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## FISCAL IMPACT REPORT

**SPONSOR** Moores/O’Neill/ Maestas      **ORIGINAL DATE** 01/28/21  
**LAST UPDATED** 02/18/21      **HB** \_\_\_\_\_  
**SHORT TITLE** Student Athlete Endorsement Act      **SB** 94/aSJC  
**ANALYST** Glenn

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Higher Education Department (HED)  
 University of New Mexico (UNM)  
 New Mexico State University (NMSU)  
 Office of the Attorney General (NMAG)

#### No Response Received

Eastern New Mexico University (ENMU)  
 New Mexico Highlands University (NMHU)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 94 adds a definition of “third party” and rewrites the remainder of the bill. As amended, the bill provides that:

- a post-secondary educational institution shall not (1) uphold a rule or other limitation that penalizes a student athlete’s participation in athletics for receiving food, shelter, medical expenses or insurance from a third party or for earning compensation from the use of the athlete’s name, image, likeness or athletic reputation (“NILR”); (2) prohibit or discourage a student athlete from wearing any footwear of their choice during official team activities, with certain exceptions; (3) prevent a student athlete from earning third-party compensation from the use of the athlete’s NILR outside of official team activities; or (4) arrange third-party compensation for the use of a student athlete’s NILR or use such deals as inducements to recruit student athletes.

- Earning compensation from the use of a student athlete’s NILR shall not affect grant-in-aid or stipend eligibility, amount, duration or renewal.
- A contract for use of NILR may not require a student athlete to advertise for the sponsor during official team activities without the approval of the athlete’s post-secondary educational institution.
- Prohibits a post-secondary educational institution from preventing a student athlete from participating in athletics for obtaining representation in contract or legal matters that is not affiliated with the institution and bars an entity or person that represents or has represented a post-secondary educational institution in the previous four years from representing the institution’s student athletes in any business agreement.

### Synopsis of Original Bill

Senate Bill 94 creates the Student Athlete Endorsement Act, which permits student athletes who engage in intercollegiate sports at post-secondary educational institutions in New Mexico to earn compensation from the use of their name, image or likeness. In particular, the bill prohibits:

- “a post-secondary educational institution,” as defined in the Act, from preventing a student athlete from earning compensation from the use of the athlete’s name, image or likeness or denying a scholarship as a result of a student athlete earning compensation from the use of the athlete’s name, image or likeness;
- an athletic association or athletic conference from preventing a student athlete from earning compensation from the use of the athlete’s name, image or likeness or a post-secondary educational institution’s participation in intercollegiate athletics if a student athlete earns compensation from the use of the athlete’s name, image or likeness; and
- a post-secondary educational institution, athletic association or athletic conference from providing a student athlete with compensation in relation to or for the use of the athlete’s name, image or likeness or a student athlete from obtaining professional representation by an agent for contracts or legal matters arising from the use of the athlete’s name, image or likeness.

SB94 provides that it applies to contracts entered into on or after July 1, 2021.

The bill does not have an effective date. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

Agencies that provided analyses of SB94 did not report any fiscal impact. HED notes that the bill may have a financial effect on student athletes that receive need-based financial aid.

### **SIGNIFICANT ISSUES**

SB94 is similar to laws enacted by other state legislatures in reaction to the current rules of the National Collegiate College Association (NCAA), which do not allow student athletes to be compensated beyond the cost of attending college. In response to pressure from regulators, Congress, and state governments, the NCAA had begun considering changes to its rules to permit

student athletes to be paid by companies for the use of their name, image or likeness. However, in early January of this year, NCAA's progress toward adopting new standards was halted after the U.S. Justice Department notified NCAA that the proposed standards might raise concerns under federal antitrust laws.

HED states that due to the withdrawal of NCAA's name, likeness and image proposal, SB94, if enacted, might cause NCAA participating higher education institutions in New Mexico to be in violation of NCAA bylaws prohibiting student athletes from receiving compensation for use of name, image and likeness and imposing penalties for noncompliance. SB94 would put student athletes and athletic programs at risk of losing NCAA and conference eligibility if it went into effect before NCAA updated its bylaws. According to HED, consequences of violating NCAA bylaws include loss of educational benefits and other competitive opportunities for student athletes.

NMSU states that SB94 would conflict with NCAA's current rules. NMSU also notes that NCAA, in addition to its now-delayed efforts to adopt new standards, has urged Congress to adopt federal legislation that would supersede state laws allowing student athletes to earn compensation for use of name, image or likeness.

### **OTHER SUBSTANTIVE ISSUES**

UNM suggests that the following issues be addressed in SB94:

1. Precluding an intercollegiate athlete from entering into a contract for compensation for the use of the athlete's name, image or likeness that materially conflicts with the athlete's team contract.
2. Conflicts between allowing an athlete to receive compensation for use of name, image or likeness and NCAA's standards governing sports betting and banned drugs.
3. Limiting the permissible use of an agent by a student athlete to ventures, existing contract negotiations, and marketing of ventures involving use of the athlete's name, image or likeness.
4. Registration requirements for agents.

UNM also suggests that the provision prohibiting post-secondary educational institutions from denying scholarships to student athletes be amended to include grants and other reimbursements for the cost of attending a post-secondary educational institution.

BG/al/sb