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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 2nd Session, 2018

Bill Number	<u>SB33</u>	Sponsor	<u>Soules</u>
Tracking Number	<u>.208975.1</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Charter School Admin Support Funding</u>		
Analyst	<u>Force</u>	Original Date	<u>1/23/18</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 33 (SB33) requires the Public Education Department (PED) to transfer one-quarter of the 2 percent of state-chartered charter school-generated program costs withheld by PED for their administrative support to the Public Education Commission (PEC). PED would retain 1.5 percent of the school-generated program costs withheld for charter school support, with PEC receiving 0.5 percent. Dedicated staff for PEC would be funded by the transferred portion of the withholding.

The bill also requires the Charter Schools Division (CSD) of PED to provide PEC with all information related to the administration of charter schools such that it is able to carry out its duties related to the approval and oversight of state-chartered charter schools. SB33 strikes the requirement that CSD make recommendations regarding approval, denial, suspension, and revocation of a state-chartered charter school.

FISCAL IMPACT

SB33 does not contain an appropriation. The bill would divide the 2 percent administrative withholding for state-chartered charter school support between PEC and PED, with PEC to receive 25 percent of the total withholding and PED retaining the other 75 percent. The preliminary number of units has been set by PED at 632 thousand, yielding an approximate unit value of \$4,100 for FY18. Based on these values, LESC staff estimate the total 2 percent withholding for state-chartered charter schools to be approximately \$2.6 million. The bill would require PED to transfer one-quarter of that sum, or approximately \$650 thousand, to PEC in the next fiscal year.

The bill assumes PEC would fund its own administrative support of state-chartered charter schools, and relieves CSD of its duty to provide direct staff support. If the amount of funds shifted to the PEC is commensurate with duties shifted, the bill would not have an overall impact on PED's budget because the bill also results in a reduction of administrative duties.

SUBSTANTIVE ISSUES

The PEC is the sole authorizer of New Mexico’s state-chartered charter schools, operating with the support of CSD as de facto PEC staff, a result of PEC’s administrative attachment to PED. The structure has inherent conflict as the PED secretary is empowered to reverse any of the PEC’s chartering decisions. The staff of CSD, while often serving the PEC, also serve the secretary, leading to situations where CSD advises PEC how to rule on a charter application, the PEC decides otherwise, and the secretary reverses PEC’s decision. This conflict has led PEC to request its own funding for dedicated staff and expenses, including independent legal representation. Currently, PEC is represented by assigned staff from the Attorney General’s Office, but only with regard to proper adherence to the requirements of the Open Meetings Act.

Current statute is unclear regarding the 2 percent withholding in several ways. First, statute is unclear as to which entity is responsible for the withholding itself. Statute refers to the “division” (CSD) or the “department,” which in both cases would refer to PED (Section 22-8-25 and Section 22-8B-13 NMSA 1978). However, statute also refers to the “authorizer” as the agent responsible for the withholding (Section 22-8B-9 NMSA 1978), or the PEC, in the case of state-chartered charter schools.

Second, the exact use of the 2 percent withholding has been of concern. Statute refers to the funds being used both for administrative “services” and “support,” and Section 22-8B-9 NMSA 1978, detailing required elements of charter school contracts, requires a “detailed description” of how the chartering authority will use the withholding. On their website, PED offers a template to guide charter schools in authoring their performance contract, which directs the “Authorizer” to withhold and use the 2 percent for administrative support of charter schools. While PED staff indicate this is boilerplate language, it is notably vague, raising questions about its compliance with the statutory requirement to “include a detailed description” of how the withholding will be used, and about whether the salaries, supplies, and travel expenditures constitute true “administrative support.”

The requirement that the withholding be used for “administrative services” or “administrative support” implies the money is withheld from the state-chartered charter schools in order to serve them. It is unclear whether PED is actually using the entire amount to support state-chartered charter schools. For example, in FY13, PED withheld approximately \$1.7 million from state-chartered charter schools, but according to Legislative Finance Committee documents, PED reverted approximately \$294 thousand, or 17.8 percent of the total withholding, and spent approximately \$370 thousand, or 22 percent, on expenses not directly related to charter school oversight. A portion of that \$370 thousand was spent on a statewide Information Technology disaster recovery plan. It is unclear how the rest of the total withholdings were spent.

