

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB375</u>	Sponsor	<u>Garratt</u>
Tracking Number	<u>.224830.1</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>Charter School Expenditure Plan</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>2/21/2023</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 375 (HB375) would amend Section 22-8B-13 NMSA 1978 to specify that a charter school's chartering authority may withhold "up to" two percent of a charter school's school-generated program cost, instead of exactly two percent. The bill would also require that chartering authorities provide an oversight and expenditure plan for the funds withheld from charter schools. HB375 would require chartering authorities to complete their expenditure plan by July 15 of each year, with a final accounting of the expenditures of the prior year's funds by August.

FISCAL IMPACT

The bill does not contain an appropriation.

Currently, statute allows a school district or the Public Education Department (PED) to withhold 2 percent of the school-generated program cost of their respectively chartered schools, which is used to pay for the administrative support provided by the chartering authorities to those schools.

In FY23, approximately \$4.3 million was withheld from charter schools receiving a charter from the public education commission (PEC), with another \$2.6 million being withheld by school districts from locally chartered schools.

According to PED, the department would require the addition of 1.0 full-time employees in the Charter Schools Division to support the reporting requirements of HB375 at an annual cost of \$110 thousand.

SUBSTANTIVE ISSUES

There are 100 charter schools in New Mexico, 45 of which were locally chartered and 55 were chartered by the PEC.

HB375 would require chartering authorities to provide an annual expenditure plan and final accounting of the funds withheld from charter school's program cost. The annual expenditure plan would be required by July 15 and would include:

- The percentage and amount of the planned withholding;
- Context of how the chartering authority will use the funds to monitor fiscal practices, governance, student performance, progress toward performance framework goals and legal compliance with state law and the charter contract and perform any other obligations of the chartering authority to the charter school pursuant to the charter contract; and
- A budget for the oversight and expenditure plan.

Beginning on August 1, 2024, school districts and PED would provide charter schools with a detailed review of how the withheld percentage and amount was spent in the prior year, including:

- Proposed and actual expenditures; and
- How activities of the chartering authority resulted in measurable value to the charter school and improvements in the financial management, governance or performance of the charter school.

Uses of 2 percent Withholding. Section 22-8B-13 NMSA 1978 allows PED or a school district to withhold 2 percent of a charter school's program cost for use in providing administrative support. The statute, however, does not define administrative support.

In its FY23 budget proposal, PED proposed providing various administrative supports to state-chartered charter schools, including:

- Charter School Division salaries and benefits;
- PEC travel, meal, per-diem, and oversight expenditures;
- Electrical and technical updates to Mabry Hall; and
- Software, hardware, and supplies.

Charter contracts include stipulations on how withheld funds will be leveraged in supporting administrative expenses incurred by PED or a school district. For example, the 2019 charter contract between Santa Fe Public Schools (SFPS) and the Academy for Technology and the Classics (ATC) identified various administrative supports provided by SFPS, including:

- Annual site visits and annual evaluations;
- Receiving, processing, evaluating, and providing recommendations on renewal applications;
- Technical assistance and support work;
- Training and professional development;
- Work that supports administrative oversight, approval of budget matters, capital outlay, transportation, special education, federal programs, school evaluation and accountability, and annual financial audits; and
- Staff work necessary to provide professional support or data analysis.

It is unclear whether SFPS provides ATC with an itemized overview of how it leverages the 2 percent withholding.

Memorandum of Understanding (MOU) between PED and PEC. In May 2021, PED entered into an MOU with the PEC specifying the services that would be provided by PED to the PEC. These services include providing staff and administrative services to support the PEC in performing its oversight functions, including: “monitoring academic, fiscal, and governance performance of state charter schools, reviewing written submissions by state charter schools, conducting on-site visits of state charter schools, providing technical support to state charter schools, and making recommendations to the commission regarding the approval, denial, suspension, or revocation of the charter of a state charter school.”

The MOU specifies PED may withhold 2 percent of a state-chartered charter school’s program cost. Of that 2 percent, PED could maintain an amount for administrative support equal to the number of state authorized charters divided by the sum of the number of all charter schools and school districts, then multiplied by the charter 2 percent of the annual state equalization guarantee (SEG) calculation dedicated to charter schools.

The remainder of the appropriation after the aforementioned calculation would be provided to PED to prioritize funding in the Charter Schools Division, with any unencumbered, unexpended available funds remaining on March 1 of each fiscal year becoming available to PED for further use in charter school administrative support.

A summative report of PED’s uses of the 2 percent withholding is required to be submitted to the PEC on an annual basis.

There are ongoing discussions on whether to amend the 2021 MOU between PED and the PEC with an amended draft of the MOU last being presented to the PEC at its October 21, 2022 work session meeting. Legislative Education Study Committee (LESC) staff submitted a request to PED for the latest draft version of the MOU but has not received a copy as of February 21, 2023.

Risk Review of 2 Percent Expenditures. In a [2017 presentation](#) by the Office of the State Auditor to the LESL, the office reported on a, “general lack of awareness of importance of tracking 2 percent expenditures.” To assess the uses of those funds, the office performed a risk review by assessing the FY16 audits of 10 state-chartered charter schools and 17 locally-chartered charter schools. The risk assessment concluded with several observations, including an inability to adequately track the withheld funds to specific expenditures and to make a subsequent determination on the sufficiency of the withheld funds in supporting administrative expenses.

ADMINISTRATIVE IMPLICATIONS

HB375 may duplicate some existing reporting requirements between PED and the PEC. However, the bill may have administrative implications for some school districts as it is unclear how many school districts with locally-chartered schools already compose a publically-accessible itemized overview of how they spend their 2 percent withholdings.

SOURCES OF INFORMATION

- LESL Files

DE/bc/cf/mb