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## FISCAL IMPACT REPORT

SPONSOR Sharer DATE TYPED 2/20/05 HB \_\_\_\_\_

SHORT TITLE Charter Schools Independent of School Districts SB 808

ANALYST Chabot

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			(See Narrative)		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 910  
 Relates to SB 274, HB510, HB 668  
 Conflicts with HB 510  
 Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 808 amends state statutes relating to charter schools. PED's summaries the changes as follows:

Section 1. Section 22-8-6.1 permits a charter school to submit its own school-based budget to PED. This budget is to be based on projected program units generated by the students enrolled in that charter school using the at-risk index and the instructional staff training and experience index of the school district where the charter school is located.

Section 2. Section 22-8-38 requires a charter school applicant requesting an initial or renewal charter from either the PED or a school district to qualify as a board of finance. Failure of the charter school to qualify for designation as a board of finance constitutes good and just grounds for denial or revocation of a charter school's charter.

Section 3. Section 22-8-39 permits the PED to suspend the authority of a charter school from acting as a board of finance if there is reasonable belief that there is mismanagement, improper recording or improper reporting of public school funds under its control. The PED can also revoke or suspend a charter that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds.

Section 4. Section 22-8B-1 changes the name of “1999 Charter School Act” to the “Charter School Act.”

Section 5. Section 22-8B-2 removes charter schools from being able to become charter schools by means of the conversion process. The bill does not affect the continuation of existing conversion charter schools.

Section 6. Section 22-8B-3 contains some cleanup language.

Section 7. Section 22-8B-4 addresses the rights and responsibilities of a charter school:

- It prohibits governing board members from serving on other charter school governing boards
- It requires charter schools to be their own boards of finance
- It requires charter schools to be subject to the Audit Act
- It permits charter schools to contract with the state and another political subdivision of the state
- It permits charter schools to occupy more than one facility, but that separate facilities would be treated as one school for purposes of calculating program units
- It gives charter schools access to state capital outlay funds through the five-year facilities plan developed by the district in which the charter school is located
- It clarifies that a charter school can contract with another entity for several services, except for management by a for-profit or nonprofit entity,
- It permits charter schools to report Accountability Data System (ADS) data directly to the PED through either an existing charter school or the PED itself
- It clarifies the role of the charter school and the local school district regarding provision of special education services. A charter school must provide special education services to its students until it has exhausted its state, federal and emergency reserves before it can request assistance from the local school district. The local school district where the charter school is geographically located must ultimately ensure that the special education student receives a free and appropriate public education. Put differently, a charter school does not become a local educational agency (LEA) for purposes of compliance with the Individuals with Disabilities Education Act (IDEA).

Section 8. Section 22-8B-4.1 addresses enrollment procedures and requires charter schools to use a lottery system for purposes of enrollment.

Section 9. Section 22-8B-4.2 adds new language regarding the educational occupancy standards that charter schools have to meet after July 1, 2005 for initial approval and January 1, 2010 for renewal. Charter schools are held to the same educational occupancy standards as all other public schools.

Section 10. Section 22-8B-5 adds language to exempt a charter school from local requirements if chartered by the PED. It requires a charter school to develop its own written policies and procedures. The section contains some cleanup language.

Section 11. Section 22-8B-5.1 does the following:

- Amends and clarifies language that the length of an initial charter shall be six years, provided that the first year must be used for planning. The charter school must demonstrate that it has satisfied any conditions and request approval to open after the year of planning from the chartering authority. The chartering authority can approve or refuse to approve the request within 21 days and provide the charter school with a written response. The charter school can appeal the refusal to the PED.
- Corrects the timeline for renewal of a charter to be consistent with the initial application timelines.
- Clarifies that 75percent of households are needed to support the renewal of a charter school.
- Names the Assessment and Accountability Act, clarifying that charter schools must comply with that act.

Section 12. Section 22-8B-6 does the following:

- Adds language for a charter school applicant to apply to the chartering authority it chooses for a charter.
- Adds language as to who can submit an application for a start-up school to include public postsecondary educational institutions and clarifies who cannot start a charter school (e.g., municipalities, counties, private postsecondary educational institutions and for-profit business entities cannot apply for a charter).
- Adds language that requires a charter school to request to be a board of finance in the application. It cannot be approved as a charter without such approval. The application shall also include a request for capital outlay and transportation funding.
- Clarifies that a chartering authority can request necessary information if the application is found to be incomplete.
- Adds language to require that the chartering authority hold at least one public meeting to obtain written and oral comments from the applicant, community, local school board and school district on the charter school.
- Clarifies the role of the chartering authority in approving, approving with conditions or denying the charter application.
- Clarifies the process for denial of an initial charter application. The chartering authority shall state its reasons in writing within 14 days. The charter applicant has a right to a hearing within 60 days presided over by a hearing officer designated by the Secretary of Education. The hearing officer makes a recommendation to the Secretary, who shall make a final decision. If the Secretary finds for the charter school, the Secretary shall remand the matter to the local school board for reconsideration and final decision.
- Adds language to allow a charter school to appeal any decision by the Secretary or the local school board to the district court.

