

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: *SB 34aa

48th Legislature, 2nd Session, 2008

Short Title: New Mexico School for the Arts Act

Sponsor (s): Senators Cynthia Nava, Mary Jane M. García, and Mary Kay Papen

Analyst: Kathleen Forrer

Date: February 1, 2008

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The Senate Finance Committee amendment strikes the appropriation.

The Senate Education Committee amendment:

- **clarifies that the New Mexico School for the Arts will be supported by state funds in the same manner and by the same means as other state-chartered charter schools. State operational funding for charter schools, as for school districts, comes through the State Equalization Guarantee (SEG) appropriation, which is then distributed by means of the Public School Funding Formula; and**
- **adds a new section to the bill:**
 - **specifying that outreach activities provided for in the bill, as well as room and board costs for students unable to pay all or part of those costs, must be paid from private funding sources;**
 - **requiring the school to keep a separate accounting of the costs of both outreach activities and room and board and of the revenue received from private sources to pay those costs; and**
 - **making failure of the school to secure adequate funding for outreach activities and room and board costs grounds for denial or revocation of the school's charter.**

Original Bill Summary:

- SB 34 would enact a new section of the *Public School Code*, the *New Mexico School for the Arts Act*, thereby allowing for the establishment of the New Mexico School for the Arts as a statewide, residential state-chartered charter high school to provide “New Mexico students who have demonstrated artistic abilities and potential with the educational opportunity to pursue a career in the arts.” For students in grades 9 through 12, the school would offer “intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.”
- SB 34 permits but does not require the Public Education Commission (PEC) to charter the school subject to all of the provisions of the *Charter Schools Act* with the exception that the school would have admissions criteria “designed to admit students who show exceptional promise or aptitude in the arts and a strong desire to pursue a career in the arts” without regard to the students’ “exposure to previous artistic training” or “ability to pay residential costs.”

- The board (governing body of the school) would be required to ensure, “to the greatest extent possible and without jeopardizing admissions standards, that an equal number of students is admitted to the school from each of the state’s congressional districts.” To ensure that the school is abiding by this provision, the board would be required to submit an annual report to the Charter School Division of the Public Education Department (PED) and to PEC regarding the demographic characteristics of, and the congressional districts represented by, its student body.
- To acquaint potential students with its programs, the school would also be required to conduct extensive outreach activities, including programs for middle school students and workshops for teachers, for which no admissions criteria may be established.
- The school would be required to charge residential students a fee to cover the costs of room and board; in addition, the governing body of the school would also be required to establish a sliding-fee scale based on the student’s ability to pay. Both the charges for room and board and the sliding fee scale would have to be approved by PEC before being implemented or changed.
- Among the governing board’s powers and duties, SB 34 would give the board the ability to solicit and receive gifts, grants, and donations “to further the purposes of the school and to assist the school in providing free or reduced-fee room and board for those residential students who cannot pay all or part of residential costs.” The board would be required to provide an annual report to the Charter Schools Division and to PEC regarding the number of students requiring financial assistance for room and board; the amount of financial assistance provided; and the amount and source of grants, gifts, and donations received by the school to provide such financial assistance.

* The bill contains an emergency clause.

Original Fiscal Impact:

\$450,000 is appropriated from the General Fund to PED for expenditure in FY 09 for planning and outreach activities. Any unexpended or unencumbered balance remaining at the end of FY 09 reverts to the General Fund.

Operational Funding

- As is the case with all other charter schools in New Mexico, the school’s operational funds would be generated through the Public School Funding Formula. Proponents of the proposed school have indicated that if the PEC approves the school’s charter, the school will open with an enrollment of 150 students in grades 9 and 10 and add an additional 75 students for each of the next two school years until it reaches a total enrollment of 300 students.
- Based on the 2007-2008 initial unit value of \$3,645.77 and a membership of 150 students, the total program cost generated for the school’s first year would be approximately \$1.44 million; this estimate includes the 2.0 percent of program cost that would be retained by PED for administrative costs.
- Although the school could be eligible for some federal funds, such as Student Nutrition, federal statute prohibits a charter school with admissions requirements from qualifying for Public Charter Schools Program grants, which support the “planning and design of the education program of a charter school.”

- With regard to other potential revenue sources, in addition to soliciting funds from private sources, proponents of the school have indicated that they may apply for money from the state Charter Schools Stimulus Fund. PED’s independent financial audit for FY 06 indicated an ending balance in the fund as of June 30, 2006 of \$820,091.

Residential Funding

As noted in the bill summary, residential costs would be funded from a combination of private revenue sources, including student fees based on a sliding scale in relation to family income, as well as gifts, grants, and donations.

Issues:

Attorney General’s Opinion

A number of questions were raised during the 2006 legislative and interim sessions regarding the establishment of a statewide residential high school for the arts (see “Background”). In response to a request from a legislator, on December 22, 2006 the Attorney General issued Opinion No. 06-03, which addresses four questions concerning the creation of the school.

