

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 166

52nd Legislature, 1st Session, 2015

Tracking Number: .197727.3

Short Title: Charter School Transportation Agreements

Sponsor(s): Representative Dennis J. Roch

Analyst: David Craig

Date: February 13, 2015

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

HB 166 amends the *Public School Code* to require charter schools that choose to provide transportation services to negotiate those services with the school districts in which they are geographically located to.

More specifically, HB 166 amends the *Public School Finance Act* to:

- exclude reference to state-chartered charter schools from current provisions related to transportation funding, including:
 - the transportation distribution;
 - transportation equipment;
 - the transportation distribution reports and payments;
 - the calculation of transportation allocation; and
 - the transportation distribution adjustment factor; and
- allow a charter school in which at least 20 percent of its students qualify for transportation services in compliance with an individualized education plan (IEP), or with Section 504 of the federal *Rehabilitation Act of 1973*, to choose to provide state-funded transportation services for its eligible students, provided that the eligible students are not provided transportation services that are provided for all students.

Among its other provisions, HB 166 amends provisions of the *Charter Schools Act* to:

- require charter schools that choose to provide transportation services to negotiate with the school district in which they are geographically located to provide transportation to eligible students; and
- indicate that a charter school and school district are not required to enter into a transportation agreement.

If enacted, the provisions of HB 166 would become effective July 1, 2015.

Fiscal Impact:

HB 166 does not carry an appropriation.

Fiscal Issues:

Funding for Charter School Programs

As shown in the **Attachment**, *Comparison of FY 14 Transportation Allocation to FY 15 Initial Transportation Allocation*:

- 64 school districts and seven state-chartered charter schools saw a reduction from the final FY 14 transportation funding formula allocation to the FY 15 initial transportation allocation;
- the total reduction for these districts and schools is approximately \$2.2 million (line 105);
- 25 school districts and seven charters schools saw the initial transportation funding formula allocations increase by the same amount; and
- of the seven charter schools receiving an increase:
 - six are new state-chartered charter schools beginning operations in FY 15, including:
 - Explore Academy Charter (line 98);
 - Health Sciences Academy Charter (line 99);
 - International School at Mesa Del Sol (line 100);
 - La Promesa Charter School (line 101);
 - Mission Achievement and Success Charter (line 102); and
 - New Mexico International Charter (line 103); and
 - these state-chartered charter schools will receive new transportation funding formula allocations totaling \$550,030 (line 104).

The bill analysis by the Public education Department (PED) indicates that, if HB 166 is enacted, charter schools will not be eligible for approximately \$1.6 million in FY 16, which could be detrimental to their current enrollment. However, it is important to note that the provisions of HB 166:

- do not change the eligibility for charter schools to receive transportation funding; but
- do change the mechanism by which charter schools would receive these funds by requiring charter schools to negotiate with the school district in which it is geographically located prior to receiving funds; and
- do not prevent a charter school from providing transportation services using revenues from other sources.

Substantive Issues:

2014 Interim LESC Charter Schools Subcommittee

The subcommittee’s examination of transportation issues with charter schools began with an LESC staff review of statutory provisions in the *Public School Finance Act* and the *Charter*

Schools Act, along with provisions in PED rule. Altogether, this testimony explained, provisions in current law and rule require:

- locally chartered charter schools to negotiate with the chartering district for transportation by school bus or per capita feeder agreement, although the routes must stay within the school district's boundaries and although the "walk zones" applicable to traditional schools do not apply to charter schools;
- the district to develop a separate transportation budget and allocation for locally chartered charter schools;
- the district to collect and submit required reporting for the locally chartered charter school's transportation;
- PED to calculate transportation allocations for each state-chartered charter school;
- the allocations to be based on the tentative transportation budget of the state-chartered school for the current fiscal year; and
- periodic installment payments to state-chartered charter schools to be based on the allocations certified by the state transportation director.

