

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 521

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

AN ACT

RELATING TO PUBLIC SCHOOLS; MAKING CHARTER SCHOOLS INDEPENDENT  
OF SCHOOL DISTRICTS FOR PURPOSES OTHER THAN CAPITAL OUTLAY AND  
TRANSPORTATION; PROVIDING FOR CHARTERING AUTHORITIES.

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 July 1,  
2004, 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

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

15 B. For charter schools approved after July 1, 2004,  
16 each charter school shall submit to the department a school-  
17 based budget. The budget shall be based upon the projected  
18 number of program units generated by that charter school and  
19 its students using the at-risk index and the training and  
20 experience index of the school district where the charter  
21 school is geographically located. Upon final approval of the  
22 budget by each governing charter body, the individual charter  
23 school budget shall be submitted to the department pursuant to  
24 the Public School Finance Act and the 1999 Charter Schools  
25 Act. "

1           Section 2. Section 22-8-38 NMSA 1978 (being Laws 1967,  
2 Chapter 16, Section 96, as amended) is amended to read:

3           "22-8-38. BOARDS OF FINANCE-- DESIGNATION. --

4           A. Except as provided in Subsection B of this  
5 section, upon written application to and approval of the [~~state~~  
6 ~~superintendent~~] department, any local school board or charter  
7 school may be designated a board of finance for public school  
8 funds of the school district or charter school. Any local  
9 school board or charter school designated a board of finance  
10 may require all funds distributed to, allocated to or collected  
11 for the school district or the public schools under its  
12 jurisdiction or the charter school to be deposited with it.  
13 The [~~state superintendent~~] department shall designate a local  
14 school board or charter school as a board of finance if:

15           [~~A.~~] (1) the local school board or charter  
16 school shows to the satisfaction of the [~~state superintendent~~]  
17 department that it has personnel properly trained to keep  
18 accurate and complete fiscal records; provided that the  
19 department may exempt a charter school from this provision in  
20 its planning year;

21           [~~B.~~] (2) the local school board or charter  
22 school agrees to consult with the [~~state superintendent~~]  
23 department on any matters not covered by the manual of ac-  
24 counting and budgeting before taking any action relating to  
25 funds held by it as a board of finance;

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1                   [~~C.~~] (3) the persons handling these funds are  
2 adequately bonded to protect the funds entrusted to them from  
3 loss; and

4                   [~~D.~~] (4) the local school board or charter  
5 school making application has not been suspended and not  
6 reinstated as a board of finance within the past year.

7                   B. Charter schools in existence or approved prior  
8 to July 1, 2004 shall continue to submit their budgets and  
9 receive funding through the local school board until their  
10 charters are renewed."

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

13                 "22-8B-1. SHORT TITLE. -- [~~Sections 1 through 15 of this~~  
14 ~~act]~~ Chapter 22, Article 8B NMSA 1978 may be cited as the "1999  
15 Charter Schools Act". "

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

18                 "22-8B-2. DEFINITIONS. -- As used in the 1999 Charter  
19 Schools Act:

20                   A. "charter school" means a conversion school or  
21 start-up school [~~within a school district authorized by the~~  
22 ~~local school board to operate as a charter school]~~ authorized  
23 by the chartering authority to operate as a public school;

24                   B. "chartering authority" means either a local  
25 school board or the department that approves the establishment

1 of a charter school;

2           ~~[B.]~~ C. "conversion school" means ~~[an existing~~  
3 ~~public school within a school district authorized by the local~~  
4 ~~school board to become a charter school]~~ a charter school that  
5 was derived from an existing public school of a school district  
6 prior to July 1, 2004;

7           ~~[C.]~~ D. "governing body" means the governing  
8 structure of a charter school as set forth in the school's  
9 charter; and

10           ~~[D.]~~ E. "start-up school" means a public school  
11 developed by one or more parents, teachers or community members  
12 authorized by the ~~[local school board of the school district in~~  
13 ~~which the school is located]~~ chartering authority to become a  
14 charter school."

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

17           "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--  
18 OPERATION. --

19           A. A charter school shall be subject to all federal  
20 and state laws and constitutional provisions prohibiting  
21 discrimination on the basis of disability, race, creed, color,  
22 gender, national origin, religion, ancestry or need for special  
23 education services.

