LESC Charter Schools Subcommittee
Ian Kleats, Senior Fiscal Analyst I
September 11-12, 2014

POLICY CONSIDERATIONS:
Two Percent Administrative Support Offset

Statutory References

- **Attachment 1** contains relevant provisions in law relating to the 2.0 percent administrative withholding from charter schools' program costs. Among their provisions, those sections of statute:

  - allocate to charter schools at least 98 percent of their school-generated program cost, allowing the school district or division to withhold up to 2.0 percent for administrative support (**22-8B-13**);
  - require that each charter school contract include a detailed description of how the chartering authority will use the withheld 2.0 percent of the school-generated program cost (**22-8B-9**);
  - define the state equalization guarantee (SEG) for state-chartered charter schools as the difference between the school-generated program cost and the 2.0 percent withheld by the department for administrative services (**22-8-25**); and
  - require that school districts allocate the appropriate distribution to locally chartered charter schools in its district within five days of receiving the district's SEG distribution, allowing school districts to deduct the administrative withholding prior to distribution (**22-8-15**).

- Potential conflicts include:

  - **22-8B-13** uses permissive language with respect to the amount of withholding from state-chartered charter schools ("up to 2 percent"). However, the definition of SEG for those schools appears to mandate exactly 2.0 percent be withheld.

  - **22-8B-9** references how the chartering authority will use the withheld 2.0 percent, but in the case of state-chartered charter schools, **22-8B-13** and **22-8-25** grant the withholding authority to the Charter Schools Division (CSD) or the Public Education Department (PED), respectively, not the chartering authority.

- Although not directly related to the 2.0 percent administrative withholding, the committee may wish to consider that the definition of SEG for state-chartered charter schools in **22-8-25** neither permits nor requires deduction of local or federal revenue from program cost in the calculation of SEG:

  - To the knowledge of the Legislative Education Study Committee (LESC) staff, no state-chartered charter schools receive such revenue as defined in that section of law, but if new charter schools were opened on Indian reservations or military bases, or if local revenue were shared with charter schools, the current statute could present problems for the state's Impact Aid calculation.

Background Information

- **Attachment 2, FY 14 Charter School Budgeted Administrative Withholding**, details the final budgeted administrative withholding from each charter school for school year 2013-2014, corresponding to FY 14. Among other data, this table shows:

  - approximately $1.94 million withheld by PED from state-chartered charter schools for administrative support;
  - approximately $1.48 million withheld by school districts from locally chartered charter schools for administrative support; and
  - final audited data were not available for the reversion or expenditure of charter school administrative withholding by PED for FY 14.

- For FY 13:

  - based on PED data, approximately $1.66 million was withheld by PED from state-chartered charter schools for administrative support;
  - according to the *Legislative Finance Committee (LFC) FY 2015 Budget Recommendations Volume II*, PED:

    - ✓ reverted $294,000, or 17.8 percent, of its charter school withholding; and
    - ✓ spent $370,000, or 22.3 percent, on expenses not directly related to charter school oversight; and

  - only about $992,000, or 59.9 percent, of state-chartered charter school administrative withholding was spent on expenses directly related to charter school oversight.

- The 2.0-percent administrative withholding from state-chartered charter schools by PED was enacted in Laws 2006, Chapter 94, and both the LFC and LESC bill analyses have been included as **Attachment 3** and **Attachment 4**, respectively. Among other analysis, the LESC bill analysis includes the following statement on the use of the withholding for administrative costs:

  - "During the 2005 interim, PED testified to the Legislative Education Study Committee (LESC) that, to oversee charter schools statewide, the department would need 22 full-time equivalent positions and an annual budget of $2.0 million. The Executive recommendation for FY 07 is $2.0 million for 'charter school authority.'"

Policy Considerations

The committee may wish to consider the following:

- **Which entity should receive the administrative withholding from state-chartered charter schools?** Potential outcomes and considerations could include:

  - PED/CSD receiving the entire withholding amount:

    - ✓ Staffing levels – what recourse does the authorizer (PEC, or the Public Education Commission) have if positions are left vacant?
    - ✓ Conflicts of interest – does the ability of the PED Secretary, under whom the CSD staff work, to overturn the chartering decisions of the PEC, which receives recommendations from CSD staff, compromise impartiality or objectivity?

  - Authorizer (PEC) receiving the entire withholding amount:

    - ✓ Parity with school district authorizers – the PEC, as authorizer, would be entitled the same administrative cost recoupment as district authorizers.
    - ✓ Consistency with certain sections of statute – state-chartered charter school contracts require that the PEC describe the services it provides those schools using the administrative withholding.
    - ✓ Potentially adverse incentives – could dedicating the administrative withholding to the state-level authorizer create a financial incentive to authorize more schools, regardless of quality, thereby increasing the amount withheld for the authorizer?

  - Distributing a portion of the administrative withholding to both CSD/PED and the state-level authorizer (PEC):

    - ✓ For FY 13, PED used under 60 percent of its administrative withholding on direct charter school oversight, while reverting almost 18 percent.
    - ✓ A dedicated revenue stream for the PEC, specifically in its duties as chartering authority, could promote autonomy and reduce the appearance of bias.
    - ✓ Other administrative duties, possibly those more suited for the department, could be performed by PED and funded through its portion of the administrative withholding.

- **What percentage of withholding adequately reflects the costs of providing administrative support to charter schools?** Potential considerations could include:

  - Should the withholding percentage be increased, decreased, or left at 2.0 percent? And, should the same percentage be withheld from both locally chartered and state-chartered charter schools?

    - ✓ Current law allows school districts to withhold below 2.0 percent from their locally chartered charter schools. However, because it appears that no school district withholds less than 2.0 percent, that amount may not fully cover administrative services required or desired by locally chartered charter schools.

- ✓ Certain PEC members have expressed concern over staffing levels in and the amount of administrative support provided by the CSD, but for FY 13, PED used under 60 percent of its administrative withholding on direct charter school oversight, while reverting almost 18 percent. As such, it is unclear whether the withholding rate is appropriate for state-chartered charter schools.

- ✓ The inclusion of a detailed description of how the chartering authority will use the withheld 2.0 percent of the school-generated program cost in charter school contracts, as required by current law, could provide a measure of oversight if the rate of withholding were increased.

22-8B-9. Charter school contract; contents; rules. (2011)

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;

22-8B-13. Charter school financing.

A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

22-8-15. Allocation limitation.

A. The department shall determine the allocations to each school district and charter school from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with locally chartered charter schools shall allocate the appropriate distributions of the public school fund to individual locally chartered charter schools pursuant to each locally chartered charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the locally chartered charter school within five days after the school district's receipt of the state equalization guarantee for that month.

