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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/17

SPONSOR Smith/Ivey-Soto LAST UPDATED \_\_\_\_\_ HB 273

SHORT TITLE Charter School Changes SB \_\_\_\_\_

ANALYST Liu/Eckberg/Courtney

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications			Recurring	General Fund & Public School Capital Outlay Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB30, SB39, SB207  
 Relates to HB46, HB417, HB454, HB470, SB147, SB305, SB313

### SOURCES OF INFORMATION

LFC Files  
 Legislative Education Study Committee (LESC) Files

Responses Received From  
 Public School Facilities Authority (PSFA)

No Responses Received From  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 273 amends the Audit Act to include charter schools in the definition of “agency,” and amends the Public School Code to change how charter schools determine student membership (MEM) and generate size adjustment, enrollment growth, new charter school, and at-risk student program units. The bill allows high-performing charter schools to open new school sites, without requiring chartering authority approval, and participate in a streamlined renewal process developed by PED. In conjunction, the bill provides for automatic closure of low-performing charter schools, with exception for supplemental accountability models (SAM) schools. Additionally, the bill changes regulations on charter school enrollment, chartering authority responsibilities, charter school capital outlay funding, and caps on the number of start-up charter schools.

## FISCAL IMPLICATIONS

The bill does not make an appropriation. All fiscal impacts are expected to affect existing appropriations.

The bill allows charter schools in the first year of operation to project the number of program units expected, but includes a provision making adjustments to student membership on the first reporting date. The fiscal impacts of this provision would be dependent on the number of new charter schools and the error of initial projections for program units.

The bill establishes separate calculations of size adjustment units for school districts and charter schools and reduces charter school size adjustment units by 20 percent if the school is located within the boundaries of a school district with more than 2,800 student membership (MEM) on the first reporting date. Using FY17 MEM and the unit value of \$3,979.63, the estimated impact would be 790.3 fewer program units generated, or \$3.1 million that could have been redistributed through the funding formula. Estimated reductions to individual charter school size adjustment funding range between 3.5 percent and 8.4 percent.

The bill establishes separate calculations of enrollment growth program units for school districts and charter schools based on whether student membership is greater or less than 1,500 MEM. If enrollment growth exceeds 3 percent, program units are generated for school districts and charter schools with less than 1,500 MEM. If enrollment growth exceeds 5 percent, program units are generated for school districts and charter schools with greater than 1,500 MEM. Using FY17 MEM and the unit value of \$3,979.63, the estimated impact would be 277.5 fewer program units generated, or \$1.1 million that could have been redistributed through the funding formula. This estimate is based on an assumed definition for *current year MEM*, which is further discussed under Technical Issues.

The bill would separate funding generated by charter schools for new formula-based programs from funding generated for enrollment growth. Some charter schools that have expanded their programs and generated funding from both enrollment growth and new program units may receive less formula funding under provisions of this bill. The dual funding of students in newly phased-in grades who count in both the calculation of new program units and enrollment growth units dilutes the unit value in the SEG. Currently it is unclear which student membership is being used for enrollment growth or new programs, so a fiscal impact estimate is not available at this time.

The bill would allow charter schools to calculate their own at-risk index rather than using the at-risk index of the school district in which they are located. Additional fiscal impacts of this provision are estimated to be minimal, assuming overall at-risk average values by geographic school district remain relatively stable and student mobility rates do not significantly increase. Impacts to individual charter schools will vary, as the bill changes how formula funding is allocated from a district average to an individual charter school calculation. For example, South Valley Academy, an Albuquerque Public Schools charter school, calculated an individual at-risk index of 0.125 compared with the district average of 0.079, which would translate to an additional \$110.3 thousand per year for the charter school under provisions of this bill.

Provisions of the bill outlining streamlined renewal and expansion of high-performing charter

schools and the automatic closure of low-performing charter schools would affect how formula funding is distributed. Although program units for charter schools closed under these provisions would be reduced, it is difficult to ascertain if these changes would result in an overall net reduction given additional expansion flexibilities for high-performing charter schools. Between the 2013 and 2016 school years, 11 charter schools had three years of consecutive D or F grades, six of which were SAM schools. Of the five low-performing charter schools, one closed in FY16 and the remaining four schools generated a total of 859.3 program units, or \$3.7 million of formula funding, in FY17.

