

<b>LFC Requester:</b>	<b>Liu</b>
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**AGENCY BILL ANALYSIS  
2021 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

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

Check all that apply:  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/25/2021  
**Bill No:** SB40

**Agency Name and Code**            PED - 924  
**Number:** \_\_\_\_\_

**Sponsor:** Sen. Mimi Stewart  
K-5 PLUS & EXTENDED  
**Short**            LEARNING AT ALL  
**Title:**            SCHOOLS

**Person Writing:**            John Sena  
**Email**                            John.Sena@state.nm.us  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	\$13,400.0	Nonrecurring	PERF
NFI	\$125,900.9	Nonrecurring	PERF

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY21</b>	<b>FY22</b>	<b>FY23</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None as of 1/24/2021  
Duplicates/Relates to Appropriation in the General Appropriation Act: See under Fiscal Implications section of bill analysis.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Senate Bill 40 (SB40) proposes a new, temporary section of law that would require all public schools to participate in either the schoolwide K-5 Plus or Extended Learning Time Program (ELTP), effectively mandating either 25 additional days for K-5 Plus or 10 days for ELTP, for the 2021-2022 school year. The provisions of this bill would occur only if in-person instruction is not prohibited by executive order or resolution of a local school board.

**FISCAL IMPLICATIONS**

SB40 would make two appropriations from the Public Education Reform Fund (PERF); \$13.4 million for ELTP and \$125.9 million for K-5 Plus. These nonrecurring appropriations would supplement the \$71.4 million for ELTP and \$79.9 million for K-5 Plus already included in the State Equalization Guarantee (SEG).

Any unexpended or unencumbered balance of these appropriations would revert to the PERF.

**SIGNIFICANT ISSUES**

By the end of the 2020-2021 school year, the Covid-19 pandemic will have forced New Mexico’s schools to provide a mix of in-person and distance learning for more than an entire school year. Despite teachers’ best efforts, most research estimates that students will be significantly behind where they would normally have been if able to attend full-time in-person school. A report from McKinsey & Company, for example, found students may lose between five and nine months of learning by the end of this school year. Students of color, the study found, may lose as many as 12 months of learning.

SB40 attempts to address the issue by mandating all public schools to add instructional days for the 2021-2022 school year. The bill would require all public elementary schools to offer K-5 Plus or ELTP. For schools participating in K-5 Plus, the proposal also includes notwithstanding language that allows the addition of 25 instructional days any time prior to the start of the regular school year or any time during the regular school year. Current statutory language requires the additional days take place before the start of the regular school year. Further, SB40 provides funding for schools participating in K-5 Plus be based on “the greater of the average of MEM in each approved public school on the second and third reporting dates of the 2020-2021 school

year or the MEM in each approved public school on the first reporting date of the 2021-2022 school year.”

SB40 requires each public school that is not an elementary school to provide schoolwide ELTP pursuant to Section 22.9.23.10 NMSA 1978, which requires the addition of 10 instructional days and 80 hours of teacher professional development.

Additionally, subject to the availability of funds, nothing in Section 1 of the bill shall be construed to prohibit an elementary school from participating in both a K-5 Plus program and ELTP.

### **Low Participation**

New Mexico has funded some sort of extended learning time programming for more than a decade, culminating in the addition of K-5 Plus and ELTP funding to the SEG for FY20. Despite substantial financial investment in both programs, participation has been far below expectations, and schools districts and charter schools have left significant portions of appropriations unspent. By the end of the 2020-2021 school year, approximately \$200 million unspent K-5 Plus and ELTP funds will have reverted to the PERF.

While research has shown the benefits of additional instructional time, and court findings in the Martinez/Yazzie consolidated lawsuit call for making these programs available to more students, school district and charter school leaders have cited various reasons for opting out of these programs, particularly K-5 Plus. Among the reasons were the inability to adhere to the strict teacher/class cohort requirements of the K-5 Plus statute, a lack of buy-in on the part of staff, and resistance from community members who felt adding 25 school days during the summer conflicted with other community priorities. Of the 141 LEAs in the state, 43 participated during the 2019-2020 school year. The health pandemic contributed to a precipitous drop, with only 15 LEAs choosing to participate in K-5 Plus for the 2020-2021 school year.

Flexibilities provided in SB40, namely the ability to add 25 days anytime during the school year and some flexibility in cohort requirements, may alleviate some of the issues with the initial implementation of the program. However, some school district and charter school leaders continue to advocate for even more flexibility, such as the ability to convert the 25 days to equivalent instructional hours.

### **Preference for ELTP**

Despite low uptake in K-5 Plus, school districts and charter schools have increasingly opted in to ELTP. This is partly due to the requirement to add only 10 instructional days instead of 25 in K-5 Plus, which school district and charter leaders said was easier to accomplish and received more community support. Of the state’s 141 LEAs, 40 participated during the 2019-2020 school year. That number increased to 77 participating LEAs for the 2020-2021 school year. Presumably, more schools would choose ELTP over K-5 Plus if required to select one.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

Under SB40, the PED secretary would be required to ensure that each school district or charter

school has made plans in its operating budget to offer K-5 Plus or ELTP for all students prior to approving a school district's or charter school's FY22 operating budget.

By requiring public schools to participate in K-5 Plus or ELTP, SB40 would result in every school board and charter school governing council having to change school calendars. Because some school boards adopt calendars two or three years ahead of time, some may have to adjust previously adopted calendars.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None as of 1/24/2021

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

SB40 takes into account the uncertainty of the Covid-19 pandemic and would require schools to participate in K-5 Plus or ELTP only if in-person instruction is not prohibited by executive order or local school board resolution.

The bill also would require school districts and charter schools to apply the provisions of the Attendance for Success Act to additional instructional days. Because previous implementation models of K-5 Plus and ELTP were not always applied to whole school populations, the provisions of the Attendance for Success Act did not apply. Subsequently absences during K-5 Plus and ELTP were not counted toward students' overall attendance. It is unclear how applying attendance provisions will affect school attendance data.

Additionally, a school district or charter school shall not be denied K-5 Plus funding for a student who participates in a K-5 Plus program and is later transferred into another classroom, provided that the transfer is made in the best interest of the student.

### **ALTERNATIVES**

N/A

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

N/A

### **AMENDMENTS**

N/A