22-8-25. State equalization guarantee distribution; definitions; determination of amount. (2010)

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

FY 14 Charter School Budgeted Administrative Withholding

ATTACHMENT 2

A	B	C = B x 2%	D = SUM C
DISTRICT/CHARTER	**Final Funded SEG**	**Administrative Withholding**	**Authorizer Totals**
STATE CHARTERS			
ACADEMY OF TRADES & TECH ST. CHARTER (APS)	$1,371,248.69	$27,424.97	
ACE (APS)	$2,632,945.15	$52,658.90	
ALBUQUERQUE INSTI. MATH & SCI. (AIMS) ST. (APS)	$2,619,946.39	$52,398.93	
ALBUQUERQUE SCHOOL OF EXCELLENCE ST. CHAR (APS)	$2,044,614.88	$40,892.30	
ALBUQUERQUE SIGN LANGUAGE ST. CHARTER (APS)	$1,383,231.98	$27,664.64	
ALDO LEOPOLD ST. CHARTER (SILVER CITY)	$1,815,855.83	$36,317.12	
ALMA D' ARTE STATE CHARTER (LAS CRUCES)	$1,774,798.08	$35,495.96	
AMY BIEHL ST. CHARTER (APS)	$2,780,787.41	$55,615.75	
ANTHONY CHARTER (GADSDEN)	$806,125.31	$16,122.51	
ASK ACADEMY ST. CHARTER (RIO RANCHO)	$2,464,892.78	$49,297.86	
CESAR CHAVEZ COMM. ST. CHARTER (APS)	$1,961,163.24	$39,223.26	
CIEN AGUAS INTERNATIONAL ST. CHARTER (APS)	$2,337,779.82	$46,755.60	
CORAL COMMUNITY (APS)	$949,466.68	$18,989.33	
COTTONWOOD CLASSICAL ST. CHARTER (APS)	$3,577,899.48	$71,557.99	
CREATIVE ED. PREP INST #1 ST. CHARTER (APS)	$1,753,148.76	$35,062.98	
EAST MOUNTAIN ST. CHARTER (APS)	$2,501,858.12	$50,037.16	
ESTANCIA VALLEY (MORIARTY)	$2,366,743.57	$47,334.87	
GILBERT L. SENA STATE CHARTER (APS)	$1,805,017.81	$36,100.36	
HEALTH LEADERSHIP CHARTER (APS)	$891,619.34	$17,832.39	
HORIZON ACADEMY WEST ST. CHARTER (APS)	$2,634,014.06	$52,680.28	
INT'L SCHOOL MESA DEL SOL ST. CHARTER (APS)	$1,835,691.82	$36,713.84	
J. PAUL TAYLOR ACADEMY (LAS CRUCES)	$1,201,241.74	$24,024.83	
LA JICARITA (PENASCO)	$355,990.36	$7,119.81	
LA PROMESA ST. CHARTER (APS)	$2,648,234.44	$52,964.69	
LA RESOLANA LEADERSHIP (APS)	$718,165.14	$14,363.30	
LA TIERRA MONTESSORI (ESPANOLA)	$659,439.77	$13,188.80	
LEARNING COMMUNITY (APS)	$1,777,279.49	$35,545.59	
MASTERS PROGRAM ST. CHARTER (SFPS)	$1,670,712.58	$33,414.25	
MCCURDY CHARTER SCHOOL (ESPANOLA)	$3,220,798.22	$64,415.96	
MEDIA ARTS COLLAB. ST. CHARTER (APS)	$1,740,592.83	$34,811.86	
MISSION ACHIEVEMENT & SUCCESS-MAS (APS)	$2,950,477.50	$59,009.55	
MONTESSORI ELEMEMTARY ST. CHARTER (APS)	$1,988,771.76	$39,775.44	
NEW AMERICA CHARTER SCHOOL ST. CH. (APS)	$2,317,325.38	$46,346.51	
NEW AMERICA SCHOOL (LAS CRUCES)	$2,394,733.84	$47,894.68	
NEW MEXCIO CONNECTIONS VIRTUAL (SFPS)	$2,728,364.81	$54,567.30	
NEW MEXICO INTERNATIONAL SCHOOL (APS)	$1,293,786.78	$25,875.74	
NEW MEXICO SCHOOL FOR THE ARTS ST. CH (SANTA FE)	$1,822,685.43	$36,453.71	
NORTH VALLEY ACADEMY ST. CHARTER (APS)	$2,821,833.70	$56,436.67	
RALPH J. BUNCHE ACADEMY (APS)	$765,686.00	$15,313.72	
RED RIVER VALLEY (QUESTA)	$679,081.06	$13,581.62	
SAGE MONTESSORI CHARTER (APS)	$1,404,350.67	$28,087.01	
SCHOOL OF DREAMS ST. CHARTER (LOS LUNAS)	$2,837,802.52	$56,756.05	
SOUTH VALLEY PREP ST. CHARTER (APS)	$1,086,050.98	$21,721.02	
SOUTHWEST AER.,MATH & SCIENCE-SAMS (APS)	$2,023,431.30	$40,468.63	
SOUTHWEST INTERMEDIATE LEARNING CENTER (APS)	$866,465.51	$17,329.31	
SOUTHWEST PRIMARY LEARNING CENTER (APS)	$884,266.74	$17,685.33	
SOUTHWEST SECONDARY LEARNING CENTER (APS)	$2,295,233.22	$45,904.66	
TAOS ACADEMY ST. CHARTER (TAOS)	$1,776,500.71	$35,530.01	
TAOS INTEGRATED SCHOOL OF ARTS ST. (TAOS)	$1,230,537.61	$24,610.75	
THE GREAT ACADEMY (APS)	$1,616,953.84	$32,339.08	
TIERRA ADENTRO ST. CHARTER (APS)	$2,110,906.64	$42,218.13	
UPLIFT COMMUNITY SCHOOL (GALLUP)	$1,379,261.73	$27,585.23	
WALATOWA CHARTER HIGH	$822,724.02	$16,454.48	
WILLIAM W & JOSEPHINE DORN CHARTER (APS)	$424,320.68	$8,486.41	
SUBTOTAL - CHARTER SCHOOLS DIVISION (PED)			**$1,936,457.13**