24           B. A charter school shall be ~~[administered and]~~  
25 governed by a governing body in the manner set forth in the

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1 charter; provided that no member of a governing body for a  
2 charter school that is initially approved or renewed after July  
3 1, 2004 shall serve on the governing body of another charter  
4 school.

5 C. A charter school [~~shall~~] chartered after June  
6 30, 2004, whether as new or renewal, must meet the  
7 qualifications for and be designated as a board of finance  
8 except for capital outlay and transportation funding.

9 D. All charter schools shall be responsible for  
10 [its]:

11 (1) their own operation, including preparation  
12 of a budget, subject to periodic audits through the school  
13 district or pursuant to the Audit Act; and

14 (2) contracting for services and personnel  
15 matters.

16 [~~D.-~~] E. A charter school may [~~negotiate or~~]  
17 contract with a school district, a university or college, the  
18 state, another political subdivision or any other third party  
19 for the use of a facility, its operation and maintenance and  
20 the provision of any service or activity that the charter  
21 school is required to perform in order to carry out the  
22 educational program described in its charter. Facilities used  
23 by a charter school shall meet the standards required by  
24 Section 22-8B-4.2 NMSA 1978.

25 [~~E. In no event shall a charter school be required~~

1 ~~to pay rent for space that is deemed available, as negotiated~~  
 2 ~~by contract, in school district facilities; provided that the~~  
 3 ~~facilities can be made available at no cost to the district.~~  
 4 ~~All costs for the operation and maintenance of the facilities~~  
 5 ~~used by the charter school shall be subject to negotiation~~  
 6 ~~between the charter school and the district.]~~

7 F. A charter school shall negotiate with a school  
 8 district to provide transportation to students eligible for  
 9 transportation under the provisions of the Public School Code.  
 10 The school district, in conjunction with the charter school,  
 11 may establish a limit for student transportation to and from  
 12 the charter school site not to extend beyond the school  
 13 district boundary.

14 ~~[G. A charter school may negotiate with a school~~  
 15 ~~district for capital expenditures.~~

16 ~~H.]~~ G. A charter school shall be a nonsectarian,  
 17 nonreligious and non-home-based public school ~~[that operates~~  
 18 ~~within a school district].~~

19 ~~[I.]~~ H. Except as otherwise provided in the Public  
 20 School Code, a charter school shall not charge tuition or have  
 21 admission requirements.

22 I. With the approval of the chartering authority, a  
 23 single charter school may maintain separate facilities at two  
 24 or more locations within the same school district; however, for  
 25 purposes of calculating program units pursuant to the Public

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1 School Finance Act, the separate facilities shall be treated  
2 together as one school.

3 J. A charter school shall be subject to the  
4 provisions of Section 22-2-8 NMSA 1978 and the Assessment and  
5 Accountability Act.

6 K. A charter school may acquire and dispose of  
7 property; provided that, upon termination of the charter, all  
8 assets of the charter school shall revert to the local school  
9 board [~~that authorized the charter~~].

10 L. A charter school may accept or reject any  
11 charitable gift, grant, devise or bequest; provided that no  
12 such gift, grant, devise or bequest shall be accepted if  
13 subject to any condition contrary to law or to the terms of the  
14 charter. The particular gift, grant, devise or bequest shall  
15 be considered an asset of the charter school to which it is  
16 given.

17 M A charter school may contract and sue and be  
18 sued. A [~~local school board~~] chartering authority that  
19 approves a charter school shall not be liable for any acts or  
20 omissions of the charter school.

21 N. A charter school shall comply with all state and  
22 federal health and safety requirements applicable to public  
23 schools, including health and safety codes related to  
24 educational building occupancy.

25 0. Charter school facilities are eligible for state



1 capital outlay funds and shall be included in the five-year  
 2 facilities plan developed by the school district within whose  
 3 geographical boundaries the charter school is located.

4 P. A charter school is a public school that may  
 5 contract with a school district or other party for provision of  
 6 financial management, food services, transportation,  
 7 facilities, education-related services or other services. The  
 8 governing body of a charter school shall not contract with a  
 9 for-profit or nonprofit entity for the management of the  
 10 charter school.

