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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/10

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE Repeal charter school limits SB 124

ANALYST Pava

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Dept. of Finance & Administration (DFA)
Office of Education Accountability (OEA)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 124 proposes to repeal Section 22-8B-11 NMSA 1978, which limits the number of charter schools established in any year or over a five-year period. This bill intends to remove the limit on the number of charter schools that can be established state-wide each year and over a five-year period. The current law limits the number of charter schools established in any year to fifteen (15), and over a five-year period to seventy-five (75). The effective date for the repeal of limiting the number of charter schools would be July 1, 2010.

FISCAL IMPLICATIONS

There is no appropriation or fiscal impact from this bill.

SIGNIFICANT ISSUES

Governor Richardson has proposed SB 124. It will address the following: correct inconsistency in statute that contradicts the ability of local school districts to approve charter schools; eliminate the risk of not qualifying for federal funds due to a cap on charter school growth; acknowledge the large waiting list for charter school enrollment; and consider the limitation of combined charter school enrollment that now must be less than 10% in any district.

PED indicates the following:

Maintaining a “cap” on the number of charter schools in the state of New Mexico may jeopardize the state’s ability to access ARRA funds and may inhibit the approval of the state’s proposal for Race to the Top funding. US Education Secretary, Arne Duncan, indicated in June 2009 that, “States that do not have public charter laws or put artificial caps on the growth of charter schools will jeopardize their applications under the Race to the Top Fund.” New Mexico has the potential to receive \$160 million from the Race to the Top funds.

Other significant reasons to remove the cap in New Mexico center on the issue of “public choice” for students and parents. It is estimated that 67% of charter schools throughout the state have a waiting list for students requesting to enroll at these schools. Currently, charter schools serve 12,700 students across the state, which is almost 4% of all public school students enrolled. The largest school district in the state, Albuquerque Public Schools, has 43 charter schools within its boundaries that serve approximately 10% of its student population. Charter schools are located in 21 of the 89 school districts in the state.

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. Since the inception of the Charter School Act in New Mexico in 1999, New Mexico has seen an average of five (5) charter schools opening up per year. While the number of charter schools has grown to the current total of 73 schools operating, the 75-school limit over a five year period has not come close to being reached. During the first five years of the charter school legislation, 45 schools were approved, and in the second five years only 36 charters were approved.

Another factor to consider when examining the cap on charter schools is the language in existing law that prohibits an application for a charter school whose proposed enrollment for that school, or in combination with existing charter schools in any district with a total enrollment of 1,300 or below, would exceed 10% of that district’s enrollment.

OEA indicates the following:

A charter school is a public school that operates under an approved charter and provides its operation with a large degree of autonomy and oversight from either local district officials or from the Local School Board. In turn, they are required to have a governing board and a financial authority that handles its financial operations.

In addition, charter schools often operate under a particular vision “charter” of education that can concentrate on a particular aspect of instruction such as arts, math and science, technology, or the classics, which distinguishes the school from other schools in a district. In 1991, the State of Minnesota was the first to enact a charter school act. Although most charter schools in New Mexico are chartered by the local district, the state enacted a law recently that provided for establishment of state-chartered schools whose issuing authority is the Public Education Commission.

Andrew Rotherham, co-founder of Education Sector and opponent of charter school caps, has written, “One might be willing to accept this pent-up demand if charter school caps, or the debate over them, were addressing the greater concern of charter school quality. But this is not the case. Statutory caps as they exist now are too blunt a policy instrument to sufficiently address quality. They fail to differentiate between good schools and lousy schools and between successful charter school authorizers and those with a poor track record of running charter schools. And, all the while, they limit public schooling options and choices for parents.”

PERFORMANCE IMPLICATIONS

The PED’s federal “Race to the Top” application, if approved, will impact public school support performance measures related to highly qualified teachers, student proficiency, the cohort graduation rate and high school graduates who take remedial courses. While SB 124 does not directly support any of the tasks within Governor Richardson’s Making School Work policy framework, the Executive has long been a supporter of charter schools.

ADMINISTRATIVE IMPLICATIONS

Removing the annual cap on new charter schools may result in an up tick in the number of applications and start-ups, which would result in more oversight responsibilities for the charter school division of the PED. New charter schools have to be handled as a separate district by the financial staff of the PED. Hence, removing the cap on new charter schools and the resulting increase in number would create more administrative and financial oversight responsibilities for this sector of PED.

OTHER SUBSTANTIVE ISSUES

Removing the cap on the annual number of charter schools created in New Mexico would align state statute closer to federal policy directives related to the Race to the Top grant initiative. New Mexico has recently submitted an application for this grant of \$160M.

COMPANIONSHIP

Companion: HB 74

TECHNICAL ISSUES

The repeal of this section of the Charter Schools Act would correct an inconsistency in the statutory language that indicates the Public Education Commission (PEC) “shall authorize the approval of start-up charter schools.” (22-8b-11(a) NMSA 1978) This is simply not the case as the local districts are also given the authority to approve start-up charter schools that wish to be authorized by their local school boards.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A potential consequence of not enacting this bill would be that NM would not receive \$160 million in federal “Race to the Top” funding. This could have potential to limit public choice in education for NM families. The current “cap” on the number of new charter schools each year and the five-year cap will continue to remain in place.