

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 630

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING CHARTER SCHOOLS TO DECIDE
THEIR CHARTERING AUTHORITY; ALLOWING CHARTER SCHOOLS TO CHANGE
THEIR CHARTERING AUTHORITY WHEN RENEWING THEIR CHARTERS;
CREATING A CHARTER SCHOOLS DIVISION IN THE PUBLIC EDUCATION
DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR
APPROVAL, DENIAL, RENEWAL, SUSPENSION OR REVOCATION OF STATE-
CHARTERED CHARTER SCHOOLS BY THE PUBLIC EDUCATION COMMISSION;
MAKING STATE-CHARTERED CHARTER SCHOOLS INDEPENDENT OF SCHOOL
DISTRICTS; REQUIRING STATE-CHARTERED CHARTER SCHOOLS TO BE
BOARDS OF FINANCE; CLARIFYING RESPONSIBILITIES OF CHARTER
SCHOOLS AND GOVERNING BODIES; CHANGING FUNDING PROVISIONS;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2005 BY REPEALING LAWS 2005, CHAPTER 176, SECTION 12;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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underscored material = new
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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 Section 1. Section 9-24-4 NMSA 1978 (being Laws 2004,
3 Chapter 27, Section 4, as amended) is amended to read:

4 "9-24-4. DEPARTMENT CREATED.--

5 A. The "public education department" is created in
6 the executive branch. The department is a cabinet department
7 and includes the following divisions:

8 (1) the administrative services division;

9 (2) the assessment and accountability
10 division;

11 (3) the charter schools division;

12 [~~(3)~~] (4) the educator quality division;

13 [~~(4)~~] (5) the Indian education division;

14 [~~(5)~~] (6) the information technology division;

15 [~~(6)~~] (7) the instructional support and
16 vocational education division;

17 [~~(7)~~] (8) the program support and student
18 transportation division;

19 [~~(8)~~] (9) the quality assurance and systems
20 integration division;

21 [~~(9)~~] (10) the rural education division; and

22 [~~(10)~~] (11) the vocational rehabilitation
23 division.

24 B. The secretary may organize the department and
25 divisions of the department and may transfer or merge functions

1 between divisions and bureaus in the interest of efficiency and
2 economy."

3 Section 2. Section 22-8-2 NMSA 1978 (being Laws 1978,
4 Chapter 128, Section 3, as amended) is amended to read:

5 "22-8-2. DEFINITIONS.--As used in the Public School
6 Finance Act:

7 A. "ADM" or "MEM" means membership;

8 B. "membership" means the total enrollment of
9 qualified students on the current roll of a class or school on
10 a specified day. The current roll is established by the
11 addition of original entries and reentries minus withdrawals.
12 Withdrawals of students, in addition to students formally
13 withdrawn from the public school, include students absent from
14 the public school for as many as ten consecutive school days;
15 provided that withdrawals do not include truants and habitual
16 truants the school district is required to intervene with and
17 keep in an educational setting as provided in Section 22-12-9
18 NMSA 1978;

19 C. "basic program ADM" or "basic program MEM" means
20 the MEM of qualified students but excludes the full-time-
21 equivalent MEM in early childhood education and three- and
22 four-year-old students receiving special education services;

23 D. "cost differential factor" is the numerical
24 expression of the ratio of the cost of a particular segment of
25 the school program to the cost of the basic program in grades

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1 four through six;

2 E. "department" or "division" means the public
3 education department;

4 F. "early childhood education ADM" or "early
5 childhood education MEM" means the full-time-equivalent MEM of
6 students attending approved early childhood education programs;

7 G. "full-time-equivalent ADM" or "full-time-
8 equivalent MEM" is that membership calculated by applying to
9 the MEM in an approved public school program the ratio of the
10 number of hours per school day devoted to the program to six
11 hours or the number of hours per school week devoted to the
12 program to thirty hours;

13 H. "operating budget" means the annual financial
14 plan required to be submitted by a local school board or
15 governing body of a state-chartered charter school;

16 I. "program cost" is the product of the total
17 number of program units to which a school district is entitled
18 multiplied by the dollar value per program unit established by
19 the legislature;

20 J. "program element" is that component of a public
21 school system to which a cost differential factor is applied to
22 determine the number of program units to which a school
23 district is entitled, including but not limited to MEM, full-
24 time-equivalent MEM, teacher, classroom or public school;

25 K. "program unit" is the product of the program

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1 element multiplied by the applicable cost differential factor;

2 L. "public money" or "public funds" means all money
3 from public or private sources received by a [~~local~~] school
4 [~~board~~] district or state-chartered charter school or officer
5 or employee of a [~~local~~] school [~~board~~] district or state-
6 chartered charter school for public use;

7 M. "qualified student" means a public school
8 student who:

9 (1) has not graduated from high school;

10 (2) is regularly enrolled in one-half or more
11 of the minimum course requirements approved by the department
12 for public school students; and

13 (3) is at least five years of age prior to
14 12:01 a.m. on September 1 of the school year; or

15 (4) is at least three years of age at any time
16 during the school year and is receiving special education
17 services pursuant to rules of the department; or

18 (5) has not reached the student's twenty-
19 second birthday on the first day of the school year and is
20 receiving special education services pursuant to rules of the
21 department; and

22 N. "state superintendent" means the secretary of
23 public education or the secretary's designee."

24 Section 3. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
25 Chapter 227, Section 8, as amended) is amended to read:

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1 "22-8-6.1. [~~CERTAIN SCHOOL DISTRICT~~] CHARTER SCHOOL
2 BUDGETS.--

3 A. Each state-chartered charter school shall submit
4 to the [~~local school board~~] charter schools division of the
5 department a school-based budget. For fiscal year 2008, and
6 for the first year of operation in any fiscal year thereafter,
7 the budget of every state-chartered charter school shall be
8 based [~~upon~~] on the projected number of program units generated
9 by that charter school and its students, using the at-risk
10 index and the instructional staff training and experience index
11 of the school district in which it is geographically located.
12 For second and subsequent fiscal years of operation, the
13 budgets of state-chartered charter schools shall be based on
14 the number of program units generated using the average of the
15 eightieth and one hundred twentieth day MEM of the prior year
16 and its instructional staff training and experience index and
17 the at-risk index of the school district in which the state-
18 chartered charter school is geographically located. The budget
19 shall be submitted to the [~~local school board~~] division for
20 approval or amendment pursuant to the Public School Finance Act
21 and the Charter Schools Act.

