

LFC Requester:

Sunny Liu

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/03/2026

Check all that apply:

Bill Number: HB 253s

Original Correction
Amendment Substitute

Sponsor: Reps. Joy Garratt and Susan K. Herrera, and Sen. William P. Soules

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis of House Education Committee Substitute for House Bill 253:

House Bill 253 (“HB 253”) seeks to amend (1) the Public School Finance Act (“PSFA”) found in NMSA 1978, Sections 22-8-1 to –49, and (2) the Statewide Cyber Academy Act (“SCAA”), found in NMSA 1978, Sections 22-30-1 to –8 (including by renaming the SCAA to the Distance Learning Act).

Section 1: Proposes to amend Section 22-8-2 of the PSFA by adding the term “distance learning student” and defining it as “a qualified student who receives full-time virtual learning instruction and is not required to attend school at a school building[.]” Section 22-8-2 (F). The language differs from the original bill by changing the definition of what a “distance learning student” is.

Section 2: Unchanged

Section 3: Unchanged

Section 4: Unchanged

Section 5: Unchanged

Section 6: Unchanged

Section 7: Unchanged

Section 8: Unchanged

Section 9: Unchanged

Section 10: Section 10: Proposes to amend Section 22-30-6 of the SCAA by placing restrictions on student enrollment in distance learning programs and providing exceptions for a public health emergency. The original bill proposed additional restrictions on schools that prevented students from outside the district from enrolling (which could be waived by the Public Education Department (“Department”)); schools from enrolling a student in grades K to 5, unless required by law; or schools from enrolling more than 10 percent of the school’s MEM. The language of the substitute differs from the original bill by stating that schools are not required to enroll

students in the distance learning program.

- Subsection A provides that a school district shall not require a student to enroll in a full-time distance learning program. Section 22-30-6 (A).
- Subsection B provides that a charter school shall not require a student to enroll in a full-time distance learning program. Section 22-30-6 (B).
- Subsection C provides exceptions to subsections A and B if a public health emergency is declared by the Public Health Emergency Response Act. Section 22-30-6 (C).

Section 11: Unchanged

Section 12: The original bill's Section 12 required that there be Department approval of a school's distance learning program. The substitute eliminates approval and requires only that the Department evaluate distance learning programs. More specifically, the Department must evaluate all full-time distance learning programs at least every five years to determine whether they are in compliance with the Public School Code and related rules. Should the Department determine that a school's program is out of compliance, then the Department would require the superintendent or head administrator to submit to the Department a plan to bring the school into compliance, and the Department must approve that plan.

Section 13: HB 253 originally proposed to enact temporary provisions relating to the Public School Finance Act and the Distance Learning Act.

- Subsection A: HB 253 Substitute removes allowance for the secretary of public education to establish an adjusted unit value for use in accordance with the Public School Finance Act for the 2025-2026 school year, and instead requires only school districts with an MEM over eight thousand (8,000+) to calculate the total number of program units to which the school is entitled.
- Subsection B: HB 253 Substitute changes the language so that a school district is not eligible for enrollment growth program units pursuant to Section 22-8-23.1 of the Public School Finance Act for students enrolled in a full-time distance learning program for fiscal years 2026 and 2027. This change eliminates the condition that ineligible programs are "operated by a contracted third party that is a for-profit corporation."
- Subsection C states that a school district or charter school shall not reorganize to create a school district or program that has a majority of students enrolled in full-time distance learning.
- Subsection D states that the legislative education study committee and the legislative finance committee and the Public Education Department shall conduct a study on virtual learning and provide a report to the governor by November 1, 2026.
- Subsection E is the same as the original bill's subsection G, which defines "full-time distance learning program" for purposes of this section as "a public school instructional program in which students receive virtual instruction and are not required to attend school at a school building."

Section 14: Unchanged

Section 15: Unchanged

Section 16: Unchanged

Synopsis of Original House Bill 253:

House Bill 253 (“HB 253”) seeks to (1) amend the Public School Finance Act (“PSFA”) found in NMSA 1978, Sections 22-8-1 to –49; and (2) amend the Statewide Cyber Academy Act (“SCAA”), found in NMSA 1978, Sections 22-30-1 to –8, which includes renaming the SCAA to the Distance Learning Act.

Section 1: Proposes to amend Section 22-8-2 of the PSFA by adding the term “distance learning student” and defining it as “a qualified student enrolled in a full-time distance learning program in accordance with the Distance Learning Act[.]” Section 22-30-8 (F).

Section 2: Proposes to amend Section 22-8-12.1 of the PSFA, which provides for membership projects and membership requests. HB 253 adds subparagraph b under paragraph 1 of subsection A, requiring an estimate of the membership of students to be enrolled as distance learning students for the succeeding fiscal year. Section 22-8-12.1(A)(1)(b). All other amendments are technical.

