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December 12, 2005

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: CHARTER SCHOOL RECOMMENDATIONS

The 2005 interim workplan of the Legislative Education Study Committee (LESC) has included charter schools as an issue for each meeting since August. During the November meeting, the committee heard tentative recommendations for amending the *1999 Charter Schools Act* from the Public Education Department (PED) and the New Mexico Coalition for Charter Schools. Because the recommendations, especially those from PED, were in preliminary draft form, the Chair of the LESLSC invited both parties to return in December with more formal recommendations.

Also during the November meeting, the LESLSC received a staff brief that, together with an attachment, enumerated the various recommendations that the committee (1) had either endorsed in the form of provisions in the unsuccessful original House Bill 510 (2005) but that were not contained in the successful committee substitute for that bill or (2) had heard in the form of testimony or discussion during the interim. For the convenience of the committee, that staff brief is included as Attachment 1.

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November 14, 2005

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

RE: STAFF BRIEF: CHARTER SCHOOL RECOMMENDATIONS

The 2005 interim workplan of the Legislative Education Study Committee (LESC) has included charter schools as an issue for each meeting since August. The presentation for November 2005 will focus on various recommendations for amending the *1999 Charter Schools Act*.

Issues:

- Beginning with the 2002 interim, when the LESC created a charter schools work group, the committee has led a number of efforts to amend the *1999 Charter Schools Act* to address a variety of issues and problems that have arisen since the implementation of the law.
 - One notable success was the passage in 2005 of the House Education Committee Substitute for House Bill 510 (Laws 2005, Chapter 221).
 - Together with another measure endorsed by the LESC and the Public School Capital Outlay Task Force (PSCOTF) – the capital outlay bill (CS/SB 455, or Laws 2005, Chapter 274) – this charter school legislation resolved many of the outstanding issues related to charter school facilities.
- Of particular benefit to charter schools, the capital outlay bill (CS/SB 455) allows the Public School Capital Outlay Council (PSCOC) to expend up to \$4.0 million annually from the Public School Capital Outlay Fund in grants for lease payments for charter schools and for school districts.

- The amount of assistance for each facility is based on the actual lease amount or up to \$600 per membership (MEM) of students enrolled, whichever is less.
- The bill also contains a provision for adjusting the lease assistance amount if the total grant awards would exceed the total annual amount available. For FY 06, because the applications for school year 2005-2006 amounted to approximately \$5.0 million, the awards were adjusted to meet the \$4.0 million maximum allowed under the law by reducing the lease assistance amount to \$477.54 per student.
- In large measure, the Legislature enacted this lease payment provision in response to information from the Public Education Department (PED) that doing so would make the state eligible for certain federal funds for charter schools. According to PED's reply to an inquiry from the committee chair in November 2004, New Mexico was at a disadvantage in competing for these funds for several reasons, among them: that there was no provision for state money to be used for the purchase, construction, or lease of facilities; that the \$300 per-pupil allocation was insufficient; and that there was no history or current legislation indicating "a source of continued funding (lease) for facilities for charter schools beyond five years."
- However, PED has explained that the federal program in question – the State Charter Schools Facilities Incentive Program – was not funded and that, therefore, there is no federal lease assistance program for school year 2005-2006.
- Although these proposals were enacted, broader consensus-built charter school legislation has failed in 2003, 2004, and 2005. As a result, issues related to such matters as chartering authority, fiscal procedures, applying for and renewing a charter, and settling disputes remain unresolved.
- Now, as the 2006 regular legislative session approaches, the LESC is once again considering amendments to the *1999 Charter Schools Act*, having not only reviewed numerous points of agreement from previous legislation that the committee endorsed but also having heard testimony regarding a number of new recommendations during the 2005 interim. Listed below are the recommendations that have come to the committee's attention thus far, either in the form of provisions that the LESC adopted via the original House Bill 510 (2005) but that were not contained in CS/HB 510 or in the form of testimony or discussion during the interim.

Provisions in the Original HB 510 (see [Attachment 2] for more details about recommendations one, five, and six)

1. Streamline the application and renewal processes, allow public postsecondary educational institutions to apply to create charter schools, and increase the petition requirements to ensure sufficient school and community support for creating a conversion charter school or renewing a charter.
2. Prohibit a charter school from contracting with a for-profit or nonprofit entity to manage the charter school.

