

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 124

49th Legislature, 2nd Session, 2010

Tracking Number: .179527.1GR

Short Title: Repeal Charter School Limits

Sponsor(s): Senators Mark Boitano and Gerald Ortiz y Pino

Analyst: David Harrell

Date: January 26, 2010

Bill Summary:

Senate Bill 124 repeals the section of the *Charter Schools Act* that allows no more than 15 start-up charter schools to be established each year statewide. The section being repealed also allows any of the 15 slots that are unused in one year to be transferred to succeeding years up to a maximum of 75 start-up charter schools in any five-year period.

In repealing this section, SB 124 also repeals another provision requiring the Public Education Commission (PEC) to authorize start-up charter schools.

Fiscal Impact:

SB 124 makes no appropriation.

Substantive Issues:

Since 1993, the *Public School Code* has provided for charter schools to operate in New Mexico. From the original five that were authorized under the 1993 legislation, the number of charter schools in New Mexico has grown to 73 operating in school year 2009-2010, according to the analysis of SB 124 by the Public Education Department (PED). The PED analysis further notes that the limit of 75 charter schools in any five-year period “has not come close to being reached”:

During the first five years of the [1999] charter school legislation [see “Background,” below], 45 schools were approved, and in the second five years only 36 charters were approved. Based on this history of start-up charter schools, the removal of the charter school cap would not appear to have any significant impact on the number of charter schools approved either in any one-year period, or over a five-year span.

Nonetheless, both the PED analysis and the analysis by the Office of Education Accountability suggest that the limitations on the number of charter schools currently in law may jeopardize New Mexico’s application for a \$160 million grant from the federal Race to the Top competition, which was submitted on January 21, 2010, according to a press release from PED. The same possibility arose in testimony to the Legislative Education Study Committee during the 2009 interim by the New Mexico Coalition for Charter Schools. However, an examination of the application criteria suggest that there may be little cause for concern on these grounds.

- As provided in federal regulations issued on November 12, 2009, there are six fundamental selection criteria:
 - state success factors;
 - standards and assessments;
 - data systems to support instruction;
 - great teachers and leaders;
 - turning around the lowest-achieving schools; and
 - general selection criteria.

- Charter schools figure significantly in the last one: general selection criteria. These criteria include ensuring successful conditions for high-performing charter schools and other innovative schools. In this respect, applications will be scrutinized in terms of the extent to which:
 - the state law “does not prohibit or effectively inhibit increasing the number of high-performing charter schools . . . in the State, measured . . . by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools”; and
 - the state enables districts “to operate innovative, autonomous public schools . . . other than charter schools.”

- As the growth figures provided by PED illustrate, New Mexico’s statutory provisions have neither prohibited nor effectively inhibited the number of charter schools in the state.

- In addition, after receiving public comment on the original version of the regulations published in July 2009, the US Department of Education shifted the emphasis from the mere number of charter schools to the number of high-performing charter schools, in line with such other criteria as the extent to which the state has laws, regulations, or guidelines that “have closed or not renewed ineffective charter schools.”

Technical Issues:

The PED analysis notes that the repeal of the requirement that the PEC authorize start-up charter schools corrects an inconsistency in statutory language as local school boards, as well as the PEC, have the authority to approve start-up charter schools.

Background:

The provisions that SB 124 repeals were first enacted as part of a major rewriting of the original law to create the *1999 Charter Schools Act*. That law allowed two kinds of charter schools: conversion charter schools – that is, traditional public schools that were converted to charter status – and start-up charter schools. The 1999 law also provided that no more than 15 start-up and five conversion charter schools may be established per year and that no more than 75 start-up and 25 conversion schools may be established in any five-year period.

As enacted in 2006 (effective July 1, 2007), the *Charter Schools Act* provides only for the establishment of new start-up charter schools – except for special provisions in the *Assessment*

and Accountability Act to allow a traditional public school that has reached the Restructuring 2 stage in the school improvement cycle to reopen as a charter school.

Related Bills:

HB 74 *Charter School Oversight for 1 Year*