Source: PED Data, 2013-2014 Final Funded SEG

FY 14 Charter School Budgeted
Administrative Withholding

A	B	C = B x 2%	D = SUM C
DISTRICT/CHARTER	**Final Funded SEG**	**Administrative Withholding**	**Authorizer Totals**
LOCALLY-CHARTERED CHARTER SCHOOLS			
ALB TALENT DEV SECONDARY	$1,414,222.85	$28,284.46	
ALICE KING COMMUNITY SCHOOL	$1,889,618.53	$37,792.37	
BATAAN MILITARY ACADEMY	$1,277,443.85	$25,548.88	
CHRISTINE DUNCAN COMMUNITY	$1,540,408.15	$30,808.16	
CORRALES INTERNATIONAL	$2,128,287.94	$42,565.76	
DIGITAL ARTS & TECH ACADEMY	$2,353,217.99	$47,064.36	
EL CAMINO REAL	$2,787,338.32	$55,746.77	
GORDON BERNELL	$3,515,768.85	$70,315.38	
LA ACADEMIA DE ESPERANZA	$3,341,894.72	$66,837.89	
LOS PUENTES	$2,073,612.99	$41,472.26	
MONTESSORI OF THE RIO GRANDE	$1,348,423.56	$26,968.47	
MOUNTAIN MAHOGANY	$1,205,757.90	$24,115.16	
NATIVE AMERICAN COMM ACAD.	$2,486,839.87	$49,736.80	
NUESTROS VALORES	$1,254,706.52	$25,094.13	
PAPA	$2,576,418.68	$51,528.37	
ROBERT F. KENNEDY	$2,468,878.30	$49,377.57	
SIA TECH	$2,447,984.85	$48,959.70	
SOUTH VALLEY	$3,172,059.56	$63,441.19	
TWENTY FIRST CENT.	$1,606,279.97	$32,125.60	
ALBUQUERQUE W/CHARTERS			$817,783.28
MOSAIC ADADEMY CHARTER	$1,283,051.83	$25,661.04	
AZTEC W/CHARTERS			$25,661.04
JEFFERSON MONT. ACAD.	$1,796,000.76	$35,920.02	
CARLSBAD W/CHARTERS			$35,920.02
MORENO VALLEY HIGH	$912,963.26	$18,259.27	
CIMARRON W/CHARTERS			$18,259.27
DEMING CESAR CHAVEZ	$1,462,789.72	$29,255.79	
DEMING W/CHARTERS			$29,255.79
CARINOS DE LOS NINOS	$1,918,223.44	$38,364.47	
ESPANOLA W/CHARTER			$38,364.47
NEW MEXICO VIRTUAL ACADEMY	$2,539,896.18	$50,797.92	
FARMINGTON W/CHARTER			$50,797.92
MIDDLE COLLEGE HIGH	$805,518.32	$16,110.37	
GALLUP W/CHARTER			$16,110.37
LINDRITH AREA HERITAGE	$263,953.04	$5,279.06	
JEMEZ MOUNTAIN W/CHARTERS			$5,279.06
SAN DIEGO RIVERSIDE CHARTER	$855,428.97	$17,108.58	
JEMEZ VALLEY W/CHARTER			$17,108.58
LA ACADEMIA DOLORES HUERTA	$1,295,424.51	$25,908.49	
LAS MONTANAS	$2,018,201.25	$40,364.02	
LAS CRUCES W/CHARTER			$66,272.51
ROOTS & WINGS	$432,654.39	$8,653.09	
QUESTA W/CHARTERS			$8,653.09
SIDNEY GUTIERREZ	$605,570.32	$12,111.41	
ROSWELL W/CHARTER			$12,111.41
ACAD FOR TECH & CLASSICS	$2,448,442.96	$48,968.86	
MONTE DEL SOL	$3,051,371.53	$61,027.43	
TIERRA ENCANTADA CHARTER	$2,266,250.38	$45,325.01	
TURQUOISE TRAIL	$3,260,939.76	$65,218.80	
SANTA FE W/CHARTERS			$220,540.10
COTTONWOOD CHARTER	$1,189,037.03	$23,780.74	
SOCORRO W/CHARTERS			$23,780.74
ANANSI CHARTER	$1,079,454.26	$21,589.09	
TAOS CHARTER	$1,447,756.21	$28,955.12	

Source: PED Data, 2013-2014 Final Funded SEG

FY 14 Charter School Budgeted
Administrative Withholding

A	B	C = B x 2%	D = SUM C
DISTRICT/CHARTER	**Final Funded SEG**	**Administrative Withholding**	**Authorizer Totals**
VISTA GRANDE	$856,887.27	$17,137.75	
TAOS W/CHARTER			$67,681.96
RIO GALLINAS CHARTER SCHOOL	$1,088,543.84	$21,770.88	
WEST LAS VEGAS W/CHARTER			$21,770.88
SUBTOTAL - SCHOOL DISTRICTS			**$1,475,350.49**
GRAND TOTAL - STATEWIDE			**$3,411,807.62**

Source: PED Data, 2013-2014 Final Funded SEG

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 2/5/2006
SPONSOR SFL **LAST UPDATED** 2/14/2006 **HB**

SHORT TITLE Education Dept. Charter Schools Division **SB** CS/600/SFLS

ANALYST Aguilar/McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	**FY07**		
	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB432, HB560, HB630, HB749, HJM48, SB211, SB450, SJM4

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Public Education Department (PED)
Attorney General's Office (AGO)
Public Schools Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

The Senate Floor substitute for Senate Finance Committee substitute for Senate Bill 600 makes substantial changes to current statute to create a Charter Schools Division within PED, expands chartering authority to the Public Education Commission (PEC), charges PEC with exclusive responsibility for the authorization of locally autonomous charter schools identified in the bill as state-chartered schools and designates the duties of chartering authorities.

The Floor substitute also makes changes to fiscal provisions of statute the most significant is the requirement that before the first year of operation, each state-chartered school must qualify as its own board of finance under requirements set forth in the bill.

The bill further sets forth requirements for the application and renewal of charter schools, as well as how charter schools will be operated and governed. The bill also removes provisions allowing for conversion schools.

FISCAL IMPLICATIONS

It is important to note that provisions contained in this bill are creating two distinctly different classifications of charter schools with their own management systems, budgeting processes, state equalization and supplemental distributions. The impact on the State Equalization Guarantee (SEG) distribution may be significant. It is also important to note that the differences between the classifications may lead to a disparity in the quality of educational opportunity for students.

- Distributions to state chartered schools shall include the following parts
    - State Equalization Guarantee distribution
    - Transportation distribution
    - Supplemental distributions
    - Emergency supplemental
    - Program enrichment

The bill generally makes state-chartered school financial operations equivalent to school district operations and exempts the charter school from school district requirements. The effect of this is to allow charter schools the same discretion over funds as school districts have.

While the Senate Floor substitute carries no appropriation; however, there are several other fiscal implications that may arise because of enactment. The General Appropriations Act contains $500 thousand in the PED budget to fund the charter school division contingent on the passage of SB600, HB630 or similar legislation of the second session of the forty-seventh legislature. This is a recurring cost to the general fund.

Beginning in FY 08, and subsequent fiscal years, the budget of every state-chartered school will be based on the projected number of program units generated by those schools and their students, using the local district at-risk index and the charter school's instructional staff training and experience index.

Budgets for locally chartered schools shall be based on the projected number of program units, using the district at-risk index and the district training and experience index. Provisions in the bill make all charter schools eligible for growth units and the charter school student activities program units. This increase in units statewide is expected to reduce the unit value unless additional appropriations are included as these units do not currently exist. The additions of certain categories for funding will increase distributions to the charter schools while decreasing the amounts to school districts.

An analysis by LESC notes that in school year 2005-2006, 13 school districts with membership of 200 or fewer were allowed to budget more than $3.5 million in emergency supplemental funding for operational expenses. At present 35 charter schools have membership of 200 or fewer. The bill provides for these schools to apply for emergency supplemental distributions at the same rate as school districts. At the current rate of applications, 28 schools could be expected to apply for such funds. If small charter schools can justify similar requests the need for additional emergency supplemental funding for school year 2007-2008 could approach $7.6 million.

Section 22-1-2 NMSA 1978 defines "private school" as a school, other than a home school, that offers on-site programs of instruction and *that is not under the control, supervision or management of a local school board* (emphasis added).

The bill provides for the governing body of a charter school to obtain approval from the Public Schools Facility Authority (PSFA) prior to the construction or letting of contracts for any school buildings and to make other construction related requirements applicable to charter schools. Further, any facilities provided by a local district shall meet occupancy standards as specified by the Public School Capital Outlay Council.

