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## FISCAL IMPACT REPORT

**BILL NUMBER:** House Bill 253/ec

**SHORT TITLE:** Reps. Garratt and Herrera/Sen. Soules

**SPONSOR:** Public Education Changes

**LAST UPDATE:** \_\_\_\_\_ **ORIGINAL DATE:** 2/5/26 **ANALYST:** Liu/Rovang

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

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Unit Value	\$41,106.6	\$16,542.6 to \$21,801.2	\$62,804.4 to \$68,062.9	\$78,304.0 to \$88,821.1	Recurring	General Fund
Enrollment Growth Units	(\$41,106.6)	(\$1,043.0)			Nonrecurring	General Fund
Rural Population Units		(\$1,787.4) to (\$7,046.0)	(\$1,787.4) to (\$7,046.0)	(\$3,574.8) to \$14,092.0)	Recurring	General Fund
K-5 Membership Units		(\$13,712.2)	(\$13,712.2)	(\$27,424.4)	Recurring	General Fund
Other Program Units			(\$47,304.8)	(\$47,304.8)	Recurring	General Fund
<b>Total</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>Recurring</b>	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 19

Duplicates language in the House Appropriations and Finance Substitute for House Bills 2 and 3

### Sources of Information

LFC Files

Legislative Education Study Committee Files

### Agency or Agencies Providing Analysis

Regional Education Cooperatives

Higher Education Department

Children, Youth and Families Department

### Agency or Agencies That Were Asked for Analysis but did not Respond

Public Education Department

## SUMMARY

### Synopsis of House Bill 253

House Bill 253 changes the Statewide Cyber Academy Act to the Distance Learning Act and:

- Establishes new reporting requirements and definitions for distance learning,

- Prohibits rural population program units for distance learning students;
- Authorizes the Public Education Department (PED) to request timely reporting from schools on funding formula data;
- Removes collaboration between the Higher Education Department (HED) and PED for the statewide cyber academy program;
- Requires full-time distance learning programs (DLP) to meet instructional hours, class load, teaching load, student data privacy, teacher licensing, and reporting standards;
- Prohibits expansion of grade levels at a full-time DLP without PED certification;
- Prohibits a student's enrollment in a district's full-time DLP if the student does not reside within the district unless PED authorizes a waiver;
- Prohibits districts and charter schools from requiring a student to enroll in a full-time DLP;
- Prohibits districts and charter schools from enrolling students in kindergarten through fifth grade in a full-time DLP unless the student has an accommodation pursuant to a special education plan or the charter school's charter or current contract is authorized for these grades;
- Prohibits districts and charter schools from enrolling more than 10 percent of student membership in a full-time DLP;
- Allows temporary enrollment in a full-time DLP during a public health emergency;
- Requires districts and charter schools that have a DLP to provide materials in a format usable by a person with a disability or compatible with the person's assistive technology;
- Authorizes PED to approve full-time DLPs and requires districts and charter schools to submit applications for a full-time DLP by October 15 of the school year preceding operations;
- Requires PED to approve or deny applications for a full-time DLP by January 30;
- Authorizes PED to approve a full-time DLP if the program is likely to improve learning opportunities for students and the district or charter demonstrates capacity to comply with statutory provisions;
- Authorizes PED to approve a full-time DLP managed or operated by a contracted third party based on reputation, track record, or past performance if information is available;
- Makes PED's decision to deny a full-time DLP application final and not subject to appeal;
- Requires PED to review each approved full-time DLP once every three to five years;
- Allows charter schools that provide only virtual or online educational programming as part of a charter or contract to operate;
- Requires PED to adopt rules on full-time DLP and a process for application; and
- Repeals statutory provisions related to an evaluation of REC distance learning networks.

The bill also includes multiple temporary provisions to:

- Adjust the FY26 unit value on February 27, 2026,
- Prohibit enrollment growth units for district students enrolled in a full-time DLP operated by a contracted for-profit corporation in FY26 and FY27,
- Prohibit school districts from including students in FY27 funding formula counts if they were enrolled in a full-time DLP operated by a contracted for-profit corporation in FY26 and accounted for more than 70 percent of the district's student membership,
- Prohibit students from enrolling in a full-time DLP in FY27 if they were not enrolled in a full-time DLP in FY26 unless required by a special education plan or seeking enrollment

- at a charter school with a charter or contract that includes a full-time DLP,
- Prohibit requests to reorganize or create a new full-time DLP that has most students enrolled in the program in FY27,
- Prohibit the Public Education Commission from authorizing a new charter school that will have most students enrolled in a full-time DLP, and
- Requires all districts and charter schools currently operating a full-time DLP to apply for approval of their full-time DLP.

