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FISCAL IMPACT REPORT

SPONSOR Garratt **LAST UPDATED** _____
ORIGINAL DATE 2/20/25
BILL
SHORT TITLE Public Education Commission Staff **NUMBER** House Bill 365
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PED			\$3,526.6	\$3,526.6	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 245

Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

Agency Analysis was Solicited but Not Received From
Public Education Department (PED)

SUMMARY

Synopsis of House Bill 365

House Bill 365 detaches the Public Education Commission (PEC) from being administratively attached and staffed by the Public Education Department (PED). Instead, PEC will be staffed by its own State Charter Schools Office (SCO) with a director appointed by the commission but still housed at PED.

The bill further requires PEC to cooperate with PED and enter into data-sharing agreements to provide seamless administration and oversight of public schools. The bill replaces all references to PED's current charter schools division (CSD) with SCO and authorizes the office to use the 2 percent of state equalization guarantee (SEG) distributions withheld from state-authorized charter schools for administrative support.

The effective date of this bill is July 1, 2026. On the effective date of this bill, all personnel, appropriations, contractual obligations, records, and property of CSD shall be transferred to the SCO.

FISCAL IMPLICATIONS

Provisions of this bill would effectively make CSD a standalone agency overseen by PEC, financed by the 2 percent of SEG withheld from state-authorized charter schools in FY27. In FY23, PED's budget for PEC was \$2.1 million, and in FY24, the budget was \$2.6 million. Assuming 6 percent budget growth each year, the estimated FY27 budget for the State Charter Schools Office (SCO) could be approximately \$3.1 million.

PED budgeted \$4.3 million from the 2 percent of SEG withheld from state-authorized charter schools for agency operations in FY23 and \$5.2 million in FY24. The amount of revenue received by PED for FY25 from this source will be \$6 million, essentially double the amount dedicated for the PEC budget in the aforementioned fiscal years. Presumably, the remainder could be spent on auxiliary functions at PED that support the Charter Schools Division's work (e.g. data systems, program staff, etc.); however, PED has not provided detail on how it spends the remainder of the withheld SEG amount. Provisions of this bill would transfer these revenues to PEC's office instead. As such, these operational functions would likely still need to be funded at PED without this revenue stream once it is transferred to SCO.

Assuming withheld SEG amounts from state charters grow at an equal rate to PEC operational costs, the amount of other state revenue supporting other PED functions beyond the transfer of CSD to PEC could be as much as \$3.5 million in FY27. PED would likely request an appropriation to offset the reduction from this revenue source, which would come from the general fund. This fiscal impact analysis assumes this cost will be incurred after the transfer in FY27. Actual costs may vary depending on growth in CSD operational costs before FY27 and whether SCO chooses to contract with PED for services beyond facility space and data-sharing (which the agency must provide to SCO in this bill).

Current law allows charter school authorizers—either a local school board or the Public Education Commission (PEC)—to withhold 2 percent of SEG payments from the charter schools under the authorizer's purview to provide administrative support to the charter school. PED's Charter School Division staffs PEC and provides administrative support to the commission. As such, PED withholds 2 percent of SEG payments from the 57 PEC-authorized charter schools for administrative support functions. For FY25, PED may withhold \$6 million from the 60 PEC-authorized charter schools, and local school boards may withhold \$2.9 million from the 39 locally-authorized charter schools for oversight and administrative support.

In previous operating budget reports, PED has used the 2 percent withholding across various department bureaus, including the charter school division, IT, and accountability to provide support to PEC. The commission has previously requested the use of the 2 percent SEG withholding to pay for their own staff rather than receive PED support.

SIGNIFICANT ISSUES

PEC was created by constitutional amendment in 2003, after the state board of education was dissolved and PED became an executive agency. PEC was given the specific duty of being a state chartering authority responsible for approving, denying, suspending, or revoking charters of state charter schools and is staffed by PED's Charter Schools Division (CSD). Despite this role, state law allows charter schools to appeal PEC decisions to the PED secretary and gives the final

authority to the PED secretary on whether to accept or override PEC's decisions. A 2011 Legislative Education Study Committee staff report noted this appeal process creates issues as it places the secretary (a political appointee) at odds with PEC (an elected body) that is staffed by CSD (overseen by the secretary) regarding a complaint filed by a public charter school (a political subdivision of the state) who can seek further remedies through the courts. Provisions of this bill would segregate PED and PEC staff and finances more clearly but require both entities to continue to share facility space and information.