Of particular note, staff testimony continued, are the transportation needs and circumstances of state-chartered charter schools. For one thing, an interim subcommittee on public school transportation during the 2012 and 2013 interims heard testimony from PED that state-chartered charter schools were receiving more school transportation funding formula allocations than they needed to provide to-and-from transportation services for students. For another thing, the *Public School Finance Act* does not specify whether state-chartered charter schools are to receive a transportation funding formula distribution or be eligible to receive such funding; and there are no provisions in law that relate to transportation boundaries or distances for state-chartered charter schools. With these points in mind, LESC staff suggested that the subcommittee may wish to consider whether:

- the current mechanism for allocating transportation funding to state-chartered charter schools is adequate;
- the eligibility criteria for charter schools to receive a transportation allocation needs further clarification; and
- geographic boundaries or distances should be established for charter school transportation services.

Staff testimony also suggested that the subcommittee consider including state-chartered charter schools in the negotiation process with local school districts and incorporating into law a provision in PED rule that allows charter schools to elect not to provide transportation services.

Individuals with Disabilities Education Act Compliance

The PED bill analysis also indicates that the bill's provision for a charter school that has at least 20 percent of the student population with an IEP or Section 504 plan appears to be in violation of the *Individuals with Disabilities Education Act* (IDEA) because:

- if a student's IEP requires transportation services to accommodate an exceptionality then the charter school is required to provide transportation; and
- PED would be required to provide funding for transporting these children, creating a conflict with the bill.

Again, however, it is important to note that while charter schools are required to provide transportation if a student's IEP team decides that transportation services are a related service necessary to provide a free and appropriate public education (FAPE) under IDEA, there do not appear to be any specific requirements in IDEA that funding be provided by a state education agency (SEA) like PED or through a categorical grant.

For charter schools with less than 20 percent of its student population requiring to be provided transportation pursuant to a student's IEP or a Section 504 plan, transportation services would be required under HB 166 to be funded through other revenue sources; and language that the exemption only applies to students that are not provided transportation services that are provided for all students is designed to conform with the least restrictive environment (LRE) provisions of IDEA.

Current provisions of the IDEA allow:

- PED to retain up to 10 percent of IDEA grant funds for state-level activities like monitoring and oversight;
- PED to retain 10 percent of the 10 percent state-level activities set aside to create a high risk pool for the purpose of assisting local educational agencies (LEA) in addressing the needs of high need children with disabilities; and
- LEAs to use IDEA sub-grants to work in a consortium to pay for high cost special education and related services.

As the SEA grantee, PED is responsible for determining state compliance with the requirements of the federal IDEA program. However, it is unclear how the provisions of HB 166 are in conflict with IDEA. In addition, the provisions of HB 166:

- may allow federal IDEA funding to cover some transportation related services costs; and
- would require PED to continue the oversight required by IDEA as part of its monitoring and enforcement duties to ensure that these charter schools are in compliance with federal law to provide transportation related services and ensure students are provided a FAPE.

Transportation Funding and Services for Locally-chartered Charter Schools and State-chartered Charter Schools

The PED bill analysis contends that HB 166 does not require school districts to negotiate with charter schools for transportation services and that, therefore, districts will be unwilling to enter into such negotiations. However, the language of the bill clearly indicates otherwise. The amendments to the *Charter Schools Act*:

- do require school districts to negotiate with charter schools that choose to provide transportation services; but also
- provide that charter schools and school districts are not required to enter into transportation agreements.

The distinction between these two points ensures that:

- charter schools may elect not to provide transportation services;
- charter schools are not forced into an unfavorable transportation agreement as a requirement to negotiate with the school district; and

- creates a geographic boundary of the school district in which the charter school is geographically located.

Background:

Transportation Funding

Provisions of the *Public School Finance Act* determine the funding elements of the state's transportation program. The following is a summary of the provisions of the *Public School Finance Act* that relate to the calculation and allocation of the transportation funding formula.

