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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>SB40/SFCS</u>	<b>Sponsor</b>	<u>Stewart</u>
<b>Tracking Number</b>	<u>.219676.4</u>	<b>Committee Referrals</b>	<u>SEC/SFC; HEC</u>
<b>Short Title</b>	<u>K-5 Plus &amp; Extended Learning At All Schools</u>		
<b>Analyst</b>	<u>Hoxie</u>	<b>Original Date</b>	<u>02/23/2021</u>
		<b>Last Updated</b>	<u>03/17/2021</u>

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**BILL SUMMARY**

Synopsis of HEC Amendment

The House Education Committee amendment to Senate Finance Committee substitute for Senate Bill 40 (SB40/SFCS/aHEC) strikes the mandate requiring all public schools, including charter schools, to provide K-5 Plus or Extended Learning Time Programs to all students in FY22. The bill also amends the application process for K-5 Plus. Under the HEC amendment, public schools that previously offered a K-5 Plus program shall simply notify Public Education Department of its intent to provide the K-5 Plus program with no formal application process.

Synopsis of Original Bill

Senate Finance Committee Substitute for Senate Bill 40 (SB40/SFCS) amends the K-5 Plus Act and Section 22-8-23 NMSA 1978 of the Public School Finance Act (Extended Learning Time Programs) to clarify provisions that have been difficult to implement and administer during the first two years of implementation and to provide for some additional flexibilities in both programs. The bill additionally requires all public schools, including charter schools, to provide K-5 Plus or Extended Learning Time Programs to all students in FY22 if in-person instruction is not prohibited by executive order.

**Extended Learning Time Program Changes.** SB40/SFCS clarifies a school providing a five-day instructional week is required to provide 10 additional instructional days or 190 instructional days total, whichever requires the addition of the fewest instructional days, to be eligible to generate Extended Learning Time Program units. Schools providing a four-day instructional week will be required to provide the lesser of eight additional instructional days or 160 total instructional days. The bill requires programs to be implemented schoolwide for all students and makes student attendance mandatory at each participating school. Finally, the bill clarifies, to participate in an

Extended Learning Time Program after the first year of participation, the school district must provide the same or more instructional days and hours as it provided in the previous year.

**K-5 Plus Changes.** SB40/SFCS amends the K-5 Plus Act to allow a school providing a five-day instruction week to provide 25 additional instructional days or 205 instructional days, whichever requires addition of the fewest instructional days, to be eligible to generate K-5 Plus units. Schools providing a four-day instruction week will be required to provide the lesser of 20 additional instructional days or 175 total instructional days. The bill requires K-5 Plus programs to be implemented schoolwide for all students and makes attendance mandatory at each participating school. Because all K-5 Plus programs will be implemented schoolwide, students will generally stay with the same classroom teacher, providing greater flexibility around the K-5 Plus cohorting requirement. Finally, the bill clarifies the school district must provide the same or more instructional days and hours as it provided in the previous year to participate in a K-5 Plus Program after the first year of participation.

## **FISCAL IMPACT**

The bill does not contain an appropriation.

The House Appropriations and Finance Committee substitute for House Bill 2 and 3 (HB2/HAFCS) includes \$229.9 for K-5 Plus programs and Extended Learning Time Programs for FY22, including \$222.9 million in general fund revenue and \$50 million in nonrecurring revenue from the public education reform fund. HB2 also includes \$10.7 million for transportation for Extended Learning Time Programs and K-5 Plus Programs. The funding level in HB2 is sufficient for every public school student enrolled in a high-poverty elementary school to participate in K-5 Plus, and all other public school students to participate in Extended Learning Time Programs. Additionally, HB2/HAFCS includes \$15 million for school districts and charter schools to pilot 25 additional instructional days in any school, which would expand the K-5 Plus program to middle and high schools that want to provide more than the 10 additional school days that would be funded pursuant to Extended Learning Time Programs. It appears the funding level provided in HB2 will provide sufficient funds to implement the provisions of SB40/SFCS.

