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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>SB384</u>	<b>Sponsor</b>	<u>Brandt</u>
<b>Tracking Number</b>	<u>.218939.3</u>	<b>Committee Referrals</b>	<u>SEC/SJC</u>
<b>Short Title</b>	<u>Closure of Certain Schools</u>		
<b>Analyst</b>	<u>Hathaway</u>	<b>Original Date</b>	<u>2/20/2021</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 384 (SB384) amends Section 22-1-4 NMSA 1978, the Assessment and Accountability Act of the Public School Code, to create provisions that would require the closure of a public school if at least 50 percent of the parents of attending students sign a petition demanding closure based on low student academic performance, ineffective teacher performance, or poor management. The public school would be closed at the end of the semester in which the petition is delivered.

The provisions of SB384 also establish requirements for reopening and enrolling of students affected by school closures in other schools. An affected student attending a public school that is not a charter school is given preference to transfer to another noncharter public school within the school district. An affected student attending a closed public school that is a charter school is not given preference to attend a charter school.

SB384 requires any closed school cannot reopen within the same school year in which it is closed. Any public school that wishes to reopen must meet certain conditions.

The effective date of SB384 is July 1, 2021.

**FISCAL IMPACT**

SB384 does not contain an appropriation. SB384, however, would authorize parents or other legal guardians to demand the closure of a public school via petition. The Legislative Finance Committee (LFC) fiscal impact report (FIR) notes the fiscal impact varies widely, from no schools closing to all Albuquerque Public Schools closing, and notes a range of \$0 to \$800.3 million for FY22.

Closures would likely have significant fiscal impacts beyond the general fund operating budget changes noted in the FIR. Notably, any permanent public school closures would result in students transferring to surrounding schools, causing a redistribution of state equalization guarantee (SEG)

dollars. The Public Education Department (PED) notes SB384 could have a significant impact on the state equalization guarantee (SEG) distribution for school districts, particularly if a school closed mid-school year, which could create complications for school budget, student enrollment, and data collection. Because school funding is based on three specific enrollment report dates during the school year, sudden school closures could alter funding formulas if a substantial number of students transfer to new schools between enrollment reporting dates.

PED also notes SB384 could also impact any lease purchase agreement to which a closed charter school is party, potentially causing immediate termination of the agreement due to insufficient funds to make lease payments.

The Public School Facilities Authority (PSFA) notes SB384 would have major financial implications on local school districts affected by the forced closing of a public school. PSFA notes the requirement to secure new leadership and administrators along with improving the weighted New Mexico Condition Index (wNMCI) score to reopen could be cost prohibitive for a school district.

## **SUBSTANTIVE ISSUES**

**School Closure Processes and Procedures.** In its analysis of SB384, PED notes processes and procedures for school closures already exist, citing that parents may already petition school boards or governing bodies, as well as testifying at school board meetings or charter school renewal hearings and campaigning against a school board with which they disagree. The provisions of SB384 would create a new avenue of school closure and reopening.

Administrative rule, issued by PED ([6.29.1.9\(G\) NMAC](#)) requires any change in a school district's or charter school's organizational pattern, including school closures, be approved by the PED secretary using a PED-specific waiver request form. Tribes must be consulted before the form is submitted with accompanying proof of consultation. The submission of this form also allows various bureaus within the department to review the potential closure and prepare for it administratively.

**Nonrenewal of Charter Schools.** Section 22-8B-12 NMSA 1978 of the Charter Schools Act establishes grounds for charter renewal, nonrenewal, and revocation. Renewal requires community and parental support, and community input hearings are required for any potential changes to school charters. This bill would override authorizing bodies' authority to evaluate schools under their performance frameworks, required under Section 22-8B-9.1 NMSA 1978. Additionally, Section 22-8B-12.1 NMSA 1978 requires the establishment of closure protocols for schools whose charters are revoked or not renewed. The act addresses the distribution of assets and payments of debts for closing schools and requires the establishment of timelines for the orderly transition of student records to new schools. PED notes this bill does not detail procedures for the closure of a school.

