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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/06/18

SPONSOR Ruiloba/Hall LAST UPDATED \_\_\_\_\_ HB 297

SHORT TITLE School Attendance Interventions SB \_\_\_\_\_

ANALYST Liu

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	\$0.0 - \$55.3	\$0.0 - \$55.3	Recurring	Local Governments Road Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Hearing Office (AHO)

Attorney General (NMAG)

Taxation and Revenue Department (TRD)

#### No Responses Received From

Children, Youth and Families Department (CYFD)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 297 amends the Compulsory School Attendance Law, providing for earlier and more intensive interventions for absent or chronically absent students; redefining terms; requiring schools to work with community partners that assist in dropping chronic absenteeism rates;

providing a parental notification, intervention, and referral process to CYFD; providing for suspension of a student's drivers license; requiring data collection and use; and requiring records of absences and responses to interventions in a students' cumulative record, amongst other proposed amendments.

Additionally, the bill repeals and replaces Sections 22-12-7 through 22-12-9 NMSA 1978 with new material. The new sections include definitions, requirements for attendance policies, and enforcement mandates for the attendance policies.

## **FISCAL IMPLICATIONS**

Under current law, habitually truant means a student who has accumulated the equivalent of 10 days or more of unexcused absences within a school year. This is similar to the bill's definition of chronically absent, which means 10 days of unexcusable absences after interventions or resources have been offered by the school. In FY17, statewide habitual truancy rates for high school students decreased; however, elementary and middle school habitual truancy rates increased, and overall habitual truancy rates remain higher than desired. Approximately 21.5 percent of students in high school were truant at least 10 days or more compared with 14.5 percent of students in middle school. The habitual truancy rate was the lowest for elementary school students, at 13.8 percent.

The bill does not include an appropriation. TRD notes this bill may result in additional revenue from reinstatement fees, although the penalty of license suspension may reduce estimates of these fees. Section 66-5-33.1 NMSA 1978 provides a \$25 prerequisite fee to reinstate any license or registration. Assuming 5 percent of 11<sup>th</sup> and 12<sup>th</sup> graders are chronically absent and have licenses suspended, the additional revenue to the local governments road fund could be up to \$55.3 thousand.

Provisions of this bill may result in additional operating budget impacts to CYFD caseworkers, as noted in prior analyses of similar bills. On average, about 15 percent of all students, or about 50 thousand students, are chronically absent each year. Assuming no changes in the chronic absenteeism rate, the number of additional CYFD caseworkers necessary to address each student case could be substantial.

## **SIGNIFICANT ISSUES**

The bill allows students over the age of 16 to leave school in the case of hardship, excuses absences for tribal obligations concerning religious instruction and medical absence considerations for pregnant and parenting students, and creates new definitions centered on absenteeism, new attendance policy requirements for public schools, new attendance enforcement procedures for public schools, and new absenteeism reporting requirements for PED. The bill requires the families in need of services program (FNS) of CYFD to notify the Motor Vehicles Division (MVD) and PED about the suspension of a student's driving license and report parents that cause their child to be chronically absent to law enforcement agencies.

The bill provides the following new material. Each public school must maintain an attendance policy that provides for early identification of students with absences and students in need of intervention and early identification of patterns of absences before chronic absenteeism begins. Additionally, the bill prohibits out-of-school suspension and expulsion as punishment for

absences and chronic absenteeism.

Public schools must help struggling student's families remove barriers to the student's regular or alternative school attendance. Schools are required to take daily attendance and document whether the absence was a medical absence, religious instruction or tribal obligation absence, or interscholastic extracurricular activities absence. Schools must also document attempts at notifying the parent of their student's absences, improving attendance informally by talking to the student or parent, meeting formally with the parent to discuss necessary interventions, and implementing intervention strategies to keep the student in an educational setting for the following levels of absenteeism:

1. If a student has three unexcused absences, five excused absences, or a combination of excused and unexcused absences totaling five absences (excluding interscholastic extracurricular activities), the public school must provide interventions. Interventions include parental notification on the student's attendance history, impact of student absences, available services, and potential referral to a juvenile probation office.
2. If a student has five unexcused absences, seven excused absences, or a combination of excused and unexcused absences totaling seven absences (excluding interscholastic extracurricular activities), the parents are notified of the absenteeism by mail. The notice will include a date, time, and place for the parent to meet with the principal or head administrator of the school to develop intervention strategies to keep the student in an educational setting.
3. If a student accumulates more than seven absences, excused or unexcused, the school will notify parents and establish nonpunitive consequences at the school level. An evaluation of teacher-student incompatibility will then be conducted to identify if the absenteeism is caused by the teacher.
4. If the public school provides necessary interventions, the parent or family does not use the resources or interventions provided, or the student continues to be absent for a total of 10 classes or school days, the student will be considered chronically absent and referred to FNS.
5. A CYFD caseworker will meet with the family at the student's public school to determine additional interventions. The meeting will involve the school principal or other school and appropriate community partners unless the parent objects. CYFD will determine if additional interventions will be worthwhile in changing the student's behavior.
6. If the student has a driver's license, the CYFD caseworker will notify the student and parent at the public school meeting that failure to demonstrate behavioral improvements will result in a report to PED and suspension of the student's driver's license upon notification to MVD. If a parent, after receiving written notice, knowingly allows a student to continue to violate the Compulsory School Attendance Law, they can be charged with a petty misdemeanor.

