



**Colorado Charter School Authorization and Funding Reform:
An Analysis of HB 04-1141**

Bradley Bartels, J.D.
Doctoral Student
Kevin Welner, J.D., Ph.D.
EPIC Co-Director
School of Education
University of Colorado,
Boulder

April 2004

Education and the Public Interest Center

EPIC

The Education and the Public Interest Center seeks to contribute education, analysis and insight to further democratic deliberation regarding educational policies. Located at the School of Education of the University of Colorado at Boulder, the Center draws upon the knowledge and expertise of the CU Boulder School of Education's nationally and internationally recognized faculty to address the information needs of individuals and groups interested in education policy formation, evaluation, and implementation. The Occasional Paper series provides research and commentary on key educational issues.

© Copyright 2003 EPIC
<http://education.colorado.edu/epic/>

Introduction

Several bills introduced in the current legislative session would amend the 1993 Colorado Charter Schools Act,¹ seeking to enlarge the options for authorization and to change the funding mechanism for Colorado charter schools. The largest and most wide-ranging proposed legislation, HB 04-1141, seeks to amend the Colorado Charter Schools Act by adding a procedure by which the Colorado Board of Education would have authority to approve and maintain charter schools when local school districts have failed to approve them.² Similarly, HB 04-1362, sponsored by Representative Carroll, seeks to create a new charter school system. The Colorado Department of Education would establish a new administrative agency, the “institute board,” to supervise newly created “institute” charter schools.³ Finally, SB 04-0142, sponsored by Senator Owen, seeks to establish community college charter schools or “skills academies.”⁴ All of this proposed legislation, because it gives authority to the state of Colorado to sponsor and supervise charter schools, changes the manner in which available revenues are used to educate public school students.

HB 04-1141, in particular, was a direct response to a heightened level of scrutiny that school districts in the state were giving charter applications. Several districts had failed to approve charter school applications, or had failed to “greenlight” other charters even after

appeal of charter denials and state Board approval. Five school districts, citing such concerns as segregation and financial burdens, had instituted moratoria on new charter schools.⁵ HB 04-1141, as well as the other proposed legislation, would make it possible for charter school groups to bypass these local school districts, leaving them with little more than the opportunity to have the “first chance” at authorization.⁶

The following analysis focuses on HB 1141, which appears to be heading toward passage. The bill has been passed by the House as well as the Senate’s Education Committee. It is currently awaiting a vote by the Senate’s Committee of the Whole.

The Colorado Constitution’s Local Control Provision

HB 04-1141 (as well as HB 04-1362 and SB 04-0142) was carefully drafted in such a way as to avoid the strong local-control provision in the Colorado Constitution. As explained below, Article IX, Section 15 of the Colorado Constitution vests in local school boards a certain amount of control over instruction in the public schools of their respective districts:

The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district.

¹ §22-30.5-101, *et seq.*, C.R.S.

² HB 04-1141, Section 10, proposed amendments to §22-30.5-108.1, C.R.S. This legislation is sponsored by Representative Keith King.

³ HB 04-1362, Section 1, proposed amendments to §22-30.5-102, *et seq.*, C.R.S.

⁴ SB 04-0142, Section 1, proposed new section, §22-30.5-501, *et seq.*, C.R.S.

⁵ The districts are Aurora, Boulder, St. Vrain, Fort Collins and Windsor. McAvoy, T. (March 9, 2004). House favors bill to give legislation on charter schools a little more bite. *Pueblo Chieftain* retrieved April 4, 2004 from <http://www.chieftain.com/metro/1078815600/5>.

⁶ *Id.*

Said directors shall have control of instruction in the public schools of their respective districts.