22 B. Each locally chartered charter school shall
23 submit to the local school board a school-based budget. For
24 fiscal year 2008, and for the first year of operation in any
25 fiscal year thereafter, the budget of every locally chartered

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1 charter school shall be based on the projected number of
2 program units generated using the average of the eightieth and
3 one hundred twentieth day MEM of the prior year, using the at-
4 risk index and the instructional staff training and experience
5 index of the school district in which it is geographically
6 located. For second and subsequent fiscal years of operation,
7 the budgets of locally chartered charter schools shall be based
8 on the prior year program units generated by that locally
9 chartered charter school and its students and its instructional
10 staff training and experience index and the at-risk index of
11 the school district in which the locally chartered charter
12 school is geographically located. The budget shall be
13 submitted to the local school board for approval or amendment.
14 The approval or amendment authority of the local school board
15 relative to the charter school budget is limited to ensuring
16 that sound fiscal practices are followed in the development of
17 the budget and that the charter school budget is within the
18 allotted resources. The local school board shall have no veto
19 authority over individual line items within the charter
20 school's proposed budget, but shall approve or disapprove the
21 budget in its entirety. Upon final approval of the local
22 budget by the local school board, the individual charter school
23 budget shall be included separately in the budget submission to
24 the department [~~of education~~] required pursuant to the Public
25 School Finance Act and the [1999] Charter Schools Act."

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1 Section 4. Section 22-8-7 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 61, as amended) is amended to read:

3 "22-8-7. BUDGETS--FORM.--All budgets submitted to the
4 department by a school district or state-chartered charter
5 school shall be in a form specified by the department."

6 Section 5. Section 22-8-11 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 66, as amended) is amended to read:

8 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

9 A. The department shall:

10 (1) on or before July 1 of each year, approve
11 and certify to each local school board and governing body of a
12 state-chartered charter school an operating budget for use by
13 the [~~local~~] school [~~board~~] district or state-chartered charter
14 school; and

15 (2) make corrections, revisions and amendments
16 to the operating budgets fixed by the local school boards or
17 governing bodies of state-chartered charter schools and the
18 [~~state superintendent~~] secretary to conform the budgets to the
19 requirements of law and to the department's rules and
20 procedures.

21 B. No school [~~board~~] district or state-chartered
22 charter school or officer or employee of a school district or
23 state-chartered charter school shall make any expenditure or
24 incur any obligation for the expenditure of public funds unless
25 that expenditure or obligation is made in accordance with an

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1 operating budget approved by the department. This prohibition
 2 does not prohibit the transfer of funds pursuant to the
 3 department's rules and procedures.

4 C. The department shall not approve and certify an
 5 operating budget of any school district or state-chartered
 6 charter school that fails to demonstrate that parental
 7 involvement in the budget process was solicited."

8 Section 6. Section 22-8-12 NMSA 1978 (being Laws 1967,
 9 Chapter 16, Section 67, as amended) is amended to read:

10 "22-8-12. OPERATING BUDGETS--AMENDMENTS.--Operating
 11 budgets shall not be altered or amended after approval and
 12 certification by the department, except for the following
 13 purposes and according to the following procedure:

14 A. upon written request of [~~any~~] a local school
 15 board or governing body of a state-chartered charter school,
 16 the [~~state superintendent~~] secretary may authorize transfer
 17 within the budget, or provide for items not included, when the
 18 total amount of the budget will not be increased thereby;

19 B. upon written request of [~~any~~] a local school
 20 board or governing body of a state-chartered charter school,
 21 the [~~state superintendent~~] secretary, in conformance with the
 22 rules of the department, may authorize an increase in any
 23 budget if the increase is necessary because of the receipt of
 24 revenue that was not anticipated at the time the budget was
 25 fixed and if the increase is directly related to a special

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1 project or program for which the additional revenue was
2 received. The ~~[state superintendent]~~ secretary shall make a
3 written report to the legislative finance committee of any such
4 budget increase;

5 C. upon written request of ~~[any]~~ a local school
6 board or governing body of a state-chartered charter school,
7 the ~~[state superintendent]~~ secretary may authorize an increase
8 in a budget of not more than one thousand dollars (\$1,000); or

9 D. upon written request of ~~[any]~~ a local school
10 board or governing body of a state-chartered charter school,
11 the ~~[state superintendent]~~ secretary, after notice and a public
12 hearing, may authorize an increase in a school budget in an
13 amount exceeding one thousand dollars (\$1,000). The notice of
14 the hearing shall designate the school district ~~[which]~~ that
15 proposes to alter or amend its budget, together with the time,
16 place and date of the hearing. The notice of the hearing shall
17 be published at least once a week for two consecutive weeks in
18 a newspaper of general circulation in the county in which the
19 school district is situated. The last publication of the
20 notice shall be at least three days prior to the date set for
21 the hearing. The charter schools division shall establish how
22 a state-chartered charter school notifies the parents of its
23 students of proposed increases in a charter school budget."

24 Section 7. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
25 Chapter 128, Section 5, as amended) is amended to read:

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1 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
2 REQUESTS.--

3 A. Each local school board or governing body of a
4 state-chartered charter school shall submit annually, on or
5 before October 15, to the department:

6 (1) an estimate for the succeeding fiscal year
7 of:

8 (a) the membership of qualified students
9 to be enrolled in the basic program;

10 (b) the full-time-equivalent membership
11 of students to be enrolled in approved early childhood
12 education programs; and

13 (c) the membership of students to be
14 enrolled in approved special education programs;

15 (2) all other information necessary to
16 calculate program costs; and

17 (3) any other information related to the
18 financial needs of the school district or state-chartered
19 charter school as may be requested by the department.

20 B. All information requested pursuant to Subsection
21 A of this section shall be submitted on forms prescribed and
22 furnished by the department and shall comply with the
23 department's rules and procedures.

24 C. The department shall:

25 (1) review the financial needs of each school

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1 district or state-chartered charter school for the succeeding
2 fiscal year; and

3 (2) submit annually, on or before November 30,
4 to the secretary of finance and administration the
5 recommendations of the [~~state board~~] department for:

6 (a) amendments to the public school
7 finance formula;

8 (b) appropriations for the succeeding
9 fiscal year to the public school fund for inclusion in the
10 executive budget document; and

11 (c) appropriations for the succeeding
12 fiscal year for pupil transportation and instructional
13 materials."

14 Section 8. Section 22-8-13 NMSA 1978 (being Laws 1974,
15 Chapter 8, Section 3, as amended) is amended to read:

16 "22-8-13. REPORTS.--

17 A. Each [~~local school board shall require each~~]
18 public school in [~~its~~] a school district [~~to~~] and each state-
19 chartered charter school shall keep accurate records concerning
20 membership in the public school. The superintendent of each
21 school district or head administrator of a state-chartered
22 charter school shall maintain the following reports for each
23 twenty-day reporting period:

24 (1) the basic program MEM by grade in each
25 public school;

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- 1 (2) the early childhood education MEM;
2 (3) the special education MEM in each public
3 school in class C and class D programs as defined in Section
4 22-8-21 NMSA 1978;
5 (4) the number of class A and class B programs
6 as defined in Section 22-8-21 NMSA 1978; and
7 (5) the full-time-equivalent MEM for bilingual
8 multicultural education programs.

9 B. The superintendent of each school district and
10 the head administrator of each state-chartered charter school
11 shall furnish to the department reports of the information
12 required in Paragraphs (1) through (5) of Subsection A of this
13 section for the first forty days of the school year. The
14 forty-day report and all other reports required by law or by
15 the [~~state board~~] department shall be furnished within five
16 days of the close of the reporting period.

17 C. All information required pursuant to this
18 section shall be on forms prescribed and furnished by the
19 department. A copy of any report made pursuant to this section
20 shall be kept as a permanent record of the school district or
21 charter school and shall be subject to inspection and audit at
22 any reasonable time.