ADMINISTRATIVE IMPLICATIONS

SB33 assumes PEC would fund its own administrative support of state-chartered charter schools and relieves CSD of its duty to provide direct staff support. If the amount of funds shifted to the PEC is commensurate with duties shifted, the bill would not have an overall impact on PED’s budget because the bill also results in a reduction of administrative duties.

PEC has indicated it would use the funds to hire a dedicated attorney, a director, and at least one staff person for fiscal and other support work. Positions would have to be created and put into the

State Personnel Office database. The accompanying loss of funds for PED may require them to give up charter school support staff to reflect decreased funds.

According to PED's analysis of an identical bill from the 2017 legislative session, funding from the 2 percent withholding is used to pay for PEC operations, supporting eight PED staff that provide information to PEC, conduct school evaluations and site visits, and provide technical assistance and training to charter schools. PED also indicated that many of its departments and divisions other than CSD support charter schools.

OTHER SIGNIFICANT ISSUES

The amount of money that is withheld by PED from state-chartered charter schools has been steadily growing at a rate commensurate with the number of state-chartered charter schools in New Mexico. In the 2008-2009 school year, the PEC authorized the first four state-chartered charter schools, which generated close to \$159 thousand in 2 percent withholdings for PED, averaging about \$37 thousand per school. In the 2016-2017 school year, PED withheld close to \$2.6 million, an average of approximately \$42 thousand per school, and is on track to withhold a similar sum this year.

In August 2017, the Office of the State Auditor (OSA) presented a risk review of the 2 percent withheld from charter school-generated program costs by their authorizers for the schools' administrative support. OSA noted that charter schools are funded with public dollars, and the state requires both academic and financial accountability; provision for the 2-percent set-aside should help ensure accountability, provide charter schools with necessary resources, and safeguard public monies.

The risk review addressed several questions, including what level of withholding would reflect actual need. OSA noted authorizers appear to be withholding the correct sums, but that a lack of awareness among authorizers of the actual requirements of law with regard to utilizing and tracking these funds makes it difficult to tie withheld funds to particular expenditures. This situation is exacerbated by the lack of detail in charter school contracts regarding the disposition of the 2 percent withholding. PEC, like other larger authorizers, uses boilerplate language, rather than tailoring language to the needs and circumstances of particular schools. OSA recommended PEC and other authorizers ensure tracking and accounting of expenditures, as well as the corresponding amendment of charter contracts when necessary. This recommendation reveals the inherent conflict between the relative duties of PEC and PED with regard to charter schools. While PEC, as authorizer, is statutorily responsible for providing support, PEC lacks staff and the capacity to track this information, and must rely on PED to track and account for these expenditures.

In its analysis of an identical bill, PED notes a conflict with Section 9-24-9 NMSA 1978, which identifies PEC as being administratively attached to PED, with PEC's administrative staff provided by PED. This section also provides that additional requests for staff services shall be made through the Secretary. While SB33 eliminates the pertinent language in the Public School Code, it does not address the corresponding language in the Public Education Department Act.

ALTERNATIVES

The Legislature may choose to appropriate funds directly to PEC rather than transfer part of the withholding for charter school support to PEC. Alternatively, a different portion than one-quarter of the 2 percent withholding may go to PEC, targeted more precisely to its stated staffing needs.

POSSIBLE QUESTIONS

What is the best mechanism for providing adequate support and oversight of state-chartered charter schools?

Could PEC's needs be satisfied with a lesser portion than one-quarter of the 2 percent withholding?

Will CSD's effectiveness in overall support of charter schools be negatively impacted by the loss of transferred funds, or will the transfer of one-quarter of the withholding successfully mitigate any potential reduction in effectiveness or efficiency for CSD?

SOURCES OF INFORMATION

- LESC Files
- PED

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