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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/2006

SPONSOR HJC LAST UPDATED 2/15/2006 HB 630/HJCS

SHORT TITLE Education Dept. Charter Schools Division SB \_\_\_\_\_

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 SB600, 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 House Judiciary Committee substitute for House Bill 630 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 HJC substitute carries no appropriation, there are several 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**

HB/630/HJCS 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-chartered 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 LESL, 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