23 D. The department shall withhold allotments of
24 funds to any school district or state-chartered charter school
25 where the superintendent or head administrator has failed to

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1 comply until the superintendent or head administrator complies
2 with and agrees to continue complying with requirements of this
3 section.

4 E. The provisions of this section may be modified
5 or suspended by the department for any school district or
6 school or state-chartered charter school operating under the
7 Variable School Calendar Act. The department shall require MEM
8 reports consistent with the calendar of operations of such
9 school district or school or state-chartered charter school and
10 shall calculate an equivalent MEM for use in projecting school
11 district revenue."

12 Section 9. Section 22-8-14 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 69, as amended) is amended to read:

14 "22-8-14. PUBLIC SCHOOL FUND.--

15 A. The "public school fund" is created.

16 B. [~~This~~] The public school fund shall be
17 distributed to school districts and state-chartered charter
18 schools in the following parts:

19 (1) state equalization guarantee distribution;

20 (2) transportation distribution; and

21 (3) supplemental distributions:

22 (a) out-of-state tuition to school
23 districts;

24 (b) emergency; and

25 (c) program enrichment.

1 C. The distributions of the public school fund
2 shall be made by the department within limits established by
3 law. The balance remaining in the public school fund at the
4 end of each fiscal year shall revert to the general fund,
5 unless otherwise provided by law."

6 Section 10. Section 22-8-15 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 70, as amended) is amended to read:

8 "22-8-15. ALLOCATION LIMITATION.--

9 A. The department shall determine the allocations
10 to each school district and charter school from each of the
11 distributions of the public school fund, subject to the limits
12 established by law.

13 B. The local school board in each school district
14 with [~~authorized~~] locally chartered charter schools shall
15 allocate the appropriate distributions of the public school
16 fund to individual locally chartered charter schools pursuant
17 to each locally chartered charter school's school-based budget
18 approved by the local school board and the department. The
19 appropriate distribution of the public school fund shall flow
20 to the locally chartered charter school within five days after
21 the school district's receipt of the state equalization
22 guarantee for that month."

23 Section 11. Section 22-8-17 NMSA 1978 (being Laws 1974,
24 Chapter 8, Section 7, as amended) is amended to read:

25 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED

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1 INFORMATION.--

2 A. The program cost for each school district and
3 charter school shall be determined by the department in
4 accordance with the provisions of the Public School Finance
5 Act.

6 B. The department is authorized to require from
7 each school district and charter school the information
8 necessary to make an accurate determination of the district's
9 or charter school's program cost."

10 Section 12. Section 22-8-18 NMSA 1978 (being Laws 1974,
11 Chapter 8, Section 8, as amended) is amended to read:

12 "22-8-18. PROGRAM COST CALCULATION--LOCAL [~~SCHOOL BOARD~~]
13 RESPONSIBILITY.--

14 A. The total program units for the purpose of
15 computing the program cost shall be calculated by multiplying
16 the sum of the program units itemized as Paragraphs (1) through
17 (5) in this subsection by the instructional staff training and
18 experience index and adding the program units itemized as
19 Paragraphs (6) through (10) in this subsection. The itemized
20 program units are as follows:

- 21 (1) early childhood education;
22 (2) basic education;
23 (3) special education, adjusted by subtracting
24 the units derived from membership in class D special education
25 programs in private, nonsectarian, nonprofit training centers;

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- 1 (4) bilingual multicultural education;
 2 (5) fine arts education;
 3 (6) size adjustment;
 4 (7) at-risk program;
 5 (8) enrollment growth or new district
 6 adjustment;
 7 (9) special education units derived from
 8 membership in class D special education programs in private,
 9 nonsectarian, nonprofit training centers; and
 10 (10) national board for professional teaching
 11 standards certification.

12 B. The total program cost calculated as prescribed
 13 in Subsection A of this section includes the cost of early
 14 childhood, special, bilingual multicultural, fine arts and
 15 vocational education and other remedial or enrichment programs.
 16 It is the responsibility of the local school board or governing
 17 body of a charter school to determine its priorities in terms
 18 of the needs of the community served by that board. Funds
 19 generated under the Public School Finance Act are discretionary
 20 to local school boards and governing bodies of charter schools,
 21 provided that the special program needs as enumerated in this
 22 section are met."

23 Section 13. Section 22-8-23.1 NMSA 1978 (being Laws 1990
 24 (1st S.S.), Chapter 3, Section 7, as amended by Laws 2003,
 25 Chapter 156, Section 1 and by Laws 2003, Chapter 386, Section
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1) is amended to read:

"22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

A. A school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

(Current Year MEM - Previous Year MEM)

Previous Year MEM X 100 = Percent Increase.

The number of additional program units shall be calculated as follows:

((Current Year MEM - Previous Year MEM) - (Current Year MEM x .01)) X 1.5 = Units.

B. In addition to the units calculated in Subsection A of this section, a school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

(Current Year MEM - Previous Year MEM)

Previous Year MEM X 100 = Percent Increase.

The number of additional program units to which an eligible school district or charter school is entitled under this subsection is the number of units computed in the following manner:

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1 (Current Year MEM - Previous Year MEM) X .50 = Units.

2 C. As used in this section:

3 (1) "current year MEM" means MEM on the
4 fortieth day of the current year;

5 (2) "MEM" means the total school district or
6 charter school membership, including early childhood education
7 full-time-equivalent membership and special education
8 membership, but excluding full-day kindergarten membership for
9 the first year that full-day kindergarten is implemented in a
10 school pursuant to Subsection D of Section [~~22-2-19~~] 22-13-3.2
11 NMSA 1978; and

12 (3) "previous year MEM" means MEM on the
13 fortieth day of the previous year."

14 Section 14. Section 22-8-23.4 NMSA 1978 (being Laws 2003,
15 Chapter 144, Section 2 and Laws 2003, Chapter 152, Section 9)
16 is amended to read:

17 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
18 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
19 program units for teachers certified by the national board for
20 professional teaching standards is determined by multiplying by
21 one and one-half the number of teachers certified by the
22 national board for professional teaching standards employed by
23 the school district or charter school on or before the fortieth
24 day of the school year and verified by the department.

25 Department approval of these units shall be contingent on

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1 verification by the school district or charter school that
2 these teachers are receiving a one-time salary differential
3 equal to or greater than the amount generated by the units
4 multiplied by the program unit value during the fiscal year in
5 which the school district or charter school will receive these
6 units."

7 Section 15. A new section of the Public School Finance
8 Act is enacted to read:

9 "[NEW MATERIAL] CHARTER SCHOOL STUDENT ACTIVITIES PROGRAM
10 UNIT.--The charter school student activities program unit for a
11 school district is determined by multiplying the number of
12 charter school students who are participating in school
13 district activities governed by the New Mexico activities
14 association by the cost differential factor of 0.1. The
15 student activities program unit shall be paid to the school
16 district in which it is generated. A charter school student is
17 eligible to participate in school district activities at the
18 public school in the attendance zone in which the student
19 resides, according to the New Mexico activities association
20 guidelines. If the student chooses to participate at a public
21 school other than the one in the attendance zone in which the
22 student resides, the student shall be subject to New Mexico
23 activities association transfer guidelines."

