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FISCAL IMPACT REPORT

ORIGINAL DATE 3/10/17

SPONSOR Roch LAST UPDATED _____ HB 454

SHORT TITLE Chartering of Virtual Charter Schools SB _____

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(\$3,461.8)	(\$3,461.8)	(\$6,923.7)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB46, HB184, HB273, SB30, SB39, SB135, SB193, SB207, SB305, SB313, SB346
 Relates to State Equalization Guarantee appropriation in the General Appropriation Act
 Conflicts with HB417

SOURCES OF INFORMATION

LFC Files
 Legislative Education Study Committee (LESC) Files

No Responses Received From
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 454 amends the Public School Code, providing definitions, adjusting funding formula program unit components, prohibiting transportation or capital improvements funding, setting chartering limitations, mandating synchronous instruction, and establishing automatic closure policies for virtual charter schools.

FISCAL IMPLICATIONS

In FY17, New Mexico had three virtual charter schools in operation, generating approximately \$13.8 million in state equalization guarantee (SEG) distributions. Provisions of the bill prohibit virtual charter schools from generating funding for fine arts programs, elementary physical education programs, school transportation, capital improvements (HB33 and SB9), and 25 percent of total program units generated before the program cost is determined. Under the provisions of this bill, the FY17 program units for these virtual charter schools would have been reduced by about 870 units and resulted in an SEG redistribution of about \$3.5 million, which

would have been allocated to all other school districts and charter schools. The following analysis uses the FY17 unit value of \$3,979.63.

	FY17 Total Units	FY17 Projected SEG	HB454 Total Units	HB454 Projected SEG
PECOS CONNECTIONS	503.769	\$2,004,814	377.827	\$1,503,611
NEW MEXICO VIRTUAL ACADEMY	718.108	\$2,857,804	538.581	\$2,143,353
NEW MEXICO CONNECTIONS VIRTUAL (SANTA FE)	2,257.677	\$8,984,719	1,693.258	\$6,738,539
TOTAL	3,479.554	\$13,847,337	2,609.666	\$10,385,503

SIGNIFICANT ISSUES

The bill provides the following definitions:

- asynchronous instruction – learning that occurs when students complete assignments and learning on their own time and schedule without live interaction with a teacher;
- internet-based method – the use of hardware devices, including computers, laptops and tablets, for students and teachers to communicate to complete course requirements;
- local virtual charter school – a virtual charter school that does not enroll students outside the boundaries of the school district in which the local virtual charter school is located;
- statewide virtual charter school – a virtual charter school that enrolls students outside the boundaries of the school district in which the statewide virtual charter school is located;
- synchronous instruction – learning that occurs with all students in a class with a teacher, receiving instruction and completing work at the same time (provided that student do not necessarily have to be in the same location); and
- virtual charter school – a charter school in which instruction and curriculum are delivered predominantly via internet-based methods.

Provisions of the bill require virtual charter schools to provide only synchronous instruction for students in kindergarten through fifth grade. Students enrolled in sixth through twelfth grade must receive synchronous instruction or a combination of synchronous and asynchronous instruction.

The bill prohibits a statewide virtual charter school from being authorized as a locally-chartered charter school. After July 1, 2017, any previously locally chartered virtual charter school that is enrolling students outside the boundaries of the school district in which the charter school is located must apply for renewal of its charter with the Public Education Commission (PEC).

The bill requires organizers of a statewide virtual charter school to notify all school districts in the state of their intent to establish a statewide virtual charter school during the application process. Organizers must also notify all school districts of the date of the public hearing for the statewide virtual charter school’s application, which will be held in Santa Fe. Public input for the statewide virtual charter school’s public hearing can be provided by any participant from around the state. The PEC is authorized to deny the application of a statewide virtual charter school if the application is contrary to the best interests of the charter school’s projected students, local community, or any other public schools in the state.

The bill creates a new section of law establishing automatic probation and closure provisions for virtual charter schools. If a virtual charter school fails to earn at least 35 percent of all possible

student growth points (according to the A-B-C-D-F Schools Rating Act) for three consecutive years, the virtual charter school will be placed on probation the following year. If, during the probationary year, the virtual charter school fails to earn at least 35 percent of all possible student growth points, the virtual charter school will be closed at the end of the probationary year unless an earlier closure is warranted by PED. The bill requires early notification to school personnel and parents about the school’s probation status and submittal of the chartering authority’s final determination to PED. Decisions to revoke or not renew a virtual charter school for a reason other than failing to meet the student growth benchmark may be appealed.

The bill establishes the 2017-2018 school as the first probationary year based on student growth factors from the 2014-2015 through 2016-2017 school years. According to LESC, the percent of growth points scored by eligible virtual charter schools for those school years are as follows:

Percent of Growth Points Scored by Virtual Charter Schools

	2013-2014	2014-2015	2015-2016
New Mexico Connections Academy	66.8%	64.2%	16.3%
New Mexico Virtual Academy	78.2%	45.7%	44.3%

ADMINISTRATIVE IMPLICATIONS

This bill would require PED to reduce program units for virtual charter school by 25 percent before calculating the SEG distributions for school districts and charter schools.