The Public School Facilities Authority notes if a state-chartered school is newly created, or is renewed, it appears to be able to apply for state capital outlay funds independently from a school district. This may be an unintended and costly proposal for the state. Consider the following:

The state-chartered school application only requires a description of the facilities a charter school plans to use. Without consideration of the capacity of the physical space or other adequacy requirements currently required of school districts applying for state capital funds, a newly minted charter school could "jump the queue" of other public schools listed in the Facilities Assessment Database. A charter could be approved without due consideration to the facilities. If it is later determined that they are not adequate for the student enrollment levels and other factors, it is conceivable that the charter school could successfully petition the chartering authority (the state) to receive funds to bring the facilities up to adequacy.

If charters are required to come up with their own match, charter schools will be at a disadvantage to conventional school districts when applying for state capital funding. To be considered for capital funding from the PSCOC under the standards-based process, the applicant is to have or be able to provide the local match for the potential project being applied for. The local match is usually funded through the passage of a bond election.

The language amending 22-8B-4 .2 provides that all assets of a charter school whose charter is revoked shall revert to the state. It is unclear whom (PED, PSFA, Property Control Division) will be the custodian of these new assets. PED is not statutorily authorized under current law to own assets; the PSFA is only allowed to own portable classrooms. There would be costs associated with maintaining, insuring and storing new assets as well.

SIGNIFICANT ISSUES

SB:CS/600/SFLS provides for two chartering authorities – the local school district and the state. The bill allows charter schools to elect their chartering authority between a school district or the PEC as well as allowing charter schools to change their chartering authority upon charter renewal. The bill provides that state-charted schools are independent of school districts and as such, the state-chartered school governing bodies are generally treated as local school district boards.

The bill creates the Charter Schools Division within the department.

With regard to local board charter schools, the bill does not require a charter school authorized by a school district to qualify as a board of finance because it would continue to be a component unit of the school district for audit purposes. Additionally, charter schools authorized by a school district would be treated no differently than they currently are relative to transportation; i.e., local districts must continue to negotiate the provision of transportation to charter school students eligible for transportation.

The bill requires that state-chartered schools governing bodies must function as boards of finance and be qualified prior to the first year of operation. Failure of the governing body of a proposed state-chartered school to qualify as a board of finance constitutes grounds for denial, nonrenewal or revocation of its charter. Charter schools authorized by the PEC can apply for their own transportation funds based upon their eligible student membership and are prevented from owning school buses and providing their own transportation system but transportation is funded and provided in a manner similar to the funded local district bus-contracted services. However it appears language contained in the bill may allow state-chartered schools to act as their own bus contractors. While the bill provides for state-chartered schools to contract for transportation and other services they are prohibited from contracting with a for-profit entity for the management of the school.

LESC notes during the 2005 interim, PED testified that requiring each charter school to be its own board of finance may pose a hardship on smaller charter schools because of the financial expertise and responsibility required of the staff.

Other provisions in the bill:

- Allow either the locally chartered authorizer or state authorizer to withhold 2 percent of the school-generated program cost fund for administrative support from each charter school that they authorize;
- Provide for charter school student activities program units that will generate 0.1 units for students who participate in district NMAA activities; funds generated from this unit multiplier will go to the local district. Although the bill creates the program unit, it does not include these units in Section 22-8-18 NMSA 1978 which is that portion of statute that lists the units that are added together to generate program cost. This may be problematic in that it is not clear if charter school activities program units are intended to be part of a district's program cost.
- Require a charter school organizer to provide written notification to both the PEC or school district where their proposed charter school would be located and of its intent to establish a charter school;
- Provide due process rights if an initial or renewal charter application is denied by either the locally chartered authorizer or state authorizer, namely, an appeal to the Education Secretary with further review available in a district court;
- Provide that state authorized charter schools are exempt from school district requirements, but locally authorized charter schools must comply with host school district requirements unless that district waives them;
- Eliminate new conversion schools after July 1, 2007 but does not eliminate any existing conversion schools;
- Require a charter school authorized by a locally chartered authority to establish an agreement with the local school board for the resolution of disputes;
- Provide that the Public School Capital Outlay Oversight Task Force, in consultation with the Public School Capital Outlay Council (PSCOC), the PED and the Public School Facilities Authority (PSFA), study funding for charter school capital outlay facilities, transportation costs and any other capital outlay issues concerning charter schools; the study must commence on May 17, 2006 with a reporting date to the LESC, the LFC and the Governor by November 1, 2006.

Requirements for each charter type differ in that:

- The state-chartered schools submit charter applications, budgets, reports, etc., to the Charter Schools Division within PED. Charter applications are approved by the existent Public Education Commission (PEC). State-charted schools are treated as local districts for capital outlay funding.
- Locally chartered schools submit charter applications, school-based budgets, reports, etc., to local district school boards and the applications are approved locally.
- District-chartered schools must submit applications, budgets, reports, etc., to local school boards and school-based budgets must be approved by the local school board and PED. Any locally chartered school must negotiate with the local school district for transportation services. Additionally, locally chartered schools are eligible for capital outlay funds through the district and must be a part of the districts' five-year facilities plans.

The effective date of Sections 1 through 57 and Section 59 is July 1, 2007.

OTHER SUBSTANTIVE ISSUES

Provisions in the bill limiting conversion schools to those authorized by a local board prior to July 1, 2007 removes an important option available to schools in restructuring.

POSSIBLE QUESTIONS

What is the significant difference between state-chartered schools and private schools? Can charter schools still be classified as public schools?

Given the significant differences in resources available between state-chartered and local chartered schools, will the quality of facilities, staff and instructional resources be equitable between the schools?

Will removing the option for conversion schools have a negative impact on schools or districts in developing and implementing restructuring strategies?

Where will charters applying for state capital funds come up with the required local matching funds? What will be their match requirement? If the answer is "the state", this would likely be in conflict with the requirements of the Zuni lawsuit.

PA/BMC/yr

ATTACHMENT 4

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill No: SB 600a **47th Legislature, 2nd Session, 2006**

Short Title: Education Dept. Charter Schools Division

Sponsor(s): Senators Cynthia Nava and Pete Campos

Analysts: Kathleen Forrer and David Harrell **Date: February 8, 2006 (revised and amended)**

AS AMENDED

The Senate Education Committee (SEC) amended sections of the *Public School Code* pertaining to public school transportation to make them apply to charter schools as they do to school districts. The other SEC amendments:

- **clarify that the governing body of a charter school designated as a board of finance may require that all funds distributed to, allocated to, or collected for the charter school be deposited with the governing body;**

- **specify that the Public Education Commission (PEC) may designate the governing body of a charter school as a board of finance if, among other conditions, no member of that governing body has been a member of the governing body of another charter school that was suspended or not reinstated as a board of finance;**

- **amend the purpose of the *Charter Schools Act* as enabling individual schools to structure, rather than restructure, their educational curriculum;**

- **clarify that charter schools approved after July 1, 2007 are eligible for lease payment funds;**

- **require that the public meeting that the PEC must hold to obtain community input on a charter application be held in the school district in which the charter school is proposed to be located;**

- **provide additional criteria under which the PEC may deny a charter application: fiscal mismanagement by the head administrator or other staff member at another charter school resulting in denial or revocation of the charter and failure to offer an educational program consistent with the requirements and purposes of the *Charter Schools Act*; and**

- **amend the deadlines for a charter school's submitting a renewal application and the PEC's acting on the application.**

Original Bill Summary:

SB 600 makes numerous changes in several sections of state law – most of them in the *Public School Code* – to implement new provisions for the authorization, oversight, and operation of charter schools in New Mexico.