24 Section 16. Section 22-8-25 NMSA 1978 (being Laws 1981,
25 Chapter 176, Section 5, as amended by Laws 2005, Chapter 176,

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1 Section 12 and by Laws 2005, Chapter 291, Section 1) is amended
2 to read:

3 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
4 DEFINITIONS--DETERMINATION OF AMOUNT.--

5 A. The state equalization guarantee distribution is
6 that amount of money distributed to each school district to
7 ensure that [~~the school district's~~] its operating revenue,
8 including its local and federal revenues as defined in this
9 section, is at least equal to the school district's program
10 cost. For state-chartered charter schools, the state
11 equalization guarantee distribution is the difference between
12 the state-chartered charter school's program cost and the two
13 percent withheld by the department for administrative services.

14 B. "Local revenue", as used in this section, means
15 seventy-five percent of receipts to the school district derived
16 from that amount produced by a school district property tax
17 applied at the rate of fifty cents (\$.50) to each one thousand
18 dollars (\$1,000) of net taxable value of property allocated to
19 the school district and to the assessed value of products
20 severed and sold in the school district as determined under the
21 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
22 value of equipment in the school district as determined under
23 the Oil and Gas Production Equipment Ad Valorem Tax Act.

24 C. "Federal revenue", as used in this section,
25 means receipts to the school district, excluding amounts that,

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1 if taken into account in the computation of the state
2 equalization guarantee distribution, result, under federal law
3 or regulations, in a reduction in or elimination of federal
4 school funding otherwise receivable by the school district,
5 derived from the following:

6 (1) seventy-five percent of the school
7 district's share of forest reserve funds distributed in
8 accordance with Section 22-8-33 NMSA 1978; and

9 (2) seventy-five percent of grants from the
10 federal government as assistance to those areas affected by
11 federal activity authorized in accordance with Title 20 of the
12 United States Code, commonly known as "PL 874 funds" or "impact
13 aid".

14 D. To determine the amount of the state
15 equalization guarantee distribution, the department shall:

16 (1) calculate the number of program units to
17 which each school district or charter school is entitled using
18 an average of the MEM on the eightieth and one hundred
19 twentieth days of the prior year; or

20 (2) calculate the number of program units to
21 which a school district or charter school operating under an
22 approved year-round school calendar is entitled using an
23 average of the MEM on appropriate dates established by the
24 department; or

25 (3) calculate the number of program units to

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1 which a school district or charter school with a MEM of two
2 hundred or less is entitled by using an average of the MEM on
3 the eightieth and one hundred twentieth days of the prior year
4 or the fortieth day of the current year, whichever is greater;
5 and

6 (4) using the results of the calculations in
7 Paragraph (1), (2) or (3) of this subsection and the
8 instructional staff training and experience index from the
9 October report of the prior school year, establish a total
10 program cost of the school district or charter school;

11 (5) for school districts, calculate the local
12 and federal revenues as defined in this section;

13 (6) deduct the sum of the calculations made in
14 Paragraph (5) of this subsection from the program cost
15 established in Paragraph (4) of this subsection;

16 (7) deduct the total amount of guaranteed
17 energy savings contract payments that the department determines
18 will be made to the school district from the public school
19 utility conservation fund during the fiscal year for which the
20 state equalization guarantee distribution is being computed;
21 and

22 (8) deduct ninety percent of the amount
23 certified for the school district by the department pursuant to
24 the Energy Efficiency and Renewable Energy Bonding Act [~~if that~~
25 ~~act becomes law pursuant to House Bill 32 or similar~~

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1 ~~legislation of the first session of the forty-seventh~~
2 ~~legislature].~~

3 E. Reduction of a school district's state
4 equalization guarantee distribution shall cease when the school
5 district's cumulative reductions equal its proportional share
6 of the cumulative debt service payments necessary to service
7 the bonds issued pursuant to the Energy Efficiency and
8 Renewable Energy Bonding Act ~~[if that act becomes law pursuant~~
9 ~~to House Bill 32 or similar legislation of the first session of~~
10 ~~the forty-seventh legislature].~~

11 F. The amount of the state equalization guarantee
12 distribution to which a school district is entitled is the
13 balance remaining after the deductions made in Paragraphs (6)
14 through (8) of Subsection D of this section.

15 G. The state equalization guarantee distribution
16 shall be distributed prior to June 30 of each fiscal year. The
17 calculation shall be based on the local and federal revenues
18 specified in this section received from June 1 of the previous
19 fiscal year through May 31 of the fiscal year for which the
20 state equalization guarantee distribution is being computed.
21 In the event that a school district or charter school has
22 received more state equalization guarantee funds than its
23 entitlement, a refund shall be made by the school district or
24 charter school to the state general fund."

25 Section 17. Section 22-8-26 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 76, as amended) is amended to read:

2 "22-8-26. TRANSPORTATION DISTRIBUTION.--

3 A. Money in the transportation distribution of the
4 public school fund shall be used only for the purpose of making
5 payments to each school district or state-chartered charter
6 school for the to-and-from school transportation costs of
7 students in grades kindergarten through twelve attending public
8 school within the school district or state-chartered charter
9 school and of three- and four-year-old children who meet the
10 [~~state board~~] department approved criteria and definition of
11 developmentally disabled and for transportation of students to
12 and from their regular attendance centers and the place where
13 vocational education programs are being offered.

14 B. In the event a school district's or state-
15 chartered charter school's transportation allocation exceeds
16 the amount required to meet obligations to provide to-and-from
17 transportation, three- and four-year-old developmentally
18 disabled transportation and vocational education
19 transportation, fifty percent of the remaining balance shall be
20 deposited in the transportation emergency fund.

21 C. Of the excess amount retained by the school
22 district or state-chartered charter school, at least twenty-
23 five percent shall be used for to-and-from transportation-
24 related services, excluding salaries and benefits, and up to
25 twenty-five percent may be used for other transportation-

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1 related services, excluding salaries and benefits as defined by
2 rule of the department.

3 D. In the event the sum of the proposed
4 transportation allocations to each school district or state-
5 chartered charter school exceeds the amounts in the
6 transportation distribution, the allocation to each school
7 district or state-chartered charter school shall be reduced in
8 the proportion that the [~~local~~] school district or state-
9 chartered charter school allocation bears to the total
10 statewide transportation distribution.

11 E. A local school [~~boards~~] board or governing body
12 of a state-chartered charter school, with the approval of the
13 state transportation director, may provide additional
14 transportation services pursuant to Section 22-16-4 NMSA 1978
15 to meet established program needs.

16 F. Nothing in this section prohibits the use of
17 school buses to transport the general public pursuant to the
18 Emergency Transportation Act."

19 Section 18. Section 22-8-27 NMSA 1978 (being Laws 1967,
20 Chapter 16, Section 77, as amended) is amended to read:

21 "22-8-27. TRANSPORTATION EQUIPMENT.--

22 A. The [~~state superintendent~~] department shall
23 establish a systematic program for the purchase of necessary
24 school bus transportation equipment.

