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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/19
 SPONSOR O'Neill/Trujillo, L. LAST UPDATED 3/5/19 HB _____
 SHORT TITLE Create NM School For The Arts SB 315/aSRC/aSEC
 ANALYST Hawker

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate				

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files
 New Mexico School for the Arts

Responses Received From

New Mexico Attorney General (NMAG)
 Public Education Department (PED)
 Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of SEC Amendment

Senate Education Committee Amendment to Senate Bill 315 as amended by Senate Rules Committee modifies:

- the definition of the “New Mexico School for the Arts”, clarifying that it has the powers and duties of a public school and a school district “for purposes of school administration” – “for purposes of school administration is added”. The definition is further modified, clarifying it does not have “power of eminent domain”. Thus the New Mexico School for the Arts has the powers and duties of a public school and a school district for purposes of school administration only and does not have taxing or bonding authority or the power of eminent domain.
- the definition for “certified school instructor” which had been stricken, is restored.
- the definition for “certified school employee” or “certified school personnel” which had been stricken, is restored.
- the purpose, Section 22-15F-2 NMSA 1978, is modified, providing the New Mexico School for the Arts is a “special” statewide residential public high school. “Special” is added. The purpose is further modified, clarifying the New Mexico School for the Arts does not have the power of eminent domain.

SB 315/aSRC/aSEC strikes SRC amendments 3, 4, 5, 6, restoring the board composition to a board of nine members, appointed by the Governor with the advice and consent of the Senate. No more than four members shall be from the same congressional district with no more than five members from the same political party.

These provisions are then stricken, replaced with language creating a nine member board as follows:

- five members shall be appointed by the Governor, confirmed by the Senate;
- at least three of the Governor’s appointed members are to be selected from a list of names provided by the New Mexico School for the Arts Art Institute;
- four members shall be appointed by the New Mexico Legislative Council;
- when making appointments, the Governor and the New Mexico Legislative Council are directed to give “due consideration to the ethnic makeup of the state and the geographic distribution of the appointees to ensure broad representation from across the state”;
- the Governor and the New Mexico Legislative Council are to consider the education and experience of board candidates in the fields of art, education and finance;
- no more than two board members shall be from the same county;
- no more than five board members shall be from the same political party.

SB 315/aSRC/aSEC strikes Section 10 of the bill. This section had made changes to the definitions of “constitutional special schools”, “constitutional special schools support spaces” and “school district” in Section 22-24-3 NMSA 1978, the Public School Capital Outlay Act.

Section 13, temporary provisions for current governing council members is amended so that the three additional members appointed by the Governor are from “areas of the state” either not represented or underrepresented.

Additionally, as terms of the current governing council members expire, both the Governor and the New Mexico Legislative Council shall ensure the provisions establishing the board’s composition are followed. “New Mexico Legislative Council” is added to this section.

Synopsis of SRC Amendment

Senate Rules Committee amendment to Senate Bill 315 amends Section 5, expanding the scope of instruction to include “other art disciplines” in addition to visual and performing arts. The school is only to receive operational funding in the same manner as other public schools, the reference to capital funding is removed.

SB 315/aSRC amends Section 6 changing the composition of the New Mexico School for the Arts Board of Education. The Board shall be composed of nine members: five appointed by the Governor, at least three of whom shall be selected from a list of names provided by the New Mexico School for the Arts Art Institute and four appointed by New Mexico Legislative Council. The Governor and Legislative Council shall consider the education and experience of candidates in the fields of art, education and finance. All members are subject to Senate confirmation.

Section 6 is also changed to stipulate no more than two members of the Board shall be from the same county.

Synopsis of Original Bill

Senate Bill 315 creates the New Mexico School for the Arts as a special statewide public high school.

Section 1: amends Section 22-1-2 NMSA 1978, to include the policy-setting body of the New Mexico school for the arts in the definition of “local school board”. The “New Mexico school for the arts” is defined as a statewide residential public school that has the powers and duties of a public school and a school district, except that it is not a political subdivision of the state and does not have taxing or bonding authority. The New Mexico school for the arts is included in the definition of “public school”.

Section 2: amends Section 22-1-4 NMSA 1978, excepting the New Mexico school for the arts from the Section.

Section 3: amends Section 22-15F-2 NMSA 1978, changing New Mexico school for the arts from a state-chartered charter school to a public high school that functions 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.

Section 4: creates the definition of “superintendent” in Section 22-15F-3 NMSA 1978.

Section 5: amends Section 22-15F-4 NMSA 1978, establishing the New Mexico school for the arts as a special statewide public high school. The New Mexico school for the arts is to be subject to all provisions of the Public School Code in the same manner as other public schools, school districts and local school boards.

New Mexico school for the arts shall receive operational and capital funding in the same manner as other public schools. Teachers and support staff are to be provided with access to professional development in the same manner as other public school teachers and support staff.

Section 6: amends Section 22-15F-5 NMSA 1978 establishing a nine member board for the New Mexico school for arts. The board is to be appointed by the governor with the advice and consent of the senate. The governor shall appoint members from a list of names provided by the New Mexico school for the arts institute. No more than four members shall be from each congressional district, no more than five members shall be from the same political party.

Section 7: amends Section 22-15F-6 NMSA 1978 changing the recipients of the annual report from the charter school division and the commission to the governor and the legislature. Outreach is expanded to include summer programming in Santa Fe or other locations in the state.

Section 8: provides for technical cleanup of Section 22-15F-7 NMSA 1978.

Section 9: provides for technical cleanup of Section 22-15F-8 NMSA 1978.

Section 10: amends Section 22-24-3 NMSA 1978 to include New Mexico school for the arts as a “special school”. There is also technical cleanup in this section.

