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

**SPONSOR** Larranaga **DATE TYPED** 2/09/04 **HB** 404/aHEC

**SHORT TITLE** Charter School Standards **SB**

**ANALYST** Baca

## APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|---|---|---|---|---|---|
| FY04 | FY05 | FY04 | FY05 | | |
| | NFI | | | | |

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HJM 33
Companion to SB 403

## SOURCES OF INFORMATION

LFC Files

Response Received From
New Mexico Public Education Department (PED)

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY TASKFORCE

## SUMMARY

Synopsis of HEC Amendment

The House Education Committee Amendment adds federal government or one of its agencies to the list of publicly owned buildings in which a charter school may be housed.

Synopsis of Original Bill

House Bill 404 amends the 1999 Charter Schools Act (§22-8b-1) to provide:

- standards for charter school facilities to be the same as those that apply to public schools,
- procedures for establishing charter schools,
- procedures for appealing the rejection, non-renewal or revocation of a charter, and
- a mediation process to resolve certain disputes between a charter school or a proposed charter school and a local school board and clarifies the role of the PED Secretary in the mediation process.

Significant Issues

Among the significant issues addressed by the amendments to this bill, the PED has included the following changes:

- adds public post secondary educational institution to the list of those eligible to apply for a charter school (§22-8B-21),
- expands with whom a charter school can contract with for a facility and the requirements for that facility (§22-8B-4D),
- clarifies the use of a facility for a conversion school (§22-8B-4E),
- adds language to allow a charter school to pay or contract the costs of operation and maintenance of its facility (§22-8B-4G),
- adds language to make charter schools eligible for state and local capital outlay funds and to require that a school district include in the district's five year capital outlay plan (§22-8B-4H),
- clarifies the calculation of program units for a charter school located on more than one site (§22-8B-4L),
- clarifies the role of the PED and the PED Secretary with charter school (§22-8B-5),
- amends the deadline for submission of charter school applications from October 1 to July1 and allows for additional time for the application of the appeal process (§22-8B-6B),
- amends the requirements for the number of households signing a petition to in support of a conversion school from "a majority" to no less than two-thirds of the households (§22-8B-6D),
- increases the number of public meetings from one to two. The change requires the first meeting to be held upon receipt of the application to inform the community and begin a discussion of the application with the applicant and other interested parties. The local school board shall rule on the application in the second public meeting within 60 days after receiving the application (22-8B-6F),
- amends the language to allow the charter school to appeal to the secretary if the local school board denies the charter (§22-8B-6G)
- the language to require the local school board to provide the charter applicant written reasons for denial, non-renewal or revocation of the charter application within 15 days of the date of denial (§22-8B-6H and § 22-8B-12E),
- allows the charter school applicant or the governing body to appeal to the secretary within 30 days from receipt of the local school board's written decision. This maintains the time frame for a charter school to file an appeal (§22-8B-7B),
- amends the appeal process for charter schools so that the process is more collaborative and less adversarial. (1) The secretary may hold a public hearing at either the school district or at the charter school. The secretary has the ability to refer the decision back to the local school board for reconsideration if the secretary finds that the local school board's decision was arbitrary or capricious or contrary to the best interests of the students, school district or community. (2) The local school board and the charter applicant or the governing body can enter into mediation to resolve the dispute concerning the local school board's decision. The cost of the mediation shall be borne by the local school district (§22-8B-7B (1) and (2)),
- adds language that allows a charter school to appeal to the secretary if a local school board refuses to renew a charter because the Public School Capital Outlay Council has determined that the facilities do not meet the statewide educational building standards.

The secretary can reverse the decision of the local school board only if the secretary finds that the decision was arbitrary, capricious, not supported by substantial evidence or not in accordance with the law (§22-8B-7E);

- adds language to allow the charter school and the local school board to enter into mediation to resolve a dispute (§22-8B-9G),
- adds language that a charter school may be approved for an initial term of six years, provided that the first year is used for planning (22-8B-12A),
- amends the timeline for the renewal of a charter application from January 1 to July 1 of the fiscal year in which the charter expires. The local school board shall rule in a public hearing no later than September 1 of the fiscal year in which the charter expires. The timeline is consistent with the application timelines(§22-8B-12B),
- amends the language of the charter stimulus fund to allow the funds to be used for planning in addition to start-up costs over a 24-month period (§22-8B-14A and B),
- adds language to the charter school law on the process and procedures for mediation and the costs associated with the mediation (§22-8B-16 through §22-8B-18).

## TECHNICAL ISSUES

In its analysis, the PED raises the following issues:

Page 2 line 16 uses the term "hearings" to qualify when a local school board cannot delegate its duties. It specifically refers to Subsection F of Section 22-8B-6 NMSA 1978. However, the referenced subsection does not use the term "hearings," instead uses the term "meetings." Moreover, what is described at that proceeding does not appear to be a "hearing" in the usual sense (i.e., no mention of any traditional rights associated with due process). All terms should be changed to either "hearings" or "meetings."

Page 12, line 2 ("sixty days") and Page 12, line 17 ("fifteen days") are in conflict. If a local board votes on the 59th day to deny a charter, does it have one day or 15 days to render its written reasons for the denial?

Given that initial applications are due July 1st, applicants might attempt strategies to avoid a perceptively hostile local board from evaluating an application. The strategy might involve filing the application at the beginning of May when schools are getting ready to close or at the end of May when in the next 60 days boards might not have a quorum due to summer vacation schedules. If the board could not entertain the requisite public meetings, then the matter would default to the Secretary who would review it. Because this review is not a review of a decision of the local board since the matter went to the Secretary by default, it is not clear in Section 22-8B-7 NMSA 1978 what the Secretary is reviewing. It sounds more like it would be a *de novo* review.

## ISSUES RAISED BY MEDIATION

The PED lists the following as issues regarding the mediation process which are raised by the various sections in the bill:

- Page 23, Subsection F (lines 16 – 19) permits a local board's decision to revoke or not renew a charter to be appealed to the Secretary pursuant to Section 22-8B-7 NMSA 1978. It is not clear if the intention is for the Secretary to make a final decision or to yield to mediation.

- Whether advantageous or not, mandatory dispute resolution (Sections 22-8B-16 to 22-8B-18 NMSA 1978) brings another administrative level of activity into public schools. Mediation costs under this proposal are shared equally. In perhaps a majority of situations, public school districts are better able to bear this cost than charter schools.

- Given the right to appeal to the Secretary, the PED could become embroiled in any number of relatively minor issues that are not resolvable after mediation. This may not be the most efficient use of a cabinet-level secretary. An alternative might be to consider bringing in binding arbitration; however, this option may be more costly than mediation.

The mediation provisions do not specify the levels of due process, if any, that are available when a party appeals after unsuccessful mediation.

## ALTERNATIVES

THE PED suggests that:

> The remedy for a local board to "reconsider" a charter application after appeal where the Secretary found the local board's decision to be arbitrary or capricious seems to unnecessarily stretch out the process. Typically, aggrieved parties are entitled to judicial review after a state agency makes a final ruling that a party after a hearing was found to have acted arbitrarily or capriciously. Here, the matter gets referred to a local board that gets another opportunity to reconsider its prior decision. If the local board still won't change its decision, then it goes to mediation. Even after mediation, there is an opportunity for an aggrieved party to appeal back to the Secretary. A way to possibly lessen the amount of administrative review is to give the Secretary the option to *either approve or reconsider* the charter upon finding a local school board to have decided arbitrarily or capriciously.

**LB/lg:dm**