11 Q. To enable charter schools that are chartered by  
 12 the department to submit required data to the department, an  
 13 accountability data system shall be maintained by either one  
 14 charter school designated by the department or by the  
 15 department itself."

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

18 "22-8B-4.1. CHARTER SCHOOLS' ENROLLMENT PROCEDURES. --

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

21 (1) a start-up school [~~may either~~] shall  
 22 enroll students [on a first-come, first-served basis or]  
 23 through a lottery selection process [if the total number of  
 24 applicants exceeds the number of spaces available at the start-  
 25 up school]; and

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1 (2) a conversion school shall give enrollment  
2 preference to students who are enrolled in the public school at  
3 the time it is converted into a charter school and to siblings  
4 of students admitted to or attending the charter school. The  
5 conversion school may either enroll all other students on a  
6 first-come, first-served basis or through a lottery selection  
7 process if the total number of applicants exceeds the number of  
8 spaces available at the conversion school.

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

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

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

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

18 "22-8B-4.2. [NEW MATERIAL] CHARTER SCHOOL FACILITIES--  
19 STANDARDS. --

20 A. The facilities of a charter school that is  
21 approved on or after July 1, 2004 shall meet educational  
22 occupancy standards required by applicable New Mexico  
23 construction codes.

24 B. The facilities of a charter school that is in  
25 existence, or has been approved prior to July 1, 2004, shall

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1 meet the statewide adequacy standards promulgated by the public  
2 school capital outlay council in the same manner as all other  
3 public schools in the state and shall qualify for grants  
4 pursuant to the Public School Capital Outlay Act as all other  
5 public schools; provided that for charter school facilities in  
6 leased facilities, grants may be used as additional lease  
7 payments for leasehold improvements.

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

10 (1) is housed in a public building that is in  
11 compliance with the statewide adequacy standards and is owned  
12 by the charter school, the school district, the state, an  
13 institution of the state, another political subdivision of the  
14 state, the federal government or a tribal government; or

15 (2) demonstrates, if it is not housed in a  
16 public building described in Paragraph (1) of this subsection,  
17 that:

18 (a) public buildings are not available  
19 or adequate for the educational program of the charter school;  
20 and

21 (b) the facility in which the charter  
22 school is housed meets the statewide adequacy standards.

23 D. The public school capital outlay council:

24 (1) shall determine whether facilities of a  
25 charter school meet the educational occupancy standards

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1 pursuant to the requirements of Subsection A of this section;

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

5 (3) upon a determination that specific  
6 standards are not appropriate or reasonable for a charter  
7 school, may grant a waiver from those standards for that  
8 charter school."

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

11 "22-8B-5. CHARTER SCHOOLS- - STATUS- - EXEMPTION FROM LOCAL  
12 SCHOOL BOARD AUTHORITY [STATE BOARD AUTHORITY]. - -

13 A. The local school board may waive [~~only~~] locally  
14 imposed school district requirements for the charter schools it  
15 charters. A charter school chartered by the department is  
16 exempt from local requirements.

17 [~~B. The state board shall waive requirements~~  
18 ~~relating to individual class load and teaching load, length of~~  
19 ~~the school day, staffing patterns, subject areas and the~~  
20 ~~purchase of instructional material. The state board]~~

21 B. A charter school is responsible for developing  
22 its own written policies and procedures in accordance with this  
23 section.

24 C. The department may waive [state board]  
25 requirements or rules and provisions of the Public School Code

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1 pertaining to individual class loads, graduation requirements,  
 2 evaluation standards for school personnel, school principal  
 3 duties and driver education. Any waivers granted pursuant to  
 4 this section shall be for the term of the charter granted but  
 5 may be revoked earlier by the chartering authority or the  
 6 department.

7 ~~[C.]~~ D. A charter school shall be a public school,  
 8 accredited by the ~~[state board]~~ department and shall be  
 9 accountable to the ~~[school district's local school board]~~  
 10 chartering authority for purposes of ensuring compliance with  
 11 applicable laws, rules and charter provisions.

12 ~~[D.]~~ E. No local school board shall require any  
 13 employee of the school district to be employed in a charter  
 14 school.