Section 13. Section 22-8B-7 amends the process for denial of an initial charter application by providing more options for denying an application:

- Violate the Public School Finance Act including that the charter school cannot qualify as a board of finance.

- Where the applicants have not demonstrated sufficient knowledge, experience, credentials or planning to operate a charter school.
- Where chartering would not be in the best interests of incoming students to the charter, the community or school district where the charter is located.

A chartering authority may deny a renewal application or revoke a charter if past or continued operation would:

- Violate civil rights laws
- Violate any court order
- Threaten health and safety of students
- Violate the prescribed number of charter schools
- Violate the Public School Finance Act
- Materially breach its charter
- Result or has resulted in management of public funds as indicated by the audit.

Additional grounds to non-renew or revoke are:

- Failure to make substantial progress.
- Failure to meet generally accepted standards of fiscal management.
- If the charter school had its designation as a board of finance suspended.
- If the charter school violated any law that the charter school was not exempted from.

This section addresses appeal rights by:

- Adding language requiring the chartering authority to provide written reasons for revocation or non-renewal of the charter school.
- Adding language to allow a charter school to appeal a notice of denial or revocation or determination by the chartering authority that the facilities do not meet statewide adequacy standards to the Secretary within 60 days for a hearing by an independent hearing officer.
- Adding language to allow a charter school to appeal a decision by the Public School Capital Outlay Council (PSCOC) to the Secretary of Education whether a facility meets the statewide adequacy standards. The Secretary can reverse the decision if the secretary determines that the decision was arbitrary, capricious, not based upon substantial evidence or not in accordance with law.
- Adding language to allow the charter school to appeal a decision of the Secretary to the district court.

Section 14. Section 22-8B-8 contains some cleanup language.

Section 15. Section 22-8B-9 amends the language to reflect that a charter is a contract between the charter school and the chartering authority. The contract shall reflect all requests for release of the charter from school district, PED's rules and the Public School Code.

This section also adds language clarifying the role of the charter school and the chartering authority in resolving disputes.

Section 16. Section 22-8B-10 adds language clarifying that a charter school application can specify that either the governance council or the head administrator can make employment decisions. If it is not stated in the charter, then the governance council will make all employment de-

cisions. This section also adds a nepotism clause for the employment of an administrator or a licensed employee, but allows the governance council to waive the nepotism rule for family members of the head administrator. Lastly, this section adds language to state that these changes will not affect an employee hired on or before July 1, 2005.

Section 17. Section 22-8B-11 amends the number of charter schools allowed in 2005-2006 and 2006-2007 to seven per year. Thereafter 10 new charters would be allowed per year.

Section 18. Section 22-8B-13 adds language that permits the PED to withhold three percent of the State Equalization Guarantee (SEG) for administrative support from schools chartered by the department. This section also adds language that permits the PED to use the at-risk and Training and Experience Index from the school district where the charter school is located for purposes of computing the SEG.

Section 19. Section 22-8B-14 provides that the stimulus funds be used for planning and start-up costs by charter schools for a period of 24 months.

Section 20. Section 22-8B-15 is a savings section that allows charter schools approved by a local school board prior to July 1, 2005 to remain under the district until renewal, at which time it can elect its chartering authority.

### Significant Issues

This bill would provide for direct granting and oversight of charters by PED. Charter schools approved after July 1, 2005 would fall under the purview of the department. Those approved before that date would remain under the school district where they reside but upon charter renewal would have the option of remaining under the district or PED.

DFA is concerned PED could be “overwhelmed with its contradictory duties as both an oversight for individual charter agency for individual charter schools and monitor for overall program quality in charter schools.” In addition test information and results will need to be reported by each charter school and the relationship with the district report card needs to be resolved.

However, PED’s analysis indicates the three percent holdback authorized by the bill for PED administrative expenses would “allow the hiring of needed staff for the increased administrative and programmatic responsibilities.”

Additional funding for PED for charter schools has been an issue as the department currently has had to assume the financial and administrative workload of charter schools without corresponding increases in the operating budget.

### **PERFORMANCE IMPLICATIONS**

PED assess the bill will address the performance measure on education reform initiative with a focus on improving quality of services.

### **FISCAL IMPLICATIONS**

PED estimates \$175 thousand would be needed to hire additional staff and purchase equipment

to provide administrative and financial oversight required by the bill. PED would have to assess whether a supplemental appropriation should be requested for the first year of implementation so PED could hire required staff prior to chartering new applicant schools.

### **CONFLICT**

PED and DFA both state the bill conflicts with HB 510 which also provides for chartering and financial administration through the charter school district.

### **TECHNICAL ISSUES**

PED points out the bill provides for decision made by the Public School Capital Outlay Council may be appealed to the Secretary, PED who also is a member of the council. However, an alternative is not suggested.

PED recommends adding the following on page 7, line 20 after 2005 “or was derived from an existing public school and reopened as a charter school pursuant to Section 22-2C-7 NMSA 1978 of the Assessment and Accountability Act”

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The 1999 Charter Schools Act will remain in effect.

GAC/yr