25 B. In establishing a system for the replacement of

1 school-district-owned buses, the [~~state superintendent~~
 2 department] shall provide for the replacement of school buses on
 3 a twelve-year cycle. School districts requiring additional
 4 buses to accommodate growth in the school district or to meet
 5 other special needs may petition the [~~state superintendent~~
 6 department] for additional buses. Under exceptional
 7 circumstances, school districts may also petition the [~~state~~
 8 ~~superintendent~~] department for permission to replace buses
 9 prior to the completion of a twelve-year cycle or to [~~utilize~~
 10 use] buses in excess of twelve years contingent upon
 11 satisfactory annual safety inspections.

12 C. In establishing a system for the [~~utilization~~
 13 use] of contractor-owned buses by school districts or state-
 14 chartered charter schools, the [~~state superintendent~~
 15 department] shall establish a schedule for the payment of rental
 16 fees for the use of contractor-owned buses. [~~As with school-~~
 17 ~~district-owned operations~~] The [~~state superintendent~~
 18 department] shall establish procedures to ensure the systematic
 19 replacement of buses on a twelve-year replacement cycle.
 20 School districts requiring additional buses to accommodate
 21 growth in the school district or to meet other special needs
 22 may petition the [~~state superintendent~~] department for
 23 additional buses. Under exceptional circumstances, school
 24 districts may also petition the [~~state superintendent~~
 25 department] for permission to replace buses prior to the

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1 completion of a twelve-year cycle or to [~~utilize~~] use buses in
2 excess of twelve years contingent upon satisfactory annual
3 safety inspections. [~~Effective with the 1995-96 school year~~]
4 No school district shall pay rental fees for any one bus for a
5 period in excess of five years. In the event a school bus
6 service contract is terminated, the [~~state superintendent~~]
7 department shall calculate the remaining number of years that a
8 bus could be used based on a twelve-year replacement cycle and
9 calculate a value reflecting that use. The [~~local~~] school
10 district shall deduct an amount equal to that value from any
11 remaining amount due on the contract or if no balance remains
12 on the contract, the contractor shall reimburse the school
13 district an amount equal to the value calculated."

14 Section 19. Section 22-8-29 NMSA 1978 (being Laws 1967,
15 Chapter 16, Section 78, as amended) is amended to read:

16 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--
17 PAYMENTS.--

18 A. Prior to November 15 of each year, each local
19 school board of a school district and governing body of a
20 state-chartered charter school shall report to the state
21 transportation director, upon forms furnished by the state
22 transportation director, the following information concerning
23 the school district's or state-chartered charter school's
24 operation on the fortieth day of school:

- 25 (1) the number and designation of school bus

1 routes in operation in the school district;

2 (2) the number of miles traveled by each
3 school bus on each school bus route, showing the route mileage
4 in accordance with the type of road surface traveled;

5 (3) the number of students transported on the
6 fortieth day of school and adjusted for special education
7 students on December 1;

8 (4) the projected number of students to be
9 transported in the next school year;

10 (5) the seating capacity, age and mileage of
11 each bus used in the school district for student
12 transportation; and

13 (6) the number of total miles traveled for
14 each school district's or state-chartered charter school's per
15 capita feeder routes.

16 B. Each local school board of a school district and
17 governing body of a state-chartered charter school maintaining
18 a school bus route shall make further reports to the state
19 transportation director at other times specified by the state
20 transportation director.

21 C. The state transportation director shall certify
22 to the [~~state superintendent~~] secretary that the allocations
23 from the transportation distributions to each school district
24 and state-chartered charter school are based upon the
25 transportation distribution formula established in the Public

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1 School Code. The allocations for the first six months of a
2 school year shall be based upon the tentative transportation
3 budget of the school district or state-chartered charter school
4 for the current fiscal year. Allocations to a school district
5 or state-chartered charter school for the remainder of the
6 school year shall adjust the amount received by the school
7 district or state-chartered charter school so that it equals
8 the amount the school district or state-chartered charter
9 school is entitled to receive for the entire school year based
10 upon the November 15 report and subject to audit and
11 verification.

12 D. The department shall make periodic installment
13 payments to school districts and state-chartered charter
14 schools during the school year from the transportation
15 distributions, based upon the allocations certified by the
16 state transportation director."

17 Section 20. Section 22-8-29.1 NMSA 1978 (being Laws 1995,
18 Chapter 208, Section 10, as amended) is amended to read:

19 "22-8-29.1. CALCULATION OF TRANSPORTATION ALLOCATION.--

20 A. As used in this section:

21 (1) "annual variables" means the coefficients
22 calculated by regressing the total operational expenditures
23 from two years prior to the current school year for each school
24 district and state-chartered charter school using the number of
25 students transported and the numerical value of site

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1 characteristics;

2 (2) "base amount" means the fixed amount that
3 is the same for all school districts and an amount established
4 by rule for state-chartered charter schools;

5 (3) "total operational expenditures" means the
6 sum of all to-and-from school transportation expenditures,
7 excluding expenditures incurred in accordance with the
8 provisions of Section 22-8-27 NMSA 1978; and

9 (4) "variable amount" means the sum of the
10 product of the annual variables multiplied by each school
11 district's or state-chartered charter school's numerical value
12 of the school district's and state-chartered charter school's
13 site characteristics multiplied by the number of days of
14 operation for each school district or state-chartered charter
15 school.

16 B. The department shall calculate the
17 transportation allocation for each school district and state-
18 chartered charter school.

19 C. The base amount is designated as product A.
20 Product A is the constant calculated by regressing the total
21 operations expenditures from the two years prior to the current
22 school year for school district or state-chartered charter
23 school operations using the numerical value of site
24 characteristics approved by the [~~state board~~] department. The
25 legislative education study committee and the legislative

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1 finance committee may review the site characteristics developed
2 by the state transportation director prior to approval by the
3 [~~state board~~] department.

4 D. The variable amount is designated as product B.
5 Product B is the predicted additional expenditures for each
6 school district or state-chartered charter school based on the
7 regression analysis using the site characteristics as predictor
8 variables multiplied by the number of days.

9 E. The allocation to each school district and
10 state-chartered charter school shall be equal to product A plus
11 product B.

12 F. For the 2001-2002, 2002-2003 and 2003-2004
13 school years, the transportation allocation for each school
14 district shall not be less than ninety-five percent or more
15 than one hundred five percent of the prior school year's
16 transportation expenditure.

17 G. The adjustment factor shall be applied to the
18 allocation amount determined pursuant to Subsections E and F of
19 this section."

20 Section 21. Section 22-8-29.4 NMSA 1978 (being Laws 1995,
21 Chapter 208, Section 13, as amended) is amended to read:

22 "22-8-29.4. TRANSPORTATION DISTRIBUTION ADJUSTMENT
23 FACTOR.--

24 A. The [~~state superintendent~~] department shall
25 establish a transportation distribution adjustment factor. The

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1 adjustment factor shall be calculated as follows:

2 (1) calculate the unadjusted transportation
3 allocation for each school district [~~previously~~] and state-
4 chartered charter school, designated in Section 22-8-29.1 NMSA
5 1978 as product A plus product B;

6 (2) the sum total of product A plus product B
7 in all school districts and state-chartered charter schools
8 added together equals product C; and

9 (3) subtract product C from the total
10 operational transportation distribution for the current year
11 and divide the result by product C and then add 1 in the
12 following manner:

13 "[$(\text{total operational transportation distribution} - C) \div C$] +
14 1". The result is the transportation distribution adjustment
15 factor.

