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FISCAL IMPACT REPORT

SPONSOR Youngblood ORIGINAL DATE 3/10/17
LAST UPDATED _____ HB 417
SHORT TITLE Charter Schools Chartered by Education Department SB _____
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB46, HB273, HB454, SB305, SB313
Conflicts with HB461, SB193

SOURCES OF INFORMATION

LFC Files
Legislative Education Study Committee (LESC) Files

No Responses Received From
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 417 amends the Public School Code, shifting certain Public Education Commission (PEC) duties to PED. The bill makes the Charter Schools Division (CSD) the chartering authority for state-chartered charter schools and assigns PED responsibility for vocational education.

FISCAL IMPLICATIONS

The bill does not make an appropriation; however, the costs of transferring responsibilities referenced in the bill are expected to be minimal since PEC is staffed by CSD and administratively attached to PED.

SIGNIFICANT ISSUES

PEC was established in the constitution in 2003 to serve as the state's authorizer of state-chartered charter schools. PEC currently receives administrative support from CSD, which is

administratively attached to PED. LESC notes this arrangement has resulted in inherent conflict, given the PED secretary’s authority to reverse any PEC chartering decisions. Several incidents involving CSD’s recommendations for charter school applications to PEC resulted in PEC deciding otherwise and the PED Secretary reversing the PEC decision. Due to this conflict, PEC has requested its own funding for dedicated staff and expenses, including legal representation. Currently, PEC is represented by assigned staff from the Attorney General’s Office for legal counsel on requirements of the Open Meetings Act.

A 2016 National Association of Charter School Authorities (NACSA) evaluation of PEC found almost all of its authorizing policies and practices were incomplete or inadequate. NACSA rated PEC as only “partially or minimally developed” in established and applied practices such as application decision-making, performance management systems, performance-based accountability, and organizational capacity. NACSA did acknowledge key recommendations from the first PEC authorizer evaluation in 2010 were implemented, including development of a school application toolkit. However, the evaluation notes tension between PEC and PED staff is “so high that it undermines both entities’ capacity to make good decisions about charter schools.” NACSA recommended third-party arbitration to help resolve existing conflicts, but representatives of both PED and PEC declared such intervention unnecessary.

LESC notes current statute is unclear regarding the 2 percent withholding provision. First, statute vaguely identifies the entity responsible for the withholding. Statute refers to the “division” (CSD) or the “department,” which in both cases would refer to PED (Section 22-8-25 and Section 22-8B-13 NMSA 1978). However, statute also refers to the “authorizer” as the agent responsible for the withholding (Section 22-8B-9 NMSA 1978), which in the case of state-chartered charter schools is the PEC. Second, the exact use of the 2 percent withholding has been an issue of concern. Statute refers to the funds being used both for administrative “services” and “support,” and Section 22-8B-9 NMSA 1978, detailing required elements of charter school contracts, requires a “detailed description” of how the chartering authority will use the withholding. It is unclear whether PED is actually using the entire amount to support state-chartered charter schools. In FY13, PED withheld approximately \$1.7 million from state-chartered charter school; reverted \$294 thousand, or 17.8 percent of the total withholding; and spent \$370 thousand, or 22 percent, on expenses not directly related to charter school oversight. A portion of the \$370 thousand was spent on a statewide Information Technology disaster recovery plan. It is unclear how the rest of the withholdings were spent.

ADMINISTRATIVE IMPLICATIONS

The bill includes a temporary provision transferring all functions, records, tangible personal property, contractual obligations, and duties referenced in statute or rule pertaining to the PEC’s chartering authority or vocational education administration to PED, which will be in place until all conditions have been met. Effectively, the bill removes the ability for PEC to take any actions.

CONFLICT, RELATIONSHIP

This bill relates to HB46, which places a moratorium on new charter schools for two years; HB273, which provides incentives and penalties for charter schools based on school grade performance; HB454 and SB305, which regulate virtual charter schools; and SB313, which adjusts charter school lease assistance requirements.

The bill conflicts with HB461, which clarifies PED duties regarding development of the education strategic plan, and SB193, requiring PED to transfer a fourth of the 2 percent withholding to PEC for administrative support of state-chartered charter schools.

OTHER SUBSTANTIVE ISSUES

According to LESC, the bill does not amend the following references to PEC in statute:

- Article XII, Section 6 of the New Mexico Constitution, which establishes election and appointment of members on PEC;
- Section 22-2-2.2 NMSA 1978, which requires PEC to solicit input from stakeholders and work with PED to develop the five-year strategic state plan for public education;
- Section 22-2-14 NMSA 1978, which requires the PED secretary to consult with PEC prior to the suspension of local school boards or officials that fail to meet department standards and requirements;
- Section 22-14-5 NMSA 1978, which subjects the instructional support and vocational education division of PED to policies of PEC;
- Section 22-15C-10 NMSA 1978, which requires PED to report on the administration and execution of the School Library Material Act upon request by PEC;
- Section 22-15F-4 and 22-15F-6 through 22-15F-7 NMSA 1978, which outlines PEC compliance and reporting requirements for the New Mexico School for the Arts;
- Section 22-21-1 NMSA 1978, which restricts PEC members from certain business transactions;
- Section 23A-6 NMSA 1978, which includes PEC as a member in a semiannual meeting of stakeholders that reviews activities relating to the education of tribal students;
- Section 22-23B-4 NMSA 1978, which requires the Hispanic education liaison to advise PEC on the five-year state education strategic plan as it relates to Hispanic student education; and
- Section 22-24-5 NMSA 1978, which requires the Public School Capital Outlay Council to report funding criteria and activities authorized by the council.

In 2011, LESC convened a work group of 12 representatives of constituencies affected by charter school appeals to serve on a work group to review the appeals process under the Charter Schools Act and to make recommendations for amendments. One of the work group's recommendations was to encourage CSD and the PED secretary to collaborate with PEC regarding the criteria for accepting or rejecting initial charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters.

A 2010 LFC evaluation on charter schools noted non-renewal of charters was a challenging but important role for authorizers. Many times charter authorizers have to balance their roles as facilitators and regulators. One school's charter was renewed as a state-chartered charter school by the PEC despite CSD's recommendation for nonrenewal. It is unknown if this process is common among local authorizers. Formalizing this process in law and making it binding based upon measurable and objective performance measures will prevent the state from funding poorly performing schools in perpetuity.