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FISCAL IMPACT REPORT

SPONSOR Soules ORIGINAL DATE 2/5/17
 LAST UPDATED _____ HB _____

SHORT TITLE Support & Oversight of Charter Schools SB 193

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB46, HB161, HB273, SB30, SB35, SB135, SB207, SB279, SB305

SOURCES OF INFORMATION

LFC Files
 Legislative Education Study Committee (LESC) Files

Responses Received From
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 193 amends the Public School Code, requiring PED to transfer one-fourth of the 2 percent of program cost withheld from state-chartered charter schools to the Public Education Commission (PEC). The PEC portion of the 2 percent withheld amount is designated for the administrative support of state-chartered charter schools.

The bill also removes requirements for the Charter School Division (CSD) to provide staff support to PEC, but includes provisions requiring CSD to provide PEC with all information related to the administration of charter schools and necessary information to oversee, approve, deny, suspend, and revoke charters of state-chartered charter schools. The bill further eliminates requirements that CSD make recommendations to PEC regarding the approval, denial, suspension, or revocation of the charter of a state-chartered charter school.

FISCAL IMPLICATIONS

The bill does not include an appropriation, but transfers 25 percent of the school-generated program cost withheld by PED for charter school administrative support to PEC. In FY17, PED

withheld \$2.6 million for charter school administrative support, which would have resulted in a \$656.7 thousand transfer to the PEC under provisions of this bill.

School-generated program cost withheld by PED for charter school administrative support has increased in conjunction with the authorization of new state charters since 2008. In the 2008-2009 school year, PEC authorized four state-chartered charter schools, which generated \$159 thousand in 2 percent withholdings. In the 2016-2017 school year, PED withheld \$2.6 million.

SIGNIFICANT ISSUES

PEC is the state's single authorizer of state-chartered charter schools and currently receives administrative support from CSD, which is administratively attached to PED. LESC notes this arrangement has resulted in inherent conflict, given the PED secretary's authority to reverse any PEC chartering decisions. Several incidents involving CSD's recommendations for charter school applications to PEC resulted in PEC deciding otherwise and the PED Secretary reversing the PEC decision. Due to this conflict, PEC has requested its own funding for dedicated staff and expenses, including legal representation. Currently, PEC is represented by assigned staff from the Attorney General's Office for legal counsel on requirements of the Open Meetings Act.

A 2016 National Association of Charter School Authorities (NACSA) evaluation of the PEC found almost all of its authorizing policies and practices were incomplete or inadequate. NACSA rated PEC as only "partially or minimally developed" in established and applied practices such as application decision-making, performance management systems, performance-based accountability, and organizational capacity. NACSA did acknowledge key recommendations from the first PEC evaluation in 2010 were implemented, including development of a school application toolkit. However, the evaluation noted tension between PEC and PED staff was "so high that it undermine[d] both entities' capacity to make good decisions about charter schools."

LESC notes current statute is unclear regarding the 2 percent withholding provision. First, statute vaguely identifies the entity responsible for the withholding. 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."

Requiring a 2 percent withholding to be used for "administrative services" or "administrative support" implies the funding is withheld from state-chartered charter schools to serve them. It is unclear whether PED is actually using the entire amount to support state-chartered charter schools. In FY13, PED withheld approximately \$1.7 million from state-chartered charter school; reverted \$294 thousand, or 17.8 percent of the total withholding; and spent \$370 thousand, or 22

percent, on expenses not directly related to charter school oversight. A portion of the \$370 thousand was spent on a statewide Information Technology disaster recovery plan. It is unclear how the rest of the withholdings were spent.

ADMINISTRATIVE IMPLICATIONS

According to PED, 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. PEC has indicated funds would be used to hire a dedicated attorney, director, and one staff person for fiscal and support work. Positions would have to be created and entered into the State Personnel Office database.

The reduction in withheld funding for PED may result in less PED charter school support staff, although PED indicates many of its departments and divisions other than CSD support charter schools. By providing a funding allocation to PEC, PED may also need to include PEC as an additional audited component unit.

RELATIONSHIP

This bill relates to HB46, which places a two year moratorium on new charter schools; HB273, which provides additional flexibilities and penalties based on charter school performance; SB30, which adjusts program units generated for at-risk students, teacher experience, and charter school size; SB35, which makes an appropriation to public schools; SB135, which requires PED to take credit for charter school federal Impact Aid payments; SB207, which limits charter school membership in school districts with at least 1,300 students; SB279, which excludes supplemental accountability model schools from generating size adjustment funding; and SB305, which establishes financing provisions for virtual charter schools.

TECHNICAL ISSUES

PED notes provisions of Section 9-24-9 NMSA 1978 administratively attach PEC to PED, with administrative staff provided by PED. Additional requests for staff services must be made through the PED secretary.

OTHER SUBSTANTIVE ISSUES

In July 2016, LESC 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. OSA was unaware of any detailed accounting of the 2 percent withholding amount, and indicated they would be conducting a sample in the upcoming audit cycle to try to make a determination.

ALTERNATIVES

LESC notes the Legislature could 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 could go to PEC to target its stated staffing needs more precisely.