- **The transportation distribution** as it relates to a school district's or state-chartered charter school's transportation allocation, including provisions that require:
 - allocations to be used only for to-and-from school transportation costs of public school students in grades K-12 and for three- and four-year-old developmentally disabled students;
 - 50 percent of any excess funds to revert to the transportation emergency fund;
 - 25 percent of the remaining excess to only be used for to-and-from transportation, excepting salaries and benefits;
 - the remaining 25 percent of excess to be used for any other transportation services, excepting salary and benefits;
 - if the amount of an allocation exceed distributions, each school district or state-chartered charter school to have their allocations reduced in the proportion to the total state distribution; and
 - a local board or governing body of a state-chartered charter school to seek approval to provide additional transportation services.
- **The purchase of school bus transportation equipment**, including the:
 - replacement of buses on a 12-year cycle including petitions to replace buses early;
 - payment of rental fees for contractor-owned buses and replacement of buses on a 12-year replacement cycle;
 - process by which a school district files a lien against contractor-owned school buses with the motor vehicle division of the taxation and revenue department;
 - rental period limit for buses to five years; and
 - provisions to allow PED to recoup money owed to a school district by a bus contract that is terminated.
- **Reporting requirements** for allocations that the local board or governing body of a state-chartered charter school must report on the first reporting date of the current year, including the:
 - number and designation of bus routes;
 - number of miles by road surface;
 - number of students transported on the first reporting period and adjustments for special education on December 1;
 - projected students for the next year;
 - seating capacity, age, and mileage of each bus; and
 - number of total miles traveled for each per capita feeder route.

- This section of law also requires PED to:
 - base allocations for the first six months of a school year on the tentative transportation budget for the current fiscal year;
 - adjust allocations for the remainder of the year based on the amount the school district is to receive on the November 15 reporting date; and
 - make installment payments to districts and state-chartered charter schools based on their approved allocations.

- **The calculation of the transportation allocation** that includes:
 - a base amount to which is added a variable predicted amount calculated from a regression analysis of site characteristics and predictor variables multiplied by number of days; and
 - then multiplied by an adjustment factor which is calculated by subtracting the amount of the sum of the base and variable amounts from the total transportation appropriation and dividing by the sum of the base and variable and then adding one.

- **Distributions from the transportation emergency fund** in instances of transportation emergencies.

Committee Referrals:

HEC/HTPWC

Related Bills:

