

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: *SB 429a

52nd Legislature, 1st Session, 2015

Tracking Number: .198584.1

Short Title: Charter School Fiscal Performance Reports

Sponsor(s): Senator William Soules

Analyst: Ian Kleats

Date: March 26, 2015

AS AMENDED

Senate Floor Amendment Number 1 requires that annual fiscal performance reports be submitted based on an annual schedule established by the Public Education Department rather than August 1 of each year.

Original Bill Summary:

Effective immediately upon signing by the Governor, SB 429 creates a new section of the *Charter Schools Act* to require each charter school to submit annual fiscal performance reports to the Public Education Department (PED) and the charter school's chartering authority.

Among its other provisions, SB 429 requires that:

- each charter school submit an annual fiscal performance report to PED and the charter school's chartering authority for the preceding school year no later than August 1 of each year (see "Fiscal Issues," below);
- at a minimum, the annual fiscal performance report include in disaggregated form:
 - certain revenues from state, local, federal, and other sources;
 - certain expenditures, including for debt service, capital outlay, and salaries and other expenses for certain specific activities, including school lunches;
 - a statement of all tax credits of which the charter school availed itself; and
 - a statement of the value of any in-kind services received from a school district or other public agency;
- copies of the charter school's lease, rental agreement, or deed be included in the annual fiscal performance report (see "Technical Issues," below);
- PED develop a template for the annual fiscal performance report; and
- the annual fiscal performance report be made publicly available.

*SB 429 contains an emergency clause (see "Technical Issues," below).

Fiscal Impact:

SB 429 does not contain an appropriation.

Fiscal Issues:

According to current statute and regulation, charter schools are required to submit annual audits to the Office of the State Auditor (OSA) for review by November 15 each year as component units of either a local school district or PED. Some of the information required in the fiscal performance report in SB 429 might not be available until the annual audit is completed. Requiring that the fiscal performance report be due prior to the finalization of the annual audit may necessitate additional expenditure by charter schools for accounting services, and the data in the fiscal performance report might not reflect final audited amounts.

Technical Issues:

On page 2, line 21, SB 429 includes “school lunch money” as an item to be included on the annual fiscal performance report. It is unclear what specifically that term might include, whether revenue from federal grants and student lunch fees, or expenditures on a school lunch program. The sponsor may wish to consider an amendment offering clarification for this item.

On page 4, lines 2-4, SB 429 requires that a copy of the charter school’s lease, rental agreement, or deed be included in the annual fiscal performance report. Charter schools may have leases, rental agreements, or deeds for multiple facilities, potentially used for either administrative or instructional purposes; and they may have such arrangements for real property other than facilities, such as vehicles or other goods. The sponsor may wish to consider an amendment that:

- requires copies of any and all leases, rental agreements, or deeds entered into by the charter school to be included in the report; and/or
- specifies the characteristics of property for which a copy of the lease, rental agreement, or deed shall be required.

It is unclear why the provisions of SB 429 include a declaration of an emergency. In the absence of an emergency declaration and without an effective date, SB 429 would become effective on June 19, 2015 if enacted, which would appear to still afford PED sufficient time to create an annual fiscal performance report template, and charter schools would not have the necessary data to complete the report until after the close of the fiscal year anyway.

Substantive Issues:

The *Charter Schools Act* already requires that, in addition to other items, performance provisions of each charter contract contain indicators, measures, and metrics for financial performance and sustainability. Under current law, the form of those indicators, measures, or metrics is open to negotiation between the charter school and its chartering authority. Fiscal performance reports, as proposed in SB 429, could provide guidance to charter schools and chartering authorities on appropriate financial indicators, measures, and metrics to be included in these performance frameworks.

Background:

2014 LESC Charter Schools Subcommittee

During the 2014 interim, the Legislative Education Study Committee (LESC) convened the LESC Charter Schools Subcommittee, comprising five senators and six representatives from the full committee. The LESC Charter Schools Subcommittee met each month from June to

November and considered various issues related to charter school administration and finance, including charter school financial audits.

In response to a specific subcommittee request, the Chief of Staff, OSA, testified that, pursuant to several statutory, regulatory, and administrative provisions, all charter schools are subject to an annual audit. In addition, the audit rule requires that an independent public accountant evaluate whether a charter school is to be presented as a component unit – that is, a separate, financially accountable legal entity – of its chartering authority. Moreover, the Governmental Accounting Standards Board (GASB) requires that this determination be made on a case-by-case basis, using criteria related to financial accountability and fiscal dependency. GASB standards require that a financial audit cover the entire “financial reporting entity,” which includes the “primary government” (such as a school district) and organizations for which the primary government is financially accountable (such as a charter school). This testimony further explained that component units must be included with the audited financial statements of their authorizers.

In response to this testimony, subcommittee members expressed concern over the lack of uniformity regarding component unit status, discussed the responsibility and authority of the authorizers, and considered separating charter school audits from those of their authorizers.

Later in the interim, in response to another subcommittee request, the OSA surveyed several other states to find examples of charter school oversight and component unit reporting.¹ In brief, this survey revealed considerable variety in the practices among other states, depending upon such factors as the type of charter school, the statutory provisions for oversight, and the elements of the charter school contract. The OSA further advised the subcommittee to regard such factors as the availability of funding and other resources and provisions for oversight of charter school compliance when considering whether to require stand-alone audit reports for charter schools.

Finally, in related testimony, LESC staff summarized the risk review by the OSA of the Southwest Secondary Learning Center and the Southwest Aeronautics, Mathematics and Science Academy, two state-chartered charter schools in Albuquerque. Among other points, as detailed in a letter from the OSA in August 2014, this examination noted:

- apparent violations of the *Procurement Code*;
- conflicts of interest arising from the schools’ head administrator co-owning the company, Southwest Educational Consultants, LLC, that leased both the aircraft and a building to the schools;
- lack of internal controls for the flight programs, including the inability to verify whether costs charged by contractors were reasonable and necessary;
- questionable governance arrangements in which the head administrator influenced the appointment of members of the governing council, who evaluate the head administrator; and
- improper or undocumented reimbursements for travel.

In response to these issues, subcommittee members considered certain policies, such as:

¹ The OSA posed a number of questions to the following states: Arizona, Hawaii, Michigan, Missouri, Nevada, Ohio, Oklahoma, Oregon, and Utah.

- ensuring that a charter authorizer has access to annual and special audit reports;
- providing the Public Education Commission with staff to conduct random internal audits of state-chartered charter schools;
- amending the *Charter Schools Act* to require public disclosure of conflicts of interest as required in the *Procurement Code*; and
- explicitly allowing financial sanctions against charter schools for unsatisfactory performance reviews.

Committee Referrals:

SEC/SFC

Related Bills:

CS/SB 8 *Charter School Educational Tech Equipment*
 SB 148aa *Charter School Responsibilities*
 SB 236a *Charter School Lease Approval*
 SB 257a *Charter Schools & Public Audit Changes*
 SB 273a *Charter School Governance*
 SB 418a *Charter School Governing Body Elections*
 *SB 518 *Charter School Enrollment Policies*
 SB 605aa *Index Charter School Head Admin Salary*
 CS/CS/**HB 19** *Charter School Educational Tech Equipment*
 HB 74 *Public Education Commission as Independent*
 HB 166 *Charter School Transportation Agreements*
 HB 253a *Charter School Facility 4 Year Plans*
 HB 352 *Charter School Capital Outlay Assistance*
 *HB 449 *Charter School Fiscal Reporting (Identical)*