

LFC Requester:	Sunny Liu
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**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 2/27/17
 Original Amendment Bill No: SB374 (correction)
 Correction Substitute

Sponsor: Senator Michael Padilla Agency Code: 924
Senator Linda M. Lopez
 Short Title: HUNGER-FREE STUDENTS' BILL OF RIGHTS ACT Person Writing Aguilar/Chavez
 Phone: 827-6519 Email PaulJ.Aguilar@state.nm.us

SECTION II: FISCAL IMPACT

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
NFI	Not Quantifiable. See Fiscal Implications	Not Quantifiable. See Fiscal Implications	Recurring	School District Budgets

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General and School District Budgets

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 208 and SB 279 NM-Grown Fresh Produce in School Meals

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 374 (SB374) enacts the hunger-free students' bill of rights act for public schools, private schools and parochial schools. This bill provides for the rights of students and responsibilities of schools participating in free or reduced meal programs including placing the onus on schools to complete free and reduced-priced meal applications for the eligible students whose parent(s) or guardian(s) have not completed the application. SB374 clarifies that a free reimbursable meal, in accordance with the United States Department of Agriculture's (USDA) meal pattern, be provided to any student who requests a meal regardless as to whether or not the student has money to pay for a meal or owes money for previous meals. SB374, as written, would require a school providing USDA meals, to provide a free meal to any students who requests one. As written, a student who qualifies for a reduced meal or is on a full pay status could request a free meal and one would have to be provided.

SB374 also requires schools to make attempts to contact the parent(s) or guardian(s) in the event of five or more unpaid meals, provides anti-stigmatization and anti-discrimination requirements of schools in relation to students and requires new debt collection practices for unpaid meals.

FISCAL IMPLICATIONS

SB 374 requires that all schools provide free and reduced applications or provide an electronic meal application at no cost. School Food Authorities (SFAs) are already required to have policy in place on July 1, 2017 and notify families: <https://www.fns.usda.gov/sites/default/files/cn/SP57-2016os.pdf> .

SB374 requires a free USDA meal be provided to any student who requests a meal. This provision could result in a school district, charter school or private school having to provide a free meal for all of their students if all were to request a free meal. This provision has the potential to impose a significant financial hardship on schools if the schools have to absorb the cost of free meals for every student. This provision has the potential for the number of unpaid meals to increase exponentially within an SFA.

SB374 also prohibits public schools, private schools, and parochial schools from requiring that recovering the costs of unpaid meals be through a nonprofit food service account and instead directs the SFAs to shall repay the operating loss from writing off the debt with non-federal funds, including:

- (a) funds from the school's general fund;
- (b) state or local funds provided to cover the cost of student meals;
- (c) donations or grants provided by community organizations or individuals; or
- (d) food service revenue from activities not funded through the nonprofit school food service account.

These provisions, particularly provisions (a) and (b) may implicate the anti-donation clause of the New Mexico Constitution in that payment from state sources would be used to pay a private debt with no tangible benefit to the state.

Existing practice and guidance from the U.S. Department of Agriculture (USDA) allows non-federal funds (e.g., donations and fundraisers) to be placed within a nonprofit school food service

account and utilized for recovering the costs of unpaid meals. With the Provision of meals to any student who requests a USDA meal where the student doesn't have proper documentation, SFA's will be able to charge the paid rate for meals which is \$.29 for breakfast and \$.30 for lunch. This could cost SFA's as much as two dollars for each breakfast or three dollars for each lunch depending on what the SFA charges per meal as the federal nutrition program would only reimburse the SFA the allowable rate for paid meals in the situations prescribed in SB374.

SB374 requires that a McKinney-Vento homeless education liaison coordinate with the school's nutrition department to ensure that a homeless student receives free school meals and is appropriately coded and entered into the sustainability, tracking, assessment and rating system.. As private schools and parochial schools are not required to have a homeless education liaison, there may be additional costs to these schools to coordinate the work required in SB374. An example of the potential fiscal impact is provided below:

There are 500 students in a school and 35% are receiving free and reduced lunch. According to Section 4-A (1), the other 65% of students could request a free meal. If 65% of the students requested a free meal for 180 days, it would cost \$175,500.00 and the reimbursement would only be \$17,550.00

Cost

325 students x \$3.00 = \$975
\$975 x 180 days = \$175,500

Reimbursement

325 students x \$0.30 = \$97.50
\$97.50 x 180 = \$17,550

While this may be an unusual scenario, any iteration of students requesting a free meal for any length of time (e.g., weeks, months) would negatively impact the reimbursement for a school district or state chartered-charter school participating in the National School Lunch Program (NSLP).