**K-5 Plus.** Funding in HB2/HAFCS for K-5 Plus programs totals \$119 million, or enough funding for 88 thousand elementary school students, or 59 percent of all elementary school students, to participate in a K-5 Plus program. Prior to the pandemic, school districts and charter schools projected 49.9 thousand students would participate in K-5 Plus during the 2020-2021 school year; however, PED cancelled K- Plus programs at the onset of the pandemic and ultimately only funded 16.1 thousand students to participate in K-5 Plus in the 2020-2021 school year. While the level of funding included in HB2/HAFCS is not sufficient for every elementary school student to participate in a funded K-5 Plus program, some school districts and charter schools will likely opt for their elementary school students to participate in Extended Learning Time Programs, rather than K-5 Plus, which is about one-third the cost of a K-5 Plus program.

**Extended Learning Time Programs.** Funding in HB2/HAFCS for Extended Learning Time Programs totals \$169 million, or enough funding for 320 thousand students to participate in a program. Prior to the pandemic, school districts and charter schools projected 190.4 thousand students would participate in Extended Learning Time Programs during the 2020-2021 school

year. However, PED ultimately only funded 134 thousand students to participate in Extended Learning Time Programs in the 2020-2021 school year.

**In-Person Learning.** The original bill mandated K-5 Plus and Extended Learning Time Program participation only if in-person learning is not prohibited by an executive order. If in-person learning is still prohibited during some or all of the 2021-2022 school year, participation in these programs will likely be lower; funding appropriated for K-5 Plus and ELTPs in HB2/HAFCS that remains unused for K-5 Plus or Extended Learning Time Programs will revert to the public education reform fund and will be available for appropriation during the 2022 and subsequent legislative sessions.

The HEC amendment to this bill strikes the requirement that schools provide extending learning time during the 2021-2022 school year.

## SUBSTANTIVE ISSUES

**Temporary Provision Addressing Learning Loss.** The original bill required all public school districts and charter schools to participate in K-5 Plus or Extended Learning Time Programs during the 2021-2022 school year in order to address Covid-19 related learning loss. A Legislative Finance Committee (LFC) report estimates a learning loss of between four and 12 months for students due to school closures in spring 2020. This does not take into account any learning loss from remote learning during the 2020-2021 school year. National research shows remote learning is, on average, less effective than in-person learning and students who come from low-income backgrounds struggle even more with online learning. With the vast majority of students in New Mexico remaining in remote learning settings throughout the fall semester of the 2020-2021 school year, the LFC report predicts New Mexico's existing achievement gap will widen. Requiring all school districts and charter schools to add additional instructional days to their calendars in FY22 will begin to provide additional time for students to catch up on their lost learning. By extending the school year through K-5 Plus and Extended Learning Time Programs, teachers have additional time to support students most at-risk of falling academically behind their peers.

The House Education amendment to SB40/SFCS eliminates this temporary provision.

**Addressing K-5 Plus Implementation Challenges.** Several of the statutory requirements of the K-5 Plus program proved challenging for school districts and charter schools. School districts and charter schools have primarily voiced concerns about the requirements to ensure students stay with their K-5 Plus cohort during the regular school year, the ability to recruit teachers and students to participate in the program, and challenges with adjusting school calendars. Provisions in the SB40/SFCS/aHEC address some of these concerns by providing greater flexibility.

**Schoolwide Implementation.** While the K-5 Plus Act requires schoolwide implementation, PED interpreted this provision to mean only a single classroom at each grade level has to be served at each elementary school for the school to be able to generate funding. While PED's interpretation of "schoolwide" was intended to provide flexibility for schools implementing new K-5 Plus programs, it has created a number of challenges for participating schools; participating schools are still treating K-5 Plus as a "program" for some students rather than school calendar reform. It has been difficult for many students to continue on with their K-5 Plus teacher and fellow participating students when all students begin attending at the start of the school year; and PED has not funded all students who have not stayed with their K-5 Plus teacher, discouraging some schools from participating. SB40/SFCS/aHEC requires programs to be implemented schoolwide for all students

and requires all elementary students enrolled in a participating school to participate in the additional instructional days.

