

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 98a

50th Legislature, 1st Session, 2011

Tracking Number: .183508.1

Short Title: Charter School Audit Monitoring

Sponsor(s): Representative Jimmie C. Hall and Others

Analyst: David Harrell

Date: March 1, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The House Education Committee amendments require that a charter school submit a copy of its audit to the charter school authorizer after, rather than before, the review of the audit by the State Auditor (see “Original Substantive Issues,” below).

Original Bill Summary:

HB 98 amends the *Public School Finance Act* to require the authorizers of charter schools to monitor charter school audits and, as needed, the correction of deficiencies or material weaknesses in those audits.

More specifically, HB 98 requires that, if a charter school audit shows internal control deficiencies or material weaknesses, the authorizer must monitor the charter school’s accounting and internal control system and the school’s fiscal condition until the deficiencies or material weaknesses are corrected and the next audit shows no deficiencies or weaknesses.

- This monitoring must include at least one site visit to help the charter school establish an adequate accounting and internal control system.
- The charter school must submit status reports to the authorizer at least quarterly explaining the school’s efforts to correct deficiencies or material weaknesses; and, depending upon the severity of the audit findings, the authorizer may request more frequent reports.

Finally, if a charter school receives a qualified opinion on its audit, HB 98 requires the Public Education Department (PED) to work with the authorizer to help the charter school improve its accounting and internal control system and to require monthly status reports.

Fiscal Impact:

HB 98 does not contain an appropriation.

Fiscal Issues:

The Fiscal Impact Report by the Legislative Finance Committee (LFC) suggests that the oversight required by HB 98 “will likely lead to fewer instances of fraud, waste and abuse, and better business practices.”

Original Substantive Issues:

During the 2010 interim, the Legislative Education Study Committee (LESC) heard a series of presentations about charter schools in New Mexico.

- One part of this presentation was a report from staff of the LFC about a program evaluation of charter schools that the LFC had conducted.
 - Among the objectives of this review were to analyze the oversight of charter schools (the application and renewal processes, monitoring of schools, and their governance) and to analyze the resource allocation of charter schools (state funding, expenditures, and spending practices).
 - Among the fiscal concerns with charter schools that the LFC identified were (1) the lack of oversight to ensure that the lease payments made to private landlords are at fair market rates, and (2) the possibility of conflicts of interest when, as was the case with some schools, the school founder is also the lease holder. To address these and similar concerns, LFC recommended that authorizers conduct site visits at least annually and request quarterly performance reporting when necessary.
 - As part of her response to the LFC evaluation, the Executive Director of the New Mexico Coalition for Charter Schools agreed that authorizers should monitor the charter schools they authorize through annual site visits and periodic reports.
- Another part of this presentation was a report by LESG staff about fiscal issues that have arisen in charter schools in other states.
 - In March 2010, this LESG staff report noted, the Office of Inspector General (OIG) with the US Department of Education released a report stating that charter executives, officials, and politicians accused in fraud cases have inflated student enrollment figures and changed student grades to increase the amount of funding they receive, and then used the money for personal expenses.
 - According to this report, more than 40 criminal investigations of embezzlement have been opened against charter school officials since 2005, resulting in 18 indictments and 15 convictions.
 - The OIG places much of the responsibility for these violations on inadequate oversight by the charter authorizers.

Even before the presentations during the 2010 interim, however, the LESG became concerned about the findings in audits of some charter schools and their effects on their authorizers because charter schools have been considered component units of their authorizers.

In addition, although it is not a recommendation of the LESC School Finance Work Group *per se*, HB 98 is consistent with the findings and recommendations of this work group (see “Background,” below).

Finally, the analysis by the Office of the State Auditor (OSA) suggests a change in the sequence of events in HB 98 to require that the annual audits of charter schools be submitted to the authorizer after the OSA has completed its review of the audit report and the report has been officially released by the State Auditor.

Background:

During the 2010 interim, the LESC formed the LESC School Finance Work Group to examine public school finance issues in collaboration with PED and in consultation with the OSA.

The activities of the work group included:

- reviewing laws, rules, and policies governing school finance, including the implementation of two provisions effective in 2010 that:
 - require local school boards and charter school governing bodies to create finance subcommittees and audit committees; and
 - allow PED to impose sanctions for failure of school districts or charter schools to submit timely audits to the State Auditor, including withholding up to 7.0 percent of a school district’s or charter school’s State Equalization Guarantee distribution and suspending the board of finance, effective July 1, 2010;
- reviewing current licensing and training requirements for school business officials and current training offered for boards of finance;
- investigating the availability of qualified school business officials and independent auditors with a focus on the needs of small, rural school districts;
- examining the internal financial controls within school districts and charter schools, including segregation of duties and the bank reconciliation process; and
- examining the supply and demand of school business officials, including the capacity of institutions of higher education to train future school business officials.

At the December LESC meeting, the work group presented its final report, which included a number of recommendations derived from the interim work. As noted under “Related Bills,” below, the LESC incorporated some of these recommendations into legislation that the committee endorsed for the 2011 session.

Finally, in school year 2010-2011, 81 charter schools are operating in 21 districts throughout New Mexico. Of those 81 schools, 33 have either been chartered initially or had their charters renewed by the Public Education Commission; the rest have been chartered or renewed by their respective local school boards. Forty-eight of the 81 charter schools are located within the Albuquerque Public Schools district.

Related Bills:

SB 141a *No Education Dept. Auditor Approval*

SB 143 *Define School Personnel "Ethical Misconduct"*

SB 203a *School Business Official Licensure*