This structure has created significant conflict and tension between PEC and CSD staff over the years. As a few examples, in 2007, CSD recommended that PEC approve the application of Cottonwood Classical Preparatory School; however, the commission denied the application. Cottonwood Classical then appealed to the Secretary of Education, Dr. Veronica Garcia, who reversed PEC's decision. In 2010, the PEC supported CSD's recommendation to deny the renewal application for three charter schools that failed to meet or make substantial progress toward achieving student performance goals; however, the acting Secretary of Education, Hanna Skandera, overturned the decision of both her staff and PEC by authorizing the renewal. Similarly in 2019, PEC supported CSD's recommendation to deny the renewal of La Academia Dolores Huerta; however, Secretary of Education Dr. Karen Trujillo overturned the decision of both her staff and PEC by authorizing the renewal.

Charter schools authorized by PEC are considered component units of the Public Education Department's (PED) agency audit each year. Since FY10, annual audits have noted issues between PED and PEC-authorized charter schools regarding fiscal management, financial internal controls, and oversight. The FY23 audit for PED, state-authorized charter schools, and the Division of Vocational Rehabilitation contained 158 findings—40 more findings than in the FY22 audit. Most findings were reported in state-authorized charter schools, while PED's findings centered around material weaknesses in reconciliations, financial close, and reporting. Auditors noted misstatements of financial statements were largely due to a lack of management oversight, lack of communication between divisions, and lack of effective internal controls. Two charter schools received disclaimers of opinion, due to the auditors' inability to reconcile financial statements.

A 2019 Stanford University study by the Center for Research on Education Outcomes (CREDO) on New Mexico charter schools found:

- In a year's time, the typical charter school student in New Mexico made similar progress in both reading and math compared to the educational gains that the student would have made in a traditional public school.
- Enrollment in online charter schools is associated with substantially weaker learning gains in both reading and math. The inferior performance of online charter schools offsets the positive impact of brick-and-mortar charter schools on student growth in reading.
- The outlook for a large proportion of charter schools with below-average growth and low achievement is a source of great concern in New Mexico. Students in these schools will fall further behind their traditional public school peers in the state academically over time if their negative growth persists.

The 2019 CREDO study updated an earlier study in 2009 that found New Mexico charter school student make weaker growth in reading and math than identical peers in traditional public

schools.

A 2016 LFC evaluation of six selected charter schools found little difference in student performance between charter schools and traditional public schools in New Mexico. The report noted charter schools tended to serve a lower percentage of Hispanic, economically disadvantaged, and English learners compared with traditional public schools. Challenges existed with the school A-to-F grading system at the time, as some charter school missions were unique and did not align well with criteria set by PED. In FY15, selected charter schools had more experienced teachers, lower teacher turnover rates, and higher average teacher salaries than the statewide average. Oversight by state and local authorizers was inconsistent and revocations of charters were rare, despite poor charter school performance. The report recommended additional guidance for authorization and accountability of charter schools and separate funding formulas for charter schools. The report also recommended new formula funding and accountability structures to address virtual schools, due to issues of cost-effectiveness and learning outcomes.

ADMINISTRATIVE IMPLICATIONS

Provisions of the bill would require CSD to transfer all personnel, appropriations, money, records, equipment, furniture, supplies, other property, and contractual obligations to SCO on July 1, 2026. PED must provide adequate quarters for SCO and PEC, and these entities must enter into data-sharing agreements to provide seamless administration and oversight of public schools. PEC must appoint a director of SCO, who will be an exempt employee, to hire and oversee classified FTE at SCO. Additionally, SCO will be responsible for the annual state charter schools report.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to Senate Bill 245, which requires locally-authorized charter schools to be qualified as a board of finance and be audited separately from their authorizer. The bill also relates to the SEG appropriation in the General Appropriations Act, which includes a set-aside of 2 percent for charter authorizers.

OTHER SUBSTANTIVE ISSUES

Since the Great Recession, the number of charter schools and charter enrollment has generally increased, from 64 schools in FY08 to 99 schools in FY25. In FY25, charter school enrollment represented 7.1 percent of total public school students, up from 3 percent in FY08. Authorization for new charter schools generally happens outside of the regular budgeting process required of all other state agencies and entities. In contrast with state agencies that must request funding from the Legislature for new programs, new charter schools can be authorized by a local school district governing board or PEC.

Altogether, charter schools in New Mexico currently enroll 21.2 thousand students—slightly smaller than Las Cruces Public Schools, the district with the second largest enrollment of 22.4 thousand students. Charter schools received over \$291.9 million, or 6.9 percent, of the FY25 SEG distribution and are primarily located in Albuquerque, Santa Fe, Las Cruces, and Taos. Overall enrollment trends in recent years suggest students in New Mexico are increasingly moving into urban areas and transferring from school districts to charter schools.

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