

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 453a

51st Legislature, 1st Session, 2013

Tracking Number: .191119.1

Short Title: School Chartering Authority to State

Sponsor(s): Representative Nathan “Nate” Cote and Others

Analyst: Sarah Amador-Guzman

Date: March 10, 2013

AS AMENDED

The House Education Committee amendments:

- **transfer to the Public Education Department rather than the Charter Schools Division any balance of the 2.0 percent administrative fee when a local school board transfers a charter school to the Public Education Commission¹; and**
- **correct an erroneous reference to “the governing board” with the correct phrase “the governing body.”**

Original Bill Summary:

HB 453 amends the *Charter Schools Act* to permit local school boards to transfer the chartering authority of a charter school to the Public Education Commission (PEC):

- if the charter school:
 - does not correct significant annual or special audit findings before the next audit; or
 - does not comply with a corrective action plan developed as a result of board sanctions; and
- if the local board finds that revoking the charter is not appropriate for the students, staff, and community.

HB 453 further provides that:

- the charter school may not appeal the local board’s decision if the school district’s annual audit has been affected by audit findings or a qualified audit of the charter school;
- the charter must be transferred within 30 days of the local board’s decision to transfer it;
- the district must forgo the remainder of the 2.0 percent administrative fee that the district received during that fiscal year for being the chartering authority and transfer that amount to the Charter Schools Division (CSD) within the Public Education Department (PED); and

¹ This amendment may create a conflict with another provision in the *Charter Schools Act*. Section 22-8B-13 NMSA 1978 provides as follows: “The school district or [charter school] division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.” (emphasis added).

- within 90 days of the transfer, the governing body of the charter school must qualify as a board of finance; otherwise, the board will be replaced or the charter revoked.

Finally, HB 453 allows the local school board and charter school to jointly petition the PEC for the charter school to remain locally chartered; however, the petition must include a plan for:

- resolving audit findings;
- ensuring proper financial controls are in place; and
- providing greater oversight by the local school board.

Fiscal Impact:

HB 453 does not contain an appropriation.

Substantive Issues:

Under current law, charter schools – whether as initial applicants for a new charter or renewals of an existing charter – may apply either to the PEC or to their local school board. Applications to the PEC are reviewed by the CSD, which then makes recommendations to the PEC whether to approve, approve with conditions, or deny the applications. Commissioners then make their own determinations, considering the recommendations of the CSD as well as their own review of the pertinent materials. The charter applicant may appeal the PEC’s decision to the Secretary of Public Education; and either party – the charter applicant or the PEC – may appeal the Secretary’s decision to district court.

HB 453 would provide another avenue for the PEC to become the chartering authority, presumably an avenue over which it would have no control. That is, once a local school board makes its unilateral decision to transfer the chartering authority, the PEC becomes the chartering authority, apparently without opportunity for review by the CSD or deliberations by the PEC itself.

Technical Issues:

The Fiscal Impact Report by the Legislative Finance Committee questions the need for the joint petition for the charter school to remain locally chartered.

Background:

Created through a constitutional amendment adopted in 2003, the PEC comprises 10 members elected from districts throughout the state. The statutory duties of the PEC include authorizing state-chartered charter schools, advising the Secretary of Public Education on the strategic plan for education, and overseeing certain federal funds. In its role as a chartering authority, the PEC works closely with the CSD; and staffing to support all of its functions is provided by PED.

According to the National Alliance for Public Charter Schools, charter school students represent 4.6 percent of the total number of students in New Mexico public schools. Currently in school year 2012-2013, PED reported a total of 95 charter schools operating in 24 districts throughout New Mexico. Of those 95 schools, 44 are locally chartered and 51 are state-chartered charter schools. According to the National Association of Charter School Authorizers, the number of school district authorizers has grown rapidly. Nationally between school year 2007-2008 and

school year 2010-2011 a total of 233 new authorizers were added. Additionally, in just one year, from 2009 to 2010, the percentage of “large authorizers” (those that authorize 10 or more schools) requiring charter schools to submit an annual, independent audit for examination increased from 13 to 100 percent.

As amended in 2011, the *Charter Schools Act* includes provisions that, once fully implemented², may address issues such as those that might lead a local school board to transfer the chartering authority to the PEC, as provided in HB 453. In general, this legislation changes the relationship between charter schools and their authorizers, and it expands the responsibilities of both parties. Among its specific provisions, this legislation:

- requires an annual evaluation process for charter schools;
- requires a contract between the chartering authority and the charter school that, among other points, contains:
 - the criteria, processes, and procedures that the chartering authority will use for ongoing oversight of operational, financial, and academic performance of the charter school;
 - a detailed description of how the chartering authority will use the 2.0 percent of the school-generated program cost to which it is entitled;
 - the process and criteria that the chartering authority will use in its annual monitoring and evaluating the fiscal, overall governance, and student performance of the charter school; and
 - the criteria, procedures, and timelines that the parties have agreed upon to address charter revocation and deficiencies found in the required annual status report; and
- assigns several additional duties to the chartering authority. Among them, the chartering authority:
 - may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities, among them conducting “appropriate inquiries and investigations,” as long as the chartering authority “does not unduly inhibit the autonomy granted to the charter schools that it governs”;
 - must promptly notify the governing body if its review finds that a charter school’s fiscal, overall governance, or student performance or legal compliance is unsatisfactory; and provide a reasonable opportunity for the governing body to remedy the problem;
 - may take appropriate corrective actions or impose sanctions, other than revocation;
 - if revocation is warranted, must follow prescribed procedures; and
 - must develop a closure protocol to ensure timely notification to parents, orderly transition of students and their records to new schools, and proper disposition of school funds, property, and other assets.

Committee Referrals:

HEC/HJC

² Because the legislation had an effective date of July 1, 2012, it will apply to charters granted or renewed after that date.

Related Bills:

HB 166a *Charter School Audit Finding Reporting*

HB 392a *Public Education Commission As Independent* (Identical to SB 476a)

HB 622 *Charter Schools As Local Agencies*

SB 358 *School Districts Governing Charter Schools*

SB 476a *Public Education Commission As Independent* (Identical to HB 392a)