Perhaps the central amendment is that SB 600 removes chartering authority from the local school boards and vests it with the Public Education Commission (PEC). As the charter school authorizer, the PEC must:

- receive and review applications for initial or renewed charters;
- hold at least one public meeting to obtain information and community input to assist it in its decision whether to grant a charter school application; and
- state its reasons for denying an application in writing within 14 days of the public meeting.

In addition, SB 600 allows the PEC to approve, approve with conditions, or deny an application; and it provides that the PEC may deny an application if:

- the application is incomplete or inadequate;
- the governing body does not qualify as a board of finance; or
- the application is contrary to the best interests of the charter school's projected students, the local community, or the school district in whose geographic boundaries the charter school proposes to operate.

In conjunction with the PEC as the sole authorizer of charter schools, SB 600 creates the Charter Schools Division within the Public Education Department (PED) and requires this division to:

- provide staff support to the PEC and technical support to the charter schools;
- review and approve charter school budget matters;
- make recommendations to the PEC regarding the approval, denial, suspension, or revocation of the charter of a charter school; and
- establish how a charter school notifies the parents of its students of proposed increases in a charter school budget.

In addition, SB 600:

- requires PED to maintain an accountability data system to enable charter schools to submit required reports; and
- allows PED to waive requirements or rules and provisions of the *Public School Code* related to individual class load, teaching load, length of the school day, staffing patterns,

subject areas, purchase of instructional material, graduation requirements, school principal duties, and driver education.

SB 600 also makes numerous amendments to the fiscal provisions pertaining to charter schools. Chief among these is that each charter school must qualify to be its own board of finance by satisfying certain conditions that the PEC will designate. Existing charter schools have until August 1, 2007 to meet this requirement, and approved charter applicants must qualify to become a board of finance before the first year of operation. Among its other fiscal provisions, SB 600:

- makes charter school financial operations in general equivalent to school district operations, extending to charter schools the same discretion over funds generated under the *Public School Finance Act* as school districts have;

- requires charter schools to submit their budgets to PED's Charter Schools Division;

- includes charter schools in the distribution from the Public School Fund, except that transportation and out-of-state tuition distributions still go only to school districts;

- requires that, for FY 08 and for the first year of operation in any fiscal year thereafter, the budget of a charter school shall be based on the at-risk index and the Training and Experience (T&E) Index of the district in which the charter school is located, but that, for the second and subsequent fiscal years, the charter school's budget shall be based on the T&E Index of the charter school and the at-risk index of the school district;

- makes charter schools eligible for enrollment growth and the small school district hold-harmless provision in the Public School Funding Formula;

- adds a charter school student activities program unit (cost differential factor of 0.1) for charter school students participating in school district activities governed by the New Mexico Activities Association, payable to the school district in which the program unit is generated;

- prescribes that, through its designation as a board of finance, a charter school may apply for and will receive state and federal funds for which it is eligible;

- requires PED, in cases of the suspension of a charter school's status as its own board of finance, to consider proceedings before the PEC to suspend, revoke, or refuse to renew the charter in the case of a charter school that has engaged in serious or repeated mismanagement, improper recording, or improper reporting of public school funds under its control;

- allows PED to withhold 2.0 percent of the school-generated program cost for the department's administrative support; and

- requires the head administrator of the charter school to submit the 40th day report and other required reports to PED.

In addition to its fiscal provisions, SB 600 contains provisions for the capital outlay needs of charter schools. On this subject, the bill:

- makes the facilities of a charter school approved before July 1, 2007 eligible for state capital outlay funds but postpones eligibility for those approved after July 1, 2007 until the charter is renewed;

- requires charter schools to develop five-year facilities plans in order to be eligible for state capital outlay funds;

- amends statute related to school construction to require the governing body of a charter school to obtain approval of the Public School Facilities Authority prior to the construction or letting of contracts for any school building and to make other construction-related requirements applicable to charter schools; and

- amends the *Public School Capital Outlay Act* to redefine the term "school district" so that it includes charter schools.

Other amendments in SB 600 address the <u>application for and renewal of charters</u>. Among these provisions, the bill:

- provides for the transition from local school board chartering authority to that of the PEC by specifying that an existing charter school shall continue its charter until its renewal date (unless the PEC suspends or revokes the charter) and by requiring that an application filed with a local school board before July 1, 2007 but not approved be transferred to the PEC on July 1, 2007;

- allows public postsecondary educational institutions or nonprofit organizations to start charter schools but prohibits municipalities, counties, private postsecondary educational institutions, and for-profit businesses from doing so;

- requires that an application for a charter include the qualifications and terms of members of the governing body, an explanation of how vacancies will be filled, and procedures for changing the membership of the governing body;

- limits conversion schools to those approved by a local school board prior to July 1, 2007;

- clarifies that the first year of an initial six-year charter term must be used exclusively for planning and not for completing the application;

- increases the petition requirements for the renewal of a charter from a majority of the households whose children are enrolled in the charter school to at least 75 percent of those households; and

- allows a charter applicant to appeal the PEC's decision to the Secretary of Public Education and to appeal the Secretary's decision to district court.

SB 600 also addresses <u>the governance and operation of charter schools</u>. Among these provisions, the bill:

- requires that a charter school's governing body have at least five members;

- allows a charter school to contract with a school district or other party for financial management, food services, transportation, facilities, education-related services, or other services; but prohibits the governing body from contracting with a for-profit entity to manage the charter school;

- allows a charter school to determine whether the governing body or the head administrator makes all employment decisions, with a default to the governing body if the charter fails to specify;

- requires an anti-nepotism policy like that already applicable to traditional public schools, effective July 2, 2007, which the governing body may waive for family members of the head administrator;

- exempts charter schools from school district policies and requires them to develop their own written policies and procedures;

- limits the enrollment of charter schools in districts with no more than 1,300 students to 10 percent of the total MEM of the school district; and

- makes charter schools responsible for providing special education services.

Finally, in addition to all the other provisions already noted, SB 600 amends the *Compulsory School Attendance Law*, the *Instructional Material Law*, the *School Library Material Act*, the *Fine Arts Education Act*, the *Bilingual Multicultural Education Act*, the *Literacy for Children at Risk Act*, and other sections of the *Public School Code* relating to sales to schools or school districts to make their provisions generally apply to charter schools as they do to school districts.

Fiscal Impact:

SB 600 makes no appropriation.

Administrative Costs: Current statute permits the host school district to retain up to 2.0 percent of a charter school's program cost. SB 600 specifies that PED will withhold exactly 2.0 percent of a charter school's program cost "for administrative services." For school year 2005-2006, the statewide program cost for all charter schools is approximately $65.1 million, 2.0 percent of which is $1.3 million statewide. However, SB 600 would also amend the *Public School Finance Act* to make charter schools eligible for growth units and the small school district hold-harmless provision, which would increase program cost for some charter schools, thus potentially increasing the funding to PED by approximately $51,300 to $1.35 million.

During the 2005 interim, PED testified to the Legislative Education Study Committee (LESC) that, to oversee charter schools statewide, the department would need 22 full-time equivalent positions and an annual budget of $2.0 million. The Executive recommendation for FY 07 is $2.0 million for "charter school authority."

