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HOUSE BILL 554

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Richard D. Vigil

AN ACT

RELATING TO PUBLIC SCHOOLS; MAKING CHARTER SCHOOLS INDEPENDENT  
OF SCHOOL DISTRICTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-8-6.1 NMSA 1978 (being Laws 1993,  
Chapter 227, Section 8, as amended) is amended to read:

"22-8-6.1. CERTAIN SCHOOL DISTRICT AND CHARTER SCHOOL  
BUDGETS. --

A. For charter schools approved prior to January 1,  
2005, each charter school shall submit to the local school  
board a school-based budget. The budget shall be based upon  
the projected number of program units generated by that charter  
school and its students, using the at-risk index and the  
instructional staff training and experience index of the  
district. The budget shall be submitted to the local school

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1 board for approval or amendment. The approval or amendment  
2 authority of the local school board relative to the charter  
3 school budget is limited to ensuring that sound fiscal  
4 practices are followed in the development of the budget and  
5 that the charter school budget is within the allotted  
6 resources. The local school board shall have no veto authority  
7 over individual line items within the charter school's proposed  
8 budget, but shall approve or disapprove the budget in its  
9 entirety. Upon final approval of the local budget by the local  
10 school board, the individual charter school budget shall be  
11 included separately in the budget submission to the department  
12 [~~of education~~] required pursuant to the Public School Finance  
13 Act and the 1999 Charter Schools Act.

14 B. For charter schools approved after January 1,  
15 2005, each charter school shall submit to the department a  
16 school-based budget. The budget shall be based upon the  
17 projected number of program units generated by that charter  
18 school and its students using the at-risk index and the  
19 training and experience index of the school district where the  
20 charter school is geographically located. Upon final approval  
21 of the budget by each governing charter body, the individual  
22 charter school budget shall be submitted to the department  
23 pursuant to the Public School Finance Act and the 1999 Charter  
24 Schools Act."

25 Section 2. Section 22-8-38 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 96, as amended) is amended to read:

2 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--Upon written  
3 application to and approval of the [~~state superintendent~~]  
4 department, any local school board or charter school may be  
5 designated a board of finance for public school funds of the  
6 school district or charter school. Any local school board or  
7 charter school designated a board of finance may require all  
8 funds distributed to, allocated to or collected for the school  
9 district or the public schools under its jurisdiction or the  
10 charter school to be deposited with it. The [~~state~~  
11 ~~superintendent~~] department shall designate a local school board  
12 or charter school as a board of finance if:

13 A. the local school board or charter school shows  
14 to the satisfaction of the [~~state superintendent~~] department  
15 that it has personnel properly trained to keep accurate and  
16 complete fiscal records; provided that the department may  
17 exempt a charter school from this provision in its planning  
18 year;

19 B. the local school board or charter school agrees  
20 to consult with the [~~state superintendent~~] department on any  
21 matters not covered by the manual of accounting and budgeting  
22 before taking any action relating to funds held by it as a  
23 board of finance;

24 C. the persons handling these funds are adequately  
25 bonded to protect the funds entrusted to them from loss; and

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1           D. the local school board or charter school making  
2 application has not been suspended and not reinstated as a  
3 board of finance within the past year. "

4           Section 3. Section 22-8B-1 NMSA 1978 (being Laws 1999,  
5 Chapter 281, Section 1) is amended to read:

6           "22-8B-1. SHORT TITLE. -- ~~[Sections 1 through 15 of this~~  
7 ~~act]~~ Chapter 22, Article 8B NMSA 1978 may be cited as the "1999  
8 Charter Schools Act". "

9           Section 4. Section 22-8B-2 NMSA 1978 (being Laws 1999,  
10 Chapter 281, Section 2) is amended to read:

11           "22-8B-2. DEFINITIONS. -- As used in the 1999 Charter  
12 Schools Act:

13           A. "charter school" means a conversion school or  
14 start-up school ~~[within a school district authorized by the~~  
15 ~~local school board to operate as a charter school]~~ authorized  
16 by the department to operate as a public school. A charter  
17 school shall be its own board of finance and shall not be part  
18 of any school district within whose geographical boundaries it  
19 is located;

20           B. "conversion school" means ~~[an existing public~~  
21 ~~school within a school district authorized by the local school~~  
22 ~~board to become a charter school]~~ a charter school that was  
23 derived from an existing public school of a school district  
24 prior to July 1, 2004;

25           C. "governing body" means the governing structure

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1 of a charter school as set forth in the school's charter; and

2 D. "start-up school" means a public school  
3 developed by one or more parents, teachers or community members  
4 authorized by the [~~local school board of the school district in~~  
5 ~~which the school is located~~] department to become a charter  
6 school. "

7 Section 5. Section 22-8B-4 NMSA 1978 (being Laws 1999,  
8 Chapter 281, Section 4, as amended) is amended to read:

9 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--  
10 OPERATION. --

11 A. A charter school shall be subject to all federal  
12 and state laws and constitutional provisions prohibiting  
13 discrimination on the basis of disability, race, creed, color,  
14 gender, national origin, religion, ancestry or need for special  
15 education services.

16 B. A charter school shall be [~~administered and~~]  
17 governed by a governing body in the manner set forth in the  
18 charter; provided that no member of a governing body for a  
19 charter school that is initially approved or renewed after July  
20 1, 2004 shall serve on the governing body of another charter  
21 school.

