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FISCAL IMPACT REPORT

SPONSOR Brandt **ORIGINAL DATE** 02/25/21
LAST UPDATED 03/01/21 **HB** _____
SHORT TITLE Closure of Certain Schools **SB** 384
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 – (\$24,950.8)	\$0.0 – (\$24,950.8)	\$0.0 – (\$49,901.5)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB51, SB237, SB272, SB318

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Public School Facilities Authority (PSFA)
 Attorney General’s Office (NMAG)
 Public Schools Insurance Authority (PSIA)
 Educational Retirement Board (ERB)

SUMMARY

Synopsis of Bill

Senate Bill 384 amends the Public School Code, creating provisions that would require a local school board or chartering authority to close a public school if at least 50 percent of the parents of attending students signed a petition demanding closure due to low student academic performance, ineffective teacher performance, or poor management. If successfully petitioned, the public school would close at the end of the semester and remain closed for the remainder of the school year. The bill establishes additional requirements for reopening and enrollment preferences for students affected by school closures. The effective date of the bill is July 1, 2021.

FISCAL IMPLICATIONS

This bill does not make an appropriation but authorizes parents to close down a public school through petition. The fiscal impact expressed in this analysis reflects the range of potential closures, from no schools closing to a high school with 2,555 students closing in FY22

(approximately \$25 million). Closures would likely have other significant fiscal impacts beyond the general fund operating budget changes shown in this analysis. Notably, the permanent closure of a public school would result in students transferring to other surrounding public schools, which would cause a redistribution of state equalization guarantee (SEG) dollars.

The bill does not establish a specific period or timeframe to petition for school closure, although presumably petitions would likely occur in the middle or latter part of the school year after assessments reveal low academic performance, evaluations show ineffective teacher performance, or leadership has demonstrated poor management over time. Because school funding is based on three specific enrollment report dates throughout the year, sudden school closures could significantly alter funding formulas if a substantial number of students transfer to new schools between enrollment reporting dates.

PED notes the bill could impact any lease purchase agreement to which a closed charter school is party, causing immediate termination of the agreement due to insufficient funds to make lease payments. According to PSFA, improving the weighted New Mexico condition index (wNMCI) score to reopen could be cost prohibitive for a school district.

SIGNIFICANT ISSUES

PED notes the ability to enact school closures at any time could be problematic. According to the bill, if a parental petition is presented to a local school board or chartering authority in the last weeks, or even days, of a semester, that school *must be closed* by school authorities by the end of that semester. No provision is made within the bill for debate or consideration of the petition by the elected local school board or the chartering authority. The bill also does not address how petitions and signatures would be certified.

According to PED, processes and procedures for school closures already exist. Section 6.29.1.9(G) NMAC 1978, requires any change in a school district's or charter school's organizational pattern, including school closures, be approved by the PED secretary via a 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.

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.

PED notes provisions of this bill 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.

The bill provides for the possibility of a school's reopening, in a year following its year of

closure, not the year during which the closure was required and effected. In order to reopen, a school must meet a number of conditions:

- employment of new leadership, including the principal, vice-principal, head administrator, vice-head administrator, or equivalent positions;
- for a charter school, the replacement of at least 50 percent of the membership of the governing board, prior to the employment of new leadership;
- employment of new licensed school employees, although former employees are permitted to reapply for employment with a closed school;
- receipt of a New Mexico condition index (wNMCI) rating equal to or better than the state average;
- engagement in “significant outreach” to the “school community”; and
- 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.

PSFA notes the bill provides parents an option to close schools due to poor performance or low student academic performance, ineffective teacher performance or poor management, yet ties the school’s facility condition (wNMCI) as a requirement for reopening. 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 the specific issues at each site. Schools with the worst wNMCI scores have potentially surpassed their functional life spans and could require full facility replacement.

Under Section 22-8B-4 NMSA 1978, At least five members must comprise a charter school governing board. PED notes charter school governing bodies are sometimes difficult to assemble, particularly in smaller communities. Likewise, New Mexico suffers from a shortage of teachers, educational assistants, and other licensed school personnel, including counselors and nurses. The requirement to replace all those personnel may be difficult for any school.

PERFORMANCE IMPLICATIONS

Provisions of this bill may increase parental or family engagement and oversight of school performance; however, school closures are inherently disruptive and would likely increase student mobility. Prior LFC evaluations have found students that change schools are more likely to perform worse than peers who do not transfer schools mid-year.

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.

Authorizing parental petitions for school closure based on test scores and teacher evaluations may create incentives for cheating or lowering standards. Some studies suggest that high stakes teacher evaluations can result in inflated observation scores from school administrators to reduce

risks of employee turnover, particularly in hard-to-staff positions.

ADMINISTRATIVE IMPLICATIONS

PED notes 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, as 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 mid-school year (in December), which could create complications for school budget, student enrollment, and data collection.

The bill 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 the bill 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 notes requiring local school districts to finance repairs, upgrades, renovations, or replacement in order to reopen could be problematic and risky. Larger districts with sufficient financial capacity may have the ability to absorb the required costs to provide capital improvements to a school. However, the improvements are likely not planned or prioritized in their existing facilities master plan, and may therefore substitute other needed projects in the district. The financial burden of funding capital projects would negatively impact school districts that cannot afford large capital projects, specifically small and rural school districts. If the local school district does not have the financial capacity to fund the costly capital projects, the school may remain shut down for a longer term. 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 at other schools.

RELATIONSHIP

This bill relates to Senate Bill 51, which gives charter school enrollment preference to children of employees; Senate Bill 237, which prohibits nepotism in charter schools; Senate Bill 272, which prioritizes the enrollment of children from military families that have relocated; and Senate Bill 318, which establishes new funds and processes for financing charter school facilities.

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.

NMAG notes provisions of the bill 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 referring to the closing school or receiving school.

PSFA recommends adjusting the term “New Mexico condition index” to “weighted New Mexico condition index,” in line with current language used by the agency.

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