The effective date of this bill's provisions that are not temporary is July 1, 2026. For the temporary provisions, the bill includes an emergency clause, meaning those provisions would go into effect immediately on the governor's signature.

## FISCAL IMPLICATIONS

The bill does not include an appropriation but would affect how online students generate program units in the school funding formula. Any unit losses would mostly be reallocated to all districts and charter schools in the form of a unit value increase, assuming a flat state equalization guarantee (SEG) appropriation. The fiscal impacts of this bill analysis show the amount of estimated SEG reallocation from potential lost program units.

A review of New Mexico public school names, charter school contracts, and charter documents suggests as many as 12.1 thousand students may be currently participating in a full-time DLP or part-time DLP statewide. Approximately 4,818 students in this analysis appear to be participating in a full-time DLP but the total figure likely underestimates the number of online students statewide, given most districts operate some form of online learning program but many do not distinguish these students as enrolled in a separate virtual school. PED does not regularly collect data identifying whether students are in a full-time DLP or where they reside, leaving a significant margin of error in estimating the fiscal impacts of this bill.

In FY26, the department reported survey results from 99 districts and charter schools showing 7,285 students in DLPs statewide. Half of the districts and charter schools in the survey reported having a DLP, and the sample represented 75 percent of total statewide enrollment. These reported online students were more likely to be low-income and in secondary grade levels but less likely to be English learners. PED noted 617 students could not be matched with enrollment records and were excluded from this figure, including four students who appeared to be residing outside of the state. Most online students in the survey did not reside within the district providing the DLP and many platforms were asynchronous programs, meaning online students did not have any interactions with teachers and were accessing programming at their own pace.

Temporary provisions in this bill would prohibit enrollment growth units for district students enrolled in a full-time DLP operated by a for-profit corporation, which will affect the transfer of about 3,000 online students from Gallup-McKinley County Schools to Chama Valley Independent Schools and Santa Rosa Consolidated Schools. For FY26, this would block the generation of an estimated 6,043 enrollment growth units at Chama and Santa Rosa. At the current FY26 unit value of \$6,801.35, this prohibition of enrollment growth units is estimated to have a fiscal impact of \$41.1 million. Additional fiscal impacts from enrollment growth in other district-contracted full-time DLPs operated by for-profit corporations are not included in this figure. The bill also limits new FY27 enrollment in full-time DLPs, apart from special education

students with online school accommodations and students at online charter schools. Assuming approximately 4 percent of enrollment growth units each year are attributable to online school enrollments, the estimated loss of new units for FY27 is projected to be \$1 million.

Provisions of this bill would prohibit DLP students from generating rural population units, which would likely affect an estimated 1,759 students in DLPs hosted within rural districts with more than 40 percent rurality. This includes 1,569 students who are enrolled at Pecos Cyber Academy, an online charter school that relocated from Carlsbad to Moriarty-Edgewood in FY25 and began generating rural population units. At the current FY26 unit value, this prohibition of rural population units is estimated to have a fiscal impact of at least \$1.8 million. Assuming approximately 13.2 percent of students in rural districts are enrolled in DLPs, this fiscal impact could be up to \$7 million.

Provisions of this bill would prohibit districts and charter schools from enrolling students in kindergarten through fifth grade in full-time DLPs. Assuming 1,730 students in these grade levels from the PED survey no longer generate membership units in the formula, at the current FY26 unit value this is estimated to have a fiscal impact of \$13.7 million.

Provisions of this bill would prohibit school districts from generating program units for online students who do not reside within the district. PED's 2025 survey and a 2017 joint LFC-Legislative Education Study Committee evaluation found most online students did not reside within the district that hosted the DLP. Assuming 60 percent of the estimated 12.1 thousand online students do not reside within the district that hosts them and PED waives this requirement for half of applicants in FY28, approximately 3,105 students would no longer generate program units. On average, each student generates 2.24 program units; at the current FY26 unit value this loss of students is estimated to have a fiscal impact of \$47.3 million.

Other fiscal impacts related to the 10 percent online student enrollment cap are not included, given the prohibition on enrolling students from outside the district would likely force these students to return to in-person learning at the district they reside in or seek other education options, including charter schools, private schools, or homeschooling. Estimated fiscal impacts on this reallocation of students is indeterminate at this time but likely substantial.

## **SIGNIFICANT ISSUES**

Three current issues surrounding virtual education in New Mexico: (1) projected budgetary shortfalls and formula funding loopholes, (2) a lack of reporting and accounting of virtual programs, and (3) a lack of direction on when virtual education should or should not be the primary mode of educational delivery. This bill attempts to tackle multiple aspects of each issue; however, broad restrictions on DLPs without comprehensive data may create unintended consequences.

