

LFC Requester: _____

**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 3/6/17
Original Amendment Bill No: HB200/aHCPAC
Correction Substitute

Sponsor: Rep. Sheryl Williams Stapleton Agency Code: 924
Short Person Writing Aguilar/Hopper
Title: ANTI-HAZING ACT Phone: 827-6519 Email PaulJ.Aguilar@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	None Noted	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB-75, SB-115

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of House Consumer and Public Affairs Committee amendment to House Bill 200

The House Consumer and Public Affairs Committee amendment to House Bill 200 (HB200/aHCPAC) clarifies the definition of hazing to include the added language of “regardless of the student or other person’s willingness to participate.” HB200/aHCPAC further clarifies that the person who is the subject of the hazing would not be found guilty of a misdemeanor.

Significant Issues of HB200/aHCPAC

HB200/aHCPAC ensures a zero tolerance for hazing committed by a student or other person in a school, college, university or other educational institution by adding that the willingness of the

student who is the subject of the hazing to participate in the hazing would still constitute hazing. HB200/aHCPAC also ensures that regardless of the willingness of the student who is the subject of the hazing to participate in the hazing, that student would not be found guilty of a misdemeanor under the penalty section of the Anti-Hazing Act.

Amendment to HB200/aHCPAC

The same amendment as proposed in the original analysis is proposed for HB200/aHCPAC. With the additional language added to the amendment, the need for the requirement of an annual training of public school coaches, administrators, other public school personnel as appropriate, and student athletes on hazing, the definition of hazing, the Anti-Hazing Act, the responsibilities of school personnel in the event of a reported incidence of hazing, the process and mechanism by which to involve law enforcement, anti-bullying prevention programs and strategies, and the potential legal consequences of hazing is further exemplified.

Synopsis of House Bill 200

House Bill 200 (HB200) defines hazing acts and proposes criminal consequences that result in misdemeanor and/or fourth degree felony for those who commit hazing in a school, college, university or other educational institution that leads to injury or death.

FISCAL IMPLICATIONS

HB200 does not appropriate any funding for the oversight of anti-hazing criminal outcomes for hazing incidents in schools, colleges, universities and other educational settings.

SIGNIFICANT ISSUES

Significant Issues of HB200

Since 2007 school districts and charter schools have been required to implement bullying prevention programs and processes as defined in the New Mexico Administrative Code (NMAC) 6.12.7 NMAC: Bullying Prevention. NMAC 6.12.7.7 defines “bullying” as any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. NMAC 6.12.7 already defines bullying to include hazing, harassment, intimidation or menacing acts of a student, which may be based on the student’s race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation. The Public Education Department (PED) promulgates comprehensive guidance to all schools for developing these policies and policies are required to be submitted as part of a three-year Safe Schools Plan cycle required for submission by every public for review and approval by the PED. (See Planning for Safe Schools in New Mexico: School Guide:

<http://ped.state.nm.us/sfsb/safeschools/2016/PlanningForSafeSchoolsNM2016.pdf>.)

The rule requires each school to develop and implement a policy that addresses bullying. The policy must include, but is not limited to:

- Definitions;
- An absolute prohibition against bullying (including cyberbullying as of the 2013-2014 school year);
- Staff training on cyberbullying;

- A method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- Procedures for reporting incidents of bullying, inclusive of hazing, and cyberbullying, which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident; and
- Consequences for bullying and cyberbullying which include consideration of compliance with state and federal Individuals with Disabilities in Education Act (IDEA) requirements; consequences for knowingly making false reports pursuant to the anti-bullying policy; procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy; and a requirement that teachers and other school staff report any incidents of bullying.

HB200, through the creation of the Anti-Hazing Act, compliments the expectations within health education courses in New Mexico. Health education classes must align with the New Mexico Health Education Content Standards with Benchmarks and Performance Standards. The Act would specifically align with Content Standard 1, Benchmarks 4 and 6 which require performance standards for all NM students in identifying, analyzing, preparing a plan of action, and negotiating and risk avoidance strategies on the topic of bullying which is inclusive of hazing.