*Student Cohorts.* SB40/SFCS/aHEC will require K-5 Plus to be implemented for all students in a school and allows schools to transfer students into another classroom if it is in the best interest of the student. Given that a school that chooses to implement a K-5 Plus program will have to make the additional days mandatory for all participating students, additional days should be viewed as calendar reform rather than the addition of a voluntary program; this will mean student movement will be easier to do at the beginning of the school year, when all students will be present. This will allow for greater funding certainty, as students who are transferred into another classroom will still be allowed to be funded.

*Additional Instructional Days.* SB40/SFCS/aHEC also provides greater program flexibility with days required to generate K-5 Plus funding. Currently, school districts and charter schools offering a K-5 Plus program are required to add 25 additional instructional days at the beginning of the school year. Under SB40/SFCS/aHEC, school districts and charter schools operating a five-day week schedule are required to offer a minimum of 205 instructional days or add 25 additional instructional days per school year; school districts and charter schools operating a four-day week schedule are required to offer a minimum of 175 instructional days or add 20 additional instructional days per school year.

*Flexibility for Extended Learning Time Programs.* SB40/SFCS/aHEC amends Section 22-8-23.10 NMSA 1978 to change requirements and provide greater instructional time flexibility for school districts and charter schools participating in Extended Learning Time Programs. The bill requires all participating school districts and charter schools to provide schoolwide Extended Learning Time Programs offered to all students to generate Extended Learning Time Programs funds. The additional instructional days will be considered an extended school calendar for all students. Currently, because of a veto to the word “instructional” from the statute, school districts and charter schools offering Extended Learning Time Programs are required by rule to add 10 additional days. Under SB40/SFCS/aHEC, school districts and charter schools operating a five-day week schedule are required to offer a minimum of 190 instructional days or add 10 additional instructional days per year; school districts and charter schools operating a four-day week schedule are required to offer a minimum of 160 days or add eight additional instructional days. Under the committee substitute, school districts and charter schools will be allowed to choose whichever instructional day option requires the fewest number of additional days in order to generate Extended Learning Time Program funds.

*Applying the Attendance for Success Act.* Subsection D of Section 6 of SB40/SFCS/aHEC would require schools to apply the provisions of the Attendance for Success Act to additional instructional days, effectively making programming mandatory for students. Section 22-12A-44 NMSA 1978 requires all school-age children to attend school. It is the intent of the committee substitute that program participation is mandatory for all participating students.

*Martinez and Yazzie Lawsuit.* Provisions of the bill may help New Mexico resolve ongoing litigation regarding the sufficiency and uniformity of the public education system in New Mexico. The court ruling in the *Martinez-Yazzie* lawsuit acknowledged extended learning time could reduce learning loss and help close achievement gaps between at-risk students and their peers but noted schools lacked funding for these programs. Extended instructional time is regarded as an evidence-based strategy associated with improved learning outcomes for students. Research finds this is particularly true for students considered at-risk as defined by the *Martinez* and *Yazzie* lawsuit, including students who are economically disadvantaged, Native American students, English

learners, and students with disabilities. Recognizing this, the Legislature has made significant investments in programs that extend learning time for students.

Programs that extend learning time have been a pillar of the Legislature’s education reform efforts since the court’s ruling in the *Martinez-Yazzie* lawsuit. The plaintiffs in the consolidated *Martinez-Yazzie* lawsuit noted the importance of programs that extend learning time, stating “evidence demonstrates money spent on classroom instruction programs such as K-5 Plus, extended school year, and quality teachers can all improve the performance of at-risk students and overcome the gap caused by their backgrounds.” In response, the Legislature created two new funding formula factors, K-5 Plus and Extended Learning Time Programs, to provide funding to school districts and charter schools to increase instructional time.

Under current law, K-5 Plus is an evidence-based program providing an additional 25 instructional days for elementary students. SB40/SFCS/aHEC amends the K-5 Plus Act to provide greater flexibility to school districts on the number of instructional days added. See “Addressing K-5 Plus Implementation Challenges” section for more detail. Research on the K-3 Plus program, the predecessor of the K-5 Plus program, showed the program decreased the achievement gap. Plaintiffs in the *Martinez-Yazzie* lawsuit argued the programs “have not been funded to the extent that all at-risk children can participate in such programs.” In response, the Legislature expanded the program to include all elementary school students and moved the program into the public school funding formula to provide for more stable funding.

