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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>HB200/HFIS</u>	Sponsor	<u>House</u>
Tracking Number	<u>.208292.4</u>	Committee Referrals	<u>HCPAC/HEC</u>
Short Title	<u>Anti-Hazing Act</u>		
Analyst	<u>Force</u>	Original Date	<u>2/27/17</u>
		Last Updated	<u>3/13/17</u>

BILL SUMMARY

Synopsis of Bill

House Floor Substitute for House Bill 200 (HB200/HFIS) proposes to enact a new section of the Criminal Code to create a new petty misdemeanor of “hazing.” Hazing occurs when a student enrolled in a postsecondary educational institution willfully takes action or creates a situation that recklessly or intentionally endangers the mental or physical health of another current or prospective student for the purpose of induction, initiation, admission, or maintenance of membership in a student organization, student body, or private athletic club. Hazing occurs whether or not the organization or club is sanctioned by the educational institution. Hazing does not include coaching, training, conditioning, physical education, or customary athletic or school-sanctioned events. A person who commits hazing would be guilty of a misdemeanor, to be sentenced to a definite term in county jail of less than one year, the payment of a \$1,000 fine, or both.

FISCAL IMPACT

HB200/HFIS does not contain an appropriation.

The Administrative Office of the Courts (AOC) indicates the bill would create minimal costs for the statewide update and documentation of statutory changes. Other fiscal impacts would be proportional to the enforcement of the law.

The Public Education Department (PED) notes the lack of appropriation in the bill would require PED to undertake significant administrative actions using limited existing resources.

SUBSTANTIVE ISSUES

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 for hazing in these states run from no criminal sanctions, to low fines with some jail time, to large fines and prison sentences for felony-level hazing.

HB200/HFIS would create misdemeanor and fourth degree felonies of the acts of hazing and hazing resulting in death. Under New Mexico law, a misdemeanor is punishable by a fine of \$1,000, or county jail time of less than one year, or both. A fourth degree felony is punishable by 18 months imprisonment, while a fourth degree felony involving sexual exploitation of a minor is punishable by 10 years in prison.

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 group, 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 list of such incidents.

As noted by the Higher Education Department (HED), the inclusive nature of the list of elements of the crime of hazing (an unsanctioned act resulting in bodily harm that recklessly or intentionally endangers the student or others) means that any person who commits such an act could be prosecuted under existing New Mexico criminal law. These requirements, however, also exclude acts that do not cause bodily harm from being considered hazing, including humiliation, degradation, and endangerment; it is possible these acts alone may not fall under another criminal statute. Finally, HED indicates it is unclear from the provisions of the act whether consent would be permitted as an affirmative defense. While HED speculates whether such a defense might make cases involving impressionable minors more difficult to prosecute, as they may have consented to the hazing, it should be noted that the provisions of the bill make a person who knowingly participates in hazing equally guilty as those who perpetrate it. Without specifically exempting victims from the language criminalizing knowing participation, victims themselves may be prosecuted as participants, thus possibly rendering the question of the affirmative defense of consent moot.

ADMINISTRATIVE IMPLICATIONS

PED notes several administrative issues it would need to address, including:

- Revision of 6.12.7 NMAC, “Bullying Prevention”;
- Changes to policy requirements for the recently revised *Planning for Safe Schools in New Mexico: School Guide* (Fall, 2016);
- Revision of the three-year timetable of review of Safe School Plan submissions, currently consisting of approximately 600 plans;
- Additional changes to the *Wellness Policy and Guidance Document* (Fall, 2016);
- PED’s Information Technology Division would need to aggregate the data captured in the Student Teacher Accountability Reporting System in relation to new definitions, incidents, and disposition of hazing as a separate act from bullying;
- Technical assistance and guidance for local school boards related to progressive discipline for bullying, hazing, and harassing;
- Development and provision of guidance and technical assistance to local schools in relation to the involvement of law enforcement, particularly as related to differentiating for age, grade, and developmentally appropriate application of the law; and
- Development and provision of guidance and technical assistance to local schools in relation to the involvement of the Attorney General, and the Children’s Court, particularly the differences between the adult and juvenile justice systems.

TECHNICAL ISSUES

The bill notes that hazing occurs when a student creates a situation that recklessly or intentionally endangers the health of another student. A “situation” is incapable of forming *mens rea*. The sponsor may wish to consider amending the bill so that it is the student who recklessly or intentionally creates a situation that endangers another student, putting the *mens rea* element of the offense back on the student, rather than the situation.

OTHER SIGNIFICANT ISSUES

PED notes that the bill does not include provision for the process, mechanisms, or responsibility of reporting hazing in a school setting, or the process or mechanism by which law enforcement would be notified or become involved.

HED indicates that tortious claims may result from the act of hazing. While most courts have tended to find no duty for postsecondary educational institutions to protect students from injuries resulting from the misconduct of another student, HED notes that some cases have established a responsibility for postsecondary institutions to protect students from hazing when they reasonably knew such activity was taking place. HED also indicates that New Mexico postsecondary institutions have explicit anti-hazing policies. A strong state law and school guidelines could help reduce the need for costly litigation.

RELATED BILLS

Relates to CS/CS/HB75/HECS/HJCS/aFl#1/aSJC, Limit School Use of Restraint & Seclusion, which regulates the use of restraint and seclusion in schools, and provides for notice to parents when their student has been subjected to restraint or seclusion.

Relates to SB115/aSJC, Safe Schools for All Students Act, which would require school districts to adopt and enforce bullying prevention policies and programs.

SOURCES OF INFORMATION

- Legislative Education Study Committee Files
- Higher Education Department
- Legislative Finance Committee files
- Office of the Attorney General
- Public Education Department

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