The bill provides an amended definition and revision to the penalties for students who are considered to be chronically absent and their parents who are in violation of the Compulsory School Attendance Law. A new section is added, authorizing MVD to suspend license of a school-age person. Reinstatement of the license will only occur if an administrative hearing is conducted and the ruling is for reinstatement, FNS issues a certificate of compliance and the student pays a reinstatement fee, or the student reaches the age of 18.

The bill repeals and replaces Sections 22-12-7 through 22-12-9 NMSA 1978, which deal with enforcement of the existing attendance law, penalties, early identification, habitual truants, unexcused absences, and attendance policies.

## **PERFORMANCE IMPLICATIONS**

Provisions of this bill may impact performance measures relating to habitual truancy rates. The New Mexico federal Every Student Succeeds Act plan includes the following excerpt:

Through school year 2017-2018, the state will report habitual truancy for students who have accumulated the equivalent of 10 or more full-day unexcused absences within a school year. This truancy rate has been reliably reported by school and LEA and is being used for supplementary information in school grading. Beginning in 2018-2019 the state proposes to expand this measure to account for all absences both unexcused and excused (chronic absenteeism). Absenteeism represents lost instructional time whether excused or not and has a strong relationship with achievement and graduation. As early as pre-kindergarten, students who are chronically absent are less likely to read proficiently by the end of third grade and more likely to be retained in later grades...For this reason, PED will begin to track PreK attendance in SY2017-18. Absenteeism further serves as an early warning system that is relevant to all grades and is considered an important metric in accountability. This measure would replace the state's use of student attendance, and PED will have multiple years to work with stakeholders to establish the full methodological and operational implications. It is important to note that chronic absenteeism would include only those situations over which schools have some control and influence, including suspensions, disciplinary actions, and truancy. Students who are absent for reasons such as medical, death in the family, or religious observance may be considered exempt from the rate. The state will work with stakeholders to detail this measure so that adequate protections and audits are in place before implementation.

## **ADMINISTRATIVE IMPLICATIONS**

Under the current bill, if a student is absent for 10 or more days in a nine-week period, the principal must refer the student to FNS. The bill requires the CYFD caseworker to meet with the family at the public school, which would likely increase caseloads.

The bill requires school districts and charter schools to report absences and chronic absences data to PED at the end of each grading period and document intervention efforts made to keep students in an educational setting.

TRD notes implementation of this bill will have a moderate impact on the information technology division. Total time to complete, test and implement changes is approximately 480 hours, or three months, and approximately \$197.6 thousand (\$164.0 thousand for FAST contractual resources and \$33.6 thousand in state resources). Implementation of this bill will require coordination with CYFD to get information to suspend and reinstate a student's license, new suspension codes, business rules on how to apply the new requirement to a driving record and clearance procedures, and a new suspension letter to send to the student. Considering the

effort, TRD recommends an effective date of October 1, 2018.

### **TECHNICAL ISSUES**

In a prior analysis of a similar bill, CYFD indicated notification to MVD for suspension of the student driver's license should be requested by PED as the factors leading to the referral to CYFD are the student's failure to attend school. CYFD juvenile justice records and information, which include chronic absenteeism referrals, are confidential under Section 32A-2-32(A) NMSA 1978, and do not include MVD on the list of entities entitled to access this information. In addition to the confidentiality issue raised by CYFD providing juvenile justice information to an unentitled entity, families who are considered in need of services under the Families In Need of Services section of the Children's Code are allowed to refuse services at any time: their compliance is entirely voluntary. This bill, however, imposes penalties for failure to comply in the form of the suspended driver's license.

TRD and AHO note the bill seems to create an unchallengeable driver's license suspension by PED 30 days before MVD (the agency responsible for licensure) even becomes aware of the matter and before the division issues a notice of suspension, presenting due process challenges. The bill is silent as to what the potential issues are at hearing, the basis for the challenge to the suspension, and under what circumstances the hearing officer should deny the suspension, creating a potentially lengthy, inefficient, unnecessarily expansive, and duplicative hearing process not guided by any clear, enforceable standards. TRD recommends an outline of requirements necessary for a chronically absent student to obtain a certificate of compliance.