CONFLICT, RELATIONSHIP

This bill relates to HB46, which places a moratorium on new charter schools; HB184, which requires property tax revenue distributions to charter schools; HB273, which provides flexibilities and penalties for charter schools based on performance; SB30, which adjusts program units generated for at-risk students, teacher experience, and charter school size adjustments; SB39, which prevents double-counting of enrollment growth and new program units; SB135, which takes credit for federal Impact Aid payments made to charter schools; SB193, which appropriates funding and clarifies authorities of PEC; SB207, which places an enrollment cap on charter schools in certain districts; SB305, which adjusts funding formula components for virtual charter schools; SB313, which adjusts eligibility for charter school lease payments; and SB346, which requires charter schools to establish eligibility and participate in the federal free and reduced-price meal program.

This bill conflicts with HB417, which transfers duties and responsibilities of the PEC to PED.

TECHNICAL ISSUES

As currently defined, a “statewide virtual charter school” would not be able to enroll students inside the school district where the virtual charter school is located. Additionally, the definition does not preclude statewide virtual charter schools from enrolling students outside of the state of New Mexico.

On page 18, line 20, the first instance of the word “in” should be removed.

OTHER SUBSTANTIVE ISSUES

Virtual education takes many forms and serves many purposes. Formats in virtual education include full-time online kindergarten through 12th grade schools as well as single courses that allow students to explore a subject not available in their brick-and-mortar schools. Virtual education is also used by students to make up credits for a required course they earlier failed. New Mexico's statutes do not currently regulate virtual charter schools. The National Center for Education Statistics (NCES) indicates virtual schools may spend as much as 25 percent less than traditional schools. However, a 2016 LFC evaluation found virtual charter schools in New Mexico have not demonstrated cost-effectiveness compared to traditional schools.

The Connections Academy, a for-profit organization, is a division of Connections Education, LLC, which is owned by Pearson PLC. Connections Academy contracts to provide an online school platform for students in kindergarten through 12th grade in 26 states. Under New Mexico law, charter schools can contract with providers for services, but cannot contract away management duties. In 2013, the initial New Mexico Connections Academy (NMCA) application was denied by the Public Education Commission as it found the charter was "contrary to the best interests of the charter school's projected students, the community, or the school district in whose geographic boundaries the charter school applies to operate," but after a series of appeals it was authorized and opened in FY13.

NMCA received few bids for curriculum, technology support, and hardware requests for proposals (RFP). NMCA had an RFP written by attorneys for curriculum, technology support, and hardware. NMCA received few bids and their contracting company, Connections Academy of New Mexico, LLC won all three bids for the online curriculum framework, laptops, and technological support for the school. NMCA paid Connections Academy of New Mexico, LLC just over \$3 million for services in FY15.

New Mexico Virtual Academy (NMVA) is a locally chartered charter school, authorized by Farmington Municipal Schools in FY12, with enrollment capped at 500 students. NMVA did not go through a RFP process but paid an estimated \$1.5 million to K12 Inc., a for-profit company, in FY15 for curriculum, online and paper books, computers, and training. Research has found serious deficiencies with K12 Inc., which NMVA utilizes.

In December 2016, Farmington Municipal Schools voted to deny reauthorization for NMVA, effectively closing the school at the end of the school year due to low student performance. This decision came a day after the school district was informed that the Attorney General's office would be investigating the company providing curriculum and educational services for the online charter school. The for-profit company, K12 Inc., recently reached a \$168.5 million settlement with the California Attorney General to resolve allegations of false advertising, false claims, and unfair competition relating to its virtual charter schools. According to California Attorney General Kamala Harris, "K12 and its schools misled parents and the State of California by claiming taxpayer dollars for questionable student attendance, misstating student success and parent satisfaction, and loading nonprofit charities with debt." The Farmington Municipal Schools board brought up several concerns about NMVA, including its graduation rate (38.6 percent), students' math (11.8 percent) and reading (29.6 percent) proficiency scores, and the school's lack of a certified procurement officer. However, after the school appealed, the Farmington school board voted to approve a two-year charter renewal with NMVA on February 9, 2017, under conditions that student achievement would improve and NMVA would pursue a charter through another school district or the state.

A 2016 CREDO online charter school study found students at online charter schools lost, on average, 72 days of learning in reading and 180 days in math compared to identical peers in traditional public schools. The CREDO report found no significant difference in online charter school student performance in New Mexico; however, the study sample was collected in 2013, the first year of online charter school entry in the state. Questions have been raised about the legality of virtual charter schools in light of statutes, previous PED staff recommendations to deny virtual charter schools, and an Attorney General opinion. Additionally, issues have been raised by the Public School Capital Outlay Council with regard to lease assistance funding – specifically the disparity between making lease assistance reimbursements based on student enrollment when only a portion of the students will ever enter the building.

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