

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** HB 321a

**49th Legislature, 1st Session, 2009**

**Short Title:** School Finance Audit Report Requirements

**Sponsor(s):** Representative Luciano “Lucky” Varela and Others

**Analyst:** Kathleen Forrer

**Date:** March 3, 2009

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**AS AMENDED**

**The House Judiciary Committee amendment:**

- strikes the HEC amendment allowing PED to suspend the local school board or the governing body of a charter school in the event that an audit is more than 270 days late, thereby restoring the language that allows PED to suspend the authority of the local board or governing body to act as a board of finance in those same circumstances; and
- substitutes the phrase “withheld temporarily” for the term “penalized” in three instances that refer to PED’s authority to retain a portion of the school district’s or charter school’s funds.

**Technical Issue:**

The substitution of the phrase “withheld temporarily” for the word “penalized” results in the following construction: “A school district or charter school...may be withheld temporarily in an amount up to...” The sponsor may wish to further amend the language to say that “a school district or charter school...may have withheld temporarily [in] an amount up to...”

**The House Education Committee (HEC) amendment:**

- requires the State Auditor to notify the Public Education Department (PED) within 10 days when a school district, charter school, or Regional Education Cooperative (REC) fails to submit a required audit report within 90 days of the due date specified by the State Auditor; and
- allows PED to suspend the local school board or the governing body of a charter school in the event that an audit is more than 270 days late.

**Revised Issues:**

Current statute delineates the following powers and duties of local school boards, many, but not all, of which relate to fiscal oversight and responsibility:

- subject to the rules of the department, develop educational policies for the school district;

- employ a local superintendent for the school district and fix the superintendent's salary;
- review and approve the annual school district budget;
- acquire, lease, and dispose of property;
- have the capacity to sue and be sued;
- acquire property by eminent domain pursuant to the procedures provided in the *Eminent Domain Code* [42A-1-1 NMSA 1978];
- issue general obligation bonds of the school district;
- provide for the repair of and maintain all property belonging to the school district;
- for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;
- except for expenditures for salaries, contract for the expenditure of money according to the provisions of the *Procurement Code* [13-1-28 NMSA 1978];
- adopt rules pertaining to the administration of all powers or duties of the local school board;
- accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given; offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and
- give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

Current statute also gives PED the ability to:

- supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards, and, until such time as requirements of law, standards or rules have been met and compliance is ensured, the powers and duties of the local school board and local superintendent shall be suspended [Section 22-2-2C NMSA 1978]; or
- suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control [Section 22-8-39 NMSA 1978].

Suspension of a locally elected school board prevents the board from taking any action on any issue whatsoever; whereas, suspension of board of finance authority prevents the board from making any financial decisions, including the approval of budget adjustment requests (BARs) and approving purchases, but does not prevent the board from developing educational policies or conducting hearings in accordance with law on matters not involving the school district's finances.

As noted below under “Original Issues,” charter schools are component units of their chartering entity; thus, they do not have stand-alone audits but “must be included in the financial statements of their sponsoring school districts or PED.” Consequently, it is up to the chartering school district or PED to ensure that charter schools comply with the State Auditor’s due dates.

**Original Bill Summary:**

HB 321 amends the *Audit Act* to require the State Auditor to notify the Public Education Department (PED) when a school district, charter school, or Regional Education Cooperative (REC) fails to submit a required audit report within 90 days of the due date specified by the State Auditor.

In addition, HB 321 adds a new section to the *Public School Finance Act* that:

- requires each school district and charter school to submit a copy of its annual fiscal audit and any special audits to PED; and
- allows PED to impose progressive sanctions on school districts and charter schools that fail to submit timely annual audit reports to the State Auditor’s Office (SAO):
  - if the audit is submitted within 90 days from the due date, the district or charter school must submit monthly financial reports to PED until PED is satisfied that the district or charter school is in compliance with all financial and audit requirements;
  - if the audit is submitted after 90 days but within 180 days from the due date, the school district or charter school may be penalized up to 5.0 percent of its current year State Equalization Guarantee (SEG) distribution;
  - if the audit is submitted after 180 days but within 270 days from the due date, the school district or charter school may be penalized up to 7.0 percent of its current year SEG distribution, and PED may require the school district or charter school to submit a corrective action plan; and
  - if the audit is submitted more than 270 days late, the school district or charter school may be penalized up to 7.0 percent of its current year SEG distribution, and the Secretary of Public Education may suspend the authority of the local board or governing body to act as a board of finance.

The effective date of the legislation is July 1, 2010.

**Fiscal Impact:**

HB 321 makes no appropriation.

**Fiscal Issues:**

In its analysis of HB 321, PED notes that “a handful of school districts” submit their audit reports to the state auditor as much as six months to a year past the due date:

Oftentimes, the entities that fail to submit audits to the SAO within a reasonable timeframe are found to have serious financial issues such as poor internal controls and lack of reconciling funds each month and are hard pressed to determine cash balances.

Both HB 140 and HB 331 contain provisions allowing PED to withhold up to 100 percent of allotments of funds to any school district or charter school that fails to comply with reporting requirements.

**Original Issues:**

The SAO 2008 *Audit Rule* specifies that charter schools are component units of the chartering authority. Thus, it is possible that a single charter school in a school district with multiple charter schools could cause that district and all other component units of that district to be out of compliance with the provisions in HB 321.

A charter school is a component unit of its sponsoring school district. Charter schools chartered by the Public Education Department (PED) pursuant to the Charter Schools Act (Chapter 22, Article 8B NMSA 1978) are component units of PED for financial reporting purposes. The charter schools must be included in the financial statements of their sponsoring school districts or PED by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

The language in HB 321 appears to provide PED with sufficient flexibility to tailor sanctions according to the specific circumstances surrounding a late district or charter school audit.

**Related Bills:**

HB 140a *Public School Finance Reporting Dates*

HB 331a *Public School Funding Formula*