

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: *HB 260

48th Legislature, 1st Session, 2007

Short Title: New Mexico School for the Arts Charter School

Sponsor (s): Representative Peter Wirth and Others

Analyst: Kathleen Forrer

Date: February 1, 2007

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

- HB 260 would enact a new section of the *Public School Code*, the *New Mexico School for the Arts Act*, and would establish the New Mexico School for the Arts as a statewide, residential charter high school that would offer “intensive pre-professional and professional instruction in the performing and visual arts combined with a strong academic program.”
- The school would be chartered by the Public Education Commission (PEC) in accordance with the *Charter Schools Act* with the exception that the school would have admissions criteria “designed to admit students who show exceptional talent, promise or aptitude in the arts and an interest in pursuing a career in the arts” without regard to the students’ prior ability to obtain training.
- The governing body would be required to ensure, “to the greatest extent possible and without jeopardizing admissions standards, that an equal number of students is admitted to the school from each of the state’s congressional districts.”
- To acquaint potential students with its programs, the school would also be required to conduct extensive outreach activities for which no admissions criteria may be established.
- Other than the prohibition of admissions criteria, the school would be subject to all other provisions of the *Charter schools Act*.
- The school would be required to charge residential students a fee to cover the costs of room and board; in addition, the governing body of the school would also be required to establish a sliding-fee scale based on the student’s ability to pay. Both the charges for room and board and the sliding fee scale would have to be approved by the Public Education Department (PED) before being implemented. Based on a formula in the proposed legislation, the state would reimburse the school for lost revenues due to the sliding fees (see “Fiscal Impact”).

* The bill contains an emergency clause.

Fiscal Impact:

HB 260 appropriates \$750,000 from the General Fund to PED for expenditure in FY 07 and FY 08 to provide financial support for the school’s initial start-up costs, including planning and outreach activities. The department may use up to 3.0 percent of the appropriation for administrative costs. The bill contains a reversion clause.

Operational Funding

Funding for the operational and other needs of the school would not be required until school year 2008-2009 (FY 09). As is the case with all other charter schools in New Mexico, the school's operational funds would be generated through the Public School Funding Formula. Proponents of the proposed school have indicated that if the PEC approves the school's charter, the school will open with an enrollment of 150 students and add an additional 75 students for each of the next two school years until it reaches a total enrollment of 300 students.

Estimates made by LESC staff during the 2006 interim session indicate that, based on the 2006-2007 initial unit value of \$3,444.35 and a membership of 150 students, the total program cost generated for the school's first year would be approximately \$1.4 million; this estimate includes the 2.0 percent of program cost that would be retained by PED for administrative costs.

Although the school could be eligible for some federal funds, such as Student Nutrition, federal statute prohibits a charter school with admissions requirements from qualifying for Public Charter Schools Program grants, which support the "planning and design of the education program of a charter school."

With regard to other potential revenue sources, proponents of the school have testified to the LESC that a number of private foundations have pledged to provide a total of \$850,000 per year for each of the first five years that the school is in operation: \$600,000 for various costs associated with providing an arts education and \$250,000 for outreach efforts.

Residential Funding

The proposed New Mexico School for the Arts will differ from other charter schools in that it will have a residential component. As previously noted, HB 260 would require that the school charge residential students a fee, based on a sliding-fee scale, to cover the costs of room and board. HB 260 also states that "the state shall reimburse the school for the difference between the actual revenue received from students and the total cost of room and board calculated by multiplying the average cost of room and board at the state's post-secondary educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico¹, including the New Mexico military institute, by the full-time-equivalent number of students residing at the school."

For FY 07, the average cost of room and board at these institutions is \$5,133. If approximately 75 students choose to live in the school's residential facility, the total potential cost to the state would be \$384,975 less whatever revenue is generated on the basis of the sliding-fee scale.

Issues:

Attorney General's Opinion

A number of questions were raised during the 2006 legislative and interim sessions regarding the establishment of a statewide residential high school for the arts (see "Background"). In response

¹ The institutions so enumerated are the University of New Mexico, New Mexico State University, New Mexico Highlands University, Western New Mexico University, Eastern New Mexico University, the New Mexico Institute of Mining and Technology, the New Mexico Military Institute, and Northern New Mexico College.

to a request from a legislator, on December 22, 2006 the Attorney General issued Opinion No. 06-03 (see Attachment 1), which addresses four questions concerning the creation of the school.