22 C. A charter school shall be designated as a board  
23 of finance except for transportation funding. As a board of  
24 finance, the charter school shall be responsible for:

25 (1) its own operation, including preparation

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1 of a budget, subject to periodic audits pursuant to the Audit  
2 Act; and

3 (2) contracting for services and personnel  
4 matters.

5 D. A charter school may [~~negotiate or~~] contract  
6 with a school district, a university or college, the state,  
7 another political subdivision or any other third party for the  
8 use of a facility, its operation and maintenance and the  
9 provision of any service or activity that the charter school is  
10 required to perform in order to carry out the educational  
11 program described in its charter. Facilities used by a charter  
12 school shall meet the standards required by Section 22-8B-4.2  
13 NMSA 1978.

14 [~~E. In no event shall a charter school be required~~  
15 ~~to pay rent for space that is deemed available, as negotiated~~  
16 ~~by contract, in school district facilities; provided that the~~  
17 ~~facilities can be made available at no cost to the district.~~  
18 ~~All costs for the operation and maintenance of the facilities~~  
19 ~~used by the charter school shall be subject to negotiation~~  
20 ~~between the charter school and the district.~~

21 F.] E. A charter school shall negotiate with a  
22 school district to provide transportation to students eligible  
23 for transportation under the provisions of the Public School  
24 Code. The school district, in conjunction with the charter  
25 school, may establish a limit for student transportation to and

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1 from the charter school site not to extend beyond the school  
2 district boundary.

3 ~~[G. A charter school may negotiate with a school~~  
4 ~~district for capital expenditures.~~

5 ~~H.]~~ F. A charter school shall be a nonsectarian,  
6 nonreligious and non-home-based public school ~~[that operates~~  
7 ~~within a school district].~~

8 ~~[I.]~~ G. Except as otherwise provided in the Public  
9 School Code, a charter school shall not charge tuition or have  
10 admission requirements.

11 H. With the approval of the secretary of public  
12 education, a single charter school may maintain separate  
13 facilities at two or more locations within the same school  
14 district; however, for purposes of calculating program units  
15 pursuant to the Public School Finance Act, the separate  
16 facilities shall be treated together as one school.

17 ~~[J.]~~ I. A charter school shall be subject to the  
18 provisions of Section 22-2-8 NMSA 1978 and the Assessment and  
19 Accountability Act.

20 ~~[K.]~~ J. A charter school may acquire and dispose of  
21 property; provided that, upon termination of the charter, all  
22 assets of the charter school shall revert to the state, unless  
23 the property had been purchased with school district property  
24 tax revenue in which case the property shall revert to the  
25 local school board ~~[that authorized the charter].~~

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1           ~~[L-]~~ K. A charter school may accept or reject any  
2 charitable gift, grant, devise or bequest; provided that no  
3 such gift, grant, devise or bequest shall be accepted if  
4 subject to any condition contrary to law or to the terms of the  
5 charter. The particular gift, grant, devise or bequest shall  
6 be considered an asset of the charter school to which it is  
7 given.

8           ~~[M-]~~ L. A charter school may contract and sue and  
9 be sued. A local school board or the department that approves  
10 a charter school shall not be liable for any acts or omissions  
11 of the charter school.

12           ~~[N-]~~ M. A charter school shall comply with all  
13 state and federal health and safety requirements applicable to  
14 public schools, including health and safety codes related to  
15 educational building occupancy.

16           N. Charter school facilities are eligible for state  
17 capital outlay funds and shall be included in the five-year  
18 facilities plan developed by the department for all the charter  
19 schools.

20           O. A charter school is a public school authorized  
21 by the department that may contract with a school district or  
22 other party for provision of financial management, food  
23 services, transportation, facilities, education-related  
24 services or other services. The governing body of a charter  
25 school shall not contract with a for-profit or nonprofit entity



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1 for the management of the charter school.

2 P. To enable charter schools to submit required  
3 data to the department, an accountability data system shall be  
4 maintained by either one charter school designated by the  
5 department or by the department itself. "

6 Section 6. Section 22-8B-4.1 NMSA 1978 (being Laws 2000,  
7 Chapter 82, Section 3) is amended to read:

8 "22-8B-4.1. CHARTER SCHOOLS' ENROLLMENT PROCEDURES. --

9 A. Start-up schools and conversion schools are  
10 subject to the following enrollment procedures:

11 (1) a start-up school [~~may either~~] shall  
12 enroll students [~~on a first-come, first-served basis or~~]  
13 through a lottery selection process [~~if the total number of~~  
14 ~~applicants exceeds the number of spaces available at the start-~~  
15 ~~up school~~]; and

16 (2) a conversion school shall give enrollment  
17 preference to students who are enrolled in the public school at  
18 the time it is converted into a charter school and to siblings  
19 of students admitted to or attending the charter school. The  
20 conversion school may either enroll all other students on a  
21 first-come, first-served basis or through a lottery selection  
22 process if the total number of applicants exceeds the number of  
23 spaces available at the conversion school.

24 B. In subsequent years of its operation, a charter  
25 school shall give enrollment preference to:

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1 (1) students who have been admitted to the  
2 charter school through an appropriate admission process and  
3 remain in attendance through subsequent grades; and

4 (2) siblings of students already admitted to  
5 or attending the same charter school."

