack of participation in school sports and activities; and
- structural challenges, such as weak truancy policies, institutional racism and discrimination, and low-income families.

During the 2013 legislative session, in its analysis of a bill identical to HB 47, the Department of Health provided the following background regarding truancy, its effects and the efficacy of linking truancy to driving privileges:

- Twenty-seven states have some policy connecting student attendance, behavior, and achievement to driving privileges:
 - seventeen states condition driving privileges on compliance with school attendance requirements;
 - four states combine academic performance and attendance requirements as conditions of driver's license eligibility;
 - three states will revoke a student's driving privilege based on suspensions, expulsions, and other safety infractions;
 - two states will revoke a student's driving privilege based on attendance infractions and suspensions, expulsions, or other safety infractions; and
 - one state places conditions on driving privileges based upon compliance with attendance, behavior, and academic performance.
- State policymakers should consider that, for many teenagers, driving is real currency, and promoting this privilege as a reward for attending and succeeding in school resonates with many students.
- Districts and schools may incur administrative costs in collaborating with the MVD, but still these can be relatively low-cost policies.⁴
- Several states have introduced No Pass No Drive laws that have been effective in reducing truancy and increased time allocated to school.⁵

⁴ <http://www.ecs.org/clearinghouse/60/10/6010.pdf>

⁵ *No Pass No Drive: Education and Allocation of Time*, IZA Discussion Paper No. 6464, Barua and Vidal-Fernandez, 2012, at <http://ssrn.com/abstract=2039650>.

- Truancy reduction programs that promote consistent attendance by addressing the underlying causes of truancy can also improve academic achievement while reducing problem behaviors, including substance abuse and delinquency.
- Truancy and chronic absenteeism, often stepping stones to withdrawal from school, have short- and long-term consequences on children and society, including:
 - lower grades;
 - greater student retention;
 - higher dropout and expulsions rates; and
 - lower graduation rates from high school than students with fewer unexcused absences.
- Truancy is a risk factor for other problems, including:
 - substance abuse;
 - delinquency;
 - gang activity; and
 - serious criminal behavior.

Committee Referrals:

HEC/HJC

Related Bills:

SB 25 *School Truancy Identification & Penalties* (Identical)