**Consultation with Tribal Leaders.** Several provisions of law require consult with tribal leaders, members, and families when the closure of a school on tribal land is being contemplated for any reason. Section 22-2-2.3 NMSA 1978 requires PED to consult with tribes when considering the closure of a school on tribal land. Section 22-5-4.13 NMSA 1978 requires local school boards to consult with tribes. Section 22-8B-12.2 NMSA 1978 requires chartering authorities to consult with tribes. PED notes the immediate nature of the bill's requirement of closure without debate or

discussion may preclude consultation and discussion, particularly with parents, family members, and tribal leaders.

PED notes provisions of SB384 may conflict with the School Personnel Act in regard to the termination or discharge of all school employees. The bill may also conflict and interfere with licensed school employees' contracts and collective bargaining agreements.

**Reopening of Schools.** Under the provisions of SB384, a school that is closed may reopen after meeting a number of requirements. The school cannot reopen in the year that it was closed, however, and must wait until the year following its closure. The conditions that must be met include:

1. The employment of new leadership, including the school principal, vice principal, head administrator, vice head administrator, or equivalent positions. If the closed public school is a charter school, the chartering authority must replace at least 50 percent of the governing body members prior to employing new school leadership;
2. The employment of new licensed school employees. Former employees are permitted to re-apply for employment with the closed school;
3. Receipt of a New Mexico condition index rating equal to or better than the state average;
4. Engagement in significant outreach to the school community; and
5. The development of a reopening plan in collaboration with the school community that identifies the root cause of the low academic performance, poor management, or ineffective teacher performance, and that enumerates the goals of the school community and how those goals will be achieved.

***Charter School Governing Boards and Reopening.*** Existing statute requires a charter school governing board must comprise at least five members. PED reports charter school governing bodies are difficult to assemble, particularly in smaller communities, and notes the requirement to replace at least 50 percent of membership may be burdensome. PED also notes New Mexico's shortage of teachers, educational assistants, and other licensed school personnel may make it difficult for schools to replace personnel.

***School Facility Conditions (wNMCI) and Reopening.*** In its analysis of SB384, PSFA notes the bill allows parents to close schools yet ties reopening to the school's facility condition, known as the "weighted" New Mexico Condition Index (wNMCI). The wNMCI is based on the results of PSFA assessments that document the age, condition, maintenance, and adequacy of school buildings statewide. Through these assessments, PSFA gathers facility information for every school to generate a score for each school building and the wNMCI score for each school.

Most operational failures at the school level are not associated with the condition of the facility. The statewide average wNMCI score for FY22 is 23.4 percent. There are 340 schools (out of over 800) with a wNMCI score that are worse than the statewide average. To improve a school's wNMCI score, capital improvements to the facility's building systems or educational adequacy are required. The potential need for capital improvements varies greatly, depending on the wNMCI score and specific issues at each site. Schools with the worst wNMCI scores have potentially surpassed their functional life spans and could require full facility replacement.

## **ADMINISTRATIVE IMPLICATIONS**

In its analysis of SB384, PED noted the requirement that petitions be filed with the local school board or chartering authority, based on low academic performance, “within the school year” would be difficult to implement. PED adds student assessment data is usually not released until the following school year.

The requirement of school closure by the end of a semester could result in a school closing in the middle of the school year (in December), which could create complications for school budget, student enrollment, and data collection.

SB384 would require appropriate amendments to all existing charter school contracts, which may involve lengthy and costly negotiations. PED notes the bill could result in litigation through the charter school appeals process regarding closures.

