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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13  
 LAST UPDATED 02/26/13    HB 453/aHEC

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SHORT TITLE School Chartering Authority to State    SB \_\_\_\_\_

ANALYST Gudgel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of HEC Amendment

House Education Committee Amendment to House Bill 453 makes two technical amendments to clarify that it is the department (PED), not the Charter Schools Division, that receives the 2 percent state equalization guarantee distribution set aside, and replaces the word “board” with “body” to refer to the governing body of a charter school consistent with statutory definitions.

#### Synopsis of Original Bill

House Bill 453 amends the Charter School Act to allow a local school board to transfer chartering authority to the Public Education Commission for a charter school that does not correct significant audit findings by the next annual audit or comply with a corrective action plan developed from local school board sanctions.

### FISCAL IMPLICATIONS

This bill does not have any direct fiscal implications; however, if a locally chartered charter school is transferred to a state-chartered charter school, the local school district will not receive the remaining 2 percent state equalization guarantee distribution set aside and it will instead be transferred to the Charter Schools Division of the Public Education Department (PED).

Additionally, the state-chartered charter school will be eligible for a distribution from the transportation appropriation.

### **SIGNIFICANT ISSUES**

The bill allows a local school board, when the board does not find revocation appropriate, to transfer chartering authority to the Public Education Commission (PEC) of a charter school that: 1) has significant audit findings that are not corrected by the next annual audit; or 2) fails to comply with a corrective action plan developed from local board sanctions.

The decision to transfer will not be appealable if the school district's annual audit has been affected by the audit findings or a qualified audit of a charter school. The charter will be transferred within 30 days of the decision to transfer and the school district will forgo the remainder of the 2 percent charter school state equalization guarantee distribution administrative set aside that the district receives for overseeing the charter school. The 2 percent set aside will be transferred to the Charter Schools Division. The governing body of a charter school will be required to qualify as a board of finance within 90 days of the transfer or the governing board can be replaced or revoked by the PEC. The bill includes a provision that allows a local school board and the charter school to jointly petition to have the charter school remain a locally chartered charter school; however it is unclear why this provision is necessary given the transfer is not mandatory, but is elective.

The PED analysis notes that currently statute gives only the Secretary of Education the authority to remove or replace board members and that provisions in this bill run contrary to current statute. However, Section 22-2-14 NMSA 1978 only gives the Secretary of Education the authority to remove or replace local school boards, and not governing body members of charter schools. Generally, Section 22-8B-12 NMSA 1978 grants oversight of charter schools to chartering authorities (local school boards or the PEC), including fiscal, overall governance and student performance, and legal compliance. The provisions of the bill allowing the PEC to replace the governing board or revoke the charter school do not appear inconsistent with current statute.

### **ADMINISTRATIVE IMPLICATIONS**

If enacted, the bill has the potential to increase administrative burden at the PED and for the PEC, and decrease administrative burden of local school districts. It is important to note that the 2 percent state equalization guarantee administrative set-aside that authorizers receive from charter schools for providing oversight would be transferred to the PED and would fund additional administrative burden.

### **TECHNICAL ISSUES**

Page 4. Lines 18 through 22 state a local school board and charter school may jointly petition to have the charter school remain a locally chartered charter school. It is unclear why a joint petition would be necessary, as the charter school will only be transferred if a transfer request is made, rather than automatic transfer.

Page 4, line 15 directs the 2 percent charter school state equalization guarantee distribution set aside to the charter schools division "division"; however it should read "department", as other divisions within the department use the 2 percent set aside to provide administrative oversight of

charter schools, including the School Budget and Financial Analysis Bureau, and the Office of General Counsel. This is addressed by the House Education Committee Amendment.

Page 4, line 17 refers to the “governing board” however statute uses the term “governing body”. This is addressed by the House Education Committee Amendment.

### **OTHER SUBSTANTIVE ISSUES**

The PED notes that locally chartered schools are approved by the local board with the expectation that the local board exercise authority to ensure that the charter school is meeting its fiscal responsibilities.

Section F of Section 22-8B-12 NMSA 1978 requires the charter authority to notify the governing body of a charter school of the unsatisfactory performance review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance. Section L provides that each chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that: (1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action; (2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and (3) require the final determination made by the chartering authority to be submitted to the department.

It is unclear why unresolved significant audit findings or non-compliance with a corrective action plan required by a local school board would warrant transfer to another authorizer rather than increased oversight and monitoring by the local authorizer or revocation. Given the passage of Senate Bill 446 during the 2011 legislative session, oversight procedures for charter schools have been strengthened and the ability of a local school board to close a charter school for unsatisfactory performance, both with regards to financial matters and student performance should become easier. However, it is important to note that the only charter schools that will be on performance contracts are those schools that have been renewed since July 1, 2014, or newly authorized charter schools that will begin operations during the 2013-2014 school year.

RSG/svb:blm