16 B. As used in this section, "total operational
17 transportation distribution" means the total legislative
18 appropriation for the transportation distribution minus amounts
19 included for capital outlay expenses."

20 Section 22. Section 22-8-30 NMSA 1978 (being Laws 1974,
21 Chapter 8, Section 17, as amended) is amended to read:

22 "22-8-30. SUPPLEMENTAL DISTRIBUTIONS.--

23 A. The [~~state superintendent~~] department shall make
24 supplemental distributions only for the following purposes:

25 (1) to pay the out-of-state tuition of

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1 students subject to the Compulsory School Attendance Law who
2 are attending school out-of-state because school facilities are
3 not reasonably available in the school district of their
4 residence;

5 (2) to make emergency distributions to school
6 districts or state-chartered charter schools in financial need,
7 but no money shall be distributed to any school district or
8 state-chartered charter school having cash and invested
9 reserves, or other resources or any combination thereof,
10 equaling five percent or more of the school district's or
11 state-chartered charter school's operational budget;

12 (3) to make program enrichment distributions
13 in the amount of actual program expense to school districts and
14 state-chartered charter schools for the purpose of providing
15 specific programs to meet particular educational requirements
16 that cannot otherwise be financed;

17 (4) a special vocational education
18 distribution to area vocational schools or state-supported
19 schools with [~~state board~~] department-approved vocational
20 programs to reimburse those schools for the cost of vocational
21 education programs for those students subject to the Compulsory
22 School Attendance Law who are enrolled in such programs; and

23 (5) to make emergency capital outlay
24 distributions to school districts or state-chartered charter
25 schools that have experienced an unexpected capital outlay

1 emergency demanding immediate attention.

2 B. The [~~state superintendent~~] department shall
3 account for all supplemental distributions and shall make full
4 reports to the governor, legislative education study committee
5 and legislative finance committee of payments made as
6 authorized in Subsection A of this section.

7 C. The [~~state superintendent~~] department may divert
8 any unused or unneeded balances in any of the distributions
9 made under the supplementary distribution authority to make any
10 other distribution made pursuant to the same authority."

11 Section 23. Section 22-8-38 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 96, as amended) is amended to read:

13 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--

14 A. Upon written application to and approval of the
15 [~~state superintendent, any~~] department, a local school board
16 may be designated a board of finance for public school funds of
17 the school district. [~~Any~~] A local school board designated as
18 a board of finance may require all funds distributed to,
19 allocated to or collected for the school district or the public
20 schools under its jurisdiction to be deposited with it. The
21 [~~state superintendent~~] department shall designate a local
22 school board as a board of finance if:

23 [~~A.-~~] (1) the local school board shows to the
24 satisfaction of the [~~state superintendent~~] department that it
25 has personnel properly trained to keep accurate and complete

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1 fiscal records;

2 [B-] (2) the local school board agrees to
3 consult with the [~~state superintendent~~] department on any
4 matters not covered by the manual of accounting and budgeting
5 before taking any action relating to funds held by it as a
6 board of finance;

7 [E-] (3) the persons handling these funds are
8 adequately bonded to protect the funds entrusted to them from
9 loss; and

10 [D-] (4) the local school board making
11 application has not been suspended and not reinstated as a
12 board of finance within the past year.

13 B. A charter school applicant requesting a charter
14 from the commission shall submit a plan detailing how its
15 governing body will qualify for designation as a board of
16 finance for public school funds of the charter school. The
17 governing body of a proposed state-chartered charter school
18 shall qualify as a board of finance before the first year of
19 operation of the charter school. The governing body of a
20 state-chartered charter school designated as a board of finance
21 may require all funds distributed to, allocated to or collected
22 for the state-chartered charter school to be deposited with the
23 governing body. The commission shall designate the governing
24 body of a state-chartered charter school as a board of finance
25 if:

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1 (1) the governing body shows to the
 2 satisfaction of the commission that it has personnel properly
 3 trained to keep accurate and complete fiscal records;

4 (2) the governing body agrees to consult with
 5 the division on any matters not covered by the manual of
 6 accounting and budgeting before taking any action relating to
 7 funds held by it as a board of finance;

8 (3) the persons handling these funds are
 9 adequately bonded to protect the funds entrusted to them from
 10 loss; and

11 (4) the governing body was not a governing
 12 body of a charter school or does not have a member who was a
 13 member of a governing body of a charter school that was
 14 suspended and not reinstated as a board of finance.

15 C. Failure of the governing body of a proposed
 16 state-chartered charter school to qualify for designation as a
 17 board of finance constitutes good and just grounds for denial,
 18 nonrenewal or revocation of its charter."

19 Section 24. Section 22-8-39 NMSA 1978 (being Laws 1967,
 20 Chapter 16, Section 97, as amended) is amended to read:

21 "22-8-39. BOARDS OF FINANCE--SUSPENSION.--The [~~state~~
 22 ~~superintendent~~] department may at any time suspend a local
 23 school board or governing body of a state-chartered charter
 24 school from acting as a board of finance if [~~he~~] the department
 25 reasonably believes there is mismanagement, improper recording

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1 or improper reporting of public school funds under ~~[its]~~ the
2 local school board's or governing body of a state-chartered
3 charter school's control. When a local school board or
4 governing body of a state-chartered charter school is suspended
5 from acting as a board of finance, the ~~[state superintendent]~~
6 department shall:

7 A. immediately take control of all public school
8 funds under the control of the local school board or governing
9 body of a state-chartered charter school acting as a board of
10 finance;

11 B. immediately have an audit made of all funds
12 under the control of the local school board or governing body
13 of a state-chartered charter school acting as a board of
14 finance and charge the cost of the audit to the school district
15 or state-chartered charter school;

16 C. act as a fiscal agent for the school district or
17 state-chartered charter school and take any action necessary to
18 conform the fiscal management of funds of the school district
19 or state-chartered charter school to the requirements of law
20 and good accounting practices;

21 D. report any violations of the law to the proper
22 law enforcement officers;

23 E. act as fiscal agent for the school district or
24 state-chartered charter school until ~~[he]~~ the department
25 determines that the local school board or governing body of a

1 state-chartered charter school is capable of acting as a board
 2 of finance or until [~~he~~] the department determines that the
 3 county treasurer should act as fiscal agent for the school
 4 district [~~and~~] or state-chartered charter school;

5 F. inform the local school board or governing body
 6 of a state-chartered charter school in writing of [~~his~~] the
 7 department's determination as to who is to act as board of
 8 finance or fiscal agent for the school district or state-
 9 chartered charter school and also inform the county treasurer
 10 in writing if [~~he~~] it determines that the county treasurer
 11 should act as fiscal agent for the school district or state-
 12 chartered charter school; and

13 G. consider commencing proceedings before the
 14 commission to suspend, revoke or refuse to renew the charter of
 15 the state-chartered charter school in the case of a state-
 16 chartered charter school that has engaged in serious or
 17 repeated mismanagement, improper recording or improper
 18 reporting of public school funds under its control."

