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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11

SPONSOR King LAST UPDATED _____ HB 192

SHORT TITLE Charter School Enrollment Preferences SB _____

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 192 amends the Charter Schools Act to require a conversion charter school to give enrollment preference to students residing within the conversion charter school's school district-designated attendance zone in years following the initial conversion year.

FISCAL IMPLICATIONS

House Bill 192 contains no appropriation and has no fiscal implications.

SIGNIFICANT ISSUES

The PED states:

Both federal and state law allow schools that are converting from a regular public school to a charter school to give enrollment preference to students already enrolled in the regular public school at the time of the initial conversion. However, such an enrollment preference is not permitted for subsequent enrollment periods.

The proposed HB192 amendment would jeopardize Charter School Program (CSP) funding because a charter school that exempts students who live within the school's district-designated attendance area does not qualify as a charter school for purposes of the federal Charter Schools Program (CSP).

In May 2010, the U.S. Dept. of Education addressed this issue in its Frequently Asked Questions (www2.ed.gov/programs/charter/faqs.doc) regarding federal grant funds for charter schools as follows:

“A school that exempts students who live in the local attendance area from its lottery would not qualify as a charter school for purposes of the CSP or meeting the Absolute Priority. ... in order to qualify as a “charter school” for purposes of the CSP and meeting the Absolute Priority, a charter school must meet all of the elements of the definition of a charter school as set forth in section 5210(1) of the ESEA.” Under that section, a charter school that is oversubscribed must admit students on the basis of a lottery and must include in that lottery all eligible applicants for admission. The Department has issued nonregulatory guidance stating that only students who are deemed to have been admitted to the charter school already and, therefore, do not need to re-apply may be exempted from the lottery (Charter Schools Program Non-Regulatory Guidance: <http://www2.ed.gov/policy/elsec/guid/cspguidance03.pdf>). The categories of students deemed to have been admitted to the charter school consist of the following: (a) students who are enrolled in a public school at the time it is converted into a public charter school; (b) siblings of students already admitted to or attending the same charter school; (c) children of a charter school's founders (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and (d) children of employees in a work-site charter school (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).

Because the Department does not interpret the CSP authorizing statute as allowing an exemption from the lottery for students living in a specific attendance area, a school that exempts such students from its lottery would not qualify as a charter school for purposes of the CSP or meeting the Absolute Priority.

OTHER SUBSTANTIVE ISSUES

The PED notes that current state law exempts charter schools from enrollment attendance areas and establishes a lottery for admission if the total number of applicants exceeds the number of spaces available. [Section 22-8B-4.1 NMSA 1978 and Section 22-1-4(E) NMSA 1978]. Requiring a charter school to abide by a district-designated attendance zone for purposes of granting enrollment preference would conflict with provisions of current statute.

GH/bym