Charter School Activities Program Unit: In 2005, legislation was enacted requiring the New Mexico Activities Association (NMAA) and the local school board to "allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by [NMAA] if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities…."

SB 600 adds a new section to the *Public School Finance Act*, creating the "charter school activities program unit." Charter school activities program units are generated by multiplying the number of charter school students participating in NMAA governed activities in district schools by a cost differential of 0.1; funding generated by charter school activities program units goes to the school district in which it is generated.

The NMAA estimates that approximately 60 percent of public school students in grades 7 through 12 participate in extracurricular activities. On the 40th day of school year 2005-2006, there were 5,589 charter school students enrolled in grades 7 through 12. Based on a participation rate of 60 percent and on the 2005-2006 final unit value of $3,198.01, the estimated cost of funding the additional units generated by charter school students is approximately $1.0 million for FY 08:

$$5{,}589 \times 60\% = 3{,}353 \text{ participating students}$$
$$3{,}353 \times .1 = 335.340 \text{ units}$$
$$335.340 \text{ units} \times \$3{,}198.01 = \$1{,}072{,}421$$

Because no money is appropriated in SB 600 to cover the cost of the additional units generated as a result of the charter school activities cost differential, if SB 600 is enacted, the unit value will decrease.

Although SB 600 creates the charter school activities program unit, it does not include these units in that portion of statute that lists the units that are added together to generate program cost [Section 22-8-18 NMSA 1978]. Therefore, it is unclear if charter school activities program units are intended to be part of a district's program cost calculation.

Supplemental Distributions: Under current statute, in order for a charter school to receive an emergency supplemental distribution or a program enrichment distribution, the school's host district must request the distribution on the school's behalf. SB 600 amends statute to allow a charter school to apply for an emergency supplemental distribution or a program enrichment distribution on the same basis as a school district.

In recent years, most emergency supplemental distributions have been made to school districts with a membership of 200 or fewer. For school year 2005-2006, 13 school districts with a membership of 200 or fewer were allowed by PED to budget a total of more than $3.5 million in supplemental emergency funding for operational expenditures in amounts ranging from $45,724 to $620,620.

Currently, there are 35 charter schools with a membership of 200 or fewer students. If they apply for supplemental emergency distributions at the same rate as school districts, approximately 80 percent, or 28 schools, may be expected to apply for such funds to support their operational expenditures. The average amount of emergency supplemental funding budgeted by a small school district for school year 2005-2006 is $271,847. If small charter schools make and can justify similar requests, the need for additional emergency supplemental funding for school year 2007-2008 could approach $7.6 million:

$$\$271{,}847 \times 28 = \$7{,}611{,}716$$

HAFC CS/HB 2, et al. (the *General Appropriation Act of 2006*) includes two emergency supplemental appropriations for FY 07, one for $2.0 million in recurring General Fund revenue and one for $5.0 million in nonrecurring General Fund revenue for a total of $7.0 million.

Audits: According to the State Auditor, requiring charter schools to be their own boards of finance would also require that they be subject to their own separate audits. Under current law, charter schools are audited as component units of their host school districts, with the districts themselves bearing the cost of the initial overhead for the district audit and the charter schools adding perhaps $3,000 to $5,000 to the cost of each district audit. However, under SB 600 each charter school would be responsible for all of the expenses of its separate audit, increasing the cost considerably. The State Auditor was unable to estimate the increase because of the numerous factors involved – size of the school, complexity of the audit, condition of the financial records – but in his opinion the increase would be substantial.

Issues:

With its extensive amendments, SB 600 raises a number of issues: fiscal, capital, and programmatic.

Fiscal Issues

Budgets

- The *Public School Finance Act* requires each charter school to submit to the local board a school-based budget, based upon the projected number of program units generated by that charter school and its students. In building the budget, the charter school must use the at-risk index and the T&E Index of its host district.

  In contrast, SB 600 would require each charter school to submit a school-based budget to the Charter Schools Division of PED. For FY 08, the budget for all charter schools would be based on the projected number of program units generated by that charter school and its students and on the at-risk index and the T&E Index of the district within whose boundaries the school is geographically located. Thereafter, only the budgets of new charter schools for the first year of operation would be based on projected units; other schools would use the averaged membership of the prior year 80th and 120th days. For subsequent years of operation, each charter school would use a T&E Index computed on the basis of its own staff but would continue to use the at-risk index of the district within whose geographical boundaries the school is located.

- Under current statute, the approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board has no veto authority over individual line items within the charter school's proposed budget; it must approve or disapprove the budget in its entirety.

  Under SB 600, PED would not face the same restrictions with regard to approving charter school budgets as do local school boards currently. The procedures would be the same as for school districts: on or before July 1 of each year, PED would be required to approve charter school operating budgets; make corrections, revisions, and amendments to the operating budgets "to conform the budgets to the requirements of law and to the department's rules and procedures"; and, prior to approving a charter school's budget, require the charter school to demonstrate that parental involvement in the budget process was solicited.

Board of Finance Designation

- **Current Statute:** Upon written application to and approval of PED, a school district may be designated a board of finance, meaning that the district "may require all funds distributed to, allocated to or collected for" the district to be deposited with the district. School districts are not required to be designated a board of finance. Charter schools, because they are public schools within a school district, are not eligible to be designated as boards of finance.

- **SB 600:** Although requesting board of finance status would remain optional for school districts, SB 600 would require all existing charter schools to qualify for and be designated as boards of finance as of August 1, 2007. In addition, a charter school applicant must submit a plan to the PEC, "detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a charter school shall qualify as a board of finance before the first year of operation of the charter school." In testimony to the LESC during the 2005 interim, PED noted that requiring each charter school to be its own board of finance may pose a hardship on smaller charter schools because of the financial expertise and responsibility required of the staff. For similar reasons, the State Auditor also questioned the value of requiring charter schools to be their own boards of finance.

Capital Issues

Although SB 600 defines the term "school district" as used in the *Public School Capital Outlay Act* (PSCOA) to include charter schools and although the bill generally regards charter schools as school districts, without more substantial and extensive amendments to the PSCOA it appears that the act cannot be applied to charter schools in the same manner that it is to school districts.

The standards-based award process required by the PSCOA includes:

- the use of the New Mexico Condition Index, which, based on nine weighted categories, ranks every public school facility in terms of relative need, from greatest to least;

- a formula for funding school district capital outlay expenditures, based upon district wealth and local effort, that provides for an average 50 percent share for all districts and a minimum state share of 10 percent; and

- an offset methodology for dealing with the disequalizing effects of direct appropriations based on a district's state share of the Public School Capital Outlay Council (PSCOC)-approved capital outlay funding.

In this computation, the district wealth and local effort are derived from the district's bonding and taxing authority, which charter schools do not have; therefore, SB 600 raises the question how charter schools will meet the local match required in order to receive capital outlay grants from the PSCOC. Also, without bonding authority charter schools cannot impose the 2-mill levy, which is a prerequisite for capital outlay grants. Given the absence of fiscal resources for charter schools, it would appear that, if SB 600 were enacted, the PSCOC would be required to fund 100 percent any charter school's requested capital outlay project.

