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FISCAL IMPACT REPORT

SPONSOR Maestas **LAST UPDATED** _____
ORIGINAL DATE 2/7/25
BILL
SHORT TITLE Charter Schools as Boards of Finance **NUMBER** Senate Bill 245
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Charter Schools	No fiscal impact	\$0.0 - \$1,981.6	\$0.0 - \$1,981.6	\$0.0 - \$3,963.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to

Sources of Information

LFC Files
 Legislative Education Study Committee (LESC) Files

Agency Analysis Received From
 Office of the State Auditor (OSA)
 Regional Education Cooperatives (REC)

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

SUMMARY

Synopsis of Senate Bill 245

Senate Bill 245 requires all charter schools to have a governing body that will qualify as a board of finance by July 1, 2026. Existing charter schools failing to meet this requirement by that date will not be approved for operation. New charter schools must meet this requirement prior to final charter contracts being signed or renewed. The bill also requires each charter school to have a separate audit from its chartering authority that is included with the chartering authority's audit.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

This bill does not contain an appropriation but may increase the costs of charter school audits. Currently, the 60 state-authorized charter schools under the Public Education Commission (PEC) are audited as component units within the Public Education Department's (PED) audit. Another 39 locally-authorized charter schools are audited as component units within their respective school district's audit. Provisions of this bill would require each charter school to complete an audit, which would be reported with their authorizer's audit.

According to PED's operating budget and management system, charter schools spent \$2 million on audits in FY24, including \$1.1 million from state-authorized charter schools and \$864.3 thousand from locally-authorized charter schools. Average audit costs per charter school were about \$20 thousand. OSA notes provisions of the bill will allow a charter school to potentially choose a separate auditor from their chartering authority and to pay for their audits from their own funds. As such, the costs of audits could potentially double. In current practice, both state-authorized and locally-authorized charter schools are separately audited by one auditing firm and reported as a component unit under its chartering authority's audit. Provisions of this bill could potentially require additional reconciliation of multiple audits conducted by separate auditors under one chartering authority's audit.

PED withholds 2 percent of each state-chartered charter school's state equalization guarantee (SEG) distribution, the amount the school receives through the funding formula, to provide administrative services and support. School districts that serve as the authorizer for local charters also receive the 2 percent SEG withholding from their schools for the same purpose. For FY25, PED projects \$6 million of SEG will be withheld by charter authorizers to support charter schools. As the unit value and enrollment in charter schools increase, the authorized withholding amount will subsequently increase, which could be used as a source of funding to cover the costs of audits.

SIGNIFICANT ISSUES

According to the Legislative Education Study Committee (LESC), PEC was granted the authority to authorize and oversee charter schools in FY09. The number of state-authorized charter schools has grown from four schools in FY09 to 60 schools in FY25. Over that same period the number of locally-authorized charter schools decreased from 63 schools to 39 schools, resulting in a total of 67 charters in FY09 and 99 charters in FY25. SEG distributions for charter schools have increased from \$105 million in FY09 to \$292 million. Altogether, statewide enrollment in charter schools for FY25 is 21.2 thousand students, slightly smaller than the second largest school district, Las Cruces, which has 22.4 thousand students.

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.

Provisions of this bill require locally-authorized charter schools to have a governing body that will qualify as a board of finance. This requirement is already in place for state-authorized charter schools. PED can designate a governing body as a board of finance if the body has personnel properly trained to keep accurate and complete fiscal records, agrees to consult with the department on matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it, has adequately-bonded personnel to protect funds entrusted to them from loss, and has no governing body members who have been part of a governing body that was suspended and not reinstated as a board of finance.

ADMINISTRATIVE IMPLICATIONS

The Office of the State Auditor (OSA) notes statements under the Governmental Accounting Standards Board (GASB) would likely prohibit auditors from classifying charter schools as a standalone government, therefore making them a component unit of their chartering authority. As such, separate audits would still have to be reconciled and blended as one entity. OSA would need to update its audit rules and could face delays in reconciling multiple audits in instances where audit data conflicts.

Qualifying as a board of finance would qualify locally-authorized charter schools to receive state, federal, and other funds (like capital outlay) directly, rather than waiting for a flowthrough from their authorizer. Provisions of this bill may impact capital outlay agreements between locally-authorized charter schools and their school district and could result in more charter schools leveraging private financing for facilities at higher interest rates.

OTHER SUBSTANTIVE ISSUES

In recent years, OSA has encountered several issues between charter schools and their foundations, with one school going into so much debt to its foundation that if it were to close the state would be liable. A few charter schools have disclaimers on their audits, meaning the auditor cannot provide an opinion on the accuracy of the financial statements.

In 2023, OSA conducted a special audit of The GREAT Academy, a state-authorized charter school, and its foundation, and found the charter had transferred \$2.3 million to its foundation, which amounted to 99.5 percent of the foundation's revenue. The audit found many of the foundation's expenses, had they been spent as public funds, would be in noncompliance with the Anti-Donation Clause of the New Mexico Constitution, state travel and per diem acts, and state procurement codes. Some areas of concern included:

- Travel expenses exceeding state maximums, paying for alcoholic beverages, and expenses in excess of receipts provided;
- Inconsistencies between facility lease agreements and payments for building and maintenance;
- Conflicts of interest where the charter school director and staff had professional service contracts with the foundation; and
- Lack of internal controls.

In 2017, the administrator of four Albuquerque charter schools, Southwest Primary Learning Center, Southwest Secondary Learning Center, Southwest Intermediate Learning Center, and Southwest Aeronautics, Mathematics and Science Academy plead guilty to federal theft, fraud, and false statement charges arising out of a 15-year scheme to defraud millions of dollars from the group of public charter schools he founded for his own personal benefit. The administrator created bogus businesses that billed the charter schools for fraudulent proposals and invoices, which he then spent on personal expenses. The U.S. Attorney and Federal Bureau of Investigation identified other schemes, including subleasing less than half of a building to one of the charter schools at twice the rent of what his personal company was paying for the facility.

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