

LFC Requester:	Sunny Liu, LFC
-----------------------	-----------------------

**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 01/25/18
Original **Amendment** **Bill No:** SB33
Correction **Substitute**

Sponsor: Senator William P. Soules **Agency Code:** 924
CHARTER SCHOOL ADMIN **Person Writing**
SUPPORT FUNDING **Analysis:** Marian Rael
Short Title: _____ **Phone:** 5058276519 **Email** Marian.rael@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	Estimated (\$640.0)	Estimated (\$640.0)	Recurring	PED Operations

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 33 provides for the Public Education Department (PED) to distribute one-fourth of the two percent withheld from state-chartered charter school’s program cost for administrative support to the Public Education Commission (PEC) for its administrative support of state-chartered charter schools. SB 33 removes the requirement for the PED’s Charter Schools Division (CSD) to provide staff support to the PEC; removes the PED’s responsibility of providing recommendations to the PEC regarding charter school authorization, denial, suspension, and renewal; and makes technical corrections.

FISCAL IMPLICATIONS

Provisions contained in Senate Bill 33 would reduce operational revenues to the PED by an estimated \$640 thousand and transfer these funds to the PEC to provide administrative support to state chartered charter schools. This transfer would cause a significant impact on revenues used by the PED to funds employee positions.

Passage of SB33 may also impact the five year, \$22M federal grant recently awarded to the department, which includes funds specifically earmarked for improving authorization, support, and oversight practices within the department.

SIGNIFICANT ISSUES

Presently, the PED uses the majority of funds generated by the charter 2 percent set-aside to fund positions throughout the agency that provide administrative support to charter schools statewide. These include full funding of the charter schools division staff and partial funding of staff from many agency bureaus that provide budget oversight, reimbursement of state and federal funds, audit support and oversight, priority schools supporting school in academic need, transportation support, instructional material and capital outlay support and assessment oversight among others. It does not appear that the PED would be able to meet its statutory charge of providing oversight of all public schools in the state if this funding was diverted to the PEC.

A reduction of \$640 thousand would require PED to reduce staff accordingly and result in reduced support to charter schools statewide.

The Public Education Commission (PEC) by statute (Section 9-24-9 NMSA 1978) is

administratively attached to the PED and is not considered an agency for funding purposes by the Legislative branch or the Executive Branch. The PEC is not assigned an agency number, is not included in the General Appropriation Act, and does not submit an audit. As such, the PEC does not have the authority to accept the distribution of \$640 thousand, and does not have the authority to expend public funds on its own.

It is unclear how the language “for its administrative support” included on page 10, line 3 interacts with the current limitation of PEC duties to authorization of charter school; specifically, it is unclear to PED whether the limited PEC duty of authorizing state chartered charter schools implies that they are authorized to obtain administrative support.

SB 33 removes the requirement for CSD to provide staff support or make recommendations to the PEC regarding approval, denial, suspension or revocation of school charters. This effectively removes education professionals from the process. Limiting the input that education professionals have on decision making increases the influence of PEC members, and PED may not be able to ensure the same rigor and quality controls are considered in authorizing decisions that currently exists.

Similar legislation last session failed to receive approval from the Public Education Commission itself, and this legislation has also not received the PEC’s endorsement.

PERFORMANCE IMPLICATIONS

Under current statute, the Secretary is the governing authority and shall have control, management and direction of all public schools. SB 33 appears to erode that authority by removing PED from evaluating and making recommendations regarding the authorization and revocation of charter schools. Under state statute (22-1-1 et seq. NMSA 1978) the Secretary is responsible to the Governor for the operation of the PED and for public education in New Mexico. Provisions of this bill would decentralize decision making regarding charter schools from the PED which in turn makes the Secretary responsible for schools over which s/he would have little authority.

ADMINISTRATIVE IMPLICATIONS

Provisions of SB 33 would reduce operational revenues by approximately \$640 thousand and transfer these funds to the PEC to provide administrative support to a state-chartered charter school. The transfer would cause a significant impact on revenues used by PED to fund employee salaries. A reduction of \$640 thousand would require PED to reduce staff accordingly and reduce support to charter schools statewide. This reduction would occur on top of a more than thirty percent reduction in agency funding the PED has absorbed since 2012.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB33 would potentially implicate Article XII of the Constitution, which provides the Secretary of Public Education administrative and regulatory powers and duties, while also running counter to current statute including the Public Education Department Act, which established “a single, unified department to administer laws and exercise functions” related to public education. Splitting administrative and functional responsibilities between the PEC and the department undermines this unification of state level educational responsibilities.

Current law contains a conflict regarding the two percent withholding that could impact implementation. Provisions in the Charter Schools Act (22-8B-13 NMSA 1978 Charter School Financing) indicates that “the amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost”. Historically, this was accurate as charter schools were not subject to credits for local mill levies (charter schools are not authorized to levy taxes), or the federal payment in lieu of taxes credits (a.k.a. federal forest reserve and impact aid). This changed in 2017 with the passage of SB 135 (being Chapter 78 Section 1 Laws 2017) which added state-chartered charter schools to the definition of federal revenue in the *Public School Finance Act* (22-8-25 NMSA 1978 Section C.) thereby requiring PED to take credit for any impact aid or forest reserve funding.

Using statutory construction, and giving consideration that legislative intent is best reflected by the most recently passed law, PED is withholding the two percent *and* taking credit for federal revenues in the calculation of the SEG. Therefore, the amount of funding allocated to a charter school can and will be less than 98 percent of the school-generated program cost and this section of the *Charter Schools Act* is in conflict with the new provisions of the *Public School Finance Act*. The section indicating funding allocated to charter schools should not be less than ninety-eight percent of the program cost should be stricken, however if the conflict continues, PED will implement the proposed provisions of SB 33 in accordance with the bill, and the withholding will be calculated using the current practice of withholding two percent from state-chartered charter schools first and then applying applicable credits.

TECHNICAL ISSUES

It is unclear if the PEC has the authority to accept or expand the distribution. The PED does not have a mechanism to transfer funds to the PEC and without an approved budget in place there is nowhere for the funds to be deposited.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Secretary of Education will retain statutory authority to oversee schools and continue to improve the quality of the state’s charter school environment.

AMENDMENTS