6 Section 7. A new section of the 1999 Charter Schools Act,  
7 Section 22-8B-4.2 NMSA 1978, is enacted to read:

8 "22-8B-4.2. [NEW MATERIAL] CHARTER SCHOOL FACILITIES--  
9 STANDARDS. --

10 A. The facilities of a charter school that is  
11 approved on or after July 1, 2004 shall meet educational  
12 occupancy standards required by applicable New Mexico  
13 construction codes.

14 B. The facilities of a charter school that is in  
15 existence, or has been approved prior to July 1, 2004, shall  
16 meet the statewide adequacy standards promulgated by the public  
17 school capital outlay council in the same manner as all other  
18 public schools in the state and shall qualify for grants  
19 pursuant to the Public School Capital Outlay Act as all other  
20 public schools; provided that for charter school facilities in  
21 leased facilities, grants may be used as additional lease  
22 payments for leasehold improvements.

23 C. After January 1, 2009, a charter school shall  
24 not be renewed unless the charter school:

25 (1) is housed in a public building that is in

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1 compliance with the statewide adequacy standards and is owned  
2 by the charter school, the school district, the state, an  
3 institution of the state, another political subdivision of the  
4 state or a tribal government; or

5 (2) demonstrates, if it is not housed in a  
6 public building described in Paragraph (1) of this subsection,  
7 that:

8 (a) public buildings are not available  
9 or adequate for the educational program of the charter school;  
10 and

11 (b) the facility in which the charter  
12 school is housed meets the statewide adequacy standards and the  
13 owner of the facility is contractually obligated to maintain  
14 those standards at no additional cost to the charter school.

15 D. The public school capital outlay council:

16 (1) shall determine whether facilities of a  
17 charter school meet the educational occupancy standards  
18 pursuant to the requirements of Subsection A of this section;

19 (2) shall determine whether facilities of a  
20 charter school meet the statewide adequacy standards pursuant  
21 to the requirements of Subsections B and C of this section; and

22 (3) upon a determination that specific  
23 standards are not appropriate or reasonable for a charter  
24 school, may grant a waiver from those standards for that  
25 charter school."

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1 Section 8. Section 22-8B-5 NMSA 1978 (being Laws 1999,  
2 Chapter 281, Section 5) is amended to read:

3 "22-8B-5. CHARTER SCHOOLS--STATUS--EXEMPTION FROM LOCAL  
4 SCHOOL BOARD AUTHORITY [~~STATE BOARD AUTHORITY~~]. --

5 [~~A. The local school board may waive only locally~~  
6 ~~imposed school district requirements.~~]

7 A. A charter school shall be responsible for  
8 developing its own written policies and procedures in  
9 accordance with this section.

10 B. [~~The state board shall waive requirements~~  
11 ~~relating to individual class load and teaching load, length of~~  
12 ~~the school day, staffing patterns, subject areas and the~~  
13 ~~purchase of instructional material. The state board] The  
14 department may waive [~~state board~~] requirements or rules and  
15 provisions of the Public School Code pertaining to individual  
16 class loads, graduation requirements, evaluation standards for  
17 school personnel, school principal duties and driver education.  
18 Any waivers granted pursuant to this section shall be for the  
19 term of the charter granted but may be revoked earlier by the  
20 department.~~

21 C. A charter school shall be a public school,  
22 accredited by the [~~state board~~] department and shall be  
23 accountable to the [~~school district's local school board~~]  
24 department for purposes of ensuring compliance with applicable  
25 laws, rules and charter provisions.

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1 D. No local school board shall require any employee  
2 of the school district to be employed in a charter school.

3 E. No local school board shall require any student  
4 residing within the geographic boundary of its district to  
5 enroll in a charter school.

6 [~~F. A student who is suspended or expelled from a~~  
7 ~~charter school shall be deemed to be suspended or expelled from~~  
8 ~~the school district in which the student resides.~~]"

9 Section 9. Section 22-8B-12 NMSA 1978 (being Laws 1999,  
10 Chapter 281, Section 12) is recompiled as Section 22-8B-5.1  
11 NMSA 1978 and is amended to read:

12 "22-8B-5.1. CHARTER SCHOOLS--TERM-RENEWAL OF CHARTER  
13 [~~GROUNDS FOR NONRENEWAL OR REVOCATION~~].--

14 A. A charter school may be approved for an initial  
15 term of [~~five~~] six years; provided that the first year shall be  
16 used exclusively for planning. A charter may be renewed for  
17 successive periods of five years each. Approvals of less than  
18 five years can be agreed to between the charter school and the  
19 [~~local school board~~] department. Prior to the end of the  
20 planning year, the charter school must demonstrate that it has  
21 satisfied any conditions imposed by the department before  
22 commencing full operation for the remainder of its charter  
23 term. The department shall either issue or refuse to issue the  
24 authorization to commence full operation within twenty-one days  
25 of the request. If the department refuses to issue the

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1 authorization, it shall provide its reasons in writing to the  
2 charter school. A charter school has the right to a hearing on  
3 the refusal in accordance with rules promulgated by the  
4 department. A hearing shall be held within sixty days of the  
5 request for hearing and may be presided over by a hearing  
6 officer designated by the secretary of public education.