TRD recommends adding the term "guardian" to take into account children living in non-traditional settings and whose parents are absent or not available.

NMAG notes the new definition for "school principal" is inconsistent with the current definition in Section 22-1-2 NMSA 1978.

NMAG also notes the bill requires that a student's driver's license be suspended for chronic absenteeism but the Motor Vehicle Code, Section 66-5-5 NMSA 1978, is not amended to reflect absenteeism as a basis for suspension or to recognize the authority of CYFD to suspend the license. To ensure compliance with the law, NMAG recommends the Motor Vehicle Code be amended to include reported chronic absenteeism by CYFD as a basis for suspension of the driver's license and MVD's obligation to send notice of suspension to include notice of the student and parent's right to an administrative hearing to the student and parent.

### **OTHER SUBSTANTIVE ISSUES**

PED's policy on school attendance is defined and communicated to all schools throughout the state. Section 6.10.8 NMAC provides required guidelines requiring that all school-age youth attend school regularly until the age of 18 years. Local school boards are required to have a written school attendance policy that mandates class attendance to be taken daily. With the exception of pregnant or parenting students who are provided additional excused absences, there is an allowance for up to only 10 missed school days, after which a student may be determined to be chronically absent.

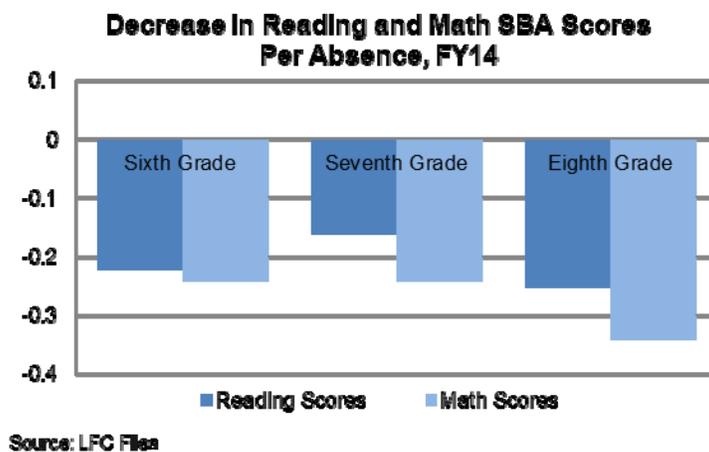
Further requirements of Section 6.10.8 NMAC include school attendance policies at the local level to provide early identification and intervention of students with unexcused absences or

those who are chronically absent. Parents or guardians are informed of and must provide explanations for their child’s absences. Parents must work with school authorities on a plan of action, utilizing all available school and community resources to remedy the issue. Non-compliance with these rules requires a school to report a student to the probation services office of the local judicial district. Schools may also follow through with lawful assistance if a chronically absent student is not properly reported by probation officers for further actions. Under current Section 6.10.8 NMAC requirements, “if the habitual truant is not referred to the children’s court by the juvenile probation office for appropriate disposition, including consideration of initial or renewed suspension of his or her driving privileges, the school district may contact the children’s court attorney directly to determine what action will be taken.”

According to PED, average statewide habitual truancy rates have fluctuated around 15 percent in the past few years. In FY16, PED allocated \$3 million to support its truancy and dropout prevention coaches (TDPC) program and pay for coach salaries at 42 school sites. Between FY15 and FY16, habitual truancy rates for all TDPC school sites showed mixed results. With the exception of Albuquerque schools, all other TDPC sites improved, decreasing habitual truancy rates from 27 percent to 21 percent. In contrast, habitual truancy rates at the 12 Albuquerque TDPC program sites worsened between FY15 and FY16, increasing from 14 percent to 27 percent. Statewide, schools experienced an average increase in habitual truancy rates from 22 percent to 24 percent between FY15 and FY16. The House Appropriations and Finance Committee substitute for House Bill 2 and House Bill 3 for FY19 appropriates \$4.2 million to TDPC.

A 2016 LFC program evaluation, *Assessing Time-on-Task and Efforts to Extend Learning Time*, found that attendance, chronic absenteeism, and discipline are critical factors impacting the availability of instructional time. The evaluation determined that encouraging students to attend school and connecting with students and families to emphasize the importance of attendance are important responsibilities for school districts and tracking attendance and absenteeism is vital for helping student achievement. Additionally, the evaluation found the percentage of students absent 10 or more days for any reason increased from FY13 to FY15. Fourteen percent of students were absent 10 or more days in FY13, 13.5 percent in FY14, and 15.4 percent in FY15. Students absent 10 or more days were absent 17 days on average in FY13 through FY15, more than three times the number of days missed by students who were absent fewer than 10 days. Students absent fewer than 10 days were absent five days on average in those same years. An elementary student absent 10 or more days loses a minimum of 15 hours of both language arts and math instruction time depending on various schedule types and configurations. Both excused and unexcused absences decrease student learning time and time-on-task.