This provision has been interpreted by the Colorado Supreme Court to limit the ability of the state legislature and state Board of Education to usurp local decision-making affecting control of instruction.⁷ These precedents arose in a specific context – focused on issues of money. In particular, several cases involved the question of whether the legislature could require locally raised revenue to be spent in ways that were not under the control of local school boards. The *Booth* court summarized the holdings in these cases as, “control of instruction requires substantial discretion regarding the character of instruction that students will receive at the district’s expense.”⁸ That is, if the funding of instruction is derived from local revenues, rather than state revenues, then the locally elected school board must have control of instruction. Most recently, this was the issue at the heart of the voucher litigation.⁹

The funding cases presented the courts with an important question: Under what circumstances does Article IX, Section 15 of the Constitution demand local control? If, for example, a voucher plan (like last term’s HB 03-1160) uses local funds but targets those funds for instruction in private, not public, schools, is this local control provision implicated? The courts, thus

far, have answered affirmatively – because the education is still provided at the district’s expense.

Keeping in mind that the constitution’s local control provision itself never mentions funding as a prerequisite, HB 04-1141 presents a new question: If there is no direct district funding, then must the system continue to vest control over public instruction in the local school board?

Consider the following three questions that might be asked by a court considering a constitutional challenge to HB 04-1141:

1. Does the application of Article IX, Section 15 of the Constitution hinge on the expenditure of moneys that were raised at the level of the school district?
2. Is a state-authorized charter school a school falling within the “of their respective districts” language of the Colorado Constitution’s local control provision?
3. How does the funding mechanism of HB 04-1141 work, and why might it be considered to not involve the expenditure of local money?

If the court answers “no” to #1, then it will ask #2, and #3 becomes moot. If the court answers “yes” to #1, then it will temporarily skip over #2 and move to #3. If it then finds, in answer to #3, that HB 04-1141 does involve an expenditure of local money, then it will return to consider #2.

Defenders of HB 04-1141 can also point to Section 9 of the bill,¹⁰ which limits the creation of state charter schools to only those school districts that have been found by the State Board of Education to have engaged in one or

⁷ See *Board of Education of School District No. 1 v. Booth*, 984 P 2d 639 (Colo. 1999).

⁸ *Id.* at 648. These court decisions are discussed in greater detail below.

⁹ Order on Cross-Motions for Summary Judgment, *Colorado Congress of Parents, Teachers, and Students, et al. v. Owens*, District Court, City and County of Denver, Case No. 03-CV-3734 (December 3, 2003).

¹⁰ Amending §22-30.5-108, C.R.S.

more specified practices or acts.¹¹ Arguably, this places the bill within the shared governance category approved by the Colorado Supreme Court in *Booth*.

In this analysis, we do not consider either of the first two questions, both of which present legalistic constitutional interpretation issues. Instead, we focus on question #3 and briefly address the shared governance issue. As part of our examination of these questions, we explore the state's school funding mechanism and HB 04-1141, as well as the rationales underlying both the local control provision and charter schools themselves.

Colorado's School Funding System

School districts are state-created entities. That is, they are subunits of the state, acting pursuant to authority delegated by the state. But, as noted above, Colorado is unusual in that the state Constitution explicitly gives to school districts certain rights that the state cannot take away. Charter schools in Colorado have, until now, been created to fit within this pre-existing system giving great authority to school districts. They were authorized by, financed through, and (to a limited extent) supervised by their home school districts.

HB 04-1141 changes this system. It creates a new form of charter schools, called "state charter schools." These state charters would be, in terms of the state hierarchy, more comparable to school *districts* than to schools within those districts. Like districts, they are

authorized by the state. Like districts, they are supervised by the state. Like districts, they are directly funded by the state.

To accomplish this change, HB 04-1141 inserts state charter schools within the state's Public School Finance Act of 1994.¹² This Act created Colorado's present system of "foundation grant" school funding. The system is complex in its details, but its basic framework is fairly straightforward. The state determines a base per-pupil funding amount. In 2003-2004 this amount was \$4,570.31. This figure is then adjusted for each school district, based on such factors as personnel costs, district size, cost of living, and the number of at-risk students. The resulting figure is called the "total program" amount for the school district, which is the per-pupil operating revenue (PPOR) multiplied by the number of pupils.