The bill would require full state funding and no local match requirement for charter schools receiving public school capital outlay grants. Fiscal impacts would be dependent on the number of charter schools eligible for Public School Capital Outlay Council (PSCOC) awards. PSFA notes charter schools currently have an average 50 percent state and 50 percent local match requirement and four charter schools are eligible for awards under the standards-based or systems-based programs. Additional costs to fully fund these projects would depend on the project request and number of requests.

## **SIGNIFICANT ISSUES**

### **Charter School Audits**

The bill amends the definition of agency to include charter schools as a political subdivision of the state subject to the Audit Act (Section 12-6-2 NMSA 1978).

### **Charter School Budgets**

The bill repeals Section 22-8-6.1 NMSA 1978 and replaces it with a new section titled Charter School Budgets. The new section contains similar language to the repealed statute regarding the calculation of program units generated in a charter school's first year and subsequent years of operation. The budget of a charter school in its first year of operation will still be based on a projected number of program units; however, the bill includes a new provision adjusting the projected (MEM) of a the charter school based on the first reporting date enrollment during that year. For second and subsequent school years, the budget will still be based on the average of qualified MEM on the second and third reporting dates of the prior year.

### **Size Adjustment Program Units**

The bill amends Section 22-8-23 NMSA 1978, removing the exclusion of "separate schools established to provide special programs" for purposes of generating size adjustment program units. This would allow vocational or alternative education schools or similar programs to generate size adjustment units. The bill adds language defining "schools that are co-located in a single facility or located on the same campus" as one school for the purpose of calculating size adjustment program units. However, if a charter school is co-located in a single facility or located on the campus of another school, each charter school or school district shall be entitled to separately-calculated size adjustment units generated by each of the co-located entities. This section is further amended to ensure any charter school located within the boundaries of a school district with a MEM of 2,800 or more on the first reporting date will only generate 80 percent of current size adjustment program units.

The small size adjustment factor in the public education funding formula was originally intended to steer resources to small, rural communities with small schools that do not benefit from economies of scale. However, statute specifically prohibits schools that offer special programs,

typically in urban areas, from receiving size adjustment funding. The 2011 joint LFC and LESC funding formula evaluation suggested that charter schools are barred from receiving school size units by statute. However, PED allows charter schools to generate school size units. As a result many charters, even in urban areas like APS, receive size adjustment funding and dilute the unit value.

### Enrollment Growth Program Units

The bill repeals section 22-8-23.1 NMSA 1978, and replaces it with a new section, titled Enrollment Growth Program Units. The new section makes a school district or charter school, with less than 1,500 MEM on the first reporting date of the current year and MEM enrollment growth greater than 1 percent, eligible for additional program units. The number of additional program units is calculated by:

$$U = 1.5[(C_{MEM} - P_{MEM}) - 0.03C_{MEM}] + 0.5(C_{MEM} - P_{MEM})$$

Where  $U$  is program units,  $C_{MEM}$  is current year MEM, and  $P_{MEM}$  is previous year MEM. The bill makes a school district or charter school with greater than 1,500 MEM on the first reporting date of the current year and MEM enrollment growth greater than 1 percent also eligible for additional program units, calculated by:

$$U = 1.5[(C_{MEM} - P_{MEM}) - 0.05C_{MEM}] + 0.5(C_{MEM} - P_{MEM})$$

Calculations determining the increase in MEM and definitions for *MEM* and *previous year MEM* remain the same as the repealed section. The bill changes the definition of *current year MEM* to mean “MEM on the first reporting date of the current school year minus MEM reported on the first reporting date of the current year that is included in the calculation of a school district’s or charter school’s program cost.” This language is unclear and should be clarified. See Technical Issues.

### New Charter School Program Units

The bill adds a new section to the Public School Finance Act titled New Charter School Program Units. This section prohibits a charter school in its first year of operation from generating size adjustment program units but allows the charter school to generate new charter school program units equal to 80 percent of the units the school would have generated through the calculation in Section 22-8-23 NMSA 1978 (see previous paragraph on Size Adjustment Program Units). A charter school in the second and subsequent years of phasing-in additional grade levels on a year-by-year basis will not be able to generate size adjustment or enrollment growth program units while it is phasing in grade levels. However, the charter will generate new charter school program units and is eligible for additional program units equal to 80 percent of the units that would have been generated in accordance with Section 22-8-23.1 NMSA 1978 (see previous paragraph on Enrollment Growth Program Units).

