

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2017 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:*

<b>Original</b>	<input type="checkbox"/>	<b>Amendment</b>	<input checked="" type="checkbox"/>	<b>Date</b>	<u>3/11/2017</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>SB290/aSEC/SFCS</u>

<b>Sponsor:</b>	<u>Senate Education Committee</u>	<b>Agency Code:</b>	<u>924</u>
<b>Short Title:</b>	<u>SCHOOL DISTRICT BUDGET FLEXIBILITY</u>	<b>Person Writing</b>	<u>Aguilar/Craig</u>
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**SECTION II: FISCAL IMPACT**

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>		See fiscal implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

SB290/aSEC/SFCS creates a new section of the Public School Finance Act to allow for local school boards to change: statutory minimums for individual class load, teaching loads, the length of school days or year, staffing patterns subject areas or purchases of instructional materials or other adjustments as required if the state equalization guarantee decreases by two percent or more or when the Secretary of public education decreases the unit value by two percent or more after school budgets have been approved.

The local superintendent and school board must seek input from employees, parents and community members on budget adjustments. The school district shall report to PED steps taken to avoid deficit spending when statutory minimums are restored.

The committee substitute adds language that indicates that nothing in the bill should be construed to impair a collective bargaining agreement.

## **FISCAL IMPLICATIONS**

All of the flexibilities contained in this bill are available in current law subject to the approval of the Secretary and continue in a manner that assures that the best interests of students are considered.

It appears the intent of this bill is to give school districts almost unlimited authority to disregard many existing provisions of the Public School Code in times when appropriations drop or when the unit value drops by at least two percent.

It is important to note that Senate Bill 114 of the current legislative session reduced the SEG with instruction that districts and charter school would transfer and equal amount from cash balances to hold the operational budget flat. These provisions do not pertain to districts do not have the cash balances to support the reduction and see little or no reduction. Given that budgets are being held harmless, the provisions of this bill are not needed and serve to undermine the intent of solvency legislation.

The Senate Finance Committee amendment that removes the term “other adjustments as required” alleviates some of the concern that superintendents have free rein to make any decision without proper oversight and may leave districts with severe fiscal difficulties not related to SEG reductions.

However, the fiscal implications of SB290/aSEC/SFCS are still unclear. The language of SB290/aSEC/SFCS appears to indicate that school districts must take steps to avoid deficit spending. It is unclear if the language prohibits deficit spending by local school districts. As part of the Operating Budget approval process, and required financial reporting, the PED seeks to prohibit school district and charter school deficit spending. If the provisions of SB290/ASEC/SFCS are to be read that school districts will be allowed to create deficits, the requirements for Emergency Supplemental requirements when statutory minimums are reinstated may be increased by a large amount.

Similarly, language in SB290/aSEC/SFCS requires the local superintendent and school board to seek input from employees, parents and community members on budget adjustments. It is unclear if the language is referencing budget adjustments broadly speaking (i.e. adjustments to budget related to program elements), or specifically referencing budget adjustment requests (BAR's). Currently, PED has oversight and approval of some forms of BAR's. If school districts are to no longer report BAR's to PED and seek approval, the ability for PED to make assurances about the school district finances, including as sub-recipients of federal grants, is compromised. School districts should already be soliciting community input as a part of its budget development pursuant to 22-8-10 NMSA 1978.

The PED raised the aforementioned issues with the original SB 290. The committee substitute adds language in both Sections of the proposed bill to indicate that nothing in the sections shall be construed to impair a collective bargaining agreement. The form contracts for instructors that the PED administrative rule provides in 6.66.2.8 NMAC 1978 Subsection E, required and adopted pursuant to 22-10A-21 NMSA 1978 indicates “this contract may also be cancelled by the board for cause not personal to the instructor when a reduction in personnel is required as a

result of decreased enrollment or a decrease or revision of educational programs *or insufficient legislative appropriation or authorization being made by the state and/or federal government for the performance of this contract*, in accordance with the New Mexico statutes and any applicable rules and regulations of the department and local board of education, provided there is no other position for which the instructor is qualified, consistent with the academic necessities of the district [*emphasis added*]”.