Two of the questions asked of the Attorney General—whether a school for the arts could associate with a postsecondary institution or whether it could be administratively attached to the Higher Education Department—no longer apply; HB 260 would establish the school as a state-chartered charter school. The remaining two questions remain pertinent: (1) does the Legislature have the authority to create such a school through legislation or is an amendment to New Mexico’s Constitution required; and (2) may such a school adopt admissions requirements that limit enrollment to artistically talented students. According to the Attorney General’s opinion, the answer to both questions is “yes”:

1. With regard to the first question, the Attorney General states that “[t]he Legislature has the authority to create a statewide magnet school for the arts without amending Article XII, § 11 of the state constitution.” Further, Article XII, Section 1, “charging the Legislature with establishing and maintaining a uniform system of free public schools sufficient for the education of all school-age children in the state, does not preclude the Legislature from creating a statewide magnet school for the arts.”
2. With regard to the second question, the Attorney General notes that “[a] large discretion is necessarily vested in the Legislature to determine not only what the interests of the public require, but also what measures are necessary for the protection of such interests.... Within this broad discretion, but necessarily cognizant of the limitations placed on it by the state and federal constitutions, the Legislature may formulate a wide variety of legislation to achieve its goals, including legislation that would allow a statewide magnet school to adopt competitive admissions requirements that limit enrollment to artistically talented students....”

On January 25, 2007, the Attorney General provided additional written comments regarding the creation of a statewide residential charter high school for the arts (see Attachment 2). In this second communication, the Attorney General notes that all of the arguments applicable to the creation of a magnet school apply to the creation of a charter school. In addition, the Attorney General states the following: “...we believe the governing body of a proposed statewide charter school may offer room and board to its residential students on a sliding scale, provided the Legislature vests the governing body with the statutory authority to charge for room and board and the students to whom discounted room and board is offered have demonstrated financial need.”

Background

During the 2006 legislative session, identical bills to enact the *New Mexico School for the Arts Act* were introduced in the House and the Senate; however, neither bill passed. Had the legislation been enacted, a residential high school, the New Mexico School for the Arts, would have been established in Santa Fe “to provide free, publicly funded education and training in grades nine through twelve for exceptional artistically talented students who are residents of New Mexico and who meet the admissions criteria and standards of the school.”

Testimony before Senate and House education committees regarding the proposed New Mexico School for the Arts raised a number of issues, including whether the school could be established

through legislation as opposed to an amendment to the New Mexico Constitution and whether a public school may have admissions criteria.

Because of the questions raised during those hearings, additional legislation was introduced in both the Senate and the House to fund a feasibility study. As amended in the House Education Committee (HEC), this bill would have appropriated \$500,000 to the LESC for a feasibility study on the creation of a publicly funded statewide residential high school for the arts. Although neither bill passed, the chair of the HEC requested that the LESC, during the 2006 interim, discuss the feasibility of establishing such a school.

At its May 2006 meeting, the LESC appointed the LESC Subcommittee on the High School for the Arts. The subcommittee, which was composed of 20 members representing the LESC, the arts community, the public schools, the Public Education Department, the school employees' unions, and other interested individuals, was charged with examining the feasibility of establishing a statewide residential high school for the arts and providing recommendations to the LESC prior to the 2007 legislative session.

Beginning in June 2006, the subcommittee met every month during the interim except July. In December 2006, the subcommittee presented its final report to the LESC and asked the LESC to consider endorsing legislation that would establish a statewide residential high school for the arts. In the final report, the subcommittee recommended that:

- the New Mexico School for the Arts be established as a state-chartered statewide, residential charter high school that will provide New Mexico students, who have demonstrated artistic abilities and potential, with intensive pre-professional and professional instruction in the performing and visual arts combined with a strong academic program leading to a high school diploma;
- the school offer a rounded arts program that includes concentrations in the visual arts, music, theater, film, and dance (the school will maintain a guest artist program in which visiting artists, in accordance with state and federal requirements, are supervised by licensed teachers of record);
- the school be subject to all requirements of the *Charter Schools Act*, except those that prohibit the establishment of admissions criteria;
- the governing body of the New Mexico School for the Arts establish admissions criteria designed to admit students who show exceptional talent, promise, or aptitude in the arts and an interest in pursuing a career in the arts;
- students be considered for admission regardless of their opportunity to obtain training prior to admission;
- to the greatest extent possible and without jeopardizing admissions standards, the student body be geographically representative of the state;
- the school conduct outreach programs so that students, parents, and teachers throughout the state are made aware of the nature and purpose of the school and of the opportunities that the school provides; and
- funds be appropriated to support planning and outreach activities during the year prior to the opening of the school.

Related Bill:

*SB 76 *New Mexico School for the Arts Act* (identical)