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## FISCAL IMPACT REPORT

Baldonado/  
Townsend/  
Powdrell-Culbert/      **ORIGINAL DATE** 02/01/21  
**SPONSOR** Madrid/ Sweetser      **LAST UPDATED** \_\_\_\_\_      **HB** 182/ec

**SHORT TITLE** Evaluate On-Campus Learning      **SB** \_\_\_\_\_

**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$30.0	\$100.0	\$50.0	\$180.0	Recurring through duration of pandemic	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Schools Facilities Authority (PSFA)  
Office of the Attorney General (NMAG)  
New Mexico Environment Department (NMED)  
Public Schools Insurance Authority (PSIA)

#### No Response Received

Public Education Department (PED)  
Albuquerque Public Schools (APS)  
Department of Health (DOH)  
Regional Education Cooperatives (RECs)

### SUMMARY

#### Synopsis of Bill

House Bill 182 would establish a legislative finding that in person or “on-campus” education has advantages over online education, allowing the public schools to better serve the academic and psycho-social needs of students. Further, it asserts that the legislature believes children’s learning to have lost momentum, with a loss of the socialization, the structure, and the emotional support that children get from school, endangering “their entire future.”

In recognizing these assertions, the legislature would cede to local school boards the determination as to when the schools in each district would shift from an all online form of education to a hybrid model, leaving to parents and to school personnel the option as to whether or not to participate in on-campus education, without risking prejudice against those parents or school personnel. School boards would be charged with using federal Centers for Disease Control recommendations to inform their decisions, and would communicate their decisions to district parents.

The legislation would apply to all public school districts and charter schools.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

### **FISCAL IMPLICATIONS**

There is no appropriation in House Bill 182.

Whatever form of education is adopted by a school district during the pandemic, all online, a mixed model, or all in-person, it is likely to be expensive compared with non-pandemic education. These costs are difficult to estimate and are not entered into the table above.

NMED, which is responsible for monitoring the safety and health protections of workplaces throughout the state, indicates that it would need one FTE to investigate matters having to do with coronavirus safety, at \$100 thousand for 12 months, prorated over the period the coronavirus pandemic persists.

PSIA would be liable to pay damages if a school employee or parent sued a school district in the case of coronavirus transmission at school.

### **SIGNIFICANT ISSUES**

The issue of whether and when schools should reopen has been a matter of much controversy around the country and the developed world, with the injection of politics into the issue in many jurisdictions.

Reference is often made to the American Academy of Pediatrics' (AAP) statement on the importance to children of attendance in school. Children's socialization, emotional and physical well-being, educational progress and even their nutrition are at stake. These considerations, in addition to the well-referenced lesser proclivity of children to transmitting the infection and lesser serious effects of the infection (less serious disease, hospitalization and death) than among adults, militate toward opening schools sooner rather than later. As of January 28, 2021, more than 2.8 million children (defined slightly differently in different states, but most often as up to 18 years of age) had been infected with the coronavirus. New Mexico reports that approximately 18 percent of its total of almost 175 thousand cases were in individuals less than 18 years of age. Nationally, children represent 1.8 per cent of the total hospitalized. Nationally, only 215 child deaths have been reported, which is 0.06 percent of the total deaths. As of January 28, 2021, 5.6 percent of New Mexico children had had a positive test. (<https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19/children-and-covid-19-state-level-data-report>)

The AAP guidance begins with the statement "The AAP continues to strongly advocate that all policy considerations for school Covid-19 plans should start with a goal of having students physically present in school."

