

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 510

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO EDUCATION; PROVIDING STANDARDS FOR CHARTER SCHOOL
FACILITIES; PROVIDING LEASE PAYMENTS FOR CHARTER SCHOOLS;
MAKING AN APPROPRIATION.

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

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

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

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

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

A. A charter school shall be subject to all federal

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1 and state laws and constitutional provisions prohibiting
2 discrimination on the basis of disability, race, creed, color,
3 gender, national origin, religion, ancestry or need for special
4 education services.

5 B. A charter school shall be ~~[administered and]~~
6 governed by a governing body in the manner set forth in the
7 charter; provided that no member of a governing body for a
8 charter school that is initially approved on or after July 1,
9 2005 or whose charter is renewed on or after July 1, 2005 shall
10 serve on the governing body of another charter school.

11 C. A charter school shall be responsible for its
12 own operation, including preparation of a budget, contracting
13 for services and personnel matters.

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

24 ~~[E. In no event shall a charter school be required~~
25 ~~to pay rent for space that is deemed available, as negotiated~~

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

6 E. A conversion school may choose to continue using
7 the school district facilities and equipment it had been using
8 prior to conversion.

9 F. A school district shall provide a charter school
10 with available facilities for the school's operations unless
11 the facilities are currently used for other educational
12 purposes. A charter school shall not be required to pay rent
13 for the school district facilities if the facilities can be
14 provided at no cost to the school district. If facilities are
15 available but cannot be provided at no cost to the school
16 district, the school district shall not charge more than the
17 actual direct cost of providing the facilities. As used in
18 this subsection, "other educational purposes" includes health
19 clinics, daycare centers, teacher training centers, school
20 district administration functions and other ancillary services
21 related to a school district's functions and operations.

22 G. A charter school may pay the costs of operation
23 and maintenance of its facilities or may contract with the
24 school district to provide facility operation and maintenance
25 services.

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1 H. Charter school facilities are eligible for state
2 and local capital outlay funds and shall be included in the
3 school district's five-year facilities plan.

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

11 ~~[G. A charter school may negotiate with a school~~
12 ~~district for capital expenditures.]~~

13 ~~H.]~~ J. A charter school shall be a nonsectarian,
14 nonreligious and non-home-based public school that operates
15 within a school district.

16 ~~[I.]~~ K. Except as otherwise provided in the Public
17 School Code, a charter school shall not charge tuition or have
18 admission requirements.

19 L. With the approval of the school district, a
20 single charter school may maintain separate facilities at two
21 or more locations within the same school district; but, for
22 purposes of calculating program units pursuant to the Public
23 School Finance Act, the separate facilities shall be treated
24 together as one school.

25 ~~[J.]~~ M. A charter school shall be subject to the

1 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
2 Accountability Act.

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

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

14 ~~[M.]~~ P. A charter school may contract and sue and
15 be sued. A local school board that approves a charter school
16 shall not be liable for any acts or omissions of the charter
17 school.

18 ~~[N.]~~ Q. A charter school shall comply with all
19 state and federal health and safety requirements applicable to
20 public schools, including those health and safety codes
21 relating to educational building occupancy."

22 Section 3. A new section of the 1999 Charter Schools Act,
23 Section 22-8B-4.2 NMSA 1978, is enacted to read:

24 "22-8B-4.2. [NEW MATERIAL] CHARTER SCHOOL FACILITIES--
25 STANDARDS.--

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1 A. The facilities of a charter school that is
2 approved on or after July 1, 2005 and before July 1, 2010 shall
3 meet educational occupancy standards required by applicable New
4 Mexico construction codes.

5 B. The facilities of a charter school that is in
6 existence, or has been approved, prior to July 1, 2005 shall be
7 evaluated, prioritized and eligible for grants pursuant to the
8 Public School Capital Outlay Act in the same manner as all
9 other public schools in the state; provided that for charter
10 school facilities in leased facilities, grants may be used as
11 additional lease payments for leasehold improvements.

12 C. On or after July 1, 2010, an application for a
13 charter shall not be approved and an existing charter shall not
14 be renewed unless the charter school:

15 (1) is housed in a public building that is:

16 (a) owned by the charter school, the
17 school district, the state, an institution of the state,
18 another political subdivision of the state, the federal
19 government or one of its agencies or a tribal government; and

20 (b) subject to evaluation and
21 prioritization and eligible for grants pursuant to the Public
22 School Capital Outlay Act in the same manner as all other
23 public schools in the state; or

24 (2) if it is not housed in a public building
25 described in Paragraph (1) of this subsection, demonstrates

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1 that:

2 (a) the facility in which the charter
3 school is housed meets the statewide adequacy standards
4 developed pursuant to the Public School Capital Outlay Act and
5 the owner of the facility is contractually obligated to
6 maintain those standards at no additional cost to the charter
7 school or the state; and

8 (b) either: 1) public buildings are not
9 available or adequate for the educational program of the
10 charter school; or 2) the owner of the facility is a nonprofit
11 entity specifically organized for the purpose of providing the
12 facility for the charter school.