In addition, under current statute any direct appropriation to a charter school counts as an offset against the district's share of capital outlay funding; and SB 600 includes no provision to alter this arrangement. While the title of the bill suggests that SB 600 will make charter schools independent of school districts, the capital outlay issues – and other issues, as well – suggest that districts will not be independent of charter schools.

The concept of district wealth and local effort is also a factor in the state's compliance with the *Zuni* lawsuit. Filed in 1999, the *Zuni* lawsuit challenged the constitutionality of the process for funding public school capital outlay in the state. In response to an order from a federal district judge that New Mexico establish and implement a uniform funding system for capital improvements in the state's school districts, in 2003 and 2004 the Legislature enacted new provisions in the PSCOA to authorize the PSCOC to determine grant awards for school districts through a standards-based process. The creation of the standards-based process, with its reliance upon a state-share formula based on a local school district's property tax wealth and local effort, was part of the state's response to implement the uniform system prescribed by the Special Master of the *Zuni* lawsuit.

At that time, charter schools were public schools within school districts and not, as SB 600 proposes to make them, tantamount to additional districts. The addition of 64 charter schools (52 operating in school year 2005-2006 and 12 more approved for school year 2006-2007) that have no bonding or taxing authority, commingled with the existing 89 school districts, is likely to complicate the ranking system. Noting the authority of charter schools, under SB 600, to apply for state capital outlay funds independently of school districts, the Public School Facilities Authority (PSFA) analysis explains:

> Without consideration of the capacity of the physical space or other adequacy requirements currently required of school districts applying for state capital funds, a newly minted charter school could "jump the queue" of other public schools listed in the Facilities Assessment Database. A charter could be approved without due consideration to the facilities. If it is later determined that [the facilities] are not adequate for the student enrollment levels and other factors, it is conceivable that the charter school could successfully petition the chartering authority (the state) to receive funds to bring the facilities up to adequacy.

The PSFA analysis adds that, in addition to being costly to the state, such consequences are likely to conflict with the requirements of the *Zuni* lawsuit, in large part because the state must supply a charter school's local match requirement.

Another potentially disequalizing feature of SB 600 is the requirement that charter schools approved after July 1, 2007 must wait until the charter is renewed before being eligible for state capital outlay funds. This postponement of eligibility, applied broadly without regard to specific situations, could result in delays of up to five years in addressing serious capital needs.

Also problematic, the PSFA analysis suggests, is the apparent conflict between SB 600 and current law. Legislation enacted in 2005 requires that school districts include charter schools in their five-year facilities plans; yet SB 600 requires existing charter schools to wait until their charters are renewed to be eligible for capital outlay funds. "If a school district has complied with this requirement," the PSFA analysis continues, "a charter school may have a legitimate protest to being excluded from potential eligibility for state capital outlay funds until after the charter has been renewed."

The PSFA analysis also questions the legality of the amendment in SB 600 that reverts to the state all assets of a charter school whose charter is revoked. "It is unclear who (PED, PSFA, Property Control Division) will be the custodian of these new assets. PED is not statutorily authorized . . . to own assets, [and] the PSFA is only allowed to own portable classrooms. Also, there would be costs associated with maintaining, insuring and storing new assets as well."

Finally, on a technical point, the PSCOA contains numerous references to charter schools as entities distinct from school districts; however, SB 600 leaves those references unchanged, despite the redefinition of the term "school district."

Programmatic Issues

The number of charter schools in New Mexico continues to grow. During school year 2005-2006, 52 charter schools have been operating in New Mexico. In addition, another 11 schools have been approved to open in school year 2006-2007, and approximately a dozen other schools have submitted applications to their respective local school boards. While many of them are concentrated in Albuquerque, others are spread throughout the state, from Deming to Clayton, from Carlsbad to Aztec. While SB 600 prohibits new conversion schools after July 1, 2007, it allows the number of start-up schools to increase at the present pace: 15 per year with a maximum of 75 in any five-year period. Already the proliferation of charter schools as schools within school districts has affected the host districts in terms of enrollment, facilities, and resources in general; the proliferation of charter schools essentially as districts themselves is likely to exacerbate the effects upon the 89 actual school districts. During previous sessions, the LESC has endorsed memorials to study the effects of charter schools upon school districts; however, like consensus-built charter school legislation that the LESC has sponsored (see "Background: Charter School Studies," below), none of these measures passed.

Both state law and the federal *No Child Left Behind Act of 2001* (NCLB) provide a series of consequences, or sanctions, for schools that fail to make "adequate yearly progress" or AYP (a prescribed degree of improvement each year, primarily in student achievement). Under these requirements, a school that has failed to make AYP for a seventh consecutive year must be restructured; that is, it must replace all or most of the school staff, submit to state takeover, or reopen as a charter school. By limiting conversion schools to those authorized by a local school board prior to July 1, 2007, SB 600 eliminates one of the prescribed options for restructuring. Amendments to the *Public School Finance Act* in SB 600 allow PED to assume financial control of a charter school in case of fiscal mismanagement; however, SB 600 does not make a similar provision in case the PEC suspends or revokes a charter for some other reason. Thus, the bill is silent on the disposition of the students and staff in either of these cases. Provisions already in the *Public School Code* allow PED, after the Secretary of Public Education has suspended the authority of a local school board, to take over the control and management of a district that has failed to meet requirements of law or department rules or standards; but without specific amendments to include charter schools in this process, the applicability of these provisions seems ambiguous at best.

SB 600 requires the charter school, "as a local educational agency," to provide special education services; but it does not provide a contingency in case a charter school, especially a small one, is unable to provide those services.

Regarding personnel issues, SB 600 grants the governing body of a charter school more authority than the *School Personnel Act* allows local school boards. As noted under "Bill Summary," above, SB 600 allows a charter school to determine whether the governing body or the head

administrator makes all employment decisions; and, if the charter fails to specify, the governing body makes all personnel decisions by default. By contrast, the Legislature amended the *School Personnel Act* in 2003 to assign hiring and firing authority to the school district superintendent, rather than the local school board.

Finally, although SB 600 makes the PEC the sole charter authorizer in New Mexico, it makes no provision for training the members of the PEC – or staff in the PED Charter Schools Division – in the role and functions of charter schools or the responsibilities of the authorizer of charter schools. (See "Background: The Role of the Charter Authorizer," below.)

Background:

Charter School Studies

Beginning with the 2002 interim, when the LESC created the first of two charter school work groups (the second, jointly sponsored by the LESC and PED, operated during the 2004 interim), the committee has led a number of efforts to amend the *1999 Charter Schools Act* to address a variety of issues and problems that have arisen since the implementation of the law. However, despite the committee's sponsorship of broad, consensus-built charter school legislation in 2003, 2004, and 2005, the only significant piece of charter school legislation to pass since the enactment of the *1999 Charter Schools Act* was the House Education Committee Substitute for HB 510 (Laws 2005, Chapter 221). Together with another measure endorsed by the LESC – the capital outlay bill (CS/SB 455, or Laws 2005, Chapter 274) – this charter school legislation resolved some of the outstanding issues related to charter school facilities. One of the major provisions is that, with certain exceptions, all charter schools must be in public facilities by 2010.

