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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>SB315/aSRC/aSEC</u>	<b>Sponsor</b>	<u>O'Neill/Trujillo, L.</u>
<b>Tracking Number</b>	<u>.212024.3</u>	<b>Committee Referrals</b>	<u>SRC/SEC/SFC</u>
<b>Short Title</b>	<u>Create NM School for the Arts</u>		
<b>Analyst</b>	<u>Force/Rogne</u>	<b>Original Date</b>	<u>2/19/19</u>
		<b>Last Updated</b>	<u>3/5/19</u>

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**BILL SUMMARY**

Synopsis of SEC Amendment

The Senate Education Committee Amendment to SB315 as amended by the Senate Rules Committee (SB315/aSRC/aSEC) clarifies that the New Mexico School for the Arts has the same powers and duties of a public school and a school district for purposes of school administration, only, and does not include taxing or bonding authority or the power of eminent domain. The SEC amendment also restores the Public School Code Definitions for “certified school instructor,” and “certified school employee’ or ‘certified school personnel.’” The SEC amendment would also establish that, notwithstanding certain provisions regarding the powers, duties, and composition of local school boards, the school is to be governed by a board of education comprising nine members, five of whom appointed by the governor with the advice and consent of the Senate, at least three of whom are to be selected from a list provided by the New Mexico School for the Arts-Art Institute. The four remaining members are to be appointed by the New Mexico Legislative Council, with due consideration given to the ethnic makeup and geographic distribution of the appointees to ensure broad representation from across the state. Consideration is also to be given to experience and education in the areas of arts, education, and finance. No more than two members are to be from the same county and no more than five members from the same political party.

Finally, the SEC amendment strikes the entirety of Section 10 of the bill, which would have changed the definition for “constitutional special schools” and “constitutional special schools support spaces” for purposes of the Public School Capital Outlay Act, that would have had the effect of changing the state and local match calculation for New Mexico School for the Arts.

Synopsis of SRC Amendment

The Senate Rules Committee Amendment to SB315 (SB315/aSRC) clarifies that the New Mexico School for the Arts is to offer intensive pre-professional instruction in the performing arts, visual arts, and other artistic disciplines. The school is to only receive operational funding in the same manner as other public schools, not capital funding. Finally, the amendment addresses the appointment, rather than the election, of school board members. The board is to comprise nine members, five of whom are to be appointed by the governor with the advice and consent of the

Senate. Three of the gubernatorial appointees must be selected from a list provided by the New Mexico School for the Arts Institute. The remaining four members are to be appointed by the New Mexico Legislative Council. The governor and the Legislative Council are to consider the education and experience of candidates in the fields of art, education, and finance. No more than two members may be from the same county, and no more than five from the same political party.

### Synopsis of Original Bill

Senate Bill 315 (SB315) proposes to eliminate New Mexico School for the Arts' charter and designate the school as either a special school, charter school, or public school across several sections of law, with the particular designation depending on the benefits of each act. The bill would amend definitions in various acts of the Public School Code in such a way as to create conflicting provisions. SB315 would amend the Public School Capital Outlay Act to convert New Mexico School for the Arts from a state-chartered charter school to a "special school" on par with the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD). This would potentially reduce the school's local match calculation from 90 percent to either 50 percent or 0 percent, though technical issues make the intent of SB315 unclear. However, SB315 also amends the Public School Capital Improvements Act, commonly referred to as SB9, and the Public School Buildings Act, commonly referred to as HB33, to make New Mexico School for the Arts a "charter school" so that the school can be included in Santa Fe Public Schools' resolution of property tax imposition for the purpose of capital improvements.

### **FISCAL IMPACT**

SB315/aSRC/aSEC does not contain an appropriation.

New Mexico School for the Arts currently leases their school building from a nonprofit foundation utilizing Public School Capital Outlay Council (PSCOC) lease assistance. In FY19, New Mexico School for the Arts received \$153.6 thousand in lease assistance reimbursements for leasing the former St. Francis Cathedral School in downtown Santa Fe. In 2015, the school's nonprofit foundation, New Mexico School for the Arts-Art Institute, bought a new building, the Sanbusco Market Center. State law requires charter schools to attain a weighted New Mexico condition index (wNMCI) rating equal to or better than the average condition of all New Mexico public schools within 18 months of moving in. New Mexico School for the Arts-Art Institute launched a capital campaign to raise funds to renovate and remodel the property in 2015.