7 B. No later than [~~January~~] July 1 of the year  
8 [~~prior to the year~~] in which the charter expires, the governing  
9 body of a charter school may submit a renewal application to  
10 the [~~local school board~~] department. The [~~local school board~~]  
11 department shall rule in a public hearing on the renewal  
12 application no later than [~~March~~] September 1 of the year in  
13 which the charter expires, or on a mutually [~~agreed~~] agreed-  
14 upon date.

15 C. A charter school renewal application submitted  
16 to the [~~local school board~~] department shall contain:

17 (1) a report on the progress of the charter  
18 school in achieving the goals, objectives, student performance  
19 standards, [~~state board~~] department minimum educational  
20 standards and other terms of the initial approved charter  
21 application, including the accountability requirements set  
22 forth in [~~Section 22-1-6 NMSA 1978~~] the Assessment and  
23 Accountability Act;

24 (2) a financial statement that discloses the  
25 costs of administration, instruction and other spending

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1 categories for the charter school that is understandable to the  
2 general public, that ~~[will allow]~~ allows comparison of costs to  
3 other schools or comparable organizations and that is in a  
4 format required by the ~~[state board]~~ department;

5 (3) contents of the charter application set  
6 forth in Section ~~[8 of the 1999 Charter Schools Act]~~ 22-8B-8  
7 NMSA 1978;

8 (4) a petition in support of the charter  
9 school renewing its charter status signed by not less than  
10 sixty-five percent of the employees in the charter school; and

11 (5) a petition in support of the charter  
12 school renewing its charter status signed by ~~[a majority]~~  
13 seventy-five percent of the households whose children are  
14 enrolled in the charter school.

15 ~~[D. A charter may be revoked or not renewed by the~~  
16 ~~local school board if the board determines that the charter~~  
17 ~~school did any of the following:~~

18 ~~(1) committed a material violation of any of~~  
19 ~~the conditions, standards or procedures set forth in the~~  
20 ~~charter;~~

21 ~~(2) failed to meet or make substantial~~  
22 ~~progress toward achievement of the state board minimum~~  
23 ~~educational standards or student performance standards~~  
24 ~~identified in the charter application;~~

25 ~~(3) failed to meet generally accepted~~

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1 ~~standards of fiscal management; or~~

2 ~~(4) violated any provision of law from which~~  
3 ~~the charter school was not specifically exempted.~~

4 ~~E. If a local school board revokes or does not~~  
5 ~~renew a charter, the local school board shall state in writing~~  
6 ~~its reasons for the revocation or nonrenewal.~~

7 ~~F. A decision to revoke or not to renew a charter~~  
8 ~~may be appealed by the governing body of the charter school~~  
9 ~~pursuant to Section 7 of the 1999 Charter Schools Act.]"~~

10 Section 10. Section 22-8B-6 NMSA 1978 (being Laws 1999,  
11 Chapter 281, Section 6) is amended to read:

12 "22-8B-6. CHARTER SCHOOL REQUIREMENTS-- APPLICATION  
13 PROCESS-- AUTHORIZATION. --

14 A. The [~~local school board~~] department shall have  
15 the authority to approve the establishment of a charter school  
16 [~~within the local school district in which it is located~~].

17 B. A charter school applicant shall apply to [~~a~~  
18 ~~local school board~~] the department for a charter. An applicant  
19 shall only submit an application [~~in~~] to operate a charter  
20 school within the school district in which the school is  
21 located. Applications for initial charters shall be submitted  
22 by [~~October~~] July 1 to be eligible for consideration for the  
23 following school year. The [~~October~~] July 1 deadline may be  
24 waived [~~upon agreement of the applicant and the local school~~  
25 ~~board~~] by the department for good cause.

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1 C. An application for a start-up school may be made  
2 by one or more teachers, parents or community members.

3 ~~[D. An application for a conversion school shall~~  
4 ~~include a petition of support signed by not less than sixty-~~  
5 ~~five percent of the employees in the school. Additionally, a~~  
6 ~~petition in support of the charter school signed by a majority~~  
7 ~~of the households whose children are enrolled in a proposed~~  
8 ~~conversion school must accompany the application.]~~

9 Municipalities, counties, private post-secondary educational  
10 institutions and for-profit business entities shall not be  
11 eligible to apply for or receive a charter.

12 D. At the time of application for a charter, a  
13 charter school applicant shall request approval to be  
14 designated a board of finance and shall not be allowed a  
15 charter without such approval. An application shall not  
16 include a request for capital outlay or transportation funding.

17 E. The ~~[local school board]~~ department shall  
18 receive and review all applications for charter schools. The  
19 ~~[local school board]~~ department shall not charge application  
20 fees. If the ~~[board]~~ department finds ~~[the]~~ that a charter  
21 school application is incomplete, the ~~[board]~~ department shall  
22 request the necessary information from the charter applicant.

23 F. The ~~[local school board]~~ department shall hold  
24 at least one public meeting to obtain information and community  
25 input, including written or oral comments in favor of or in

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1 opposition to the application from the applicant, the local  
2 community and the local school board and school district in  
3 whose geographical boundaries the charter school is proposed to  
4 be located, to assist the [~~local school board~~] department in  
5 its decision whether to grant a charter school application.