Next, the state figures out the amount of its equalization payment to each school district. The state requires each school district to tax property at a minimum rate. Notwithstanding the comparable rates, or "mill levies," these taxes raise very different amounts of money, depending upon the property wealth in each district. For instance a mill levy of 35 might raise \$3,500 per year on a property assessed at \$100,000.¹³ For a property assessed at \$1,000,000, the same mill level might raise \$35,000. Similarly, each county receives specific ownership tax revenue (part of which is distributed to local school districts), and the amount of these revenues differs in each district.

¹¹ The listed practices or acts fall into two general categories: (a) not paying to the district's charter schools moneys purportedly due them; or (b) not giving good faith, individualized consideration to applications to create charter schools. The latter provision is clearly directed at the five districts with moratoria.

¹² §22-54-101, *et seq.*, C.R.S.

¹³ A mill produces one dollar in tax income for every \$1,000 worth of assessed property value within the school district.

Colorado's foundation grant system subtracts most of these local revenues from the total program amount. For instance, if the appropriate total program of a school district is determined to be \$10 million, and the district raises \$4 million locally, then the state equalization payment would be \$6 million. If another, wealthier district also had a total program amount of \$10 million but raised \$7 million locally, then the state equalization payment would be only \$3 million.

Funding Under HB 04-1141

Colorado's current charter schools are funded under this foundation grant system. The state calculates its equalization payment, counting the charter school student as part of the school district's enrollment. Approximately ninety-five percent of the pupil's portion of the total program for that district (PPOR) is then passed on to the student's charter school. The home school district retains about five percent of the PPOR for administrative expenses.

The funding mechanism under HB 04-1141 is basically the same, with one important exception. A state charter school's PPOR would be the same, calculated using the total program amount of the home district (now called the "denying district"). But the state would be the immediate source of all moneys sent to the state charter. That is, instead of the PPOR funding being derived from a mixture of local revenues plus state equalization payments, no local revenues would be sent to the state charter. The bill's language is as follows:

[T]he calculation of total program pursuant to the provisions of this section shall

also represent the financial base of support for the state charter school, even though the state charter school is not a school of the district. The amount of the district's state share of total program that is withheld from the district and paid to the state charter school ..., shall not be available to nor under the control of the district,¹⁴

The other main piece of this puzzle is provided in the bill's next section (Section 67), which amends §22-54-106(11)(a)(I), C.R.S., to direct the state to withhold the following amount from its equalization payment to a "denying district:"

An amount equal to one hundred percent of the district per pupil revenues multiplied by the number of pupils enrolled in the state charter school who are not on-line pupils plus one hundred percent of the district per pupil on-line funding multiplied by the number of on-line pupils enrolled in the state charter school.¹⁵

To explain the difference between the current system and the one proposed, imagine the following hypothetical school district, currently operating with 1,000 students in district charter schools.

- Number of Students: 10,000 (1,000 in charters; 9,000 in other publics);

¹⁴ HB 04-1141, Section 66, proposed amendments to §22-54-104(1)(B), C.R.S.

¹⁵ The bill actually directs the state to withhold the lesser of this amount or the entire state equalization payment to the denying district. In practice, one would expect that this second alternative would always be larger and therefore would not come into play. The only exception would be a district where the number of state charter school students is approximately equal to (or greater than) the number of non-charter public school students.

- Total Program Amount: \$55,000,000;
- Local Share: \$22,000,000; and
- State Equalization Payment: \$33,000,000.

Under the current system, the state would make the entire equalization payment to the school district. The district would then calculate the PPOR for the 1,000 charter school students (\$5,500 each, or \$5,500,000 in total) and retain approximately five percent (\$275,000) to cover some administrative costs. At the PPOR level, one can see that an average of \$5,225 per pupil would be sent to each charter school and that 40% of this money (or \$2,090) would be traceable to Local Share revenues and 60% (or \$3,135) would be traceable to the State Equalization Payment.