<https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

The guidance document is nuanced, taking into account the well-being of students, staff, teachers, and communities:

- To be able to keep schools safe, it is vitally important that communities take all necessary measures to limit the spread broadly of SARS-CoV-2 throughout the community.
  - It is critical to use science and data to guide decisions about the pandemic and school Covid-19 plans.
  - School transmission mirrors but does not drive community transmission.
  - Community-wide approaches to mitigation are needed for schools to open and remain open.
  - Adequate and timely Covid-19 testing resources must be accessible.
- School policies should be adjusted to align with new information about the pandemic; administrators should refine approaches when specific policies are not working.<sup>10</sup>
- Schools must continue to take a multi-pronged, layered approach to protect students, teachers, and staff. By using different approaches, these layers of protection will make in-person learning safe and possible.
- It is critically important to develop strategies that can be revised and adapted depending on the level of viral transmission and test positivity rate throughout the community and in the schools, recognizing the differences between school districts, including urban, suburban, and rural districts.
- School districts must be in close communication and coordinate with state and/or local public health authorities, school nurses, local pediatric practitioners, and other medical experts.
- School Covid-19 policies should be practical, feasible, and appropriate for child and adolescent's developmental stage and address teacher and staff safety.
  - Special considerations and accommodations to account for the diversity of youth should be made, especially for populations facing inequities, including those who are medically fragile or complex, have developmental challenges, or have disabilities. Children and adolescents who need customized considerations should not be automatically excluded from school unless required in order to adhere to local public health mandates or because their unique medical needs would put them at increased risk for contracting Covid-19 during current conditions in their community
- School policies should be guided by supporting the overall health and well-being of all children, adolescents, their families, and their communities but should also look to create safe working environments for educators and school staff. This focus on overall health and well-being includes addressing the behavioral/mental health needs of students and staff.

Centers for Disease Control guidance, referred to in House Bill 182, is entitled “Operating schools during Covid-19: CDC's Considerations” and updated February 1, 2021, is consistent with the AAP guidelines:

As communities in the United States consider how to safely re-open K-12 school buildings for in-person learning and activities and keep them open, CDC offers updated considerations for mitigation strategies that school administrators can use to help protect students, teachers, and staff and slow the spread of the virus that causes Covid-19. These updated considerations

for Schools are intended to aid school administrators as they consider how to protect the health, safety, and wellbeing of students, teachers, staff, their families, and communities:

1. Promoting behaviors that reduce Covid-19's spread;
  2. Maintaining healthy environments;
  3. Maintaining healthy operations; and
4. Preparing for when someone gets sick. Schools should determine, in collaboration with state and local health officials to the extent possible, whether and how to implement each of these considerations while adjusting to meet the unique needs and circumstances of the local community. Implementation should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community. It is also critically important to develop strategies that can be revised and adapted depending on the level of viral transmission in the school and throughout the community, as this may change rapidly. Strategies should be implemented in close coordination with state, local, or tribal public health authorities, recognizing the differences between school districts, including urban, suburban, and rural districts. These considerations are meant to supplement—**not replace**—any Federal, state, local, territorial, or tribal health and safety laws, rules, and regulations with which schools must comply (e.g., Individuals with Disabilities Education Act). (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>)

PSFA indicates that “This bill does not provide local school boards with sufficient resources necessary to properly determine whether a school facility is safe to re-open or how to safely reopen a school facility during a public health emergency. School personnel and health officials may not always have the expertise to assist local school boards regarding essential requirements that may provide for the safe operation of school facilities. In some instances, the expertise may require contracting with qualified engineers or other technical professionals.” PSFA also notes the importance of assuring internet connectivity for all students using virtual learning opportunities.

PSIA notes concern over possible liability issues that would occur surrounding a school district's determination to open for on-campus instruction, “While NMPSIA is offering coverage to its members under the Tort Claims Act, there are many claims and issues which could be litigated in the case of school exposure.” PSIA notes concern over the adequacy of ventilation systems in many schools.

## TECHNICAL ISSUES

The bill does not specify whether “charter schools” include only state-chartered schools, locally-chartered schools, or both.

AOC notes that “Section 1(A) and 2(D) are identical. Drafters may want to consider removing Section 2(D) as there is no need for both sections.”

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Decisions on the timing of re-opening of on-campus learning would continue to be made on a state level, using the best available scientific data.