6 The [~~local school board~~] department shall rule on the  
7 application for a charter school in a public meeting within  
8 sixty days after receiving the application. [~~If not ruled upon~~  
9 ~~within sixty days, the charter application will be~~  
10 ~~automatically reviewed by the state board in accordance with~~  
11 ~~the provisions of Section 7 of the 1999 Charter Schools Act.~~

12 The charter applicant and the local school board may, however,  
13 jointly waive the deadlines set forth in this section.

14 G. ~~If the local school board denies a charter~~  
15 ~~school application or imposes conditions that are unacceptable~~  
16 ~~to the charter applicant, the charter applicant may appeal the~~  
17 ~~decision to the state board pursuant to Section 7 of the 1999~~  
18 ~~Charter Schools Act.] The department may approve, approve with~~

19 conditions or deny the application.  
20 [~~H.~~] G. If [~~a local school board~~] the department  
21 denies a charter school application, it shall state its reasons  
22 for the denial in writing within fourteen days of the meeting.  
23 If [~~a local school board grants a charter, it shall send a copy~~  
24 ~~of the approved charter to the department of education within~~  
25 ~~fifteen days after granting the charter~~] the secretary of

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1 public education approves the charter, the approved charter  
2 shall be provided to the applicant together with any imposed  
3 conditions.

4 H. A charter school that has received a notice from  
5 the department denying approval of the charter shall have a  
6 right to a hearing pursuant to rules established by the  
7 department. Any hearing shall be held within sixty days of the  
8 request for a hearing after issuance of the notice from the  
9 department and may be presided over by a hearing officer  
10 designated by the secretary of public education. The hearing  
11 officer shall make a recommended decision to the secretary, who  
12 shall make a final decision.

13 I. An applicant aggrieved by a decision of the  
14 secretary of public education may appeal the decision to the  
15 district court pursuant to the provisions of Section 39-3-1.1  
16 NMSA 1978. "

17 Section 11. Section 22-8B-7 NMSA 1978 (being Laws 1999,  
18 Chapter 281, Section 7) is amended to read:

19 "22-8B-7. CHARTER SCHOOL APPLICATION [APPEAL] - - DENIAL OR  
20 REVOCATION - - PROCEDURES. - -

21 ~~[A. The state board, upon receipt of a notice of~~  
22 ~~appeal or upon its own motion, shall review decisions of any~~  
23 ~~local school board concerning charter schools in accordance~~  
24 ~~with the provisions of this section.~~

25 ~~B. A charter applicant or governing body of a~~

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1 ~~charter school that wishes to appeal a decision of a local~~  
2 ~~school board concerning the denial, nonrenewal or revocation of~~  
3 ~~a charter school or the imposition of conditions that are~~  
4 ~~unacceptable to the charter school or charter school applicant~~  
5 ~~shall provide the state board with a notice of appeal within~~  
6 ~~thirty days after the local school board's decision. The~~  
7 ~~charter school applicant or governing body of the charter~~  
8 ~~school bringing the appeal shall limit the grounds of the~~  
9 ~~appeal to the grounds for denial, nonrenewal or revocation~~  
10 ~~specified by the local school board. The notice shall include~~  
11 ~~a brief statement of the reasons the charter school applicant~~  
12 ~~contends the local school board's decision was in error. The~~  
13 ~~appeal and review process shall be as follows:~~

14 (1) ~~within sixty days after receipt of the~~  
15 ~~notice of appeal, the state board, at a public hearing that may~~  
16 ~~be held in the school district in which the proposed charter~~  
17 ~~school has applied for a charter, shall review the decision of~~  
18 ~~the local school board and make its findings. If the state~~  
19 ~~board finds that the local school board's decision was contrary~~  
20 ~~to the best interests of the students, school district or~~  
21 ~~community, the state board shall remand the decision to the~~  
22 ~~local school board with written instructions for approval of~~  
23 ~~the charter. The instructions shall include specific~~  
24 ~~recommendations concerning approval of the charter. The~~  
25 ~~decision of the state board shall be final and not subject to~~

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1 ~~appeal; and~~

2 ~~(2) within thirty days following the remand of~~  
3 ~~a decision by the state board, the local school board, at a~~  
4 ~~public hearing, shall approve the charter.~~

5 ~~C. The state board, on its own motion, may review a~~  
6 ~~local school board's decision to grant a charter. Within sixty~~  
7 ~~days after the making of a motion to review by the state board,~~  
8 ~~the board, at a public hearing that may be held in the district~~  
9 ~~in which the proposed charter school has applied for a charter,~~  
10 ~~shall review the decision of the local school board and~~  
11 ~~determine whether the decision was arbitrary and capricious or~~  
12 ~~whether the]~~

13 A. The department may deny an initial application  
14 if establishment or operation of the proposed charter school  
15 would:

16 (1) violate any federal or state laws  
17 concerning civil rights;  
18 (2) violate any court order;  
19 (3) threaten the health and safety of students  
20 within the school district; [or]

21 (4) violate the provisions of Section [11 of  
22 the 1999 Charter Schools Act] 22-8B-11 NMSA 1978, prescribing  
23 the permissible number of charter schools;

24 ~~[D. If the state board determines that the charter~~  
25 ~~would violate the provisions set forth in Subsection C of this~~

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1 ~~section, the state board shall remand the decision to the local~~  
2 ~~school board with instructions to deny the charter application.~~  
3 ~~The state board may extend the time lines established in this~~  
4 ~~section for good cause. The decision of the state board shall~~  
5 ~~be final and not subject to appeal]~~

6 (5) violate the Public School Finance Act;

7 (6) otherwise not be in the best interests of  
8 the state because the applicants have not demonstrated  
9 sufficient knowledge, experience, credentials or planning to  
10 operate a charter school; or

11 (7) not be in the best interests of the  
12 incoming students to the charter school, the school district or  
13 the community where the charter school is to be geographically  
14 located.