3. Require teachers in charter schools to be subject to the same standards of evaluation as teachers in regular public schools.
4. Amend the fiscal provisions to require charter schools to be their own boards of finance, except for capital outlay and transportation funding; to require each charter school to be responsible for its own operation, including preparation of a budget, subject to periodic audits through the school district or pursuant to the *Audit Act*; and to allow money from the Charter Schools Stimulus Fund to be used for planning, with the charter school being allowed to take up to 24 (rather than 18) months to begin operating after receiving an initial grant from the fund.
5. Include the qualifications of the applicant and compliance with certain legal and fiscal requirements as additional criteria for denying or revoking a charter.
6. Provide for appeals of decisions by local school boards to deny, not renew, or revoke a charter and provide mediation to settle disputes between charter schools or applicants and local school boards.

Recommendations from Testimony and Discussion during the 2005 Interim

1. Retain the chartering authority with local school boards exclusively.
2. Allow an alternative to local school boards as the chartering authority, perhaps PED or a charter school commission that reports to the Secretary of Public Education.
3. Require local school board members to receive training in charter schools and charter school authorizing.
4. Assign the responsibility for supplementing a charter school's special education services to the school district in which the charter school is located rather than to PED.
5. Provide for an intermediate step, such as suspending certain functions of the school or its governing board, prior to revoking a charter.
6. Include an anti-nepotism clause similar to the one in the *Public School Code* for regular public schools.
7. Implement a temporary moratorium on the creation or authorization of any new charter schools until some of the outstanding issues are resolved. During this moratorium, PED, in conjunction with the Public School Facilities Authority (PSFA), is to conduct a financial analysis of the impact of requiring charter schools to be in public buildings by 2010.
8. Grant to regular public schools that are making adequate yearly progress the same automatic waivers that are granted to charter schools.

9. Assign the hiring and firing authority over all employees of a charter school to the principal or equivalent, to correspond with the hiring and firing authority already assigned to the school district superintendent.
10. Defer substantial amendments to the *1999 Charter Schools Act* until the 2007 session to allow time for proper deliberation.

Background:

- According to correspondence from PED in September 2005, 52 charter schools will be in operation during school year 2005-2006; an additional six schools have been approved to open in school year 2006-2007; and approximately 13 other schools have submitted applications and are awaiting a decision.
- Charter schools in New Mexico are eligible for money from a variety of sources.
 - At the state level:
 - each charter school receives at least 98 percent of the school-generated program cost (approximately \$64.1 million for school year 2005-2006, according to PED);
 - since FY 00, the Legislature has appropriated nearly \$4.5 million to the Charter School Stimulus Fund, which the Legislature created to provide financial support to charter schools for initial start-up costs and initial costs associated with renovating or remodeling existing buildings; and
 - in 2003, the Legislature appropriated \$100,000 to PED to provide charter school incubation services in FY 03 and FY 04; and, through a request for proposals, PED contracted with Youth Development, Inc., in Albuquerque, to provide those services.
 - At the federal level, New Mexico is in its third and final year of a grant from the federal Charter Schools Program (CSP) of nearly \$18 million intended to support the planning, program design, and implementation of charter schools and the dissemination of successful practices in charter schools. The project period will end on September 30, 2006, and PED intends to reapply during school year 2005-2006. According to PED, however, the CSP grants have become increasingly competitive, and there is no guarantee that every state that applies will receive full or even partial funding. Nonetheless, PED says that the US Department of Education places New Mexico's charter school program in high regard.
 - In September 2005, PED provided information about the distribution of funds from the state Charter School Stimulus Fund and the federal CSP for school year 2004-2005. Distributions for school year 2005-2006 are pending the approval of additional charter school applications.
 - Each charter school also receives that portion of money from state or federal programs (special education, for example) generated by eligible students enrolled in the charter school.

- Finally, as the committee will recall, for the September 2005 meeting PED provided performance and enrollment data for the charter schools in New Mexico. In summary:
 - of 43 charter schools that participated in statewide testing in school year 2004-2005, 20 made AYP and 23 did not;
 - charter school enrollment statewide for school year 2004-2005 was 8,050, while projected enrollment for school year 2005-2006 is 10,489; and
 - charter school enrollment in Albuquerque Public Schools for school year 2004-2005 was 5,499, while projected enrollment for school year 2005-2006 is 7,576.

Presenters:

For this presentation, Dr. Veronica C. García, Secretary of Public Education; and Dr. Lisa S. Grover, Executive Director, New Mexico Coalition for Charter Schools, will present additional recommendations regarding the *1999 Charter Schools Act*.