Web search indicates 42 of 50 states have specific anti-hazing laws in effect. The following link specifies details for the 42 states that have current anti-hazing laws:

http://c.ymcdn.com/sites/www.kappaalphapsi1911.com/resource/resmgr/docs/state_hazing_laws.pdf

Current assault laws are defined under New Mexico law as one of three different behaviors: attempting to commit a battery upon someone else, threatening or displaying menacing conduct which causes the alleged victim to reasonably believe they will be subject to battery, or using assaulting language to another which might harm his honor or his reputation. In general, assault is considered a petty misdemeanor and carries a potential 6 months in jail and fines reaching \$500. <http://www.assaultandbattery.org/new-mexico/>

In New Mexico, a fourth degree felony can include aggravated assault, involuntary manslaughter, and assisting suicide. Up to eighteen months in a prison facility constitutes a Fourth Degree Felony sentencing. <http://felonyguide.com/New-Mexico-Felony.php>

PERFORMANCE IMPLICATIONS

While HB200 may support the PED strategic lever “Ready for Success” by providing a safe and supportive learning environment for students, it may also be duplicative of existing efforts.

ADMINISTRATIVE IMPLICATIONS

The PED would be required to revise NMAC 6.12.7, Bullying Prevention, to reflect the changes as outlined in the Anti-Hazing Act, to inform school districts and state charter schools of the proposed changes to the rule, conduct public hearings on the proposed changes to the rule,

summarize public comments, post the final rule, and communicate the changes after the rule has been posted.

Additionally, the PED would need to make further changes to the policy section requirements of the recently revised Planning for Safe Schools in New Mexico: School Guide (fall, 2016) to reflect changes in the bullying prevention component of the required school site-specific Safe Schools Plan submissions and communicate these changes to school districts and state charter schools. The PED would also need to revise its three-year timetable of Safe School Plan submissions to review approximately 600 Safe School Plans that are being assessed during the 2016-2017 and 2017-2018 school years.

The PED would be required to make changes to the policy section of the Wellness Policy and Guidance Document (Fall 2016) and to communicate these changes to school districts and state charter schools.

http://ped.state.nm.us/sfsb/tools/2017/PED-WellnessPolicyGuidanceDocument_1.19.2017.pdf

The PED would need to work with the PED's Information Technology (IT) Division to aggregate the data as captured in the Student Teacher Accountability Reporting System (STARS), in relation to the modified definitions, incidents and disposition of hazing as a separate incident from bullying.

The PED would also be required to provide technical assistance and guidance to local school boards related to progressive discipline, as a means of reducing bullying, hazing and harassment, and effective bullying prevention programs to reduce bullying and school violence. The above mentioned may be duplicative of existing strategies within both the PED's Safe Schools Program and Response to Intervention (RtI) framework endorsed by the PED and utilized by schools.

The PED would be required to develop and provide technical assistance and guidance to local schools in relation to the involvement of law enforcement in cases of hazing, differentiating for age, grade and developmentally appropriate application of the law.

The PED would be required to develop and provide technical assistance and guidance to local schools in relation to the involvement of the Office of the Attorney General and Children's Court in understanding the differences between the adult and juvenile justice system.

http://www.nmlea.dps.state.nm.us/legal/documents/Childrens_Code.pdf

As HB200 does not have an allocation, the PED would need to implement these requirements with existing and limited resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB200 relates to HB75 in that HB200 specifies anti-hazing criminal consequences and HB75 would prohibit the use of mechanical and chemical restraints and aversive interventions such as intervention, consequences or procedure intended to cause pain or unpleasant sensations among others. HB200 also relates to SB115 Safe Schools for All Students Act which would require additional changes to NMAC 6.12.7, Bullying Prevention.

OTHER SUBSTANTIVE ISSUES

HB200 does not detail the process, mechanisms, or onus for reporting an incident of hazing in the school setting or the process or mechanism by which a school administrator would involve and report to local law enforcement.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB200hcpaca is not enacted, then the disposition of incidences of bullying, including as further defined in HB200, would continue to be addressed by school districts and state chartered-charter schools through existing local policies and processes including the possibility of a school district or state-chartered charter school to include law enforcement in the disposition of any incidence of bullying as warranted or dictated in state statute.

Amendment to HB200

A new Section to the Anti-Hazing Act requiring annual training of public school coaches, administrators, other public school personnel as appropriate, and student athletes on hazing, the Anti-Hazing Act, the responsibilities of school personnel in the event of a reported incidence of hazing, the process and mechanism by which to involve law enforcement, anti-bullying prevention programs and strategies, and the potential legal consequences of hazing should be added.