When the Legislature considered the creation of the charter school, New Mexico School for the Arts specifically committed to the Legislature that funding for room and board outreach would not come from state resources in the future, but the school would instead seek funding from private sources. The *Albuquerque Journal* reported on February 17, 2019, "When first created by an act of the Legislature in 2008, [NMSA] was given \$525 thousand by the state for startup costs, with the understanding that it wouldn't come back for more. The \$30 million that was raised for the purchase and renovation of the Sanbusco Center came almost entirely from private capital, according to the school."

To date, New Mexico School for the Arts has received \$310 thousand in direct capital appropriations. The school received \$210 thousand to purchase a permanent campus in Santa Fe, contingent upon an equal match from private donations, though this appropriation has been reauthorized twice. Laws 2018, Chapter 68 (SB245) reauthorized \$210 thousand of the unexpended balance of the appropriation in Laws 2014, Chapter 66, which was reauthorized by

Laws 2015, Chapter 147. The school also received \$100 thousand to plan, design, and equip its facilities.

New Mexico School for the Arts must account for arts programming and residential room and board costs separately and secure these funds from private donations. This means capital outlay funds cannot be used for either of these purposes.

The school receives funding from the state as a charter school, currently about \$2.2 million through the state equalization guarantee (SEG); SB315/aSRC/aSEC would provide New Mexico School for the Arts with about \$44 thousand in additional revenue, as SB315/aSRC/aSEC would designate New Mexico School for the Arts as a “special school” instead of a charter school, allowing the school to keep the 2 percent of their SEG currently allocated for administrative support of a charter school by its authorizer.

Section 3 of SB315/aSRC/aSEC states the New Mexico School for the Arts will have “the powers and duties of a school district, except for taxation, bonding, eminent domain, and other activities available only to a political subdivision.” It is unclear if this will mean the school will qualify as a school district under the Public School Finance Act. School districts under 4,000 students are eligible for additional program units and it is unclear the school will be allowed to generate these program units. If the school is allowed to generate these program units, staff estimate the school would generate 31 additional program units, generating \$130 thousand with the final FY19 unit value of \$4,190.85. Without an additional appropriation to the SEG distribution, these units could slightly dilute the unit value for school districts and charter schools statewide.

In FY18, according to the latest information available from the Public Education Department (PED), New Mexico School for the Arts received \$127.5 thousand in HB33 funds pursuant to the Public School Buildings Act and \$171.2 thousand in SB9 funds pursuant to the Public School Capital Improvements Act. The school also received \$164.3 thousand from education technology notes in FY18.

## **SUBSTANTIVE ISSUES**

**Issues Raised by Conflicting Amendments to Definitions.** SB315/aSRC/aSEC appears to define terms in various articles of the Public School Code depending upon the particular needs of the school vis-à-vis the particular act or section of law in question, leading to conflicting provisions or provisions inappropriate to the New Mexico School for the Arts.

Depending on the particular act implicated, the school is defined as, variably, a special statewide residential public school with some, but not all, the powers and duties of a school district; a public school; a statewide residential public high school that functions as a special high school, with some, but not all, of the powers and duties of a school district; a special school; a school district; or a charter school, despite distinguishing the school from charter schools in other sections of the proposed bill.

**General Provisions.** Several definitions in the general provisions of the Public School Code would be amended by SB315/aSRC/aSEC, having implications throughout the entire body of public school law.

*“Local school board.”* SB315/aSRC/aSEC defines local school boards as the policy-setting body of a school district, including the policy-setting body of the New Mexico School for the Arts. This

amendment raises several issues, potentially granting the school inappropriate powers. Article 5 of Chapter 22 NMSA 1978, on local school boards, the powers and duties of those bodies include such things as bonding capacity; the acquisition, leasing, and disposition of property; and, with the approval of the district court, the power to issue subpoenas for documents and witnesses in connection with the powers of the local school board.