15 B. The department may deny a renewal application or  
16 may revoke a charter at any time if past or continued operation  
17 of the charter school would:

18 (1) violate or actually has violated any  
19 federal or state laws concerning civil rights;

20 (2) violate or actually has violated any court  
21 order;

22 (3) threaten or actually has threatened the  
23 health and safety of students within the school district;

24 (4) violate or actually has violated the  
25 provisions of Section 22-8B-11 NMSA 1978 prescribing the

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1 permissible number of charter schools;

2 (5) violate the Public School Finance Act;

3 (6) materially breach or has materially  
4 breached its charter; or

5 (7) result or has resulted in the  
6 mismanagement of public funds as established by findings of the  
7 state auditor, the charter school's independent public  
8 accountant or the department's auditor.

9 C. In addition to the grounds set forth in  
10 Subsection B of this section, a charter renewal application may  
11 be denied or a charter may be revoked, if the department  
12 determines that the charter school did any of the following:

13 (1) committed a material violation or breach  
14 of any of the conditions, standards or procedures set forth in  
15 the charter;

16 (2) failed to meet or make substantial  
17 progress toward achievement of the department's minimum  
18 educational standards or student performance standards  
19 identified in the charter application or required by law;

20 (3) failed to meet generally accepted  
21 standards of fiscal management; or

22 (4) violated any provision of law from which  
23 the charter school was not specifically exempted.

24 D. If the department revokes or does not renew a  
25 charter, it shall state in writing its reasons for the

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1 revocation or nonrenewal and provide notice of its decision to  
2 the charter school.

3 E. A charter school that has received a notice from  
4 the department denying renewal of the charter or contemplating  
5 revocation of the charter or determining that the facilities do  
6 not meet statewide adequacy standards shall have a right to a  
7 hearing pursuant to rules established by the department. Any  
8 hearing shall be held within sixty days of request for a  
9 hearing after issuance of the notice from the department and  
10 may be presided over by a hearing officer designated by the  
11 secretary of public education.

12 F. If the public school capital outlay council has  
13 determined that the facilities do not meet the statewide  
14 adequacy standards, the charter school applicant or charter  
15 school may appeal the decision to the secretary of public  
16 education as otherwise provided in this section; provided that  
17 the secretary shall reverse the decision of the public school  
18 capital outlay council only if the secretary determines that  
19 the decision was arbitrary, capricious, not supported by  
20 substantial evidence or otherwise not in accordance with the  
21 law.

22 G. A charter school aggrieved by a decision of the  
23 secretary of public education after a hearing pursuant to this  
24 section may appeal the decision to the district court pursuant  
25 to the provisions of Section 39-3-1.1 NMSA 1978."

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1           Section 12. Section 22-8B-8 NMSA 1978 (being Laws 1999,  
2 Chapter 281, Section 8) is amended to read:

3           "22-8B-8. CHARTER APPLICATION--CONTENTS. --The charter  
4 school application [~~whether~~] for a start-up school [~~or a~~  
5 ~~conversion school~~] shall be a proposed agreement between the  
6 [~~local school board~~] department and the charter school and  
7 shall include:

8                   A. the mission statement of the charter school;

9                   B. the goals, objectives and student performance  
10 standards to be achieved by the charter school;

11                   C. a description of the charter school's  
12 educational program, student performance standards and  
13 curriculum that must meet or exceed the [~~state board of~~  
14 ~~education's~~] department's educational standards and must be  
15 designed to enable each student to achieve those standards;

16                   D. a description of the way a charter school's  
17 educational program will meet the individual needs of the  
18 students, including those students determined to be at risk;

19                   E. a description of the charter school's plan for  
20 evaluating student performance, the types of assessments that  
21 will be used to measure student progress toward achievement of  
22 the state's standards and the school's student performance  
23 standards, the time line for achievement of the standards and  
24 the procedures for taking corrective action in the event that  
25 student performance falls below the standards;

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1 F. evidence that the plan for the charter school is  
2 economically sound, including a proposed budget for the term of  
3 the charter and a description of the manner in which the annual  
4 audit of the financial and administrative operations of the  
5 charter school is to be conducted;

6 G. evidence that the fiscal management of the  
7 charter school complies with all applicable federal and state  
8 laws and regulations relative to fiscal procedures;

9 ~~H. evidence of a plan for the displacement of~~  
10 ~~students, teachers and other employees who will not attend or~~  
11 ~~be employed in the conversion school;~~

12 ~~I.]~~ H. a description of the governing body and  
13 operation of the charter school, including how the governing  
14 body will be selected and the nature and extent of parental,  
15 professional educator and community involvement in the  
16 governance and operation of the school; ~~[and the relationship~~  
17 ~~between the governing body and the local school board;~~