15 ~~[E.]~~ F. No local school board shall require any  
 16 student residing within the geographic boundary of its district  
 17 to enroll in a charter school.

18 ~~[F.]~~ G. A student who is suspended or expelled from  
 19 a charter school shall be deemed to be suspended or expelled  
 20 from the school district in which the student resides."

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

24 "22-8B-5.1. CHARTER SCHOOLS--TERM-RENEWAL OF CHARTER  
 25 ~~[GROUNDS FOR NONRENEWAL OR REVOCATION]~~. --

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1           A. A charter school may be approved for an initial  
2 term of ~~[five]~~ six years; provided that the first year shall be  
3 used exclusively for planning. A charter may be renewed for  
4 successive periods of five years each. Approvals of less than  
5 five years can be agreed to between the charter school and the  
6 ~~[local school board]~~ chartering authority.

7           B. Prior to the end of the planning year, the  
8 charter school must demonstrate that it has satisfied any  
9 conditions imposed by the chartering authority before  
10 commencing full operation for the remainder of its charter  
11 term. The chartering authority shall either issue or refuse to  
12 issue the authorization to commence full operation within  
13 twenty-one days of the request. If the chartering authority  
14 refuses to issue the authorization, it shall provide its  
15 reasons in writing to the charter school. A charter school has  
16 the right to a hearing by the department on the refusal as  
17 provided in Section 22-8B-6 NMSA 1978.

18           ~~[B.]~~ C. No later than ~~[January]~~ July 1 of the year  
19 ~~[prior to the year]~~ in which the charter expires, the governing  
20 body of a charter school may submit a renewal application to  
21 the ~~[local school board]~~ chartering authority. The ~~[local~~  
22 ~~school board]~~ chartering authority shall rule in a public  
23 hearing on the renewal application no later than ~~[March]~~  
24 September 1 of the year in which the charter expires, or on a  
25 mutually ~~[agreed]~~ agreed-upon date.

1           ~~[C.]~~ D. A charter school renewal application  
2 submitted to the ~~[local school board]~~ chartering authority  
3 shall contain:

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

11                   (2) a financial statement that discloses the  
12 costs of administration, instruction and other spending  
13 categories for the charter school that is understandable to the  
14 general public, that ~~[will allow]~~ allows comparison of costs to  
15 other schools or comparable organizations and that is in a  
16 format required by the ~~[state board]~~ chartering authority;

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

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

23                   (5) a petition in support of the charter  
24 school renewing its charter status signed by ~~[a majority]~~  
25 seventy-five percent of the households whose children are

1 enrolled in the charter school.

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

5 ~~(1) committed a material violation of any of~~  
6 ~~the conditions, standards or procedures set forth in the~~  
7 ~~charter;~~

8 ~~(2) failed to meet or make substantial~~  
9 ~~progress toward achievement of the state board minimum~~  
10 ~~educational standards or student performance standards~~  
11 ~~identified in the charter application;~~

12 ~~(3) failed to meet generally accepted~~  
13 ~~standards of fiscal management; or~~

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

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

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

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

24 "22-8B-6. CHARTER SCHOOL REQUIREMENTS-- APPLICATION  
25 PROCESS-- AUTHORIZATION. --



1           A. The local school board or the department shall  
 2 have the authority to approve the establishment of a charter  
 3 school [~~within the local school district in which it is~~  
 4 ~~located~~].

5           B. A charter school applicant shall apply to [a  
 6 ~~local school board~~] the chartering authority it chooses for a  
 7 charter. [~~An applicant shall only submit an application in the~~  
 8 ~~district in which the school is located.~~] Applications for  
 9 initial charters shall be submitted by [~~October~~] July 1 to be  
 10 eligible for consideration for the following school year. The  
 11 [~~October~~] July 1 deadline may be waived [~~upon agreement of the~~  
 12 ~~applicant and the local school board~~] by the chartering  
 13 authority for good cause.

14           C. An application for a start-up school may be made  
 15 by one or more teachers, parents or community members or by a  
 16 public post-secondary educational institution.