Extended Learning Time Programs increase the number of instructional days, guarantee time for professional development, and provide after school programs for students. These programs were created so middle schools and high school, in addition to elementary schools, would be eligible for a program extending instructional time. Under current law, Extended Learning Time Programs provide school districts and charter schools funding to add 10 days for all students without the additional programmatic requirements of K-5 Plus. SB40/SFCS/aHEC provides for greater flexibility around the number of days added to offer an Extended Learning Time Program.

## **ADMINISTRATIVE IMPLICATIONS**

The Public Education Department (PED) notes in the original bill, the new provisions could require public school districts and charter schools to change school calendars. PED states some public school boards adopt calendars two or three years ahead of time, resulting in some public school boards potentially needing time to adjust adopted calendars. SB40/SFCS/aHEC addresses this concern by eliminating the mandate for all schools to offer a K-5 Plus or Extended Learning Time Program during the 2021-2022 school year.

The Early Childhood Education and Care Department notes childcare facilities may need to adapt their out-of-school-care program schedules, staffing levels, timeframes, and transition plans to accommodate the extended school year. This may provide childcare assistance funds savings to the state because students would be in school instead of in childcare facilities. SB40/SFCS/aHEC addresses this concern by eliminating the mandate for all schools to offer a K-5 Plus or Extended Learning Time Program during the 2021-2022 school year.

## OTHER SIGNIFICANT ISSUES

***Increasing Instructional Time.*** A 2008 American Institutes for Research (AIR) study of the New Mexico public school funding formula noted an extended school year of “uninterrupted instructional days” would increase the opportunity for a student to gain mastery of grade-level skills and knowledge. This AIR report further states the extended school year should be provided to all students. In 2010, LFC noted that requiring all school districts and charter schools on a five-day schedule to provide 185 instructional days and school districts and charter schools on a four-day schedule to provide 150 instructional days would cost an estimated additional \$96 million. The cost would be higher today. At the time, 66 percent of public school districts and charter schools on a five-day scheduled provided 180 instructional days that was, at the time, required by statute. During the 2020-2021 school year, that average number of instructional days provided by school districts and charter schools on a five-calendar is 177, with one school district only requiring 163 instructional days.

***District Participation in Programs Extending Instructional Time.*** Implementation of programs that extend learning time for students has remained slow. In FY20, the Legislature appropriated funding for 87 thousand students to participate in K-5 Plus programs; however, only 16 thousand participated, or 18 percent of funded students. Uptake of Extended Learning Time Programs was higher with 83.3 thousand students, or 67 percent of funded students, participating in FY20. School districts and charter schools were more likely to apply for Extended Learning Time Programs, which require fewer additional days than K-5 Plus and give school districts and charter schools more flexibility to design their own programs.

Due to the public health emergency, the Public Education Department (PED) canceled K-5 Plus for all summer programs scheduled to run between July 1, 2020, and the start of the school year. During the June 2020 special legislative session, the Legislature recognized the loss of instructional time from Covid-19 school closures and provided K-5 Plus program flexibility, including allowing the secretary of PED to waive 10 days of the program for school districts and charter schools that implement schoolwide programs. In FY21, PED preliminarily awarded funding for 16 thousand students at 15 public school districts or charter schools to participate in K-5 Plus, or 26 percent of students the funding was intended to cover.

In FY21, PED preliminarily awarded funding for 134 thousand students at 77 public school districts or charter schools to participate in Extended Learning Time Programs, or 93 percent of the students the funding was intended to cover. While the FY21 Extended Learning Time Program implementation has increased over time, approximately 50 percent of students in New Mexico are not participating in a program that extends learning time.

***Teacher Take-Home Pay.*** According to PED, K-5 Plus and extended learning time programs have the added benefit of increasing teacher take-home pay. PED estimates teachers receive a 14 percent take-home pay increase when they participate in K-5 Plus programs and a 6 percent increase when they participate in Extended Learning Time Programs.

## SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee
- Educational Retirement Board

- Early Childhood Education and Care Department
- Public Education Department

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