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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB193</u>	Sponsor	<u>Soules</u>
Tracking Number	<u>.204675.4</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Support & Oversight of Charter Schools</u>		
Analyst	<u>Force</u>	Original Date	<u>2/3/17</u>
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BILL SUMMARY

Senate Bill 193 (SB193) would require the Public Education Department (PED) to transfer one-quarter of the 2 percent of school-generated program costs withheld by PED for the administrative support of state-chartered charter schools to the Public Education Commission (PEC). PED would retain 1.5 percent of the of the school-generated program costs withheld for charter school support, with PEC receiving 0.5 percent.

The bill would also require the Charter Schools Division (CSD) 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. Dedicated staff would be funded by the transferred portion of the withholding. Current law requires CSD to provide staff support to the commission, and make recommendations regarding approval, denial, suspension, and revocation of a state-chartered charter school.

FISCAL IMPACT

SB193 does not include 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. In FY17, PED would receive \$2.6 million for administrative support of state-chartered charter schools. The bill would require PED to transfer one-quarter of that sum, or approximately \$650 thousand, to PEC in the next fiscal year.

It is unclear how much of the \$2.6 million charter school-generated program costs is transferred to PEC. Given the proposed distribution of \$650 thousand to PEC, and the assumption that the commission would be able to provide for its own staff support with its own budget, it remains uncertain how this shift of funds and responsibility would affect PED. 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 the Options for Parents Division of PED (commonly referred to as the Charter Schools Division, or CSD) as de facto PEC staff, a result of PEC’s administrative attachment to PED. The relationship is not without some inherent conflict, however; the Secretary of Public Education is empowered to reverse any of the PEC’s chartering decisions. The staff of CSD, while often serving the PEC, also staff 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 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), which in the case of state-chartered charter schools is the PEC. Second, the exact use of the 2 percent withholding has been an issue 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

It is unclear how much of the \$2.6 million charter school-generated program costs is transferred to PEC. Given the proposed distribution of \$650 thousand to PEC, and the assumption that the commission would be able to provide for its own staff support with its own budget, it remains uncertain how this shift of funds and responsibility would affect PED. 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.

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. Presumably, the change in duties for CSD from direct support to merely providing necessary information should relieve the division of much of the logistical and financial burden of directly staffing PEC, though there may be additional impact to other divisions of the department that serve charter schools, as PED has 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.

In July 2017, the committee heard from the Office of the State Auditor (OSA) regarding the recent audit of PED and the findings associated with state-chartered charter school component units. They indicated that OSA is unaware of any detailed accounting of exactly how the 2 percent is used, and informed the committee that they would be conducting a sample this coming audit cycle to try to make a determination.

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 lesser 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

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