Other areas of law that would implicate the powers of the New Mexico School for the Arts, due to amended definitions, include Sections 22-5-1.1 and 22-5-9 NMSA 1978, requiring the public election of school board members of the school; and Section 22-5-13 NMSA 1978, which requires all local school board members – now to include board members of the school – to undergo mandatory training pertaining to public school law, finances, and other matters deemed important by PED.

*“New Mexico School for the Arts.”* The next defined term means a special statewide residential public school that has all the powers and duties of a public school and school district, except that it is not a political subdivision of the state, and lacks bonding and taxing authority. This is in direct conflict with the preceding definition for local school board, which would give the board of the school *all* the powers and duties of local school boards, without exception.

*“Public school.”* The definition for “public school” was also amended in the general provisions to include the New Mexico School for the Arts. The term “public school” in Section 22-5-16 NMSA 1978, for example, would require the school to create an advisory council composed of equal membership of school employees, parents, and community members to assist the school with school-based decisions. Moreover, as used in the Bilingual Multicultural Education Act, “district” is defined to mean a “public school” as defined in the general provisions, so that professional development would be required for employees of the New Mexico School for the Arts on research-based bilingual multicultural programs, best practices for teaching English as a second language, and classroom assessments to support language development. The school would also be required to provide parents with appropriate training in English or the student’s home language. Further, to be eligible for state financial support, the school would have to provide for the educational needs of culturally different students, such as Native American students. Yet in Section 22-1-4 NMSA 1978, on free public schools, the bill exempts the school from the requirement that public schools offer a free education to any school-age person.

***New Mexico School for the Arts Act.*** The bill amends the definition for “superintendent,” while defining the purpose of the school, which is to function as a special high school that has the powers and duties of a school district except for taxation, bonding, and other activities available only to a political subdivision of the state, again creating a conflict with the definitions in the general provisions that purport to make the school both a local school board with all its powers and duties and a special statewide residential public school without taxing and bonding capacity. Section 22-15F-4 NMSA 1978 of the act indicates the school would be subject to the provisions of the Public School Code in the same manner as other public schools, school districts, and school boards, yet several definitional conflicts already exist as a result of attempting to define the school as having the same powers and duties as public schools, while defining it differently in other parts of the Public School Code.

*“Board.”* This term would mean the board of education of the New Mexico School for the Arts, which, as noted above, would require public elections of board members under Article 5 of Chapter 22 NMSA 1978.

“*Superintendent.*” This term would mean the head administrator of the New Mexico School for the Arts, who carries out the educational, budgetary, financial, and other policies of the board. This definition is different from the definition of “local superintendent” in the general provisions of the Public School Code, where it explicitly means the chief executive officer of a school district.

***Public School Capital Improvements Act and Public School Buildings Act, commonly referred to as SB9 and HB33, respectively.*** SB315/aSRC/aSEC proposes to add a definition for “charter schools,” to both acts, which would explicitly include the New Mexico School for the Arts. This proposed amendment seems contradictory, given that SB315/aSRC/aSEC strikes language in the New Mexico School for the Arts Act that designates it as a charter school. According to the secretary of the school’s governing council, that change was proposed specifically to permit the school to keep the 2 percent of its SEG allocation that is retained by a charter school’s authorizer for its administrative support. To then specifically define the school as a charter school for purposes of these acts so the school is eligible for funding seems problematic.

**Other Issues Related to SB315/aSRC/aSEC’s Amended Definitions.** As the New Mexico Attorney General (AG) notes, while SB315/aSRC/aSEC amends the definition “local school board” to include the “policy-setting body” of the school, the term “policy-setting body” remains undefined. Further, the AG notes that, in the New Mexico School for the Arts Act, the school has the powers and duties of a school district, except for bonding and taxation, and “other activities,” which remain undefined. Without an enumerated list of “other activities,” these amended provisions may lead to inconsistent interpretation.