CS/HB 19 *Charter School Educational Tech Equipment*

HB 253 *Charter School Facility 4 Year Plans*

SB 8a *Charter School Education Tech Equipment*

SB 128 *Public School Capital Outlay Building Needs*

SB 130a *Public School Lease Purchase Act Definitions*

SB 148 *Charter School Responsibilities*

SB 236 *Charter School Lease Approval*

SB 257 *Charter Schools & Public Audit Changes*

SB 273 *Charter School Governance*

**COMPARISON OF FY 14 FINAL TRANSPORTATION ALLOCATION TO FY 15 INITIAL
TRANSPORTATION ALLOCATION**

| District/ Charter School Name | FY 14 FINAL ALLOCATION | District/ State-Chartered Charter School Name | FY 15 INITIAL ALLOCATION | Difference (Decrease) | Difference (Increase) |
|---|------------------------------|---|-----------------------------|--------------------------|--------------------------|
| 1 ALAMOGORDO | \$1,354,801 | ALAMOGORDO | \$1,340,617 | (\$14,184) | |
| 2 ASL CHARTER SCHOOL | \$241,802 | ASL CHARTER SCHOOL | \$241,662 | (\$140) | |
| 3 ARTESIA | \$1,132,196 | ARTESIA | \$1,104,603 | (\$27,593) | |
| 4 AZTEC | \$1,237,162 | AZTEC | \$1,211,521 | (\$25,641) | |
| 5 BLOOMFIELD | \$1,236,669 | BLOOMFIELD | \$1,203,952 | (\$32,717) | |
| 6 CAPITAN | \$332,638 | CAPITAN | \$316,706 | (\$15,932) | |
| 7 CARRIZOZO | \$167,504 | CARRIZOZO | \$165,045 | (\$2,459) | |
| 8 CHAMA | \$259,322 | CHAMA | \$257,190 | (\$2,132) | |
| 9 CIEN AGUAS | \$75,941 | CIEN AGUAS | \$67,239 | (\$8,702) | |
| 10 CLAYTON | \$717,383 | CLAYTON | \$715,915 | (\$1,468) | |
| 11 CLOUDCROFT | \$252,687 | CLOUDCROFT | \$228,909 | (\$23,778) | |
| 12 CLOVIS | \$1,276,617 | CLOVIS | \$1,124,267 | (\$152,350) | |
| 13 COBRE CONS. | \$579,489 | COBRE CONS. | \$534,283 | (\$45,206) | |
| 14 COTTONWOOD CLASSICAL | \$253,768 | COTTONWOOD CLASSICAL | \$234,904 | (\$18,864) | |
| 15 DEMING | \$1,951,783 | DEMING | \$1,927,426 | (\$24,357) | |
| 16 DES MOINES | \$228,858 | DES MOINES | \$225,458 | (\$3,400) | |
| 17 DEXTER | \$499,975 | DEXTER | \$498,279 | (\$1,696) | |
| 18 DORA | \$252,536 | DORA | \$233,303 | (\$19,233) | |
| 19 DULCE | \$192,735 | DULCE | \$173,572 | (\$19,163) | |
| 20 ELIDA | \$209,342 | ELIDA | \$206,437 | (\$2,905) | |
| 21 ESTANCIA | \$403,738 | ESTANCIA | \$384,746 | (\$18,992) | |
| 22 EUNICE | \$247,640 | EUNICE | \$241,935 | (\$5,705) | |
| 23 FLOYD | \$142,406 | FLOYD | \$126,869 | (\$15,537) | |
| 24 GRADY | \$190,650 | GRADY | \$181,351 | (\$9,299) | |
| 25 HAGERMAN | \$252,660 | HAGERMAN | \$230,671 | (\$21,989) | |
| 26 HATCH | \$673,795 | HATCH | \$612,574 | (\$61,221) | |
| 27 HOBBS | \$1,544,658 | HOBBS | \$1,508,314 | (\$36,344) | |
| 28 HONDO | \$203,848 | HONDO | \$184,000 | (\$19,848) | |
| 29 HOUSE | \$172,793 | HOUSE | \$156,254 | (\$16,539) | |
| 30 JAL | \$175,273 | JAL | \$163,332 | (\$11,941) | |
| 31 JEMEZ MOUNTAIN | \$427,157 | JEMEZ MOUNTAIN | \$409,149 | (\$18,008) | |
| 32 JEMEZ VALLEY | \$470,526 | JEMEZ VALLEY | \$440,160 | (\$30,366) | |
| 33 LA TIERRA MONTESSORI CHOOLOF THE ARTS | \$40,244 | LA TIERRA MONTESSORI CHOOLOF THE ARTS | \$37,252 | (\$2,992) | |
| 34 LAKE ARTHUR | \$132,269 | LAKE ARTHUR | \$123,901 | (\$8,368) | |
| 35 LAS VEGAS EAST | \$638,532 | LAS VEGAS EAST | \$631,350 | (\$7,182) | |
| 36 LAS VEGAS WEST | \$644,600 | LAS VEGAS WEST | \$630,596 | (\$14,004) | |
| 37 LOGAN | \$244,123 | LOGAN | \$240,417 | (\$3,706) | |
| 38 LORDSBURG | \$385,408 | LORDSBURG | \$357,647 | (\$27,761) | |
| 39 LOS ALAMOS | \$489,733 | LOS ALAMOS | \$412,933 | (\$76,800) | |
| 40 LOVING | \$129,578 | LOVING | \$119,886 | (\$9,692) | |

