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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/15
SPONSOR Brandt **LAST UPDATED** _____ **HB** _____

SHORT TITLE Prohibit Certain Public Ed Fees **SB** 47

ANALYST Gudgel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Potential Revenue Decrease	See Fiscal Implications		School District and Charter Schools

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Potential Expenditure Increase		See Fiscal Implications		School District and Charter Schools

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)

Responses Not Received From
 Public Education Department

SUMMARY

Synopsis of Bill

Senate Bill 47 enacts a new section of the Public School Code that establishes what fees a school, school board, or governing body of a charter school is able to charge a student and what fees are prohibited. The bill requires each school board or governing body of a charter school to enact, at a public meeting that has given 30-days notice, a fee and then get PED ratification of the fee prior to imposing allowed student fees.

FISCAL IMPLICATIONS

The bill will decrease the revenues currently able to be collected by local school districts and charter schools for student fees, likely resulting in the use of state equalization guarantee funds for things currently paid with student-fee revenue. At this time, it is unclear the exact fiscal impact on school districts and charter schools, as it is unknown how much revenue is collected by school districts and charter schools for student fees that are prohibited in this bill.

There are also additional fiscal implications of this bill for school districts and charter schools related to the requirements to hold a public meeting to enact student fees and posting of notice.

SIGNIFICANT ISSUES

The bill prohibits public schools from charging fees to a student for:

- participating in any course or program conducted during the school day that allows the student to earn a credit; is subject to the standardized statewide grading system; is pursuant to an interim next-step plan, next-step plan, final next-step plan or individualized education plan; is necessary for enrollment, grade promotion or graduation; constitutes fine arts education; or constitutes physical education;
- participation in any school-sanctioned activity conducted during the school day;
- instruction, educational assistance, special education or intervention rendered during the school day;
- instructional materials for facilitating learning, unless the instructional materials are replacement instructional materials necessitated by the student's loss or damage;
- school library materials, unless the school library materials are replacement school library materials necessitated by the student's loss or damage;
- materials, supplies or equipment needed for a student to participate in any course or program conducted during the school day, unless the materials, supplies or equipment are replacement materials, supplies or equipment necessitated by the student's loss or damage; or
- any item or service needed for a student to attend or be enrolled in the school or be registered in the school, school district or charter school. A school, local school board or governing body of a charter school may charge a student for a replacement item necessitated by the student's loss or damage.

The bill allows fees to be charged for the following:

- parking;
- attendance at an event conducted before or after the school day or not on school grounds;
- or
- anything not expressly prohibited by the bill.

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.

The Attorney General’s Office notes the bill appears 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 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.

As currently proposed, the language in Section B, which would allow for assessment of a fee for “anything not prohibited in Subsection A of this section,” may be too broad. The AGO’s analysis suggests that, consistent with the Supreme Court’s ruling in *Norton*, any fees imposed should be limited to “reasonable fees” for elective courses or other activities that are not an essential component of a free public school education.

It is unclear if, given how the bill is drafted, a school district or charter school will still be able to charge student fees for meals (breakfast and lunch). Subsection B allows a school district to impose a fee for anything not specifically exempted in Subsection A. Subsection A notes a school is unable to impose a fee for any school-sanctioned activity conducted during the school day. It is possible that this could be construed to include lunch. If the intent is to all schools to continue to charge fees for lunch this should be included as a specific exemption pursuant to Subsection B.

ADMINISTRATIVE IMPLICATIONS

Local school boards and governing bodies of charter schools will be required to post notice of a meeting to consider imposing a fee 30 days prior to the notice and then hold a public meeting to enact the fee prior to imposing any allowable student fees.

PED will be required to ratify any fee imposed by a local school board or governing body of a charter school prior to the district or school being able to impose any fees.

CONFLICT

Senate Bill 207, 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