SFA's are required to check their direct certification site to determine if any of these students are eligible for free meals. They are required to check at least three times per year. Many SFAs already check the direct certification list. SFAs must inform households that receive benefits through the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR) and are not directly certified, that they only need to provide a case number on their application and do not need to provide the names of the adults in the household or income information;

SIGNIFICANT ISSUES

This bill duplicates federal regulations and requirements already associated with the National School Lunch Program.

In New Mexico, only 65 SFA's, out of approximately 220 SFA's across the state, operate as a standard school with the requirement of collecting applications for free or reduced-price meals. The majority of these standard SFA sites are private schools. The number of students impacted by the implementation of SB374 would be limited to a small subpopulation of students in the state. USDA already provides guidance relative to unpaid meal charges and clarification on

collection of delinquent meal payments. SFA's have the authority to decide what is best for their food service program (<https://www.fns.usda.gov/sites/default/files/cn/SP57-2016os.pdf>). SB374 unnecessarily duplicates federal guidance and provides certain qualifiers not in existing federal guidance.

The USDA already provides guidance in relation to ensuring access to free and reduced price school meals (<https://www.fns.usda.gov/sites/default/files/SP43-2014os.pdf>). SB374 duplicates existing federal rule and guidance and adds an unnecessary burden on schools participating in the USDA's National School Lunch Program (NSLP) through requiring a principal, assistant principal, or counselor to contact the parent or guardian to offer assistance with a meal application. SFA's participating in the NSLP already exercise this strategy without it being defined to a specific staff member within the school. The guidance provided by the USDA already addresses:

- Providing families with a school meal program application and information about the availability of school meals in routine contacts throughout the year, not only at the beginning of the school year as required;
- Posting the application for free and reduced price meals on school websites and allow parents to submit a completed copy electronically; and
- Making clear to households and schools that only a single application is needed for all students in the household attending schools in the LEA.

New Mexico also utilizes a prototype application available in both English and Spanish.

Additionally, schools participating in the Community Eligibility Provision (CEP) which allows for the grouping of schools within a district in order to utilize an aggregated free and reduced lunch percentage and Provision 2 (schools that collect all applications only in their base year and that are not required to collect applications for three subsequent years) are not required to collect applications yearly. CEP and Provision 2 districts already provide free meals to all students.

Section 5 on page 4 of SB374 requires anti-stigmatization and anti-discrimination practices. This section is unnecessary as federal rule already prohibits such discrimination and the USDA already provides guidance in relation to overt identification of children receiving free or reduced-priced meals (<https://www.fns.usda.gov/sites/default/files/cn/SP57-2016os.pdf>). SB374 is duplicative of existing federal guidance.

SB374 requires the appropriate coding of students receiving free school meals within a tracking system. The PED already utilizes the Student Teacher Accountability Reporting System (STARS) for tracking purposes. Additionally, SFAs are already required to check if students are eligible for free meals. Additionally, SFAs already inform households that receive benefits through the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR) and are not directly certified for receiving free meals, that they only need to provide a case number on their application and do not need to provide the names of the adults in the household or income information.

SB374 provides specific allocations for free meals for homeless students. The PED already communicates with school food authorities within school districts, local charter schools, state-chartered charter schools, and parochial schools of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) and the provisions of providing homeless students free meals in lieu of applications.

ADMINISTRATIVE IMPLICATIONS

The PED would need to send out information to all SFAs within school districts, local charter schools, state chartered-charter schools, private schools and parochial schools clarifying the Hunger-Free Students' Bill of Rights Act in relation to existing federal rules and guidance and provide technical assistance regarding overlaps between the Hunger-Free Students' Bill of Right Act and variances in the Act from federal rules and guidance. The enforcement and monitoring of the Hunger-Free Students' Bill of Rights Act would place an additional and unnecessary layer on the administrative and procurement review process of SFA's conducted by the PED.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB374 relates to HB208 and SB279 NM-Grown Fresh Produce in School Meals and appropriations in the General Appropriation Act.

TECHNICAL ISSUES

The PED does not have a "sustainability, tracking, assessment and rating system". The legislature may wish to change this to reflect the Student Teacher Accountability Reporting System (STARS) where such date is currently tracked

OTHER SUBSTANTIVE ISSUES

Per the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), in order to expedite the delivery of nutritional benefits, school officials may accept documentation that the children are homeless from the local educational liaison or directors of homeless shelters where children reside. Documentation to substantiate free meal eligibility must consist of the child's name or a list of names, effective date(s), and the signature of the local educational liaison or the director of the homeless shelter. This documentation is acceptable in lieu of a free and reduced price meal application. SB374 unnecessarily replicates existing federal rule and guidance.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PED would continue to support school districts, local and state-chartered schools, private schools, and parochial schools with funds for the NSLP and continue to effectively address meal applications, anti-stigmatization, and unpaid meals through USDA guidance and rule.