19 Section 25. Section 22-8-40 NMSA 1978 (being Laws 1977,
 20 Chapter 136, Section 2, as amended) is amended to read:

21 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--DISTRIBUTION--
 22 INTEREST.--

23 A. All public money in the custody of [~~local school~~
 24 ~~boards which~~] school districts or state-chartered charter
 25 schools that have been designated as boards of finance shall be

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1 deposited in qualified depositories in accordance with the
2 terms of this section.

3 B. Deposits of funds of the [~~local~~] school district
4 or state-chartered charter school may be made in noninterest-
5 bearing checking accounts in one or more banks, savings and
6 loan associations or credit unions, as long as the credit union
7 deposits are insured by an agency of the United States, located
8 within the geographical limits of the school district.

9 C. Deposits of funds of the [~~local~~] school district
10 or state-chartered charter school may be made in interest-
11 bearing checking accounts, commonly known as "NOW" accounts, in
12 one or more banks, savings and loan associations or credit
13 unions, as long as the credit union deposits are insured by an
14 agency of the United States, located within the geographical
15 limits of the school district.

16 D. Public money placed in interest-bearing
17 deposits, in banks and savings and loan associations, other
18 than interest-bearing checking accounts as defined in
19 Subsection C of this section, shall be equitably distributed
20 among all banks and savings and loan associations having their
21 main or manned branch offices within the geographical
22 boundaries of the [~~local~~] school district [~~which~~] that have
23 qualified as public depositories by reason of insurance of the
24 account by an agency of the United States or by depositing
25 collateral security or by giving bond as provided by law in the

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1 proportion that each such bank's or savings and loan
2 association's net worth bears to the total net worth of all
3 banks and savings and loan associations having their main
4 office or a manned branch office within the geographical
5 boundaries of the school district. The net worth of the main
6 office of a savings and loan association and its manned branch
7 offices within the geographical boundaries of a school district
8 is the total net worth of the association multiplied by the
9 percentage that deposits of the main office and the manned
10 branch offices located within the geographical boundaries of
11 the school district are of the total deposits of the
12 association. The net worth of each manned branch office or
13 aggregate of manned branch offices of a savings and loan
14 association located outside the geographical boundaries of the
15 school district in which the main office is located is the
16 total net worth of the association multiplied by the percentage
17 that deposits of the branch or aggregate of branches located
18 outside the geographical boundaries of the school district in
19 which the main office is located are of the total deposits of
20 the association. The director of the financial institutions
21 division of the regulation and licensing department shall
22 promulgate a formula for determining the net worth of banks'
23 main offices and branches for the purposes of distribution of
24 public money as provided for by this section. "Net worth"
25 means assets less liabilities as reported by such banks and

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1 savings and loan associations on their most recent semiannual
2 reports to the state or federal supervisory authority having
3 jurisdiction.

4 E. Notwithstanding the provisions of Subsection D
5 of this section, public money may be placed in interest-bearing
6 deposits, other than interest-bearing checking accounts as
7 defined in Subsection C of this section, at the discretion of
8 the board of finance, in credit unions having their main or
9 manned branch offices within the geographical boundaries of the
10 [~~local~~] school district to the extent such deposits are insured
11 by an agency of the United States.

12 F. The rate of interest for all public money
13 deposited in interest-bearing accounts in banks, savings and
14 loan associations and credit unions shall be set by the state
15 board of finance, but in no case shall the rate of interest be
16 less than one hundred percent of the asked price on United
17 States treasury bills of the same maturity on the date of
18 deposit. Any bank or savings and loan association that fails
19 to pay the minimum rate of interest at the time of deposit
20 provided for herein for any respective deposit forfeits its
21 right to an equitable share of that deposit under this section.
22 If the deposit is part or all of the proceeds of a bond issue
23 and the interest rate prescribed in this subsection materially
24 exceeds the rate of interest of the bonds, the interest rate
25 prescribed by this subsection shall be reduced on the deposit

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1 to an amount not materially exceeding the interest rate of the
 2 bonds if the bond issue would lose its tax exempt status under
 3 Section 103 of the United States Internal Revenue Code of 1954,
 4 as amended.

5 G. Public money in excess of that for which banks
 6 and savings and loan associations within the geographical
 7 boundaries of the [~~local~~] school district have qualified may be
 8 deposited in qualified depositories, including credit unions,
 9 in other areas within the state under the same requirements for
 10 payment of interest as if the money were deposited within the
 11 geographical boundaries of the [~~local~~] school district.

12 H. The board of finance of the school district or
 13 state-chartered charter school may temporarily invest money
 14 held in demand deposits and not immediately needed for the
 15 operation of the school district or state-chartered charter
 16 school. Such temporary investments shall be made only in
 17 securities [~~which~~] that are issued by the state or by the
 18 United States government, or by their departments or agencies,
 19 and [~~which~~] that are either direct obligations of the state or
 20 the United States or are backed by the full faith and credit of
 21 those governments.

22 I. The department of finance and administration may
 23 monitor the deposits of public money by [~~local school boards~~]
 24 school districts or state-chartered charter schools to assure
 25 full compliance with the provisions of this section."

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1 Section 26. Section 22-8B-1 NMSA 1978 (being Laws 1999,
2 Chapter 281, Section 1, as amended) is amended to read:

3 "22-8B-1. SHORT TITLE.--Chapter 22, Article 8B NMSA 1978
4 may be cited as the "[1999] Charter Schools Act"."

5 Section 27. Section 22-8B-2 NMSA 1978 (being Laws 1999,
6 Chapter 281, Section 2) is amended to read:

7 "22-8B-2. DEFINITIONS.--As used in the [1999] Charter
8 Schools Act:

9 A. "charter school" means a conversion school or
10 start-up school [~~within a school district authorized by the~~
11 ~~local school board to operate as a charter school~~] authorized
12 by the chartering authority to operate as a public school;

13 B. "chartering authority" means either a local
14 school board or the commission;

15 C. "commission" means the public education
16 commission;

17 [B-] D. "conversion school" means an existing
18 public school within a school district that was authorized by
19 [~~the~~] a local school board to become a charter school prior to
20 July 1, 2007;

21 E. "division" means the charter schools division of
22 the department;

23 [E-] F. "governing body" means the governing
24 structure of a charter school as set forth in the school's
25 charter; and

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

6 Section 28. Section 22-8B-3 NMSA 1978 (being Laws 1999,
 7 Chapter 281, Section 3) is amended to read:

8 "22-8B-3. PURPOSE.--The ~~[1999]~~ Charter Schools Act is
 9 enacted to enable individual schools to ~~[restructure]~~ structure
 10 their educational curriculum to encourage the use of different
 11 and innovative teaching methods that are based on reliable
 12 research and effective practices or have been replicated
 13 successfully in schools with diverse characteristics; to allow
 14 the development of different and innovative forms of measuring
 15 student learning and achievement; to address the needs of all
 16 students, including those determined to be at risk; to create
 17 new professional opportunities for teachers, including the
 18 opportunity to be responsible for the learning program at the
 19 school site; to improve student achievement; to provide parents
 20 and students with an educational alternative to create new,
 21 innovative and more flexible ways of educating children within
 22 the public school system; to encourage parental and community
 23 involvement in the public school system; to develop and use
 24 site-based budgeting; and to hold charter schools accountable
 25 for meeting ~~[state board minimum]~~ the department's educational

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1 standards and fiscal requirements."