Under the HB 04-1141 proposal, now assume that the 1,000 charter school students are enrolled in state charter schools. The school district's Total Program Amount is calculated based in the hypothetical inclusion of the charter school students, so it remains at \$55 million. The Local Share also remains at \$22 million. The district's PPOR remains at \$5,500. The total charter school funding therefore stays at \$5.5 million.¹⁶ But two things change. Pursuant to Section 66 of the bill, the school district no longer sends money to the charter schools; the entire \$5.5 million is sent by the state. Also, pursuant to Section 67 of the bill, the State Equalization Payment to the district is reduced by the PPOR times the number of state charter students, in this case \$5.5 million, resulting in state aid to the district of only \$27.5 million.

¹⁶ The state is authorized to withhold up to five percent to cover administrative costs, thereby effectively reducing the charter school PPOR to \$5,225.

Opponents of the bill can point to the reduction in state funding and an over-weighting of local funds;¹⁷ advocates can point out that the district's PPOR remains the same, as does the amount of revenue raised locally.

As a practical matter, the only difference between the two systems is that the state has now taken over the administrative duties for the charter schools.¹⁸ But the change is being driven by legal, not practical, considerations. If the courts conclude that HB 04-1141 includes no meaningful elements of local control, then they may also conclude that it violates Article IX, Section 15 of the Colorado Constitution. At that point, the court may need to determine whether the new law involves the expenditure of locally raised revenue. The HB 04-1141 funding mechanism is designed to yield a negative answer to that question.

Analysis

Courts will sometimes allow a government to do indirectly that which it is barred from doing directly. For example, even if the federal government cannot directly demand that states institute a given highway speed limit, it can tax citizens of those states and then refuse to disburse the tax revenue (in the form of highway construction funding) back to any state that refuses to institute

¹⁷ Districts that have a disproportionate number of state charter school students would receive a corresponding lower percentage of state funds, thus shifting district funding to local revenues.

¹⁸ To the extent that the current system costs school districts more than 5% of PPOR to administer, this change may be welcomed at the district level (see Augenblick & Myers, Inc. (2002). *The Fiscal Impact of Charter Schools on Boulder Valley School District*. Retrieved April 4, 2004 from www.bvsd.k12.co.us/downloadPdf/budgcharterreport.pdf).

the desired speed limit. Advocates of small-government and local governance have long decried the trend in this direction – with more and more control moving from local government to the state, and from the state to the federal government.

Let's assume that HB 04-1141 would indeed violate Article IX, Section 15 of the Colorado Constitution if the law did not substitute state funds for local funds – if local funds passed directly to the state charter schools. The courts may nonetheless decide that as actually written HB 04-1141 passes constitutional muster, since the law is careful to separate the two sources of funding. Only state funds are passed directly to the state charter schools.¹⁹

The counter-argument is that the HB 04-1141 funding system is little more than a shell game. Yes, the money is coming directly from the state and not the locals, but this is a distinction without a difference. If the law were really to take the locals out of the state charter school funding equation, then only a portion of the State Equalization Payment would be subtracted. Returning to the hypothetical school district discussed above, recall that \$3,135 (or 60%) of the \$5,500 PPOR for the students in this district is provided by the state. If the law were to withhold

only this amount (or \$3.135 million for the 1,000 total state charter school students), there would be no question that local money is not implicated.

An analogy may help. If Lisa attends a public school and she decides to transfer to a charter school under the current law, she remains a school district student and the district continues to pay its share for her education. However, if Lisa decides to transfer to a private school, she is no longer a district student. The district no longer contributes toward the cost of her education. HB04-1141 places the school district in the financial equivalent of the first situation, putting the district under financial obligations equivalent to Lisa remaining a district student. If it switched to the second, the constitutionality of the law would be substantially more secure.²⁰

Legal Precedents

Since the Colorado Supreme Court, in *Booth*, did not approve (under the current Colorado Charter Schools Act) of the exercise of state authority to actually control the establishment of the educational program in a charter school, this issue remains in regard to HB 04-1141.