Section 11: amends Section 22-25-2 NMSA 1978 providing for technical cleanup and defining a charter school includes the New Mexico school for the arts.

Section 12: amends Section 22-26-2 NMSA 1978 providing for technical cleanup and defining a charter school includes the New Mexico school for the arts.

Section 13: is a temporary provision, the current governing council members shall continue until their terms expire. Three additional members shall be nominated by the Governor with the consent of the Senate. These members are to be from congressional districts not represented or underrepresented on the current governing council.

Section 14: the effective date of SB315 is July 1, 2019.

FISCAL IMPLICATIONS

Fiscal Implications of SEC Amendment

SB 315/aSRC/aSEC strikes section 10 of the bill, as such, the New Mexico School for the Arts is no longer defined in the Public School Capital Outlay Act (PSCOA). Currently the New Mexico School for the Arts is included in the definition of a “school district” as “school district” includes state-chartered charter schools”. “School districts” are eligible for funding under PSCOA.

By striking section 10, it is unclear if New Mexico School for the Arts will still be eligible for lease payment assistance. Lease payment assistance is a program awarding grants to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. The New Mexico School for the Arts has been awarded lease payment assistance since FY11. It was awarded \$153,617 in FY19.

Fiscal Implication of Original Bill

SB 315 will have an impact on the public school capital outlay fund. Currently, New Mexico School for the Arts is required to pay 90 percent of a qualify project pursuant to the Public School Capital Outlay Act. SB 315 reduces the school’s responsibility, potentially as low as 0 percent.

SIGNIFICANT ISSUES

The New Mexico School for the Arts is a public, statewide high school, offering pre-professional arts training and academics. It is open to students in New Mexico who qualify through a blind, competitive audition and portfolio admissions process. A panel of professional artists participate as the selection team. Students who live too far away to commute daily have the option of boarding at the school dormitories Monday through Friday. Boarding fees are based on a sliding scale, scholarships are available based on proven economic need and availability of funds.

The academic programming receives state funding. This is overseen by the School’s Governing Council. The New Mexico School for the Arts Art Institute, a nonprofit, with support from its Board of Trustees, funds the residential and outreach program through private funds. The arts program is funded almost entirely through private contributions.

Under current law, as a state-chartered charter school, New Mexico School for the Arts has the same match as Santa Fe Public Schools, the school district in which the school is geographically located, at 90 percent. According to Section 22-24-5 NMSA 1978, the local match for constitutional special schools is set at 50 percent, although PSCOC may adjust or waive that local share – or the amount of any direct appropriation offset – required for the constitutional special schools if an applicant special school has insufficient local resources available. It appears the intent of SB315 here is to define New Mexico School for the Arts as a “special school,” thus reducing the school’s local match to 50 percent. However, while SB315 strikes the word “constitutional” from the definition of “constitutional special schools,” in Section 22-24-3 NMSA 1978, it does not strike the word “constitutional” in Section 22-24-5 NMSA 1978, making it unclear if the 50 percent match for “constitutional special schools” would apply to New Mexico School for the Arts as a “special school” (see “Technical Issues,” below). As “special schools” do not have a set state and local match calculation in the Public School Capital Outlay Act, the school may have a local match as low as 0 percent to maintain their facilities.

TECHNICAL ISSUES

Technical Issues SEC Amendment

Striking Section 10 of the bill will leave New Mexico School for the Arts undefined under PSCOA.

Technical Issues SRC Amendment

NMAG observes in SB 315/aSRC the provisions regarding the Boards composition are in tension with the temporary provision in Section 13, allowing the governor to nominate three additional members. The three members selected under Section 13 must meet different criteria, “members from congressional districts not represented or underrepresented on the current governing council” than the members selected under SB 315/aSRC where two members cannot be from the same county.

Technical Issues Original Bill

The New Mexico School for the Arts in SB 315 is referred to as either a: special statewide residential public school with some, but not all, powers and duties of a school district; a public school; a statewide residential public 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. This variety may, if nothing else, make it difficult to apply the provisions of SB 315. It is unclear which provisions of law will apply.

SB315 reduces the New Mexico School for the Art’s public school capital outlay local match calculation from 90 percent to either 50 percent or 0 percent; technical issues make it unclear what the match is to be.

NMAG observes: Page 2, lines 20 -22 edits the definition of “local school board” to add the “policy setting body” for the school for the arts. “Policy setting body” is not defined in the School for the Arts Act definitions, Section 22-15F-3 NMSA 1978.

Section 3, which amends Section 22-15F-2 NMSA 1978 add language that delineates the school for the arts from school districts, stating that the school “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.” It is not clear what “other activities” includes. NMAG suggests including clarifying language to avoid inconsistent interpretation.

OTHER SUBSTANTIVE ISSUES

PSFA notes:

“Per the 2018-2019 preliminary New Mexico Condition Index (wNMCI) ranking, NM School for the Arts is ranked at 177 with a wNMCI of 32.86%. The 2018-2019 capital funding programs under Public School Capital Outlay Act required schools to be within the top 75 of the ranking to be eligible for a standards-based award, and within the top 300 of the ranking to be eligible for a systems-based award. The current rank of the New Mexico School for the Arts indicates potential eligibility for an award in future cycles. The current state match of 10% of the total estimated project cost to adequacy would be increased to 50% under SB 315.

Although the NM School for the Arts would not have taxing or bonding authority, SB 315 defines the NM School for the Arts as a charter school under the Public School Capital Improvements Act and the Public School Buildings Act. By definition, this would allow the NM School for the Arts 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 50% local match toward an award pursuant to the Public School Capital Outlay Act.”

VKH/al/gb