17           [~~D. An application for a conversion school shall~~  
 18 ~~include a petition of support signed by not less than sixty-~~  
 19 ~~five percent of the employees in the school. Additionally, a~~  
 20 ~~petition in support of the charter school signed by a majority~~  
 21 ~~of the households whose children are enrolled in a proposed~~  
 22 ~~conversion school must accompany the application.~~]

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

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1                   D. At the time of application for a charter, a  
2 charter school applicant shall request approval to be  
3 designated a board of finance and shall not be allowed a  
4 charter without such approval. An application shall include a  
5 request for capital outlay or transportation funding.

6                   E. The [~~local school board~~] chartering authority  
7 shall receive and review all applications for charter schools.  
8 The [~~local school board~~] chartering authority shall not charge  
9 application fees. If the [~~board~~] chartering authority finds  
10 [~~the~~] that a charter school application is incomplete, the  
11 [~~board~~] chartering authority shall request the necessary  
12 information from the charter applicant.

13                   F. The [~~local school board~~] chartering authority  
14 shall hold at least one public meeting to obtain information  
15 and community input, including written or oral comments in  
16 favor of or in opposition to the application from the  
17 applicant, the local community and the local school board and  
18 school district in whose geographical boundaries the charter  
19 school is proposed to be located, to assist the [~~local school~~  
20 board] chartering authority in its decision whether to grant a  
21 charter school application. The [~~local school board~~]  
22 chartering authority shall rule on the application for a  
23 charter school in a public meeting within sixty days after  
24 receiving the application. [~~If not ruled upon within sixty~~  
25 ~~days, the charter application will be automatically reviewed by~~

underscored material = new  
[bracketed material] = delete

1 ~~the state board in accordance with the provisions of Section 7~~  
 2 ~~of the 1999 Charter Schools Act. The charter applicant and the~~  
 3 ~~local school board may, however, jointly waive the deadlines~~  
 4 ~~set forth in this section.~~

5 ~~G. If the local school board denies a charter~~  
 6 ~~school application or imposes conditions that are unacceptable~~  
 7 ~~to the charter applicant, the charter applicant may appeal the~~  
 8 ~~decision to the state board pursuant to Section 7 of the 1999~~  
 9 ~~Charter Schools Act.] The chartering authority may approve,~~  
 10 ~~approve with conditions or deny the application.~~

11 ~~[H.] G. If [a local school board] the chartering~~  
 12 ~~authority denies a charter school application, it shall state~~  
 13 ~~its reasons for the denial in writing within fourteen days of~~  
 14 ~~the meeting. If [a local school board grants a charter, it~~  
 15 ~~shall send a copy of the approved charter to the department of~~  
 16 ~~education within fifteen days after granting the charter] the~~  
 17 ~~chartering authority approves the charter, the approved charter~~  
 18 ~~shall be provided to the applicant together with any imposed~~  
 19 ~~conditions.~~

20 ~~H. A charter school that has received a notice from~~  
 21 ~~the chartering authority denying approval of the charter shall~~  
 22 ~~have a right to a hearing by the department pursuant to rules~~  
 23 ~~promulgated by the department. Any hearing shall be held~~  
 24 ~~within sixty days of the request for a hearing after issuance~~  
 25 ~~of the notice from the department and shall be presided over by~~

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1 a hearing officer designated by the secretary of public  
2 education. The hearing officer shall make a recommended  
3 decision to the secretary, who shall make a final decision. If  
4 the secretary finds for the charter school, the secretary shall  
5 remand the matter to the local school board for reconsideration  
6 and final decision of the local school board.

7 I. An applicant aggrieved by a decision of the  
8 secretary of public education or a final decision of the local  
9 school board may appeal the decision to the district court  
10 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

13 "22-8B-7. CHARTER SCHOOL APPLICATION [APPEAL] - - DENIAL OR  
14 REVOCATION - - PROCEDURES. - -

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

19 ~~B. A charter applicant or governing body of a~~  
20 ~~charter school that wishes to appeal a decision of a local~~  
21 ~~school board concerning the denial, nonrenewal or revocation of~~  
22 ~~a charter school or the imposition of conditions that are~~  
23 ~~unacceptable to the charter school or charter school applicant~~  
24 ~~shall provide the state board with a notice of appeal within~~  
25 ~~thirty days after the local school board's decision. The~~

