

<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:**

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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** 2/24/2021  
**Bill No:** SB384

**Sponsor:** Sen. Craig Brandt  
**Short**        CLOSURE OF CERTAIN  
**Title:**        SCHOOLS

**Agency Name and Code**        PED - 924  
**Number:** \_\_\_\_\_  
**Person Writing:**        John Sena  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A

(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>	N/A	Undetermined	Undetermined	Undetermined	Undetermined	General fund and others

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB51, Charter School Enrollment Preference; SB237, Charter School Duties; and SB318, Charter School Changes.  
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Senate Bill 384 (SB384) proposes to add a new section to the Assessment and Accountability Act to provide for closure of a public school upon parent demand based upon low student academic performance, ineffective teacher performance, or poor management.

The bill proposes to strike language in Subsection C of Section 22-1-4 of the Assessment and Accountability Act that refers to the repealed A-B-C-D-F Schools Rating Act. SB384 proposes making third in enrollment priority those students who attended a traditional public school that was closed pursuant to the bill as a result of low academic performance, ineffective teacher performance, or poor management.

**FISCAL IMPLICATIONS**

SB384 does not contain an appropriation.

The fiscal effect of the bill is undetermined, but could have significant impact upon the state equalization guarantee (SEG) distribution for school districts in which a school is closed for poor performance. The bill could also impact any lease purchase agreement to which a closed charter school is party, probably by causing immediate termination of the agreement due to insufficient funds to make lease payments.

**SIGNIFICANT ISSUES**

SB384 proposes a new, potentially arbitrary avenue of school closure and reopening that fails to address numerous administrative and legal concerns. The bill does not acknowledge the processes and procedures that currently exist for school closures or communication of concerns or grievances to school authorities. Parents may already petition school boards or governing bodies for change. In the case of school boards, they may vote against, or even run against, members of boards they feel are ineffective or inattentive to their concerns. In the case of charter schools, they may present their views to chartering authorities at schools' community input, opening, and renewal hearings.

**School Closure Issues.** This bill creates an immediate pathway to traditional public and charter school closure that has not previously been contemplated by law, based on "low academic performance," "ineffective teacher performance," or "poor management." If merely 50 percent of

the parents of students attending a public school sign and present a petition calling for the school's closure to the school board or chartering authority, those authorities would be required to effect a virtually immediate closure of the school at the end of the current semester. The timelines involved in school closure under SB384 are concerning: According to the bill, if a parental petition is presented to a local school board or chartering authority in the last weeks, or even days, of a semester, that school *must be closed* by school authorities by the end of that semester. No provision is made within the bill for debate or consideration of the petition by the elected local school board or the chartering authority. The bill does not address, and it is otherwise unclear, under what process these petitions and signatures would be certified.

“Low academic performance,” “ineffective teacher performance,” and “poor management” are not statutorily defined terms, although “ineffective teacher performance” may refer to that level of performance delineated, but not defined, in 6.69.8 NMAC, Teacher and School Leader Effectiveness. It is unclear from the terms of the bill whether parents are to base petitions for school closure due to poor teacher performance under that process.

No provision is made for assisting students in a closing school to find a new school. While the bill offers traditional school students preference in enrollment at another traditional public school within the same district, SB384 also explicitly notes that the school district shall not be responsible for the transport of students affected by school closures who transfer to another school, probably outside the school zone in which they reside. This will likely lead to difficulty and added expense for those students having to arrange their own transportation.

SB384 does not account for several provisions of law requiring consultation with tribal leaders, members, and families when the closure of a school on tribal land is merely being *contemplated* for *any* reason. These statutes list specific areas of concern that must be addressed, such as cultural responsiveness and religious sensitivity:

- Section 22-2-2.3 NMSA 1978 requires PED consult with tribes when considering the closure of a school on tribal land.
- Section 22-5-4.13 NMSA 1978 requires local school boards' consultation with tribes.
- Section 22-8B-12.2 NMSA 1978 requires chartering authorities' consultation with tribes.

The immediate nature of the bill's requirement of closure without debate or discussion at the end of the semester during which the petition is presented to school authorities completely precludes consultation and discussion, particularly with those parents, family members, and tribal leaders who may not agree with the proposed closure.

The New Mexico Administrative Code, at 6.29.1.9(G) NMAC, requires any change in a school district's or charter school's organizational pattern, including school closures, be approved by the Secretary of Education via a specific waiver request form. That form also includes a requirement that tribes be consulted before the form is submitted, with accompanying proof of that consultation. The submission of this form also allows various bureaus within the department to review the potential closure, and prepare for it administratively (see, “Administrative Implications,” below).