Much of the limited annual increase in enrollment growth units has been the result of charter schools that are phasing in grades over time. For FY17, 63 percent of the 3,835 enrollment growth units were generated by state-chartered charter schools. Because student membership for these new programs is generally based on current year enrollment, rather than prior year enrollment, schools have historically been able to count these students toward new programming and enrollment growth units. Typically, 10 to 20 charter schools add new grades each year. The individual impact to each charter school will fluctuate greatly depending on school size, the

number of students served, and the number of new grades added.

### **At-Risk Program Units**

The bill amends Section 22-8-23.3 NMSA 1978, allowing a charter school to generate additional program units if it budgets and reports identified services for at-risk students. The calculation of at-risk program units is the same for charter schools and school districts; however, the bill phases in the three-year average total rate for new charter schools based on available data. The three-year average total rate is a three-year average of the percentage of student membership:

- used to determine Title I allocations,
- classified as English language learners based on U.S. Office of Civil Rights criteria, and
- considered in calculations of student mobility.

The percent of student enrollment that is Title I eligible is determined using data from the U.S. Census Bureau, which is based on poverty levels in a set geographic area. Although individual schools have data on the number of Title I students that attend, because of New Mexico's relatively high poverty rate, many schools in New Mexico operate "school wide" Title I programs. In those cases, Title I eligible enrollment would equal 100 percent of enrollment. Given the limitations of the data, it may not be possible to calculate a charter school's at-risk index using Title I eligibility.

Currently, charter schools use the same at-risk index of the school district in which they are located. Provisions of this bill would allow charter schools to calculate their own at-risk index using the same methodology as school districts. Funding allocated through the public school funding formula would be adjusted to reflect actual at-risk student factors.

Three recent independent studies have made a series of recommendations to either implement a new formula or adjust the existing formula, and all three studies have recommended directing increased funding to serve the state's most at-risk students. As part of the Funding Formula Study Task Force, the American Institutes for Research published "An Independent Comprehensive Study of the New Mexico Public School Funding Formula" (2008). The study recommended including higher factors for students in poverty or not fluent in English. In November, 2011, a joint study evaluating the public school funding formula by the LFC and LESC also recommended allocating higher funding for at-risk students. In 2012, the Maddox Foundation of Hobbs, New Mexico, commissioned researchers from Syracuse University to conduct a funding formula review. This study also argued for higher funding for at-risk students. The current formula places little weight, as compared with other components and other states' formulas, on the additional costs associated with educating at-risk students. Currently, approximately 3 percent of total public education funding is directed to serve the state's at-risk students, identified based on English language status, Title I status, and mobility.

### **Charter School Rights and Responsibilities**

The bill amends Section 22-8B-4 NMSA 1978, allowing the governing body of a charter school, without approval of the chartering authority, to open additional sites of the school within the jurisdiction of the school's chartering authority if, for each of the three prior years, PED assigns the school a letter grade of A or B, under the A-B-C-D-F Schools Rating Act. The bill makes additional technical amendments to clarify language in Sections 22-8B-4 and 22-8B-5.3 NMSA 1978.

### **Charter School Application and Authorization**

The bill amends Section 22-8B-6 NMSA 1978, no longer requiring a chartering authority to

process every submitted charter school application and removing the chartering authority's ability to cap the total number of students served in a charter school, except as to ensure compliance with Subsection G.

Subsection G currently prohibits new charter school enrollment for all grades if it would cause total charter school enrollment to exceed 10 percent of the total MEM of a school district with 1,300 MEM or less (charter schools authorized prior to FY08 are excluded from this provision). This bill increases the school district eligibility threshold from 1,300 MEM to 1,500 MEM.

### **Charter School Contracts**

The bill amends 22-8B-9 NMSA 1978, removing requirements to provide "any other information reasonably required by either party to the charter school's contract."

### **Streamlined Charter School Renewal**

The bill amends 22-8B-12 NMSA 1978, requiring PED to establish a streamlined renewal application process for a charter school earning a letter grade of A or B for the final three school years in the charter term under the provisions of the A-B-C-D-F Schools Rating Act.