A 2015 LFC program evaluation on middle schools, *Public Education Department – Performance, Programming, and Cost of Middle Schools in New Mexico*, found “frequent absences in elementary schools have consequences for middle schools contributing to academic weaknesses and poor attendance habits compounding into chronic absenteeism as students’ progress into middle school. Absences have the largest impact on eighth grade reading and math SBA [standards-based assessment] scores with a reduction of 0.31 in reading and 0.40 in math for every absence. A student with zero absences is projected to be proficient in both reading and math; however, the likelihood of scoring proficient and above declines with every absence.”



Additionally, the evaluation found chronic absenteeism begins to rise in middle school and continues to climb through 12<sup>th</sup> grade. Nearly a quarter of school districts in New Mexico have habitually truant percentages higher than the statewide average. National research has found a strong relationship between sixth grade attendance and on-time graduation rates. Chronic absenteeism in middle school is one of the best indicators a student will drop out later. Students who were chronically absent in any year between eighth and twelfth grades were 7.5 times more likely to drop out of high school.

A report by the National Assessment of Educational Progress (NAEP) found absences had consequences for fourth and eighth grade students: 56 percent of eighth grade students who performed at the advanced level in NAEP reading in FY11 had perfect attendance in the month before the test, compared with 39 percent of students who performed below the basic level; in contrast, nearly one in five eighth grade students at the basic level and more than one in four below basic in reading had missed three or more days in the previous month. The trends were similar for fourth grade students. A student who misses an average of three days a month is missing five weeks of school each year, based on a nine month school calendar.

A 2014 LFC evaluation, *Cost Effective Options for Increasing High School Graduation and Improving Adult Education*, found that both national research and state data confirm students who drop out tend to have poor attendance, behavioral referrals, and multiple course failures. The evaluation found that in 2014, 8 percent of New Mexico high school students were absent 10 percent or more of the school year and were at-risk of dropping out. Of the 25 high schools with the greatest numbers of dropouts, 13 had chronic absenteeism rates above 10 percent, meaning more than 10 percent of students missed 18 or more days of school annually and were at-risk of dropping out.

Research suggests the strongest indicators of dropping out of school are attendance, behavior, and course failures, commonly called the ABCs of dropping out, and these characteristics can be used to identify students who are not on track to graduate. Dropout rates are strongly associated with chronic absenteeism. According to the Utah Education Policy Center, students who miss 10 percent or more of the school year, are 7.4 times more likely to drop out. Similarly, Johns Hopkins University reports every high school suspension decreases a student's odds of graduating by 20 percent, after controlling for demographics and course completion.

The U.S. Department of Education (USDE) notes that reasons for chronic absences from school are particularly acute in disadvantaged communities and areas of poverty and may prevent children in elementary school from reaching early learning milestones. According to USDE, children who miss 15 or more days in preschool, kindergarten, and first grade are much less likely to read at grade level by third grade. Students who cannot read at grade level by the end of third grade are four times more likely than proficient readers to drop out of high school.

A growing body of research demonstrates chronic absence from school – for any reason, excused or unexcused – is a primary cause of low academic achievement and a powerful predictor of which students will eventually drop out of school. Chronic absenteeism is particularly prevalent among low-income students, students of color, students with disabilities, students who are highly mobile, and youth involved in the juvenile justice system. Several federal agencies released a joint report, *Every Student, Every Day: A Community Toolkit To Address and Eliminate Chronic Absenteeism*, which recommends prioritizing development of early warning prevention and intervention systems, developing a positive message for youth and families as well as implementing supportive engagement strategies, launching local initiatives to raise public awareness about the causes and effects of chronic absenteeism, and regularly communicating that chronic absenteeism is a problem that affects the community, not just chronically absent students and their families.

## **ALTERNATIVES**

TRD recommends deleting lines 20 through 23 on page 17 and replacing the text with, “Until the families in need of services program notifies the motor vehicle division of the taxation and revenue department of the student’s compliance; and”. This will allow for electronic submission of compliance. By doing so FNS will be able to notify MVD of both non-compliance as well as compliance electronically similar to the Human Services Department’s Child Support Enforcement Division does for non-compliance and compliance of child support statutes and rules. It will also allow for the customer to reinstate using online services rather than having to take a physical notice of compliance to MVD and pay the reinstatement fee.

**SL/sb**