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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
 SPONSOR SEC _____ LAST UPDATED 02/18/13 HB _____
 SHORT TITLE Define Virtual Charter School & Moratorium SB 338/SECS
 ANALYST Gudgel _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal		Minimal		LESC and PED Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

Senate Education Committee substitute for Senate Bill 338 amends enacts a temporary provision, establishing a one-year moratorium on the creation of new virtual charter schools. The bill prohibits a chartering authority from accepting or approving an application for new virtual charter schools from June 1, 2013 through May 1, 2014. During the moratorium, the bill requires the Public Education Department (PED), in coordination with the Legislative Education Study Committee (LESC) to review current statutes and propose changes to law to accommodate and regulate virtual charter schools. The bill has an emergency clause.

FISCAL IMPLICATIONS

The bill has no immediate fiscal impact. The bill places a moratorium on the opening of new virtual charter schools in FY14, and the consideration of new applications in FY14 for virtual charter schools. If enacted, the bill could potentially limit virtual charter schools from opening in FY15, as they would be considered in FY14. The bill will not have any effect on the opening of virtual charter schools in FY14.

SIGNIFICANT ISSUES

Questions have been raised about the legality of virtual charter schools in light of statutes, previous PED staff recommendations to deny virtual charter schools, and an Attorney General

Opinion. Additionally, issues have been raised by the Public School Capital Outlay Council with regard to lease assistance funding – specifically the disparity between making lease assistance reimbursements based on student enrollment when only a portion of the students will ever enter the building.

This bill will allow the PED and the LESC time to address these issues.

ADMINISTRATIVE IMPLICATIONS

The PED and the LESC will be required to review the issue of virtual charter schools during the 2013 interim and identify statutory changes for the 2014 legislative session.

OTHER SUBSTANTIVE ISSUES

According to Legislative Education Study Committee September 2012 Staff Brief

The September 2012 LESC brief noted the PEC denied the applications from New Mexico Connections Academy, a virtual charter school, in 2012. (Charter Schools Division counsel recommended approval of the virtual charter school; however the Final Recommendation noted there may be a question concerning the ability of the Public Education Commission to approve state-wide virtual programs.)

Among the reasons for denying the application, the PEC noted research indicating that the test scores of students in virtual schools are generally lower than those of students in traditional schools; the current availability of online learning through the New Mexico Cyber Academy and IDEAL-NM (Innovative Digital Education Learning-New Mexico), as well as online programs in a number of school districts throughout the state; the inconsistent internet connectivity throughout the state, suggesting that not all students would have equal access to a virtual charter school; the potential for harm to communities and districts throughout the state whose students enroll in the charter school, especially if, through this precedent, other virtual charter schools were to open; and the tenuous legal authority of the PEC to approve a virtual charter school. On this point, commissioners noted that the law is arguably ambiguous, but they cited two legal statements – a formal opinion from the CSD counsel in 2009 and an advisory letter from the Attorney General in 2008 – as well as rules of the PED, all suggesting that virtual charter schools are not permitted in New Mexico.

- In brief, counsel opined that New Mexico law contemplated schools as “brick and mortar” buildings with a physical presence in a particular place, tied to “attendance areas,” with “walk zones,” and “allowable class sizes,” all of which suggested that the Legislature had in mind the physical presence of children in school buildings. Additionally, he noted that the Legislature could have permitted virtual schools when it passed the *Statewide Cyber Academy Act*, but did not. Counsel concluded, therefore, that the PEC could not legally authorize virtual charter schools.
- The CSD counsel also indicated that not just any building would satisfy this legislative intent: “As virtual charter schools, the applicants will not have a brick and mortar school building, but rather they are proposing to have learning centers or administrative offices located in the state where students may occasionally meet face-to-face with a teacher.”