Questions the committee may wish to consider:

1. When will actual enrollment figures for all the charter schools in New Mexico in school year 2005-2006 be available?
2. What best practices of charter schools have been disseminated through the grant from the federal Charter Schools Program?
3. What effects, if any, would a moratorium on the creation of any new charter schools have on those charter schools already operating or approved?
4. To what extent is the success of a charter school dependent upon services provided by the host school district?
5. If New Mexico were to create an independent charter school authorizing body, where should it be housed? How should its membership be determined and its duties defined? How would it interact with school districts and PED? Who would be responsible for such services as transportation and special education? How would capital outlay funding be addressed?
6. To what extent have the charter schools in New Mexico accomplished their statutory purposes, among which are improving student achievement, developing “different and innovative forms of measuring student learning and achievement,” encouraging “the use of different and innovative teaching methods that are based on reliable research and effective practices,” and encouraging “parental and community involvement in the public school system”?

**MAJOR PROVISIONS IN THE ORIGINAL HOUSE BILL 510 (FAILED)
REGULAR SESSION, 2005
NOT INCLUDED IN CS/HB 510 (PASSED)**

- Application and renewal provisions:
 - A public postsecondary educational institution may apply to create a charter school.
 - An application for a conversion school must include a petition of support signed by no less than two-thirds (rather than 65 percent) of the employees in the school and a petition signed by no less than two-thirds (rather than a majority) of the households whose children are enrolled in the proposed conversion school.
 - A local school board must hold two meetings to review applications: the first to inform the community and discuss the merits of the application, and the second to rule on the application.
 - An application to renew a charter must be made no later than July 1 of the fiscal year in which the charter expires (rather than January 1 of the year before the charter expires); and the local board must rule no later than September 1 of the fiscal year in which the charter expires (rather than March 1 of the year in which the charter expires).
 - A petition in support of a renewal must be signed by no less than two-thirds (rather than 65 percent) of the employees of the charter school, and another petition must be signed by 75 percent (rather than a majority) of the households whose children are enrolled in the charter school.

- Administrative provisions:
 - A charter school is prohibited from contracting with a for-profit or nonprofit entity to manage the charter school.
 - Teachers in charter schools are subject to the same standards of evaluation as teachers in regular public schools.

- Fiscal provisions:
 - A charter school must be responsible for its own operation, including preparation of a budget, subject to periodic audits through the school district or pursuant to the *Audit Act*.
 - Each charter school must become its own board of finance, except for capital outlay and transportation funding
 - Money from the Charter Schools Stimulus Fund may be used for planning, and a charter school may take up to 24 (rather than 18) months to begin operating after receiving an initial grant from the fund.

- Additional criteria for denying or revoking a charter:
 - In addition to hearing appeals, the Secretary of Public Education may, on the Secretary's own initiative, review a local board's decision to grant a charter and refer the decision back to the local board with instructions to deny the application if the Secretary determines that the charter would:
 - violate the *Public School Finance Act*;
 - not be in the best interests of the state because of the applicant's insufficient knowledge, experience, credentials, or planning to operate the charter school; or
 - not be in the best interests of the incoming students of the charter school.
 - A local school board may deny a renewal application or revoke a charter for any of these reasons:
 - violation of civil rights laws, court order, or the *Public School Finance Act*;
 - a threat to the health or safety of students in the district; or
 - mismanagement of public funds.
 - Failure of a charter school to qualify for designation as a board of finance is grounds for denial of an initial application or renewal for a charter school that is initially approved or has its charter renewed after July 1, 2005.

- Processes for appeals and mediation:
 - The Secretary of Public Education may review or hear appeals of any local school board's decision to deny, not renew, or revoke a charter.
 - If the local board denies a charter school application or renewal and the charter school appeals to the Secretary of Public Education, the Secretary must refer such a decision back to the local board for reconsideration if the Secretary finds that the board's initial decision was arbitrary, capricious, or contrary to the best interests of the students, school district, or community. If the local board does not decide in favor of the charter school applicant or governing body, the two parties must enter into mediation, with the local board paying the cost of mediation in a case involving an applicant for an initial charter.
 - Mediation is required for unresolved disputes between the local school board and an established charter school, with the two parties sharing the cost of mediation.
 - To engage in mediation, the two parties agree on and hire a mediator, the local school board issues a written notice of the mediation session held at a neutral site in the school district, the mediator provides each party and the Secretary of Public Education a copy of the mediation report, and either party may appeal a continued point of disagreement to the Secretary of Public Education, whose decision is "final and not subject to appeal."
 - Finally, a charter school applicant or charter school may appeal to the Secretary of Public Education if the local board denies an application or renewal because the Public School Facilities Authority determined that the facilities do not meet standards.