18 ~~J.]~~ I. an explanation of the relationship that will  
19 exist between the proposed charter school and its employees,  
20 including evidence that the terms and conditions of employment  
21 will be addressed with affected employees and their recognized  
22 representatives, if any;

23 ~~K.]~~ J. the employment and student discipline  
24 policies of the proposed charter school;

25 ~~[L. an agreement between the charter school and the~~

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1 ~~local school board regarding their respective legal liability~~  
2 ~~and applicable insurance coverage;~~

3 ~~M.]~~ K. a description of how the charter school  
4 plans to meet the transportation and food service needs of its  
5 students;

6 ~~[N.]~~ L. a description of the waivers that the  
7 charter school is requesting from the ~~[local school board and~~  
8 ~~the state board]~~ department and the charter school's plan for  
9 addressing these waiver requests;

10 ~~[O.]~~ M. a description of the facilities the charter  
11 school plans to use; and

12 ~~[P.]~~ N. any other information reasonably required  
13 by the ~~[local school board]~~ department. "

14 Section 13. Section 22-8B-9 NMSA 1978 (being Laws 1999,  
15 Chapter 281, Section 9) is amended to read:

16 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES. --

17 A. An approved charter application ~~[shall be]~~ is a  
18 contract between the charter school and the ~~[local school~~  
19 ~~board]~~ department.

20 B. The ~~[contract between the charter school and the~~  
21 ~~local school board]~~ charter shall reflect all agreements  
22 regarding the release of the charter school from ~~[school~~  
23 ~~district]~~ rules and policies of the department.

24 ~~[C. The contract between the charter school and the~~  
25 ~~local school board shall reflect all requests for release of~~

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1 ~~the charter school from state board rules or the Public School~~  
2 ~~Code. Within ten days after the contract is approved by the~~  
3 ~~local school board, any request for release from state board~~  
4 ~~rules or the Public School Code shall be delivered by the local~~  
5 ~~school board to the state board. If the state board grants the~~  
6 ~~request, it shall notify the local school board and the charter~~  
7 ~~school of its decision. If the state board denies the request,~~  
8 ~~it shall notify the local school board and the charter school~~  
9 ~~that the request is denied and specify the reasons for denial.]~~

10 C. The charter shall reflect all requests for  
11 release of the charter school from departmental rules or the  
12 Public School Code. If the department denies the request, it  
13 shall notify the charter school that the request is denied and  
14 specify the reasons for denial.

15 D. Upon approval of the charter by the [~~local~~  
16 ~~school board~~] department, the charter school shall be waived  
17 from the Public School Code provisions relating to [~~individual~~  
18 ~~class load and~~] teaching load requirements, length of school  
19 day, staffing patterns, subject areas and purchase of  
20 instructional materials.

21 E. The charter school shall participate in the  
22 public school insurance authority.

23 F. Any revision or amendment to the terms of the  
24 [~~contract~~] charter may be made only with the approval of the  
25 [~~local school board~~] department and the governing body of the

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1 charter school.

2 G. The charter shall include procedures [~~agreed~~  
3 ~~upon by the charter school and the local school board~~] for the  
4 resolution of disputes between the charter school and the  
5 [~~local school board~~].

6 ~~H. The charter shall include procedures that shall~~  
7 ~~be agreed upon by the charter school and the local school board~~  
8 ~~in the event that such board determines that the charter shall~~  
9 ~~be revoked pursuant to the provisions of Section 12 of the 1999~~  
10 ~~Charter Schools Act] department. Each party shall designate a~~  
11 ~~point of contact, who shall be solely responsible for resolving~~  
12 ~~disputes between the charter school and the department. A~~  
13 ~~designee may be changed by written notice to the other party.~~"

14 Section 14. Section 22-8B-10 NMSA 1978 (being Laws 1999,  
15 Chapter 281, Section 10) is amended to read:

16 "22-8B-10. CHARTER SCHOOLS-- [~~EMPLOYEE OPTIONS--HIRING AND~~  
17 ~~FIRING]~~ EMPLOYEES. -- [~~A. Notwithstanding the provisions of~~  
18 ~~Section 22-5-4 NMSA 1978]~~ A charter school shall hire its own  
19 employees. The provisions of the School Personnel Act shall  
20 [~~otherwise~~] apply to such employees.

21 [~~B. An employee of a conversion school who was~~  
22 ~~previously an employee of the school district in which the~~  
23 ~~conversion school is located shall be considered to be on a~~  
24 ~~one-year leave of absence from the school district. The leave~~  
25 ~~of absence shall commence on the initial date of employment for~~

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1 ~~the charter school. Upon request of the employee, the one-year~~  
2 ~~leave of absence shall be renewed for up to two additional one-~~  
3 ~~year periods, absent good cause.~~

4 ~~C. The time during which an employee is on a leave~~  
5 ~~of absence shall be counted for longevity credit on the school~~  
6 ~~district's salary schedule.~~

7 ~~D. During the period of time that an employee is on~~  
8 ~~a leave of absence from the school district and is actively~~  
9 ~~employed by the charter school, the charter school shall~~  
10 ~~continue the retirement or other benefits previously granted to~~  
11 ~~the employee.~~

12 ~~E. A leave of absence shall not be considered a~~  
13 ~~break in service with the school district with which an~~  
14 ~~employee was previously employed.~~

