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## FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 3/1/2007  
LAST UPDATED \_\_\_\_\_ HB 874  
SHORT TITLE NM School for the Arts SB \_\_\_\_\_  
ANALYST Aguilar

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
\$750.0		Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 76 and HB 260

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 874 appropriates \$750 thousand from the general fund to the Public Education Department for the purpose of providing financial support for initial start-up costs, including planning and outreach activities for the New Mexico School for the Arts.

### FISCAL IMPLICATIONS

The appropriation of \$750 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the general fund.

The LFC remains concerned with funding initiatives outside of the funding formula as it tends to disqualify school funding and diverts funding away from core educational needs.

The bill provides for PED to use up to 3 percent for administrative costs.

**SIGNIFICANT ISSUES**

PED notes that before funds can flow to the charter school, the school has to be approved by the Public Education Commission (PEC), which cannot begin approving charter schools until July 1, 2007. Until the school is approved by the PEC and is designated as a board of finance, it cannot receive state funds. (see Section 22-8B-13(C).) Thus, there would be no entity to which the PED can flow the appropriation until that occurs. Furthermore, there is the potential that the application could be denied by the PEC, in which case no entity would ever exist to which the money could be flowed.

PED also notes that given that the proposed school would not be a charter school until so-approved by the PEC that cannot authorize schools until July 1, 2007, any action by a state agency to pay public funds over to a private person or to a private non-profit foundation would implicate the Anti-Donation Clause of the New Mexico Constitution. (Article IX, Section 14). Also note, NM Const. Art. IV, sec. 31, (“No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state...”). Although this is not a direct appropriation to charter school organizers, the fact that the school could not become a charter school until July 1<sup>st</sup> may give the appearance that an appropriation is being made contrary to the restrictions in this article of the State constitution.

PA/csd