The terms, “special school,” “statewide residential public school,” “statewide residential public high school,” and “special high school” remain undefined.

**Temporary Provision.** As noted by the AG, Section 13 of the bill proposes a temporary provision addressing the current composition of the school governing council and changes to the council after current members’ terms have expired. It is unclear if this provision is to be added to the New Mexico School for the Arts Act or some other article of the Public School Code. The terms, “council” and governing council” are not defined in either the general provisions of the Public School Code or the New Mexico School for the Arts Act. The sponsors may wish to specify to which article of the Public School Code Section 13 is to be added, then define those terms accordingly.

According to the Public Schools Facilities Authority, under the 2018-2019 preliminary wNMCI ranking, New Mexico School for the Arts is ranked at 177 with a wNMCI of 32.86 percent. However, this ranking is for their current facility, not the Sanbusco Center, which the school has stated they plan to move into in August 2019. Under current law, the school must attain a wNMCI equal to or better than the average condition of all New Mexico public schools within 18 months of moving in to a new facility.

SB315/aSRC/aSEC would amend the Public School Capital Improvements Act, commonly referred to as SB9, and the Public School Buildings Act, commonly referred to as HB33, to include New Mexico School for the Arts in the definition of “charter school.” PSFA notes that although the New Mexico School for the Arts would not have taxing or bonding authority, this would allow the school to be included in the Santa Fe Public School’s resolution of property tax imposition for the purpose of capital improvements, which could provide a source of funding for the required local match toward an award pursuant to the Public School Capital Outlay Act.

**Background on Public School Capital Outlay Funding.** Public school capital outlay funding, used to purchase capital assets like buildings, is both a local and state responsibility in New Mexico. The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by Gallup-McKinley County Schools (GMCS) and Grants/Cibola County Public Schools. The district court found that, through its public school capital outlay funding system, the state was violating that portion of the state constitution that guarantees establishment and maintenance of a “uniform system of free public schools sufficient for the education of, and open to, all children of school age” in the state. The court ordered the state to “establish and implement a uniform funding system for capital improvements... and for correcting past inequities” and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review the state’s progress.

Although the quality of school facilities has improved significantly since the lawsuit, litigant school districts are still concerned the system is inequitable. These alleged ongoing disparities led GMCS two years ago to reopen the *Zuni* lawsuit – which had never been closed – and seek judicial intervention to cure what the school district characterizes as ongoing disparities in the current public school capital outlay funding system. For example, GMCS is concerned that property-wealthy school districts are able to build public school facilities significantly above adequacy without taxing themselves to the same extent that voters in the GMCS school district tax themselves.

PSCOC, which implemented standards-based awards in 2004 as part of its response to the *Zuni* lawsuit, considers four primary factors when making standards-based awards: the cost of bringing the school up to adequacy standards, the size of the state match for which the school district is eligible, availability of funding, and the school’s eligibility for funding based on its ranking. The statewide adequacy standards set the minimum educational space requirements for school facilities. Since 2003, all PSCOC-funded capital outlay projects have been subject to the Public School Capital Outlay Act’s state and local match formula that requires school districts and charter schools to pay a portion of project costs. In addition, the Legislature in 2003 enacted a measure to counteract the disequalizing effect of direct legislative appropriations by requiring an offset be applied against the state share of PSCOC funds for school districts that receive direct legislative appropriations for capital outlay expenditures. In 2004, PSCOC developed the facility condition index (FCI) and the wNMCI to rank every facility based on relative need from greatest to least.

## **OTHER SIGNIFICANT ISSUES**

**Background.** With the enactment of Senate Bill 34, the New Mexico School for the Arts was established in 2008 as a statewide residential state-chartered charter high school that provides New Mexico students who have demonstrated artistic abilities and potential with the opportunity to pursue a career in the arts. The New Mexico School for the Arts Act is subject to all provisions of the Charter Schools Act except the school is allowed to have admissions requirements and enrollment preferences.