Section 3: Proposes to amend Section 22-8-13 of the PSFA, which concerns reports.

- Subsection B makes technical amendments, and the requirement for annual reports remains the same. Section 22-8-13(B)(1)-(3).
- Subsection C makes technical amendments and adds paragraph 6, requiring each state-chartered charter school to maintain a report for each reporting period of the distance-learning-student MEM by grade in each public school.
- Subsection D requires that all reports be furnished to the Department on or before the close of each reporting period or as otherwise requested by the Department, instead of the previous requirement of “within 10 working days.”
- The last sentence of Subsection D is moved to a new subsection E, which defines “working day” for purposes of Section 3.

Section 4: Proposes to amend Section 22-8-23 of the PSFA by making changes to the public school funding formula.

- Subsection A: The proposed amendment to Subsection A removes charter schools from eligibility for additional program units.
- Subsection D removes express reference to the definition of “school district” in Section 22-1-2 of the Public School Code.
- Subsection E deletes references to the cost differential factor for fiscal years 2020 through 2023, and leaves the cost differential factor of 0.15, “provided that the full-time-equivalent MEM used for this determination does not include membership derived from distance learning students.”

Section 5: Proposes to amend Section 22-30-1 of the SCAA by renaming the act the Distance Learning Act.

Section 6: Proposes to amend Section 22-30-2 of the SCAA by making a conforming amendment for alignment with Section 5 of HB 253 (e.g., renaming the SCAA the Distance Learning Act),

removing existing definitions, and defining new terms. Specifically, Section 6 deletes the following statutory definitions: course provider, distance learning course, distance learning student, learning management system, local distance learning site, primary enrolling district, regional host, service center, and statewide cyber academy. Section 6 also defines the following new terms: distance learning course, distance learning student, and full-time distance learning programs. Section 22-30-2(A)-(C).

Section 7: Proposes to amend Section 22-30-3 of the SCAA, which provides for the creation of the statewide cyber academy. Section 7 removes the requirement that the statewide cyber academy be a collaborative program.

Section 8: Proposes to amend Section 22-30-4 of the SCAA, which requires that the Department promulgate rules to carry out the provisions of the SCAA. Section 8 proposes a conforming amendment for alignment with Section 5 of HB 253 (i.e., renaming the SCAA the Distance Learning Act).

Section 9: Proposes to amend Section 22-30-5 of the SCAA by providing all-new requirements for school districts and charter schools that operate full-time distance learning programs.

- Subsection A provides the requirements that school districts and charter schools shall follow if they are operating a full-time distance learning program. Section 22-30-5 (A).
- Subsection B restricts a school district or charter school that is operating a full-time distance learning program from expanding the program to an additional grade level without providing certification to the Department that it has sufficient courses for a full instructional program for that grade level. Section 22-30-5 (B).

Section 10: Proposes to amend Section 22-30-6 of the SCAA by placing restrictions on student enrollment in distance learning programs and providing exceptions for a public health emergency.

- Subsection A provides the restrictions for a school district. Section 22-30-6 (A).
- Subsection B provides the restrictions for a charter school. Section 22-30-6 (B).
- Subsection C provides exceptions to subsections A and B if a public health emergency is declared by the Public Health Emergency Response Act. Section 22-30-6 (C).

Section 11: Proposes to amend Section 22-30-7 of the SCAA by clarifying the requirements for school districts and charter schools regarding distance learning and serving students with disabilities. Specifically, it requires that instructional materials be provided in an electronic format usable by a person with a disability or in a format compatible with the person's assistive technology. Section 22-30-7.

Section 12: Proposes to enact a new section of the Distance Learning Act (as renamed by Section 5 of HB 253).

- Subsection A requires the Public Education Department's approval of distance learning programs.
- Subsections B through E provide a process for school districts and charter schools to apply for approval of a program.

- Subsection F requires that the Department review each approved full-time distance learning program, at least once every three to five years, to determine whether the program shall maintain the Department's approval.
- Subsection G provides that the Distance Learning Act shall not be construed to prohibit a charter or charter contract for a charter school that provides only virtual or online educational programming.
- Subsection H requires that the Department adopt rules for uniform requirements for full-time distance learning programs and for a uniform process for school districts or charter schools to apply to establish those programs.

Section 13: Proposes to enact a new section of the Distance Learning Act (as renamed by Section 5 of HB 253). Section 13 enacts temporary provisions relating to the Public School Finance Act and the Distance Learning Act.