**COMPARISON OF FY 14 FINAL TRANSPORTATION ALLOCATION TO FY 15 INITIAL
TRANSPORTATION ALLOCATION**

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|----|-------------------------------------|------------------------------|---|-----------------------------|--------------------------|--------------------------|----|
| 41 | LOVINGTON | \$960,460 | LOVINGTON | \$821,970 | (\$138,490) | | 41 |
| 42 | MAXWELL | \$77,645 | MAXWELL | \$69,988 | (\$7,657) | | 42 |
| 43 | MELROSE | \$265,094 | MELROSE | \$243,616 | (\$21,478) | | 43 |
| 44 | MESA VISTA | \$292,610 | MESA VISTA | \$288,805 | (\$3,805) | | 44 |
| 45 | MORA | \$398,060 | MORA | \$374,893 | (\$23,167) | | 45 |
| 46 | MOUNTAINAIR | \$284,042 | MOUNTAINAIR | \$259,167 | (\$24,875) | | 46 |
| 47 | PECOS | \$396,543 | PECOS | \$377,106 | (\$19,437) | | 47 |
| 48 | PENASCO | \$265,089 | PENASCO | \$246,466 | (\$18,623) | | 48 |
| 49 | PORTALES | \$903,956 | PORTALES | \$849,168 | (\$54,788) | | 49 |
| 50 | QUESTA | \$321,229 | QUESTA | \$318,582 | (\$2,647) | | 50 |
| 51 | RATON | \$473,223 | RATON | \$382,828 | (\$90,395) | | 51 |
| 52 | RED RIVER CHARTER | \$36,141 | RED RIVER CHARTER | \$31,399 | (\$4,742) | | 52 |
| 53 | RESERVE | \$202,607 | RESERVE | \$196,051 | (\$6,556) | | 53 |
| 54 | RIO RANCHO | \$3,204,538 | RIO RANCHO | \$2,990,811 | (\$213,727) | | 54 |
| 55 | ROSWELL | \$2,278,360 | ROSWELL | \$2,006,477 | (\$271,883) | | 55 |
| 56 | RUIDOSO | \$662,172 | RUIDOSO | \$629,785 | (\$32,387) | | 56 |
| 57 | SAN JON | \$170,541 | SAN JON | \$153,009 | (\$17,532) | | 57 |
| 58 | SANTA FE | \$3,507,469 | SANTA FE | \$3,485,693 | (\$21,776) | | 58 |
| 59 | SANTA ROSA | \$477,650 | SANTA ROSA | \$470,143 | (\$7,507) | | 59 |
| 60 | SOCORRO | \$698,224 | SOCORRO | \$639,754 | (\$58,470) | | 60 |
| 61 | S.W. SECONDARY | \$49,869 | S.W. SECONDARY | \$49,375 | (\$494) | | 61 |
| 62 | SPRINGER | \$183,028 | SPRINGER | \$166,958 | (\$16,070) | | 62 |
| 63 | TAOS | \$880,909 | TAOS | \$839,790 | (\$41,119) | | 63 |
| 64 | TATUM | \$261,549 | TATUM | \$260,326 | (\$1,223) | | 64 |
| 65 | TEXICO | \$238,941 | TEXICO | \$226,805 | (\$12,136) | | 65 |
| 66 | TUCUMCARI | \$523,252 | TUCUMCARI | \$423,755 | (\$99,497) | | 66 |
| 67 | TULAROSA | \$487,743 | TULAROSA | \$461,017 | (\$26,726) | | 67 |
| 68 | UPLIFT COMMUNITY | \$134,151 | UPLIFT COMMUNITY | \$118,130 | (\$16,021) | | 68 |
| 69 | VAUGHN | \$115,829 | VAUGHN | \$106,766 | (\$9,063) | | 69 |
| 70 | WAGON MOUND | \$149,190 | WAGON MOUND | \$138,042 | (\$11,148) | | 70 |
| 71 | ZUNI | \$515,629 | ZUNI | \$439,067 | (\$76,562) | | 71 |
| 72 | ALBUQUERQUE | \$17,422,584 | ALBUQUERQUE | \$17,540,856 | | \$118,272 | 72 |
| 73 | ANIMAS | \$337,723 | ANIMAS | \$338,526 | | \$803 | 73 |
| 74 | BELEN | \$1,434,135 | BELEN | \$1,472,736 | | \$38,601 | 74 |
| 75 | BERNALILLO | \$1,315,036 | BERNALILLO | \$1,327,549 | | \$12,513 | 75 |
| 76 | CARLSBAD | \$1,349,123 | CARLSBAD | \$1,360,126 | | \$11,003 | 76 |
| 77 | CENTRAL CONS. | \$2,361,573 | CENTRAL CONS. | \$2,459,033 | | \$97,460 | 77 |
| 78 | CIMARRON | \$373,518 | CIMARRON | \$386,709 | | \$13,191 | 78 |
| 79 | CORONA | \$264,199 | CORONA | \$285,962 | | \$21,763 | 79 |
| 80 | CUBA | \$658,277 | CUBA | \$666,087 | | \$7,810 | 80 |
| 81 | ESPANOLA | \$1,436,743 | ESPANOLA | \$1,451,446 | | \$14,703 | 81 |
| 82 | FARMINGTON | \$2,877,620 | FARMINGTON | \$3,004,135 | | \$126,515 | 82 |