1 ~~charter school applicant or governing body of the charter~~  
2 ~~school bringing the appeal shall limit the grounds of the~~  
3 ~~appeal to the grounds for denial, nonrenewal or revocation~~  
4 ~~specified by the local school board. The notice shall include~~  
5 ~~a brief statement of the reasons the charter school applicant~~  
6 ~~contends the local school board's decision was in error. The~~  
7 ~~appeal and review process shall be as follows:~~

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

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

24 ~~C. The state board, on its own motion, may review a~~  
25 ~~local school board's decision to grant a charter. Within sixty~~

1 ~~days after the making of a motion to review by the state board,~~  
2 ~~the board, at a public hearing that may be held in the district~~  
3 ~~in which the proposed charter school has applied for a charter,~~  
4 ~~shall review the decision of the local school board and~~  
5 ~~determine whether the decision was arbitrary and capricious or~~  
6 ~~whether the]~~

7 A. The chartering authority may deny an initial  
8 application if establishment or operation of the proposed  
9 charter school would:

- 10 (1) violate any federal or state laws  
11 concerning civil rights;  
12 (2) violate any court order;  
13 (3) threaten the health and safety of students  
14 within the school district; ~~[or]~~

15 (4) violate the provisions of Section ~~[41 of~~  
16 ~~the 1999 Charter Schools Act]~~ 22-8B-11 NMSA 1978, prescribing  
17 the permissible number of charter schools;

18 ~~[D. If the state board determines that the charter~~  
19 ~~would violate the provisions set forth in Subsection C of this~~  
20 ~~section, the state board shall remand the decision to the local~~  
21 ~~school board with instructions to deny the charter application.~~  
22 ~~The state board may extend the time lines established in this~~  
23 ~~section for good cause. The decision of the state board shall~~  
24 ~~be final and not subject to appeal]~~

25 (5) violate the Public School Finance Act;

1                   (6) otherwise not be in the best interests of  
 2 the state because the applicants have not demonstrated  
 3 sufficient knowledge, experience, credentials or planning to  
 4 operate a charter school; or

5                   (7) not be in the best interests of the  
 6 incoming students to the charter school, the school district or  
 7 the community where the charter school is to be geographically  
 8 located.

9                   B. The chartering authority may deny a renewal  
 10 application or may revoke a charter at any time if past or  
 11 continued operation of the charter school would:

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

14                   (2) violate or actually has violated any court  
 15 order;

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

18                   (4) violate or actually has violated the  
 19 provisions of Section 22-8B-11 NMSA 1978 prescribing the  
 20 permissible number of charter schools;

21                   (5) violate the Public School Finance Act;

22                   (6) materially breach or has materially  
 23 breached its charter; or

24                   (7) result or has resulted in the  
 25 mismanagement of public funds as established by findings of the

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1 state auditor, the charter school's independent certified  
2 public accountant or the chartering authority's auditor.

3 C. In addition to the grounds set forth in  
4 Subsection B of this section, a charter renewal application may  
5 be denied or a charter may be revoked, if the chartering  
6 authority determines that the charter school did any of the  
7 following:

8 (1) committed a material violation or breach  
9 of any of the conditions, standards or procedures set forth in  
10 the charter;

11 (2) failed to meet or make substantial  
12 progress toward achievement of the department's minimum  
13 educational standards or student performance standards  
14 identified in the charter application or required by law;

15 (3) failed to meet generally accepted  
16 standards of fiscal management; or

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

19 D. If the chartering authority revokes or does not  
20 renew a charter, it shall state in writing its reasons for the  
21 revocation or nonrenewal and provide notice of its decision to  
22 the charter school.

23 E. A charter school that has received a notice from  
24 the chartering authority denying renewal of the charter or  
25 contemplating revocation of the charter or determining that the



1 facilities do not meet statewide adequacy standards shall have  
 2 a right to a hearing by the department pursuant to rules  
 3 established by the department. Any hearing shall be held  
 4 within sixty days of request for a hearing after issuance of  
 5 the notice from the department and may be presided over by a  
 6 hearing officer designated by the secretary of public  
 7 education.