- Subsection A would allow the secretary of public education to establish an adjusted unit value for use in accordance with the Public School Finance Act for the 2025-2026 school year, on or before February 27, 2026.
- Subsection B provides that a school district is not eligible for enrollment growth program units pursuant to Section 22-8-23.1 of the Public School Finance Act for students enrolled in a full-time distance learning program operated by a contracted third party that is a for-profit corporation, for fiscal years 2026 and 2027.
- Subsection C provides that a school district's MEM shall not include students who were enrolled in a full-time distance learning program in fiscal year 2026 if the program was operated by a contracted third party that is a for-profit corporation. This subsection would only apply to a school district with an MEM enrolled in full-time distance learning programs that account for more than seventy percent of the district's total MEM.
- Subsection D provides two exceptions to the restriction that, for fiscal year 2027, a student shall not enroll in a school district's or charter school's full-time distance learning program if the student was not enrolled in the program in fiscal year 2026.
- Subsection E prohibits a school district or charter school from creating a school district, school or school program that has a majority of students enrolled in a full-time distance learning program for fiscal year 2027. Similarly, Subsection E prohibits a school district or the public education commission from authorizing a new charter school that will have a majority of students enrolled in a full-time distance learning program.
- Subsection F requires a school district or charter school operating a full-time distance learning program as of the effective date of HB 253 to submit an application to establish a full-time distance learning program in accordance with the Distance Learning Act.
- Subsection G defines "full-time distance learning program" for purposes of this new section as "a public school instructional program in which students receive virtual instruction and are not required to attend school at a school building."

Section 14: Repeals Section 22-30-8 of the SCAA, which provided for the evaluation of regional education cooperative distance learning networks.

Section 15: Proposes that the effective date of the provisions of Section 1 through 12 and 14 of HB 253 is July 1, 2026.

Section 16: Proposes an emergency clause which would make Section 13 of HB 253 effective immediately, if passed and signed by the Governor.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Substitute Bill Analysis

The changes HB 253 Substitute presents could bring additional complications in learning within, and liabilities to, the State. Changing Section 12 to require only that the Department evaluates virtual learning programs, rather than approves them, could be problematic when managing virtual learning programs through third party services. While the local schools are provided with authority under the Public School Code to contract with virtual learning providers through the procurement code, placing an approval-by-Department requirement could prevent local schools from duplicating contracts or contracting with inadequate virtual learning vendors. *See generally* NMSA 1978, Sections 22-5-1 to -18 for authority of Local School Boards.

Original Bill Analysis

The changes proposed in HB 253 could bring complications in learning and may present liabilities to the State. HB 253 does not include references to, nor discuss, implications of the procurement process for services contracts. State entities, such as public school districts, may be required to follow procurement procedures in New Mexico for direct online learning services provided by third-party contractors, as outlined in NMSA 1978, Sections 13-1-1 to -199. Such services agreements are bound by the terms of the agreement and should be reviewed and approved at the state level to ensure all education requirements are met. Section 12, subsection D, E, and F of HB 253 appear to provide review and allow the Public Education Department (the “Department”) to review and even reject agreements for online learning services. However, procurement processes and procedures are not mentioned, and the Department’s potential involvement, if any, during that process is similarly not mentioned.

It could be valuable to include mandated requirements under HB 253 for specific terms and conditions in such agreements that the Department can rely upon for enforcement, should there be a breach of contract with the State. For example, as contemplated by HB 253, maintaining teacher-to-student ratios is important. Third-party online learning services may have difficulty adhering to these requirements. Consider adding Sections or Subsections of required “Terms and Conditions” for agreements or contracts entered into between a school and a program under the “Distance Learning Act”. This could be included in the rules that the Department are required to make under Section 8 of HB 253 and NMSA 1978, Section 22-30-4.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Technical Issues in Original HB 253:

Section 6: It could be helpful and consistent with the changes to NMSA 1978, Section 22-30-2 DEFINITIONS to include a defined term for Department as the same definition in NMSA 1978, Section 22-8-2(E). “Department” or “Division” means the Public Education Department.

Section 12: It could be beneficial to the bill to narrow subsection F to read “once every three years” instead of “at least once every three to five years.” This distinction would provide clarity and consistency regarding the review for online learning programs.

OTHER SUBSTANTIVE ISSUES

While not a substantive issue, it is worth noting that, as stated under Section 12, once the Department approves an agreement or contract with schools under the new “Distance Learning Act,” the agreement or contract should be between the School Board and the program group. An agreement or contract with a School Board is subject to all meeting requirements set out in the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 and the Local School Boards Act, NMSA 1978, Section 22-5-1 to -18. Agreements and contracts under a school board’s approval must be voted on in an open meeting and are subject to public comment.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A