PSFA notes SB384 does not specify if the state or local school is responsible for funding the capital improvements when a school is closed due to operational failures. Obligating the state to address this requirement could disrupt the Public School Capital Outlay Council’s (PSCOC) capital funding programs, prioritization, and processes. PSCOC-awarded projects take multiple years to plan, design, and construct and are unlikely to be completed before the following school year. Additionally, if a school closes and is no longer recognized by PED as an operational school, the school is removed from the statewide ranking and is, therefore, no longer eligible for any PSCOC capital funding awards.

PSFA’s analysis of SB384 also notes requiring local school districts to finance repairs, upgrades, renovations, or replacement to reopen could be problematic. Larger districts with sufficient financial capacity may have the ability to absorb costs to provide capital improvements to a school, although improvements to reopen a school might supplant other, higher priority projects in the district. Other school districts, specifically small and rural school districts, might not be able to afford large capital projects. If the local school district does not have the financial capacity to fund the costly capital projects, the school may remain closed, regardless of other factors. Additionally, some school districts may have the capacity to transfer students to other underutilized schools. However, if other schools in the area or district are already at or over capacity, there would not be adequate classroom space or teaching staff to account for the influx of students from other schools.

## **TECHNICAL ISSUES**

PED notes the terms “low academic performance,” “ineffective teacher performance,” and “poor management” are not statutorily defined terms, although “ineffective teacher performance” may refer to that level of performance delineated, but not defined, in 6.69.8 NMAC. The sponsor may want to clarify a performance level or benchmark that would constitute grounds for petition of school closures, as well as define “poor management,” “significant outreach,” “school community,” and “reopening plan.”

The New Mexico Attorney General (NMAG) notes provisions of SB384 absolve “the school district” from the responsibility of providing transportation to students transferring as a result of closure; however, it is unclear if this is in reference to the closing school or the receiving school.

PSFA recommends adding the word “weighted” to the term “New Mexico condition index” so it becomes “weighted New Mexico condition index,” which is in line with current language used by the agency.

## **OTHER SIGNIFICANT ISSUES**

**Student Mobility.** Provisions of SB384 may increase parental or family engagement and oversight of school performance and, in turn, student experience and outcomes. Despite this, school closures are inherently disruptive and, when schools are closed, result in inevitable student mobility as students find new schools to attend.

A 2015 [report](#) from the National Education Policy Center (NEPC) notes changing schools can harm child and adolescent development by disrupting relationships with peers and teachers, as well as altering a student’s educational program. NEPC reports the most consistent and severe impacts are on test scores and high school graduation. NEPC writes that, when considering school closures, officials should take into account the impacts of student mobility and if school closures are needed, programs and supports that ease the transition should be considered. Previous LFC evaluations have also found students that change schools are more likely to perform worse than peers who do not transfer between schools mid-year.

The provisions of SB384 require that a school would be closed by the end of the semester following a petition from at least 50 percent of parents. SB384 does not establish a specific timeframe to petition for school closure. School closures that occurred in the middle or latter part of the school year may be likely, however, after assessments and evaluations reveal low academic performance, ineffective teacher performance, or poor management. Closure in the middle of a school year may result in increased student mobility.

In FY20, PED did not administer statewide assessments due to Covid-19-related school closures and removed student test scores from the teacher evaluation system. Without standardized academic test scores or an objective teacher evaluation system, provisions of this bill may limit the ability for parents to petition for school closures.

## **RELATED BILLS**

Relates to SB51, Charter School Enrollment Preference, which gives an enrollment preference to children of employees at charter schools.

Relates to SB237, Charter School Duties, which prohibits nepotism in charter schools.

Relates to SB272, Military Family Early School Enrollment, which allows military families to enroll their children in New Mexico schools prior to their physical presence in the state.

Relates to SB318, Charter School Changes, which establishes new funds and processes for financing charter school facilities.

## **SOURCES OF INFORMATION**

- LESC Files
- Public School Facilities Authority (NMPSFA)
- New Mexico Attorney General (NMAG)
- Public Education Department (PED)

- Educational Retirement Board (ERB)
- New Mexico Public Schools Insurance Authority (NMPSIA)

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