15 ~~F. An employee who is on a leave of absence and~~  
16 ~~actively teaching at a charter school and who submits a notice~~  
17 ~~of intent to return to the school district in which the~~  
18 ~~employee was employed immediately prior to employment in the~~  
19 ~~charter school shall be given employment preference by the~~  
20 ~~school district if:~~

21 ~~(1) the employee's notice of intent to return~~  
22 ~~is submitted to the school district within three years after~~  
23 ~~ceasing employment with the school district; and~~

24 ~~(2) if the employee is a teacher, a position~~  
25 ~~for which the teacher is certified or is qualified to become~~

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1 ~~certified is available. If the employee is not a teacher, a~~  
2 ~~position for which the employee is qualified is available.~~

3 ~~G. An employee who is on leave of absence and~~  
4 ~~employed by a charter school and is discharged or terminated~~  
5 ~~for just cause by the charter school shall be considered~~  
6 ~~discharged or terminated by the school district.]"~~

7 Section 15. Section 22-8B-11 NMSA 1978 (being Laws 1999,  
8 Chapter 281, Section 11) is amended to read:

9 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED. --

10 A. ~~[Local school boards shall]~~ The department may  
11 authorize the approval of both conversion and start-up charter  
12 schools ~~[within their school districts].~~

13 B. For the 2005-2006 and 2006-2007 school years, no  
14 more than [fifteen] seven start-up schools [and five conversion  
15 schools] may be established per year statewide. [The number of  
16 charter school slots remaining in that year shall be  
17 transferred to succeeding years up to a maximum of seventy-five  
18 start-up schools and twenty-five conversion schools in any  
19 five-year period. The state board shall promptly notify the  
20 local school board of each school district when the limits set  
21 forth in this section have been reached.] Thereafter, up to ten  
22 start-up schools may be established per year statewide. The  
23 department shall track the number of charter school  
24 applications per year."

25 Section 16. Section 22-8B-13 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 13) is amended to read:

2 "22-8B-13. CHARTER SCHOOL FINANCING. --

3 A. The amount of funding allocated to the charter  
4 school shall be not less than [~~ninety-eight~~] ninety-six percent  
5 of the school-generated program cost.

6 [~~B. That portion of money from state or federal  
7 programs generated by students enrolled in a charter school  
8 shall be allocated to charter schools serving students eligible  
9 for that aid. Any other public school program not offered by  
10 the charter school shall not be entitled to the share of money  
11 generated by a charter school program.]~~

12 B. If a charter application is approved by the  
13 secretary of public education, a charter school shall be  
14 designated as a board of finance pursuant to Section 22-8-38  
15 NMSA 1978 and shall receive state and federal funds for which  
16 it is eligible.

17 C. All services centrally or otherwise provided by  
18 the local school district, including custodial, maintenance and  
19 media services, libraries and warehousing shall be subject to  
20 negotiation between the charter school and the [~~local~~] school  
21 district. Any services for which a charter school contracts  
22 with a school district shall be provided by the district at a  
23 reasonable cost.

24 D. For purposes of computation of a charter  
25 school's state equalization guarantee distribution by the

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1 department pursuant to the Public School Finance Act, the  
2 department shall use the at-risk and training and experience  
3 index from the school district where each charter school is  
4 geographically located. "

5 Section 17. Section 22-8B-14 NMSA 1978 (being Laws 1999,  
6 Chapter 281, Section 14) is amended to read:

7 "22-8B-14. CHARTER SCHOOLS STIMULUS FUND CREATED. --

8 A. The "charter schools stimulus fund" is created  
9 in the state treasury. Money in the fund is appropriated to  
10 the department [~~of education~~] to provide financial support to  
11 charter schools, whether start-up or conversion, for initial  
12 planning and start-up costs and initial costs associated with  
13 renovating or remodeling existing buildings and structures for  
14 expenditure in fiscal year 2000 and subsequent fiscal years.  
15 The fund shall consist of money appropriated by the legislature  
16 and grants, gifts, devises and donations from any public or  
17 private source. The department [~~of education~~] shall administer  
18 the fund in accordance with rules adopted by the [~~state board~~]  
19 department. The department [~~of education~~] may use up to three  
20 percent of the fund for administrative costs. Money in the  
21 fund shall not revert to the general fund at the end of a  
22 fiscal year.

23 B. If the charter school receives an initial grant  
24 and fails to begin operating a charter school within the next  
25 eighteen months, the charter school shall immediately reimburse

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1 the fund. "

2 Section 18. Section 22-8B-15 NMSA 1978 (being Laws 1999,  
3 Chapter 281, Section 15) is repealed and a new Section 22-8B-15  
4 NMSA 1978 is enacted to read:

5 "22-8B-15. [NEW MATERIAL] CHARTER SCHOOLS-- SAVING  
6 CLAUSE.--A charter school approved by a local school board  
7 prior to July 1, 2004 shall, during the term of its existing  
8 charter, remain a public school within the school district in  
9 which it is located, unless the charter school notifies the  
10 department in writing of its election to be solely authorized  
11 to operate as a public school by the department. Charter  
12 schools that do not make this election shall continue to  
13 operate under their existing charters until their renewal, at  
14 which time they shall request authorization to operate as a  
15 public school by the department. "

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