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

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

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

24 "22-8B-8. CHARTER APPLICATION--CONTENTS. --The charter  
 25 school application [~~whether~~] for a start-up school [~~or a~~

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1 ~~conversion school~~] shall be a proposed agreement between the  
2 [~~local school board~~] chartering authority and the charter  
3 school and shall include:

4 A. the mission statement of the charter school;

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

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

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

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

22 F. evidence that the plan for the charter school is  
23 economically sound, including a proposed budget for the term of  
24 the charter and a description of the manner in which the annual  
25 audit of the financial and administrative operations of the

1 charter school is to be conducted;

2 G. evidence that the fiscal management of the  
3 charter school complies with all applicable federal and state  
4 laws and ~~[regulations]~~ rules relative to fiscal procedures;

5 ~~[H. evidence of a plan for the displacement of  
6 students, teachers and other employees who will not attend or  
7 be employed in the conversion school;~~

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

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

19 ~~[K.]~~ J. the employment and student discipline  
20 policies of the proposed charter school;

21 ~~[L. an agreement between the charter school and the  
22 local school board regarding their respective legal liability  
23 and applicable insurance coverage;~~

24 ~~M.]~~ K. a description of how the charter school  
25 plans to meet the transportation and food service needs of its

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1 students;

2 [N.] L. a description of the waivers that the  
3 charter school is requesting from the local school board and  
4 the [~~state board~~] department and the charter school's plan for  
5 addressing these waiver requests;

6 [Ø.] M. a description of the facilities the charter  
7 school plans to use; and

8 [P.] N. any other information reasonably required  
9 by the [~~local school board~~] chartering authority."

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

12 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES. --

13 A. An approved charter application [~~shall be~~] is a  
14 contract between the charter school and the [~~local school~~  
15 ~~board~~] chartering authority.

16 B. The [~~contract between the charter school and the~~  
17 ~~local school board~~] charter shall reflect all agreements  
18 regarding the release of the charter school from school  
19 district and department rules and policies.

20 [~~C. The contract between the charter school and the~~  
21 ~~local school board shall reflect all requests for release of~~  
22 ~~the charter school from state board rules or the Public School~~  
23 ~~Code. Within ten days after the contract is approved by the~~  
24 ~~local school board, any request for release from state board~~  
25 ~~rules or the Public School Code shall be delivered by the local~~

1 ~~school board to the state board. If the state board grants the~~  
 2 ~~request, it shall notify the local school board and the charter~~  
 3 ~~school of its decision. If the state board denies the request,~~  
 4 ~~it shall notify the local school board and the charter school~~  
 5 ~~that the request is denied and specify the reasons for denial.]~~

6 ~~[D.]~~ C. Upon approval of the charter ~~[by the local~~  
 7 ~~school board]~~, the charter school shall be waived from the  
 8 Public School Code provisions relating to ~~[individual class~~  
 9 ~~load and]~~ teaching load requirements, length of school day,  
 10 staffing patterns, subject areas and purchase of instructional  
 11 materials.

12 ~~[E.]~~ D. The charter school shall participate in the  
 13 public school insurance authority.

14 ~~[F.]~~ E. Any revision or amendment to the terms of  
 15 the ~~[contract]~~ charter may be made only with the approval of  
 16 the ~~[local school board]~~ chartersing authority and the governing  
 17 body of the charter school.

18 ~~[G.]~~ F. The charter shall include procedures  
 19 ~~[agreed upon by the charter school and the local school board]~~  
 20 for the resolution of disputes between the charter school and  
 21 the ~~[local school board]~~.

22 ~~H.~~ ~~The charter shall include procedures that shall~~  
 23 ~~be agreed upon by the charter school and the local school board~~  
 24 ~~in the event that such board determines that the charter shall~~  
 25 ~~be revoked pursuant to the provisions of Section 12 of the 1999~~

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1 ~~Charter Schools Act~~ chartering authority. Each party shall  
2 designate a point of contact, who shall be solely responsible  
3 for resolving disputes between the charter school and the  
4 chartering authority. A designee may be changed by written  
5 notice to the other party."