In 2009, the Public Education Commission (PEC) denied three virtual charter school applications, flagging concerns about whether they had legal authority to authorize online charter schools. PED's legal counsel for PEC issued an opinion that state law defined public schools as "buildings" in a "particular place" in Section 22-1-2 NMSA 1978, reflecting the intent of the Legislature to define schools as brick and mortar, discernible buildings to educate students. Other definitions relating to attendance areas, class sizes, and walking zones also reflected the Legislature's contemplation of the physical presence of children in school buildings.

In 2012, the Farmington school district authorized New Mexico Virtual Academy as a local online charter school and contracted with Stride K12, Inc., a for-profit education management company that provides online education, to manage the online school of 500 students in sixth through 12<sup>th</sup> grade. In 2014, the New Mexico Attorney General issued an opinion that found administrative and managerial involvement by Stride K12, Inc. at the New Mexico Virtual Academy violated the Charter Schools Act, which explicitly prohibits contracting with a for-profit entity for the management of a charter school. The Attorney General noted the level of control K12, Inc. held over the operations of the school were significant, including interviewing, recommendations on hiring and firing, negotiations, background checks, employee benefits, human resources, staffing plans, facility management, financial budgeting and planning, maintenance and reporting of student records, school policies and charter renewal, etc. The opinion noted these responsibilities and services constituted “management” of the charter school by a for-profit entity, which violated the law.

Provisions of this bill allow PED to approve a district’s or charter school’s full-time DLP managed or operated by a contracted third party after considering the third party’s reputation, track record, or past performance if such information is available. The bill does not define third party but presumably would allow a for-profit entity to be approved so long as the reputation, track record, or past performance is considered by the department. This potentially could open the door for a for-profit company to manage and operate a full-time DLP, which conflicts with prohibitions in the Charter School Act on for-profit companies managing or operating a charter school and may violate the anti-donation clause of the state Constitution.

The anti-donation clause of the state Constitution prohibits all transfers of value from the state to private parties with limited exceptions. Since 1912, there have been about 30 judicial opinions applying the anti-donation clause, primarily dealing with two questions: (1) Has the state or any county, school district, or municipality made a donation or pledged its credit in aid of any person, association, or corporation? (2) If yes, does an exception to the clause apply? Roughly, these exceptions allow for the care and maintenance of sick or indigent persons, veterans’ scholarships, loans to nurses, transfers authorized by the Local Economic Development Act, and affordable housing. The two main purposes of the anti-donation clause are to protect the public trust, a principle that expenditure of public funds must be for the benefit of the public and not private interests, and to demarcate the state from public-spirited groups that are not the state and not subject to state control.

In 2016, the New Mexico Attorney General opened an investigation into Stride K12, Inc. after California’s attorney general reached an over \$160 million settlement with Stride K12, Inc. to resolve allegations of false advertising, false claims, and unfair competition. Following this announcement and citing academic and procurement issues, Farmington initially chose not to renew New Mexico Virtual Academy’s charter, then extended the charter with multiple stipulations, and ultimately ended its charter in 2019.

In 2020, the Gallup school district contracted with Stride K12, Inc. to operate an online school within the district called Destinations Career Academy (DCA) of New Mexico. In FY21, Gallup generated 2,152 enrollment growth units, which included DCA students. In 2025, after citing issues with DCA’s academic performance, staffing, instructional time, special education services, enrollment processes, and reporting practices and alleging conspiracy, fraud, and misinformation, Gallup chose to end its contract with Stride K12, Inc. Months later, Stride K12, Inc. signed agreements with Chama and Santa Rosa to host DCA.

During the LFC hearing on December 11, 2025, PED requested a \$35 million supplemental appropriation to keep the FY26 unit value flat at \$6,801.35 for all public schools in anticipation of a budgetary shortfall from new enrollment growth units. Neither the executive, LFC, the Legislative Education Study Committee (LESC), nor the House Appropriations and Finance Committee FY27 budget recommendations support this \$35 million supplemental appropriation request. These projected enrollment growth units are due to 3,000 online students transferring in FY26 to the Chama and Santa Rosa districts from Gallup. After accepting an offer from Stride K12, Inc. to equally split students of the DCA online school in each district, Chama and Santa Rosa made a school reorganization request to PED, which is still pending.

By statute, these transferred DCA online students are still contributing to Gallup's funded student (MEM) counts for FY26 from the prior year, despite the fact DCA is no longer a school within the district this year. Additionally, the Chama and Santa Rosa districts are entitled to enrollment growth units due to the sudden influx of DCA students in the 40<sup>th</sup> day student count.