13 D. The public school capital outlay council:

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

17 (2) shall determine whether facilities of a
18 charter school meet the requirements of Subsections B and C of
19 this section; and

20 (3) upon a determination that specific
21 requirements are not appropriate or reasonable for a charter
22 school, may grant a variance from those requirements for that
23 charter school."

24 Section 4. Section 22-8B-6 NMSA 1978 (being Laws 1999,
25 Chapter 281, Section 6) is amended to read:

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1 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
2 PROCESS--AUTHORIZATION.--

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

6 B. A charter school applicant shall apply to a
7 local school board for a charter. An applicant shall only
8 submit an application in the district in which the school is
9 located. Applications shall be submitted by ~~[October 1]~~ July 1
10 to be eligible for consideration for the following ~~[school]~~
11 fiscal year; provided that the ~~[October 1]~~ July 1 deadline may
12 be waived upon agreement of the applicant and the local school
13 board.

14 C. An application shall include a request for
15 capital outlay funding.

16 ~~[G.]~~ D. An application for a start-up school may be
17 made by one or more teachers, parents or community members.

18 ~~[D.]~~ E. An application for a conversion school
19 shall include a petition of support signed by ~~[not]~~ no less
20 than sixty-five percent of the employees in the school.
21 Additionally, a petition in support of the charter school
22 signed by a majority of the households whose children are
23 enrolled in a proposed conversion school ~~[must]~~ shall accompany
24 the application.

25 ~~[E.]~~ F. The local school board shall receive and
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1 review all applications for charter schools. The local school
 2 board shall not charge application fees. If the board finds
 3 the charter school application is incomplete, the board shall
 4 request the necessary information from the charter school
 5 applicant.

6 ~~[F.]~~ G. The local school board shall hold at least
 7 one meeting to obtain information and community input to assist
 8 the local school board in its decision whether to grant a
 9 charter school application. The local school board shall rule
 10 on the application for a charter school in a public meeting
 11 within sixty days after receiving the application. If not
 12 ruled upon within sixty days, the charter application ~~[will]~~
 13 shall be automatically reviewed by the ~~[state board]~~ secretary
 14 in accordance with the provisions of Section ~~[7 of the 1999~~
 15 ~~Charter Schools Act]~~ 22-8B-7 NMSA 1978. The charter school
 16 applicant and the local school board may, however, jointly
 17 waive the deadlines set forth in this section.

18 ~~[G.]~~ H. If the local school board denies a charter
 19 school application or imposes conditions that are unacceptable
 20 to the charter school applicant, the charter school applicant
 21 may appeal the decision to the ~~[state board]~~ secretary pursuant
 22 to Section ~~[7 of the 1999 Charter Schools Act]~~ 22-8B-7 NMSA
 23 1978.

24 ~~[H.]~~ I. If a local school board denies a charter
 25 school application or approves the application with conditions,

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1 it shall state its reasons for the denial or conditions. If a
2 local school board grants a charter, it shall send a copy of
3 the approved charter to the department [~~of education~~] within
4 fifteen days after granting the charter."

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

7 "22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--
8 PROCEDURES.--

9 A. The [~~state board~~] secretary, upon receipt of a
10 notice of appeal or upon [~~its~~] the secretary's own motion,
11 shall review decisions of [~~any~~] a local school board concerning
12 charter schools in accordance with the provisions of this
13 section.

14 B. A charter applicant or governing body [~~of a~~
15 ~~charter school~~] that wishes to appeal a decision of a local
16 school board concerning the denial, nonrenewal or revocation of
17 a charter school or the imposition of conditions that are
18 unacceptable to the charter school or charter school applicant
19 shall provide the [~~state board~~] secretary with a notice of
20 appeal within thirty days after the local school board's
21 decision. The charter school applicant or governing body [~~of~~
22 ~~the charter school~~] bringing the appeal shall limit the grounds
23 of the appeal to the grounds for denial, nonrenewal or
24 revocation or the imposition of conditions that were specified
25 by the local school board. The notice shall include a brief

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1 statement of the reasons the charter school applicant or
 2 governing body contends the local school board's decision was
 3 in error. Except as provided in Subsection E of this section,
 4 the appeal and review process shall be as follows:

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

19 (2) within thirty days following the remand of
 20 a decision by the [~~state board~~] secretary, the local school
 21 board, at a public hearing, shall approve the charter.

22 C. The [~~state board, on its~~] secretary, on the
 23 secretary's own motion, may review a local school board's
 24 decision to grant a charter. Within sixty days after the
 25 making of a motion to review by the [~~state board~~] secretary,

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1 the ~~[board]~~ secretary, at a public hearing that may be held in
2 the school district in which the proposed charter school has
3 applied for a charter, shall review the decision of the local
4 school board and determine whether the decision was arbitrary
5 ~~[and]~~ or capricious or whether the establishment or operation
6 of the proposed charter school would:

- 7 (1) violate any federal or state laws
- 8 concerning civil rights;
- 9 (2) violate any court order;
- 10 (3) threaten the health and safety of students
- 11 within the school district; or
- 12 (4) violate the provisions of Section ~~[11 of~~
13 ~~the 1999 Charter Schools Act]~~ 22-8B-11 NMSA 1978, prescribing
14 the permissible number of charter schools.