With initial enactment, the school was prohibited from receiving public funding for arts programming and room and board costs. Senate Bill 34 required the school to separately account for these costs and the revenue received from private sources to pay those costs. In addition, the New Mexico School for the Arts Act stipulates that the school board is responsible for soliciting grants and donations from private sources for these purposes. Failure of the school to secure adequate funding for these purposes was listed as grounds for denial or revocation of the charter.

The 2013 enactment of Senate Bill 164 amended the New Mexico School for the Arts Act to allow the school to seek public funding for arts programming and room and board for those students financially unable to pay the full cost. This 2013 amendment prohibited the use of the school’s SEG distribution for arts programming and room and board expenses for students. However, the school may use other general fund appropriations made in the General Appropriations Act, other direct legislative appropriations, or other public funding sources for arts programming and student room and board.

New Mexico School for the Arts students take academic classes from 9:20 a.m. until 2:00 p.m. daily. Academic programming is funded by SEG distribution and complies with New Mexico PED standards. Afternoons are dedicated to study of the artistic discipline of a student’s choosing, with an extended day that ends at 4:45 p.m. The costs of the arts programs, the residential program, outreach, and various other activities are met through fees and private philanthropy through the nonprofit affiliate, the New Mexico School for the Arts-Art Institute.

According to the school, in 2017, the New Mexico School for the Arts-Art Institute raised more than \$100 thousand annually from private donors to provide financial aid to students for room and board. Additionally, the Institute raises more than \$2 million annually to pay for arts classes and outreach.

Sliding Fee Scale for the Residential Program: Annual Family Taxable Income (for a family of 4)	Rate	Fee Amount
\$75,000 or more	100%	\$9,500
\$60,000 - \$74,999	80%	\$7,600
\$45,000 - \$59,999	60%	\$5,700
\$30,000 - \$44,999	40%	\$3,800
\$25,000 - \$29,999	20%	\$1,900
Under \$25,000	10%	\$950

Source: NMSA

The New Mexico School for the Arts-Art Institute asks each family to pay an annual Arts Fee of \$1,000 per student to offset part of the cost of the arts programming; the Institute provides \$6,500 per student for arts programming per year. Ability to pay the arts fee is not a criterion for acceptance into the school. For the 2015-2016 school year, the total room and board fee was \$9,500; however, residential scholarships were available. According to the school, the 2016-2017 residential operation costs are budgeted at \$248,559. Residential student

room and board is assessed on a sliding scale basis that is approved by the Public Education Commission and based on family income.

**Constitutionality of SB315/aSRC/aSEC under the *Yazzie* and *Martinez* Consolidated Lawsuit and N.M. Gen. Op. 06-03.** The AG notes that legal authority exists suggesting that the creation of a special school for the arts as contemplated in SB315/aSRC/aSEC may be unconstitutional. In 2006, the AG issued Opinion No. 06-03, noting Article XII, Section 1 of the New Mexico Constitution, as interpreted by the New Mexico Supreme Court, may preclude the creation of a special school for the arts until the state has fulfilled its duty to create an education system “sufficient for the education of all school age children.” The AG opined that Article XII, Section 1 “does not preclude the Legislature from establishing a statewide publicly funded magnet school [for the Arts], *provided it continues to maintain a uniform system of free public schools*” (emphasis added). At that time, there was no question whether the state had fulfilled that constitutional duty. However, with Judge Singleton’s decision and order in the *Martinez* and *Yazzie* consolidated lawsuit, finding the state has failed that duty, it may be that the creation of the New Mexico School for the Arts as a special school is precluded by Article XII, Section 1 until the state has fulfilled that obligation under the constitution and the lawsuit.

**ALTERNATIVES**

The implications of SB315/aSRC/aSEC are wide-ranging and ill-defined, and may benefit from further study by the Legislative Finance Committee, the Legislative Education Study Committee, and PSCOC.

**POSSIBLE QUESTIONS**

What is the impact on the currently enumerated constitutional special schools, the NMSBVI and the NMSD, both of which attempt to educate special populations of New Mexico students?

**SOURCES OF INFORMATION**

- LESC files
- Public School Facilities Authority (PSFA)
- New Mexico Attorney General (AG)

**RKF/MCR/mc/my**