The “local control” provision of the Colorado Constitution vests explicit constitutional authority with school

¹⁹ In *Kotterman v. Killian*, 972 P.2d 606 (1999), the Arizona Supreme Court used reasoning of this sort to uphold the constitutionality of a tuition tax credit statute. The law provided for the funding of tuition to private, religious schools. If the state provided the money directly, the funding would have violated the state constitution's clause requiring a separation of church and state. Instead, the state provided a 100%, dollar-for-dollar tax credit to private citizens, who donated the money to the schools. Since the state never had control over the money that went to the schools, the court found that the constitutional provision was not violated.

²⁰ However, if the statute opted for the second situation, providing funding with state money only, then authors would face a dilemma. One option would be to supplement the normal state share of PPOR with the additional local district share, thus placing a hefty price tag on the legislation. The other option would be to fund charter schools are only a fraction of PPOR. Moreover, under either option, school districts would have an *incentive to deny* a charter application, since state charters would leave them in a much better financial position than local charters.

district boards of education. This authority is limited, however, by balancing local control with the interests of the state Board of Education to supervise the public schools.²¹ The Colorado Supreme Court has determined, in the context of a dispute over authorization of charter schools, that the state Board has the authority “to act as a final arbiter of disputes involving local boards.”²²

Colorado courts have applied the local control principle repeatedly in regard to issues regarding educational funding, vesting “considerable discretion” in local school districts as to how students are educated. Specifically, the Supreme Court has determined that the Colorado legislature “cannot require money raised in one district to be expended in another district without the first district’s consent.”²³ In the *Booth* case, the Supreme Court outlined a number of “guiding principles” regarding local control issues, including that “generally applicable law triggers control of instruction concerns when applied to specific local board decisions likely to implicate important education policy.”²⁴ Also, “general statutory or judicial constraints, if they exist, must not have the effect of usurping the local

board’s decision-making authority or its ability to implement, guide, or manage the educational programs for which it is ultimately responsible.”²⁵ The Supreme Court concluded that “[f]or circumstances in which the State Board and local boards have potentially conflicting authority, the reviewing court must strike a balance between the local control of instruction and the State Board’s general supervision.”²⁶ Such cases must be considered on an individual basis; the balancing test must not be “rigid.”²⁷

In explaining and applying the principle of local control, Colorado courts often cite two important policies.²⁸ First, because local taxpayers finance the local public schools, they ought to have a high degree of control over the expenditures of funds for education.²⁹ Second, the so-called “wiser decision-maker” policy provides that local school districts are better able and better situated to make decisions regarding the instruction in public schools.³⁰ The “requirement that local

²⁵ *Id.*

²⁶ *Id.* Applying these principles, the Colorado Supreme Court determined, in *Booth*, that the so-called “second appeal” provision of the Colorado Charter School Act was an appropriate balance of local and state constitutional powers; however, the state’s authority only went so far as to direct the local school district to approve the charter school or affirm its denial, working in good faith to reach an agreement on the contract provisions. *Id.* at 650-654.

²⁷ *Id.* at 650.

²⁸ Perla, P. (1996). “Comment: The Colorado Charter Schools Act and the Potential for Unconstitutional Applications Under Article IX, Section 15 of the State Constitution.” 67 U. Colo. L. Rev. 171, 178-180 (and cases cited therein).

²⁹ *Id.* at 179, citing *Cary v. Board of Education*, 598 F.2d 535 (10th Cir. 1979).

³⁰ *Id.* at 180, explaining that the Colorado Supreme Court adopted this policy concept in

²¹ *Board of Education of School District No. 1 v. Booth*, *supra* at 646. Article IX, Section 1(1) of the Colorado Constitution provides that “[t]he general supervision of the public schools of the state shall be vested in a board of education whose powers and duties shall be . . . proscribed by law.”

²² *Id.* at 648.

