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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/06

SPONSOR Wirth LAST UPDATED _____ HB 332

SHORT TITLE New Mexico School for the Arts Act SB _____

ANALYST Earp

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	Substantial	Recurring	General Fund
	Substantial	Non-Recurring	General Fund possibly STB

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 599

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 DFA Office of Educational Accountability (OEA)
 Public School Capital Outlay Council (PSCOC)

SUMMARY

Synopsis of Bill

House Bill 332 creates the New Mexico School for the Arts as a state-funded institution for grades nine through 12. The bill exempts the school from certain provisions of the New Mexico Public School Code and Public Education Department (PED) authority. A nine-member Board of Trustees is created and is to be appointed by July 1, 2006 and instruction would begin in the 2007-08 school year. Powers and duties of the board are defined, as are the duties of the principal and staff. The bill authorizes the board to establish admission criteria. The school is to be subject to the same state budget statutes as other agencies, and is to receive state appropriations in the same manner as other agencies and institutions.

FISCAL IMPLICATIONS

This bill does not include an appropriation but would have significant fiscal implications for the

general fund beginning in fiscal year 2008. The proposed School for the Arts will require both staff and facilities. Operational funding will likely need to be ramped up over several years as the school adds additional grades of students and as permanent facilities are built. The following is only a very general discussion of these issues.

OPERATIONAL FUNDING

The Department of Finance and Administration, Office of Educational Accountability (OEA), has provided a conservative estimate of potential operational costs for a School of the Arts by modeling costs for a 400 student school based on average salaries for various types of personnel in New Mexico. The OEA estimates that approximately 56 FTE positions would be required to operate such a school at an annual personnel cost of approximately \$2.6 million. Additional costs would be required for supplies, materials, utilities, etc.

By way of comparison, the following are the fiscal year 2006 operating budgets for other institutions with somewhat similar general characteristics (state funded, residential public schools.) It is noted that all of these examples are from long-established institutions with fully-developed facilities and programs, and that there are differences in mission that impact staffing requirements.

	<u>FY 2006 Budget</u>	<u>Staff FTE</u>
Alabama School for the Arts	\$7.3 million	99.5
NM School for the Blind and Visually Impaired	\$10.3 million	173.5
NM School for the Deaf	\$11.7 million	189.2

The most useful benchmark for estimating the potential cost of the proposed New Mexico School for the Arts may be the Alabama School for the Arts, which appears to have the most similar mission and structure.

No provision is made in this bill to address the start-up costs that would be necessary in fiscal year 2007. An appropriation would need to be provided for this purpose. No estimate of the first-year funding requirements has been provided as of this date.

FACILITIES FUNDING

The bill provides that the New Mexico School for the Arts will be a residential high school located in Santa Fe. Facilities will need to be developed to provide for instruction, administration, student support services and residential living.

The DFA-OEA has provided data on the national average size of high school facilities per student. Using this national average of 168 square feet per student times an estimated enrollment of 400 times an estimated cost of \$190 per square foot yields a construction cost of approximately \$12.8 million for a 67,200 sq. ft. facility. It is noted that this estimate would not provide for residential housing or specialized performance/studio/laboratory spaces. It may be possible in the Santa Fe area to negotiate some sharing of specialized fine arts facilities.

The table above indicates that the facilities costs would likely impact the general fund or perhaps

Severance Tax Bonds (STB's).

SIGNIFICANT ISSUES

The proposed New Mexico School for the Arts would be the first institution of its type established at the state level in New Mexico. The proposal exempts the school from most of the provisions of the Public School Code and establishes it as a state institution. It may require a period of time to identify and resolve a number of technical details that may arise in implementing such an initiative. The Public Education Department (PED) and Public School Capital Outlay Council (PSCOC) have noted some such items that are reported in the Technical Issues section below.

ADMINISTRATIVE IMPLICATIONS

The proposed school would be established as a new state institution. Administrative structures and policies would need to be developed from the ground up, which would require significant effort on the part of the board and school staff. The Department of Finance and Administration would be expected to provide assistance in this regard since the school is to report to DFA for budget submission and approval.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 332 and Senate Bill 599 are duplicate measures.

TECHNICAL ISSUES

PED suggests consideration of the following issues:

The bill does not propose how or if the NMSA would be accredited by any state accreditation process or any outside private entity. The Trustees have control over the management and operation of NMSA. Although they are empowered to award diplomas based on standards adopted by their rule, the omission of any statewide or other nationally accepted accreditation framework could jeopardize the ability of “graduates” of NMSA to be accepted to accredited colleges/universities across the country. Without further clarifying language such as appears at Sections 21-1-1 and 21-1.1.1, (prohibiting the state’s higher educational institutions from discriminating against a college applicant with a GED) graduates of NMSA may be denied admission to the state’s higher educational institutions.

The bill at Page 3, Lines 23 – 25 permits the Trustees to apply for and receive federal funds. This would implicate compliance with Title IX of the Education Amendments of 1972 (20 US Code 1681), the Individuals with Disabilities Education Act (IDEA - 20 US Code 1400), Section 504 of the Rehabilitation Act of 1973 (29 US Code 741) and No Child Left Behind Act of 2001 (PL 107-110 - the Elementary and Secondary Education Act). Given that the state already receives federal educational/non-educational funds, federal agencies could take the position that NMSA must comply with federal laws and rules even without applying for their own funds.

Even though NMSA is not a public school, it is likely to be considered a “local educational agency” (LEA) or a “public agency” by the federal government for purposes of compliance with IDEA and Section 504 of the Rehabilitation Act. This then would implicate compliance with directives from the federal Office of Special Education Programs (OSEP – of the US Department of Education).

Even though admission to NMSA is based upon “admission criteria, standards and procedures” set by the Trustees, Section 504 of the Rehabilitation Act provides that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity receiving federal funds.

If NMSA is deemed an LEA for purposes of compliance with NCLB, this would implicate a host of federal statutory and regulatory provisions not least of which are mandatory annual standards-based assessments, the need to meet adequate yearly progress (AYP) based upon a state definition and the need to have “highly qualified teachers” in the classroom who teach core academic subjects. The core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography. (Note: Page 11, Line 14 exempts “art instructional faculty” from holding any license issued by the PED.)

The status of employees is unclear. May they be terminated at-will? Given that they will be receiving public funds for their services, they may be de-facto state employees. In any event, they would be entitled to due process before dismissal or lesser adverse action. It is not clear whether they are intended to have a property interest in their employment, which may be applied by federal and state case law that interprets the 14th Amendment due process clause of the U.S. Constitution. The Fair Labor Standards Act would apply to them if applicable criteria were met.

Additional provisions in the Public School Code may require amendment to clarify their application to NMSA. For example, the Compulsory School Attendance Law refers to various duties and responsibilities of “local school boards” and “districts” which would not apply to NMSA.

The Public School Capital Outlay Council notes:

The school as defined in law as a state institution may not be eligible for capital outlay funds from the state through the Public School Capital Outlay Council (PSCOC) as are traditional schools/school districts. Capital funding needs may require a direct legislative appropriation. It would be prudent to ask the courts whether or not establishing a new school and providing capital funding with direct appropriations would conflict with the court ruling in the Zuni lawsuit. The court sided with the school districts (Zuni, Gallup-McKinley & Grants/Cibola) and stated that direct legislative appropriations have a disqualifying effect on the overall system of distributing capital dollars from the state to school districts.

ALTERNATIVES

Consideration could be given to establishing a specialized charter school in Santa Fe. However, such a school would not be statewide in focus and would not likely provide residential facilities.

DKE/mt