Gallup	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
Funded Students (MEM)	10,872	10,720	11,792	11,750	11,867	11,964	12,557
Enrollment Growth Program Units	0	2,152	0	85	0	615	0
Total Program Units	22,005	25,834	24,417	23,697	26,168	26,587	28,427
State Equalization Guarantee (SEG), in thousands	\$101,274.0	\$117,203.9	\$118,738.7	\$130,869.0	\$163,330.8	\$174,242.8	\$193,341.1

Source: PED

Pursuant to the Public School Finance Act, schools are entitled to program units using an average MEM count from the prior year and enrollment growth units using the 40<sup>th</sup> day student count from the current year. As shown in the table above, Gallup experienced a substantial increase in enrollment and funding in the 2020-2021 school year due to contracting with Stride K12, Inc. in 2020. The subsequent MEM increase in the 2021-2022 year became part of the district's base—an anomaly that year given most other districts lost students from their formula due to school closures in 2020-2021. For the 2025-2026 year, Gallup continues to have a higher MEM count, despite revoking the contract with Stride K12, Inc. in 2025. For the 2026-2027 school year, however, Gallup will lose a significant number of units once the MEM count is reconciled for DCA's exit.

## PERFORMANCE IMPLICATIONS

A 2017 LESC-LFC program evaluation found virtual charter schools produced lower academic outcomes than brick-and-mortar schools, despite serving fewer at-risk students. Compared with brick-and-mortar schools, distance learning schools spent 67 percent less on instructional staff per student and 75 percent less per student spent on maintenance and operations. The evaluation noted the funding formula treated virtual charter schools similarly to brick-and-mortar schools, causing financial inefficiencies and possibly incentivizing school districts to authorize virtual charter schools. Planned enrollment growth at virtual charter schools resulted in large annual financial windfalls and significant swings in per-student funding levels.

The 2017 evaluation also found the three virtual charter schools (New Mexico Virtual Academy, New Mexico Connections Academy, and Pecos Connections Academy) all contracted with a for-

profit virtual education curriculum provider (Stride K12, Inc. or Connections Education, LLC). In FY17, New Mexico virtual charter schools paid Stride K12, Inc. and Connections a total of \$7.5 million, about half of the \$15 million in expenditures from those schools. Virtual schools had significantly higher student-to-teacher ratios, with reported ratios as high as 44 students per teacher. Virtual schools also had high student withdrawals, with some schools reporting about a third of students disenrolling during FY17. Compared to the statewide high school retention rate of 54 percent, virtual charter schools reported fewer than 15 percent of the same students four years after enrollment.

Both the 2015 and 2019 Stanford Center for Research on Education Outcomes reports on New Mexico found online charter schools had substantially weaker learning gains and the inferior performance of online charter schools offset the positive impact of brick-and-mortar charter schools.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill have significant administrative implications for PED, requiring all schools to report their distance learning students, requiring all full-time DLPs to submit applications for approval, and for PED to review and approve or deny all applications, including requests to waive restrictions on enrolling students outside the boundaries of a district. PED must also review full-time DLPs every three to five years and promulgate rules for full-time DLPs.

HED notes provisions of the bill may limit full-time DLPs providing dual credit or advanced coursework opportunities for high school students.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill duplicates language in both Senate Bill 19 and the HAFC substitute for House Bills 2 and 3 (the General Appropriation Act). Senate Bill 19 authorizes PED to reset the unit value on February 27, 2026, and the HAFC substitute includes language prohibiting new online schools from opening in FY27 and prohibiting new enrollment growth units for students enrolling in online schools in FY27 unless their individualized education program provides for remote instruction or they are enrolling in a charter school that includes remote instruction as part of its charter.

## **OTHER SUBSTANTIVE ISSUES**

The Children, Youth and Families Department notes the creation of the Statewide Cyber Academy from LESC-endorsed legislation in 2007 was intended to be a collaborative program among PED, HED, telecommunications networks, and other state agencies engaged in providing distance education for secondary students. PED operated the academy through its initiative called IDEAL-NM using the Blackboard learning management system. As DLPs advanced, districts and charter schools created their own programs and opted out of the Statewide Cyber Academy. In FY17, due to state budget solvency issues, the Legislature cut the appropriation for IDEAL-NM, effectively ending the program but leaving the statute intact. Provisions of this bill would replace the statute with new provisions related to distance learning.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

PED will adjust the FY26 unit value on February 27, 2026, likely reducing it by \$37 to cover projected costs of online enrollment growth units at Chama and Santa Rosa. This would effectively reduce SEG distributions for all school districts and charter schools by 0.5 percent. The largest district, Albuquerque Public Schools, would experience an SEG reduction of about \$5.5 million, and the smallest charter school, Moreno Valley High School, would see an SEG reduction of \$5,756.

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