COMPARISON OF FY 14 FINAL TRANSPORTATION ALLOCATION TO FY 15 INITIAL TRANSPORTATION ALLOCATION

| | District/ Charter School Name | FY 14 FINAL ALLOCATION | District/ State-Chartered Charter School Name | FY 15 INITIAL ALLOCATION | Difference (Decrease) | Difference (Increase) | |
|-----|---|---------------------------------------|--|-------------------------------------|----------------------------------|----------------------------------|-----|
| 83 | FT. SUMNER | \$459,231 | FT. SUMNER | \$476,846 | | \$17,615 | 83 |
| 84 | GADSDEN | \$4,553,149 | GADSDEN | \$4,724,594 | | \$171,445 | 84 |
| 85 | GALLUP | \$4,549,566 | GALLUP | \$5,148,107 | | \$598,541 | 85 |
| 86 | GRANTS | \$985,206 | GRANTS | \$1,041,571 | | \$56,365 | 86 |
| 87 | LAS CRUCES | \$4,558,287 | LAS CRUCES | \$4,606,689 | | \$48,402 | 87 |
| 88 | LOS LUNAS | \$2,211,648 | LOS LUNAS | \$2,267,947 | | \$56,299 | 88 |
| 89 | MAGDALENA | \$278,694 | MAGDALENA | \$305,646 | | \$26,952 | 89 |
| 90 | MORIARTY | \$1,471,244 | MORIARTY | \$1,569,714 | | \$98,470 | 90 |
| 91 | MOSQUERO | \$219,181 | MOSQUERO | \$257,573 | | \$38,392 | 91 |
| 92 | POJOAQUE | \$788,599 | POJOAQUE | \$820,578 | | \$31,979 | 92 |
| 93 | QUEMADO | \$355,416 | QUEMADO | \$381,803 | | \$26,387 | 93 |
| 94 | ROY | \$95,496 | ROY | \$96,022 | | \$526 | 94 |
| 95 | SILVER CITY | \$920,877 | SILVER CITY | \$935,556 | | \$14,679 | 95 |
| 96 | TRUTH OR CONS. | \$819,499 | TRUTH OR CONS. | \$820,065 | | \$566 | 96 |
| 97 | S.W. AM&SA | \$169,474 | S.W. AM&SA | \$178,407 | | \$8,933 | 97 |
| 98 | | | EXPLORE ACADEMY CHARTER | \$163,770 | | \$163,770 | 98 |
| 99 | | | HEALTH SCIENCES ACADEMY CHARTER | \$102,670 | | \$102,670 | 99 |
| 100 | | | INTERNATIONAL SCHOOL AT MESA DEL SOL | \$68,432 | | \$68,432 | 100 |
| 101 | | | LA PROMESA CHARTER SCHOOL | \$70,120 | | \$70,120 | 101 |
| 102 | | | MISSION ACHIEVEMENT & SUCCESS CHARTER | \$84,407 | | \$84,407 | 102 |
| 103 | | | NEW MEXICO INTERNATIONAL CHARTER | \$60,631 | | \$60,631 | 103 |
| 104 | SUBTOTAL SIX NEW STATE CHARTERED CHARTER SCHOOL TRANSPORTATION PROGRAMS | | | | | \$550,030 | 104 |
| 105 | TOTALS | \$91,744,680 | TOTALS | \$91,744,680 | (\$2,208,215) | \$2,208,215 | 105 |