### **Automatic Charter School Closure**

The bill amends 22-8B-12.1 NMSA 1978, requiring a chartering authority to order the closure of any charter school, except for supplemental accountability models (SAM) schools, assigned a letter grade of D or F under the A-B-C-D-F Schools Rating Act for each of the three prior years. The authority shall make the closure effective one year after the most recent D or F rating.

SAM schools have a primary mission of addressing the needs of students at risk of educational failures, as indicated by poor grades, truancy, disruptive behavior, eligibility for special education services or other factors associated with temporary or permanent withdraw from school. In addition, SAM schools must serve a student population in which 10 percent or more of the students are 19 years of age or older or 20 percent or more of the non-gifted students qualify for special education services. Given the exemption from automatic closure and emphasis on school grades, charter school makeup may shift toward an increasing number of SAM schools.

### **Public School Capital Outlay Awards**

The bill amends 22-24-5 NMSA 1978, changing the state-local match calculation for charter schools to a 100 percent state match. The bill removes language requiring state-chartered charter schools to use the local-state match ratio of the school district in which the charter is physically located. The bill also excludes charter schools from the five percent reduction of the local share if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program.

The bill amends Section 22-24-6.1 NMSA 1978 striking provisions allowing the Public School Capital Outlay Council (PSCOC) to make an award to a state-chartered charter school that does not have the resources to pay all or a portion of the total cost of the capital outlay projects from the charter school capital outlay fund. PSFA notes the charter school fund appropriation expired and was reverted at Board of Finance direction in December 2011, thus no charter school capital outlay fund exists.

### **Capital Improvements Tax Impositions**

The bill amends Section 22-25-3 NMSA 1978, requiring charter schools to provide necessary

information, at least 90 days before the local school board adopts a capital improvement property tax resolution, to be included on the resolution for funding.

### **Charter School Start-Up Cap**

The bill repeals Section 22-8B-11 NMSA 1978, which assigns approval of start-up charter schools to the Public Education Commission and limits the total number of start-up schools established to 15 schools per year, or up to 75 schools in any five-year period, statewide.

### **PERFORMANCE IMPLICATIONS**

Performance measures relating to public school grades or interventions in failing schools may change due to provisions of this bill.

### **ADMINISTRATIVE IMPLICATIONS**

Provisions of the bill will require PED to develop a streamlined renewal process for high-performing charter school. Additional funding formula audits may become necessary to ensure provisions of the bill are executed properly.

PSFA notes flexibility provisions in the bill may affect the agency's ability to determine suitable facilities that meet enrollment requirements or forecast cost impacts of lease assistance grants, which are calculated based on student membership.

### **CONFLICT, RELATIONSHIP**

This bill conflicts with SB30, which adjusts the funding formula program units generated for at-risk students, teacher experience, and charter school size adjustment; SB39, which changes the definition of "current year MEM"; and SB207, which waives provisions of the 10 percent charter school enrollment caps in school districts with less than 1,300 MEM.

The bill relates to HB46, which places a moratorium on new charter schools for two years; HB417, which removes certain responsibilities from the Public Education Commission and gives PED additional duties; HB454, which provides regulations for virtual charter schools; HB470, which exempts the New Mexico School for the Arts from certain provisions of the Public School Capital Outlay Act; SB147, which phases in a new local-state match funding formula for public school capital outlay; SB305, which establishes a reduced SEG distribution for virtual charter schools; and SB313, which amends provisions related to charter school lease assistance.

### **TECHNICAL ISSUES**

Although the bill applies enrollment growth program units to school districts and charter schools experiencing growth over 1 percent, the formulas only generate program units if enrollment growth is over 3 percent for school districts and charter schools with less than 1,500 MEM and over 5 percent for school districts and charter schools with greater than 1,500 MEM.

The bill changes the definition of *current year MEM* to mean "MEM on the first reporting date of the current school year minus MEM reported on the first reporting date of the current year that is included in the calculation of a school district's or charter school's program cost." Because MEM is a base component of a school district's or charter school's calculation for program cost,

the provision may inadvertently result in calculations of negative enrollment growth, which would be inconsistent with actual enrollment figures.

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