²³ *Board of Education of School District No. 1 v. Booth*, *supra*, n. 7, at 648. See also *School District No. 16 v. Union High School No. 1*, 152 P. 1149 (1915); *Hotchkiss v. Montrose County High School District*, 273 P. 652 (1928); *Beiler v. Wilson*, 147 P. 355 (1915).

²⁴ *Board of Education of School District No. 1 v. Booth*, *supra* at 649.

tax dollars be used to finance the public schools helps assure continuous interest in school matters by local citizens.”³¹

The recent order in the *Owens* voucher case dealt specifically with the balance of constitutional authority regarding school funding (specifically, the payment of local revenues to private schools). In its decision, the Denver District Court cited the principles set forth by the Colorado Supreme Court in *Booth*, holding that HB 03-1160 left no discretion to local school districts concerning how revenue dollars would be used to fund the educational needs of its voucher-recipient students.³² In so doing, the court rejected the state’s arguments pointing to the tremendous growth over the years in the state’s plenary power, associated with such policies as CSAP-based accountability and the 1994 funding reform. Although acknowledging this growth, the court concluded that Article IX, Section 15 nonetheless continues to vest some authority with local school boards.³³

Rationales for HB 04-1141

One of the key reasons for charter school laws is the belief that school districts stifle innovation. For advocates of charter schools, local democratic institutions are less desirable than individual initiative freed from bureaucratic constraints. Therefore, the current system created by the 1993 Colorado Charter Schools Act – giving district school boards authority over the creation and renewal of these charters –

constitutes an unhealthy restriction. Moreover, these advocates can point to specific instances where school districts have imposed moratoria on any new charter schools, thus denying applications individual consideration on their respective merits.

From this perspective, the charter school system needs revamping. It needs an alternative mechanism, allowing applications to navigate around obstreperous districts. These districts should not be allowed to hold hostage the progress of the charter school movement.

Rationales for Local Control

In a nutshell, local control over charter school contracts can serve several goals, including efficient enrollment management, protecting against adverse local financial impacts, ensuring fiscal and pedagogical soundness, and avoiding *de facto* segregation. Local financial impacts are tied to enrollment planning. For instance, a school district with shrinking (or even stable) enrollment may be forced to close a school or lay off (or reassign) teachers. Even in a district with growing enrollment, a new charter school creates an element of unpredictability that the district may need to respond to by, e.g., reassigning teachers.

Several school districts have also complained that the administrative and other costs associated with charters exceed the five percent of PPOR that they are entitled to retain. In districts already facing fiscal exigencies, this purported additional burden is viewed as unwelcome.

Currently, school districts are called upon to evaluate charter school applications based, in part, on the fiscal

Lujan v. Board of Education, 649 P.2d 1005 (Colo. 1982).

³¹ *Id.* at 181.

³² *Colorado Congress of Parents, Teachers, and Students, et al. v. Owens*, *supra*, n. 9. This order is currently on appeal before the state Supreme Court.

³³ *Id.* at 13-14.

and pedagogical soundness of their proposal. Some applications have been denied on this basis. The HB 04-1141 system also allows for such evaluations, but local school authorities may be better positioned than statewide officials to make these judgments.

Some school districts have expressed concern that charter schools have exacerbated problems with student segregation, by race, income, achievement level, and special education status. Again, statewide officials are also certainly capable of considering such factors. But local officials may be better positioned to identify and respond to these concerns.

Shared Governance

Under HB 04-1141, charter school applications rising to the level of state administrative review have already been *denied* by school districts exercising their discretion to establish, implement, and control educational programs within the district. The legislation retains the requirement that the state Board must consider appeals of local school district denials of charter school applications in accordance with whether the local school district's decision was "contrary to the best interests of the pupils, school district, or community."³⁴ This provision maintains the state Board's authority to override a local school district's determination that the charter school application is not in the best interests of the pupils, school district, or community.³⁵ This is the so-called "shared governance" provision that was upheld in *Booth*.

³⁴ HB 04-1141, Section 9, *compare* §22-30.5-108(3)(a), C.R.S.

³⁵ *Board of Education of School District No. 1 v. Booth*, *supra* at 651.