While some capital needs of charter schools have been addressed, others remain unresolved, as do issues related to such matters as chartering authority, fiscal procedures, applying for and renewing a charter, and settling disputes. For this reason, beginning in August, the LESC heard testimony on charter schools at each meeting during the 2005 interim. At various times, testimony came from PED, school districts, the New Mexico School Boards Association, the State Auditor, and the New Mexico Coalition for Charter Schools. During these hearings, the committee reviewed a variety of recommendations for amending the law, either (1) in the form of provisions that the LESC adopted via the original House Bill 510 (2005) but that were not contained in CS/HB 510 or (2) in the form of testimony or discussion during the interim. One of the recommendations (not reflected in SB 600) was to implement a temporary moratorium on the creation or authorization of any new charter schools until some of the outstanding issues are resolved. Otherwise, the provisions in SB 600 reflect a mixture of some of the recommendations that the LESC reviewed and a number of new ones.

One of the questions studied extensively during each of the two interims was that of chartering authority. After considering a number of options and their consequences, the 2002 work group chose not to recommend any change in the chartering authority; the 2004 work group, however, recommended dual chartering authority, shared by local school boards and PED. Then when the work group presented its recommendations to the LESC in December 2004 and to the Public School Capital Outlay Task Force in January 2005, each body rejected the proposal for dual chartering authority, preferring that chartering authority remain exclusively with local school boards.

Although the 2002 work group did not consider the board of finance issue, the 2004 work group did review it and recommended that charter schools be their own boards of finance, in part

because of concerns over the frequent audit findings in district audits attributable to charter schools. The original HB 510 (2005), endorsed by the LESC, included this provision; however, like numerous others, it was not part of the successful committee substitute for HB 510. Furthermore, the State Auditor had indicated that, regardless of their board of finance status, charter schools would continue to be component units of school district audits because the local school board has the authority to approve, deny, or revoke a charter.

The Role of the Charter Authorizer

At different times under state law, New Mexico has vested chartering authority in both state and local entities.

- The original *Charter Schools Act* (1993) allowed five conversion charter schools and designated the State Board of Education as the sole chartering authority.

- The *1999 Charter Schools Act* amended those provisions to allow start-up charter schools in addition to conversion schools and to make the chartering authority the local school board of the district in which the charter school is located, the provision that remains in effect today.

New Mexico is not alone in examining the assignment of chartering authority and the roles of the charter school authorizer. During the past few years, the focus on charter schools nationally has broadened to include not only the charter schools themselves but also the entities that authorize them. The National Association of Charter School Authorizers (NACSA) says that, as the number of charter schools has continued to grow nationwide, states have tended to allow multiple types of entities to grant and oversee charter schools, a trend also noted in a January 2005 study by the US Government Accountability Office (GAO).

This increased attention to charter authorizers has also highlighted certain roles, responsibilities, and expectations. Increasingly, authorizers are expected not only to grant charters but also to provide technical assistance to help charter schools succeed. They are also expected to monitor the operation and progress of charter schools that they have authorized and to deny or revoke the charters of any schools that have failed to show the required results or that have engaged in some form of serious mismanagement, usually fiscal. Given these responsibilities, most sources agree, charter authorizers need not only financial support but also extensive training. One of the recommendations that the LESC heard in testimony during the 2005 interim was that local school board members receive training in charter schools and charter authorizing.

Several national studies or organizations have offered recommendations on chartering entities, whether local school boards, state school boards or education agencies, boards or agencies created expressly for the purpose of authorizing and monitoring charter schools, or some combination of authorizers. For example, the National School Boards Association suggests that local school boards are a logical choice because of their "legal and moral responsibility for educating all of the community's children"; the GAO study recommends a mix of authorizers to provide charter school founders more opportunity to find support for a wider range of instructional approaches or educational philosophies; and the Charter Friends National Network says that specialized chartering authorities have the advantages of independence from existing education agencies and the opportunity to develop specialized expertise in both approving charters and providing ongoing oversight. To determine which approach might work best for New Mexico, two other bills introduced this session (HB 432 and SB 450, endorsed by the

Public School Capital Outlay Oversight Task Force) include an appropriation of $50,000 for FY 06 and FY 07 for a feasibility study of alternative chartering authority.

Performance and Evaluation of Charter Schools in New Mexico

Like traditional public schools, charter schools are subject to the requirements of the federal NCLB, in particular the requirement that each school make AYP. In this respect, the performance of charter schools is much like that of public schools as a whole. During school year 2004-2005, 45.5 percent of public schools in general made AYP, as did 46.5 percent of charter schools (20 of 43 charter schools).

According to the *2004-2005 Evaluation of New Mexico Charter Schools*, prepared by The Synergy Group, Ltd., "the student achievement picture [of charter schools] remains blurred," as it has for each of the five years of the evaluation. Furthermore, the report identifies the following "broad conclusions" that can be drawn about charter schools according to the data collected for school year 2004-2005:

- The enrollment in charter schools is increasingly representative of the state's public school student population.

- Charter schools, by and large, are the smallest public schools in the state, the majority having fewer than 200 students.

- As charter school curricula become increasingly refined, they are characterized by cohesiveness, integration, and innovation. Instruction in charter schools is characterized by traditional methods but enhanced by hands-on, "authentic" experiences.

- Charter school students continue to achieve at comparable levels as their peers in other public schools. Their achievement is also documented through an array of authentic performance assessment tools.

- Administrators, teachers, and students continue to express high levels of satisfaction with their charter school experience. Parents in particular are satisfied with the quality of education their students are receiving as well as their opportunity to have a voice in the school operations.

- Many of the benefits and accomplishments of charter schools can be attributed to the small school size. Students and parents are convinced that charter schools provide better learning opportunities. Charter schools are able to create communities of learners as they foster outreach and involvement in the larger community.

Funding of Charter Schools

Charter schools in New Mexico are eligible for funding from a variety of sources. At the state level, as noted under "Fiscal Impact," above, each charter school receives at least 98 percent of the school-generated program cost in the State Equalization Guarantee. In addition, since FY 00 the Legislature has appropriated nearly $4.5 million to the Charter Schools Stimulus Fund, which the Legislature created to provide financial support to charter schools for initial start-up costs and initial costs associated with renovating or remodeling existing buildings; and in 2003, the

Legislature appropriated $100,000 to PED to provide charter school incubation services in FY 03 and FY 04.

At the federal level, New Mexico is in its third and final year of a grant from the federal Charter Schools Program of nearly $18.0 million intended to support the planning, program design, and implementation of charter schools and the dissemination of successful practices in charter schools. The project period will end on September 30, 2006, and PED has stated its intention to reapply during school year 2005-2006. Also, each charter school receives that portion of money from state or federal programs (size adjustment and special education, for example) generated by eligible students enrolled in the charter school.

Related Bills:

*HB 432 *Public School Capital Outlay Omnibus Bill* (identical to *SB 450)
HB 560 *Amy Biehl Charter School Justice Program*
HB 630 *Education Dept. Charter Schools Division* (identical)
HB 749 *Estancia Learning Center Charter School*
HJM 48 *Public School Capital Outlay Process Reform*
*SB 211 *Public School Capital Outlay Changes*
*SB 450 *Public School Capital Outlay Omnibus Bill* (identical to *HB 432)
SJM 4 *Study Public School Capital Outlay Changes*