SB384 also conflicts with the current Charter Schools Act in several respects. Section 22-8B-12 NMSA 1978 establishes grounds for charter renewal, nonrenewal, and revocation; renewal efforts already require community and parental support, and community input hearings are

required for any potential charter school. This bill would override authorizing bodies' authority to evaluate schools under their performance frameworks, required under Section 22-8B-9.1 NMSA 1978. Moreover, Section 22-8B-12.1 NMSA 1978 requires the establishment of closure protocols for schools whose charters are revoked or not renewed. That section addresses not only the distribution of assets and payments of debts for closing schools, but also requires the establishment of timelines for the orderly transition of student records to new schools, and explicitly requires a smooth and orderly transition for students and parents. SB384 does not address the procedures for the closure of a school.

SB384 may conflict with the School Personnel Act in regard to the termination or discharge of all school employees, particularly in those circumstances where a closure must be effected speedily in advance of the rapid approach of a semester's end. The bill may also conflict and interfere with licensed school employees' contracts and collective bargaining agreements.

***School Reopening Issues.*** The bill provides for the possibility of a closed school's reopening, in a year following its year of closure, not the year during which the closure was required and effected. The process, however, is unclear. In order to reopen, a school must meet a number of conditions, which include reference to other relevant but undefined terms:

- the employment of new leadership, including the principal, vice-principal, head administrator, vice-head administrator, or equivalent positions;
- for a charter school, the replacement of at least 50 percent of the membership of the governing board, prior to the employment of new leadership;
- the employment of new licensed school employees, although former employees are permitted to reapply for employment with a closed school;
- receipt of a New Mexico condition index rating equal to or better than the state average;
- engagement in "significant outreach" to the "school community";
- the development of a "reopening plan," in collaboration with the school community that identifies the root cause of the low academic performance, poor management, or ineffective teacher performance, and that enumerates the goals of the school community and how those goals will be achieved.

At least five members must comprise a charter school governing board, under Section 22-8B-4 NMSA 1978. At times, charter school governing bodies are difficult to assemble, particularly in smaller communities. The requirement to replace at least 50 percent of their membership may be burdensome. Likewise, New Mexico suffers from a shortage of teachers, educational assistants, and other licensed school personnel, including counselors and nurses. The requirement to replace all those personnel may be difficult for any school. SB348 provides for reapplication by former employees, they may have found other employment in the intervening time between school closure and reopening, further complicating the issue of school staffing.

## **PERFORMANCE IMPLICATIONS**

As noted, SB384 does not specify criteria or processes for parents who present petitions for school closure. The requirement that petitions be filed with the local school board or chartering authority, based on low academic performance, "within the school year" would be difficult to implement, as student assessment data is usually not released until the following school year, assuming that academic performance is to be based upon assessment data; again, the bill fails to clarify whether that is the case. The requirement of school closure by the end of a semester could

result in a school closing mid-school year (in December), which could create complications for school budget, student enrollment, and data collection.

SB384 would require appropriate amendments to all existing charter school contracts, which may involve lengthy and costly negotiations. The bill could result in litigation through the charter school appeals process regarding closures.

### **ADMINISTRATIVE IMPLICATIONS**

As noted above, school closures ordinarily require the Secretary’s approval via submission of a reorganization or waiver form. That process requires a local school board or charter school to identify not only the rationale for the closure, but also the likely impact to operations, facilities and capital, school transportation, information technology, budget, staffing, curricular programs, student instruction, culturally and linguistically responsive frameworks, enrollment, and finally, tribal students, if the affected school is on tribal land or affects a Native American community. Specific reporting of community engagement over the proposed reorganization is required. Attention to student reassignment is needed, as is the transfer of student records. A proposed closure or other reorganization must be reviewed by the School Budget, Capital Outlay, Transportation, Assessment and Accountability, and Information Technology Bureaus, as well as by the Office of General Counsel, for legal sufficiency. This review and approval is for the benefit and protection of the students and community, to ensure that all protocols are followed and all areas of student and school need are addressed.

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

SB384 relates to SB51, Charter School Enrollment Preference; SB237, Charter School Duties; and SB318, Charter School Changes.

### **TECHNICAL ISSUES**

The sponsor may wish to define the following terms: “low academic performance,” “ineffective teacher performance,” “poor management,” “significant outreach,” “school community,” and “reopening plan.”

### **OTHER SUBSTANTIVE ISSUES**

N/A

### **ALTERNATIVES**

N/A

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

N/A

### **AMENDMENTS**

N/A