Two of the questions asked of the Attorney General—whether a school for the arts could associate with a postsecondary institution or whether it could be administratively attached to the Higher Education Department—no longer applied because the proposed 2007 legislation would have established the school as a state-chartered charter school. The remaining two questions remain pertinent: (1) does the Legislature have the authority to create such a school through legislation or is an amendment to New Mexico’s Constitution required; and (2) may such a school adopt admissions requirements that limit enrollment to artistically talented students. According to the Attorney General’s opinion, the answer to both questions is “yes”:

1. With regard to the first question, the Attorney General states that “[t]he Legislature has the authority to create a statewide magnet school for the arts without amending Article XII, § 11 of the state constitution.” Further, Article XII, Section 1, “charging the Legislature with establishing and maintaining a uniform system of free public schools sufficient for the education of all school-age children in the state, does not preclude the Legislature from creating a statewide magnet school for the arts.”
2. With regard to the second question, the Attorney General notes that “[a] large discretion is necessarily vested in the Legislature to determine not only what the interests of the public require, but also what measures are necessary for the protection of such interests.... Within this broad discretion, but necessarily cognizant of the limitations placed on it by the state and federal constitutions, the Legislature may formulate a wide variety of legislation to achieve its goals, including legislation that would allow a statewide magnet school to adopt competitive admissions requirements that limit enrollment to artistically talented students....”

On January 25, 2007, the Attorney General provided additional written comments regarding the creation of a statewide residential charter high school for the arts. In this second communication, the Attorney General notes that all of the arguments applicable to the creation of a magnet school apply to the creation of a charter school. In addition, the Attorney General states the following: “...we believe the governing body of a proposed statewide charter school may offer room and board to its residential students on a sliding scale, provided the Legislature vests the governing body with the statutory authority to charge for room and board and the students to whom discounted room and board is offered have demonstrated financial need.”

PED Analysis

In its analysis of SB 34, PED suggests that the board of the New Mexico School for the Arts provide reports only to the Charter School Division and not to the PEC and that the PED Administrative Services Division be responsible for approving residential fees. However, PEC is the statutorily designated authorizer for state-chartered charter schools.

Background

During the 2006 legislative session, identical bills to enact the New Mexico School for the Arts Act were introduced in the House and the Senate; however, neither bill passed. Had the legislation been enacted, a residential high school, the New Mexico School for the Arts, would have been established in Santa Fe “to provide free, publicly funded education and training in grades nine through twelve for exceptional artistically talented students who are residents of New Mexico and who meet the admissions criteria and standards of the school.”

Testimony before Senate and House education committees regarding the proposed New Mexico School for the Arts raised a number of issues, including whether the school could be established through legislation as opposed to an amendment to the New Mexico Constitution and whether a public school may have admissions criteria.

Because of the questions raised during those hearings, additional legislation was introduced in both the Senate and the House to fund a feasibility study. Although neither bill passed, the chairs of the education committees requested that the LESC, during the 2006 interim, discuss the feasibility of establishing such a school.

At its May 2006 meeting, the LESC appointed the LESC Subcommittee on the High School for the Arts. The subcommittee, which was composed of 20 members representing the LESC, the arts community, the public schools, the Public Education Department, the school employees’ unions, and other interested individuals, was charged with examining the feasibility of establishing a statewide residential high school for the arts and providing recommendations to the LESC prior to the 2007 legislative session.

Beginning in June 2006, the subcommittee met every month during the interim except July. In December 2006, the subcommittee presented its final report to the LESC and asked the LESC to consider endorsing legislation that would establish a statewide residential high school for the arts. In the final report, the subcommittee recommended that:

- the New Mexico School for the Arts be established as a state-chartered statewide, residential charter high school that will provide New Mexico students, who have demonstrated artistic abilities and potential, with intensive pre-professional and professional instruction in the performing and visual arts combined with a strong academic program leading to a high school diploma;
- the school offer a rounded arts program that includes concentrations in the visual arts, music, theater, film, and dance (the school will maintain a guest artist program in which visiting artists, in accordance with state and federal requirements, are supervised by licensed teachers of record);
- the school be subject to all requirements of the *Charter Schools Act*, except those that prohibit the establishment of admissions criteria;

- the governing body of the New Mexico School for the Arts establish admissions criteria designed to admit students who show exceptional promise or aptitude in the arts and a strong desire to pursue a career in the arts;
- students be considered for admission regardless of their opportunity to obtain training prior to admission;
- to the greatest extent possible and without jeopardizing admissions standards, the student body be geographically representative of the state;
- the school conduct outreach programs so that students, parents, and teachers throughout the state are made aware of the nature and purpose of the school and of the opportunities that the school provides; and
- funds be appropriated to support planning and outreach activities during the year prior to the opening of the school.

As a result of the work of the subcommittee, the LESC endorsed legislation that would have authorized the PEC to charter a statewide residential high school for the arts. That legislation, which did not pass, differed from SB 34 in that the school would have been reimbursed by the state for revenue lost as a result of students' inability to pay all or part of the residential costs. SB 34 would require the board of the school to secure funds through gifts, grants, and donations to provide financial assistance to students for residential costs.

Related Bills:

SB 238 *Grant & Socorro County Dance Education*
HB 53 *Santa Fe Performing Arts School Programs*
HB 92 *Santa Fe Dance Education Programs*