HB 04-1141 extends the state Board's authority, giving charter school applicants two powerful tools, at least in those districts subject to the formation of state charters. Most obviously, applicants would have the additional option for creating a state charter. In addition, they would have added leverage in negotiations with school districts. Arguably, districts would be facing a "Catch-22" situation: to *retain* local control, it may have to *give up* local control. That is, the only available decision might become approval, notwithstanding any legitimate concerns about pedagogical or fiscal soundness, enrollment patterns, financial impacts, or segregation.

A school district would be labeled a "denying district," subject to the creation of state charters, if (among other possibilities) within the preceding four years it imposed a moratorium on approving charter schools or refused to approve a charter school after a second remand.³⁶ A rationale for this four-year window might be that moratoria, as well as repeated denials of new applications, cause a chilling effect on creation of new charter schools in general. However, the five school districts that have imposed moratoria on new charters were exercising their legal authority. This provision will likely be felt by them as a retroactive punishment.

Other States

Several states have school finance systems similar to Colorado's system and have laws authorizing states to

³⁶ HB 04-1141, Section 9, proposed new section, §22-30.5-108(2)(b)(I), C.R.S. Local school district are also "subject to" creation of state charter schools for failing to financially support local school district charter schools in a number of enumerated ways.

exercise plenary power to establish, sponsor, and supervise charter schools. Moreover, a number of states with permissive charter school laws, such as Arizona, Connecticut, Delaware, North Carolina, and Pennsylvania, among others, permit state boards of education to sponsor such charter schools.³⁷ Other states, including Alaska, allow state board chartering authority with initial local school district *approval* of charter school applications.³⁸ However, to date, there exist no reported appellate cases regarding a challenge to a funding mechanism for charter schools similar to that proposed under HB 04-1141.

Minnesota has a charter school authorization law similar to that proposed under HB 04-1141, in that it provides for state chartering authority only *after* local school districts have denied applications and they have been reviewed on appeal.³⁹ Unlike the proposed Colorado bill, however, funding for these Minnesota state charters comes only from the state portion of operations funding (the district portion is “lost” to the charter school).⁴⁰ Also unlike HB 04-1141, *all* Minnesota charter schools are subject to state administrative approval at *all* times, and must have approval prior to submission of a charter by a sponsor.⁴¹

Conclusion

In this analysis, we examined the justifications and objectives underlying HB 04-1141 and underlying Colorado’s policy of local control. Our analysis of

the state’s funding system and legal authorities explores key issues that will no doubt be litigated should the bill become law. At the heart of the legislation and the questions explored in this analysis are real differences about core educational values and about the future of schooling in Colorado. Over the last decade, since 1993 when the Colorado Charter School Act was enacted, the popularity of charter schools has grown, reaching 93 schools and 25,500 students.

As the reform continues to evolve, so do the justifications for, and purposes of, charter schools. For instance, although initially put forward as a way to foster “new, innovative, and more flexible ways of educating all children within the public school system,”⁴² many charter schools have opted for off-the-shelf curricula. In fact, HB 04-1141 deletes references to innovation from the law, instead encouraging charter schools to use “researched-based” and “proven” approaches.

Particularly in the Front Range communities, charter schools have become a mainstay of schooling. However one feels about the impact of charter schools, the impact nonetheless exists. HB 04-1141 would no doubt hasten the expansion of the reform, thus increasing that impact. We hope this analysis contributes to a reasoned and informed deliberation of these issues.

³⁷ Center for Education Reform (2004). Untitled. Retrieved from <http://www.edreform.com/index.cfm?fuseAction=cLaw> on February 15, 2004.

³⁸ *Id.*

³⁹ *Id.*; M.S.A. §124D.10, Subd. (4)(a).

⁴⁰ *Id.*; M.S.A. §124D.11, *et seq.*

⁴¹ M.S.A. §124D.10, Subd. (4)(a).

⁴² §22-30.5-102 (3), C.R.S.