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

23 E. If a local school board denies an application or
24 refuses to renew a charter because the public school capital
25 outlay council has determined that the facilities do not meet

1 the standards required by Section 22-8B-4.2 NMSA 1978, the
 2 charter school applicant or charter school may appeal the
 3 decision to the secretary as otherwise provided in this
 4 section; provided that the secretary shall reverse the decision
 5 of the local school board only if the secretary determines that
 6 the decision was arbitrary, capricious, not supported by
 7 substantial evidence or otherwise not in accordance with the
 8 law."

9 Section 6. Section 22-8B-12 NMSA 1978 (being Laws 1999,
 10 Chapter 281, Section 12) is amended to read:

11 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
 12 GROUNDS FOR NONRENEWAL OR REVOCATION.--

13 A. A charter school may be approved for an initial
 14 term of [~~five~~] six years; provided that the first year shall be
 15 used for planning. A charter may be renewed for successive
 16 periods of five years each. Approvals of less than five years
 17 [~~can~~] may be agreed to between the charter school and the local
 18 school board.

19 B. Prior to the end of the planning year, the
 20 charter school shall demonstrate that its facilities meet the
 21 requirements of Section 22-8B-4.2 NMSA 1978.

22 [~~B.~~] C. No later than January 1 of the year prior
 23 to the year in which the charter expires, the governing body
 24 [~~of a charter school~~] may submit a renewal application to the
 25 local school board. The local school board shall rule in a

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1 public hearing on the renewal application no later than March 1
2 of the fiscal year in which the charter expires, or on a
3 mutually [~~agreed~~] agreed-upon date.

4 [~~G.~~] D. A charter school renewal application
5 submitted to the local school board shall contain:

6 (1) a report on the progress of the charter
7 school in achieving the goals, objectives, student performance
8 standards, state [~~board~~] minimum educational standards and
9 other terms of the initial approved charter application,
10 including the accountability requirements set forth in [~~Section~~
11 ~~22-1-6 NMSA 1978~~] the Assessment and Accountability Act;

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

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

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

25 (5) a petition in support of the charter

1 school renewing its charter status signed by a majority of the
 2 households whose children are enrolled in the charter school;
 3 and

4 (6) a description of the charter school
 5 facilities and assurances that the facilities are in compliance
 6 with the requirements of Section 22-8B-4.2 NMSA 1978.

7 ~~[D.]~~ E. A charter may be revoked or not renewed by
 8 the local school board if the board determines that the charter
 9 school did any of the following:

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

13 (2) failed to meet or make substantial
 14 progress toward achievement of the state board minimum
 15 educational standards or student performance standards
 16 identified in the charter application;

17 (3) failed to meet generally accepted
 18 standards of fiscal management; or

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

21 ~~[E.]~~ F. If a local school board revokes or does not
 22 renew a charter, the local school board shall state in writing
 23 its reasons for the revocation or nonrenewal.

24 ~~[F.]~~ G. A decision to revoke or not to renew a
 25 charter may be appealed by the governing body ~~[of the charter~~

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1 ~~school]~~ pursuant to Section ~~[7 of the 1999 Charter Schools Act]~~
2 22-8B-7 NMSA 1978."

3 Section 7. APPROPRIATION.--

4 A. Four million dollars (\$4,000,000) is
5 appropriated from the public school capital outlay fund to the
6 public school capital outlay council for expenditure in fiscal
7 year 2006 for the purpose of making lease payments for
8 classroom facilities, including facilities leased by charter
9 schools. The payments shall be made upon application by the
10 school districts or charter schools and pursuant to rules
11 adopted by the council and the following criteria:

12 (1) the amount of a grant to a school district
13 or charter school shall not exceed the lesser of:

14 (a) the actual annual lease payments
15 owed for leasing classroom space for schools, including charter
16 schools, in the school district; or

17 (b) six hundred dollars (\$600)
18 multiplied by the number of MEM using the leased classroom
19 facilities; provided that, if the total payments made pursuant
20 to this subsection would exceed the total amount available, the
21 rate specified in this subparagraph shall be reduced
22 proportionately; and

23 (2) money received for the lease payments of a
24 charter school may be used by that charter school as a state
25 match necessary to obtain federal grants pursuant to the

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1 federal No Child Left Behind Act of 2001.

2 B. Any unexpended or unencumbered balance remaining
3 at the end of fiscal year 2006 shall revert to the public
4 school capital outlay fund.

5 C. As used in this section, "MEM" means:

6 (1) the average full-time-equivalent
7 enrollment using leased classroom facilities on the fortieth,
8 eightieth and one hundred twentieth days of the prior school
9 year; or

10 (2) in the case of an approved charter school
11 that has not commenced classroom instruction, the estimated
12 full-time-equivalent enrollment that will use leased classroom
13 facilities in the first year of instruction, as shown in the
14 approved charter school application.

15 Section 8. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2005.