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

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

13 ~~[B. An employee of a conversion school who was~~  
14 ~~previously an employee of the school district in which the~~  
15 ~~conversion school is located shall be considered to be on a~~  
16 ~~one year leave of absence from the school district. The leave~~  
17 ~~of absence shall commence on the initial date of employment for~~  
18 ~~the charter school. Upon request of the employee, the one year~~  
19 ~~leave of absence shall be renewed for up to two additional one-~~  
20 ~~year periods, absent good cause.~~

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

24 ~~D. During the period of time that an employee is on~~  
25 ~~a leave of absence from the school district and is actively~~

1 ~~employed by the charter school, the charter school shall~~  
 2 ~~continue the retirement or other benefits previously granted to~~  
 3 ~~the employee.~~

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

7 ~~F. An employee who is on a leave of absence and~~  
 8 ~~actively teaching at a charter school and who submits a notice~~  
 9 ~~of intent to return to the school district in which the~~  
 10 ~~employee was employed immediately prior to employment in the~~  
 11 ~~charter school shall be given employment preference by the~~  
 12 ~~school district if:~~

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

16 ~~(2) if the employee is a teacher, a position~~  
 17 ~~for which the teacher is certified or is qualified to become~~  
 18 ~~certified is available. If the employee is not a teacher, a~~  
 19 ~~position for which the employee is qualified is available.~~

20 ~~G. An employee who is on leave of absence and~~  
 21 ~~employed by a charter school and is discharged or terminated~~  
 22 ~~for just cause by the charter school shall be considered~~  
 23 ~~discharged or terminated by the school district.]"~~

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

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1 "22-8B-11. CHARTER SCHOOLS-- MAXIMUM NUMBER ESTABLISHED. --

2 [A. ~~Local school boards shall authorize the~~  
3 ~~approval of both conversion and start-up charter schools within~~  
4 ~~their school districts.~~

5 B.] For the 2004-2005 and 2005-2006 school years, no  
6 more than [fifteen] seven start-up schools [and five conversion  
7 schools] may be established per year statewide. [The number of  
8 charter school slots remaining in that year shall be  
9 transferred to succeeding years up to a maximum of seventy-five  
10 start-up schools and twenty-five conversion schools in any  
11 five-year period. The state board shall promptly notify the  
12 local school board of each school district when the limits set  
13 forth in this section have been reached.] Thereafter, up to ten  
14 start-up schools may be established per year statewide. The  
15 department shall track the number of charter school  
16 applications per year. "

17 Section 16. Section 22-8B-13 NMSA 1978 (being Laws 1999,  
18 Chapter 281, Section 13) is amended to read:

19 "22-8B-13. CHARTER SCHOOL FINANCING. --

20 A. The amount of funding allocated to the charter  
21 school shall be not less than ninety-eight percent of the  
22 school-generated program cost for schools chartered by a local  
23 school board and not less than ninety-seven percent of the  
24 school-generated program cost for schools chartered by the  
25 department. The department may withhold and use up to three

underscoring material = new  
[bracketed material] = delete



1 percent of the school-generated program cost for its  
 2 administrative support of the charter school.

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

9 B. When a charter school is designated as a board  
 10 of finance pursuant to Section 22-8-38 NMSA 1978, it shall  
 11 receive state and federal funds for which it is eligible.

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

19 D. For purposes of computation of a charter  
 20 school's state equalization guarantee distribution by the  
 21 department pursuant to the Public School Finance Act, the  
 22 department shall use the at-risk and training and experience  
 23 index from the school district where each charter school is  
 24 geographically located. "

25 Section 17. Section 22-8B-14 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 14) is amended to read:

2 "22-8B-14. CHARTER SCHOOLS STIMULUS FUND CREATED. --

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

18 B. If the charter school receives an initial grant  
19 and fails to begin operating a charter school within the next  
20 eighteen months, the charter school shall immediately reimburse  
21 the fund."

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

25 "22-8B-15. [NEW MATERIAL] CHARTER SCHOOLS-- SAVING

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1 CLAUSE. --A charter school approved by a local school board  
2 prior to July 1, 2004 shall, during the term of its existing  
3 charter, continue its chartering relationship with that local  
4 school board. At the time of renewal of its charter, it may  
5 choose its chartering authority. "

6 Section 19. EFFECTIVE DATE. --The effective date of the  
7 provisions of this act is July 1, 2004.

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underscored material = new  
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