All instructor contractual relationships under the collective bargaining agreement still require this language to be included on the contractual form. Therefore, it may be unnecessary to clarify that the provisions of SB290/aSEC/SFCS shall not impair any collective bargaining agreement because school districts have the authority to cancel instructor contracts regardless of collective bargaining agreements. School districts and charter schools engaging in collective bargaining generally extend this type of clause to other personnel contracts, and it is required statutorily to other contractual arrangements such as a lease purchase arrangement for a building.

## **SIGNIFICANT ISSUES**

It is bad public policy to codify statutory provisions that set up a structure to disregard statutes put in place by the legislature for “unforeseen” circumstances that may or may not occur. Rather, strong accountability and oversight is more important in tough times to ensure that public funds are expended thoughtfully and in a manner that is focused on improving student achievement.

Many of the provisions of this bill may implicate the uniformity provisions and the powers of the Secretary provisions of Article XII of the New Mexico Constitution

The proposal to allow school boards to alter provisions in law without state oversight when revenues are decreased is problematic. Creating two sets of laws, one we use when financial conditions are positive, and one which we use when the financial environment is challenging, does not adhere to the spirit of creating a uniform system of education. It would also likely create confusion around, and require someone to arbitrate, which reports to PED need to be adhered to as there is likely to be significant disagreements between local school boards who want to retain local flexibility to not meet stricter statutory guidelines and PED that wishes to maintain oversight of school district operations to ensure it meets its statutory mission.

## **ADMINISTRATIVE IMPLICATIONS**

In the absence of clear legislative direction regarding budget adjustment reporting and approval or submittal of required financial reports, PED would likely keep the current financial reporting and approval system in place.

## **OTHER SUBSTANTIVE ISSUES**

There are multiple provisions in state law that allows the Secretary to grant waivers for statutory minimums related to solvency. For example, in the 2016 Legislative Session, the Legislature amended current law by instituting a temporary provision in 22-1-10 NMSA 1978 that allows waivers from the statutory requirements for individual class load, teaching load, and staffing patterns contained in 22-10A-20 NMSA 1978. The waiver for these requirements has been in place since the 2009-2010 school year and currently is set to expire at the end of the 2018-2019 school year.

Charter schools have provisions pertaining to individual class load and teaching load waived by the Public Education Department (PED) according to the provisions of 22-8B-5 NMSA 1978. The portion of law creating class loads, Section 22-10A-20 NMSA 1978, also allows the Secretary to waive the individual school class load requirements for up to two years if a school demonstrates that no portable classrooms are available, no other available sources of funding exist to meet its need for additional classrooms, the school district is planning on alternatives to increase building capacity for implementation within one year, and the parents of all children affected have been notified in writing among other requirements.

Another example occurs in Section 22-2-2.1 NMSA 1978, which requires the Secretary to grant all reasonable requests to waive the individual class load requirements for all schools that exceed educational standards, within limits. 22-10A-14 NMSA 1978 allows the PED to issue a certificate of teaching waiver or assignment waiver if a local superintendent or governing authority of a state agency certifies to the PED that an emergency exists in the hiring of a qualified person.

It is unclear what added benefit is derived from amending statute to add yet another waiver from provisions in law, this time removing the PED's oversight or review from the waiver process and allowing school boards to preempt PED budgetary and program oversight. Creating a self-report mechanism that ensures that a school district isn't going into a deficit is not sufficient to prevent the condition from occurring.

## **ALTERNATIVES**

The provisions of SB290/aSEC/SFCS appears to add to the multiple and varied ways in which the school districts are waived from class loads or other sections of law related to statutory minimums, or increase flexibilities related to budgeted expenditures. The Legislature should consider whether the original requirements for class loads or other statutory minimum requirements need to be removed instead of creating new waiver provisions during every economic downturn.

## **AMENDMENTS**

The sponsor may wish to consider amending SB290/aSEC/SFCS to clarify exactly which required financial reporting the school district will be required to submit while the statutory minimums are not being followed. Additionally, the sponsor may wish to clarify whether or not a school district will be prohibited from deficit spending.