2 Section 29. A new section of the Charter Schools Act is
3 enacted to read:

4 "[NEW MATERIAL] PUBLIC EDUCATION COMMISSION--POWERS AND
5 DUTIES.--The commission shall receive applications for initial
6 chartering and renewals of charters for charter schools that
7 want to be chartered by the state and approve or disapprove
8 those charter applications. The commission may approve, deny,
9 suspend or revoke the charter of a state-chartered charter
10 school in accordance with the provisions of the Charter Schools
11 Act. The chartering authority for a charter school existing on
12 July 1, 2007 may be transferred to the commission; provided,
13 however, that if a school chartered under a previous chartering
14 authority chooses to transfer its chartering authority, it
15 shall continue to operate under the provisions of that charter
16 until its renewal date unless it is suspended or revoked by the
17 commission. An application for a charter school filed with a
18 local school board prior to July 1, 2007, but not approved, may
19 be transferred to the commission on July 1, 2007."

20 Section 30. A new section of the Charter Schools Act is
21 enacted to read:

22 "[NEW MATERIAL] CHARTER SCHOOLS DIVISION--DUTIES.--The
23 "charter schools division" is created in the department. The
24 division shall:

25 A. provide staff support to the commission;

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1 B. provide technical support to all charter
2 schools;

3 C. review and approve state-chartered charter
4 school budget matters; and

5 D. make recommendations to the commission regarding
6 the approval, denial, suspension or revocation of the charter
7 of a state-chartered charter school."

8 Section 31. Section 22-8B-4 NMSA 1978 (being Laws 1999,
9 Chapter 281, Section 4, as amended) is amended to read:

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

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

17 B. A charter school shall be governed by a
18 governing body in the manner set forth in the charter; provided
19 that a governing body shall have at least five members; and
20 provided further that no member of a governing body for a
21 charter school that is initially approved on or after July 1,
22 2005 or whose charter is renewed on or after July 1, 2005 shall
23 serve on the governing body of another charter school.

24 C. A charter school shall be responsible for:
25 (1) its own operation, including preparation

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1 of a budget, subject to audits pursuant to the Audit Act; and
2 (2) contracting for services and personnel
3 matters.

4 D. A charter school may contract with a school
5 district, a university or college, the state, another political
6 subdivision of the state, the federal government or one of its
7 agencies, a tribal government 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 [~~provided that~~]. Facilities
12 used by a charter school shall meet the standards required
13 pursuant to Section 22-8B-4.2 NMSA 1978.

14 E. A conversion school chartered before July 1,
15 2007 may choose to continue using the school district
16 facilities and equipment it had been using prior to conversion,
17 subject to the provisions of Subsection F of this section.

18 F. [A] The school district in which a charter
19 school is geographically located shall provide a charter school
20 with available facilities for the school's operations unless
21 the facilities are currently used for other educational
22 purposes. A charter school shall not be required to pay rent
23 for the school district facilities if the facilities can be
24 provided at no cost to the school district. If facilities are
25 available but cannot be provided at no cost to the school

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1 district, the school district shall not charge more than the
2 actual direct cost of providing the facilities. The available
3 facilities provided by a school district to a charter school
4 shall meet all occupancy standards as specified by the public
5 school capital outlay council. As used in this subsection,
6 "other educational purposes" includes health clinics, daycare
7 centers, teacher training centers, school district
8 administration functions and other ancillary services related
9 to a school district's functions and operations.

10 G. A locally chartered charter school may pay the
11 costs of operation and maintenance of its facilities or may
12 contract with the school district to provide facility operation
13 and maintenance services.

14 H. Locally chartered charter school facilities are
15 eligible for state and local capital outlay funds and shall be
16 included in the school district's five-year facilities plan.

17 I. A locally chartered charter school shall
18 negotiate with a school district to provide transportation to
19 students eligible for transportation under the provisions of
20 the Public School Code. The school district, in conjunction
21 with the charter school, may establish a limit for student
22 transportation to and from the charter school site not to
23 extend beyond the school district boundary.

24 J. A charter school shall be a nonsectarian,
25 nonreligious and non-home-based public school. [~~that operates~~

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1 ~~within a school district]~~

2 K. Except as otherwise provided in the Public
3 School Code, a charter school shall not charge tuition or have
4 admission requirements.

5 L. With the approval of the ~~[school district]~~
6 chartering authority, a single charter school may maintain
7 separate facilities at two or more locations within the same
8 school district; but, for purposes of calculating program units
9 pursuant to the Public School Finance Act, the separate
10 facilities shall be treated together as one school.

11 M. A charter school shall be subject to the
12 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
13 Accountability Act.

14 N. Within constitutional and statutory limits, a
15 charter school may acquire and dispose of property; provided
16 that, upon termination of the charter, all assets of the
17 locally chartered charter school shall revert to the local
18 school board and all assets of the state-chartered charter
19 school shall revert to the state.

20 O. The governing body of a charter school may
21 accept or reject any charitable gift, grant, devise or bequest;
22 provided that no such gift, grant, devise or bequest shall be
23 accepted if subject to any condition contrary to law or to the
24 terms of the charter. The particular gift, grant, devise or
25 bequest shall be considered an asset of the charter school to

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1 which it is given.

2 P. ~~[A charter school]~~ The governing body may
3 contract and sue and be sued. A local school board ~~[that~~
4 ~~approves a charter school]~~ shall not be liable for any acts or
5 omissions of the charter school.

6 Q. A charter school shall comply with all state and
7 federal health and safety requirements applicable to public
8 schools, including those health and safety codes relating to
9 educational building occupancy.

10 R. A charter school is a public school that may
11 contract with a school district or other party for provision of
12 financial management, food services, transportation,
13 facilities, education-related services or other services. The
14 governing body shall not contract with a for-profit entity for
15 the management of the charter school.

16 S. To enable state-chartered charter schools to
17 submit required data to the department, an accountability data
18 system shall be maintained by the department.

19 T. A charter school shall comply with all
20 applicable state and federal laws and rules related to
21 providing special education services. Charter school students
22 with disabilities and their parents retain all rights under the
23 federal Individuals with Disabilities Education Act and its
24 implementing state and federal rules. Each charter school is
25 responsible for identifying, evaluating and offering a free

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1 appropriate public education to all eligible children who are
2 accepted for enrollment in that charter school. The state-
3 chartered charter school, as a local educational agency, shall
4 assume responsibility for determining students' needs for
5 special education and related services. The division may
6 promulgate rules to implement the requirements of this
7 subsection."

8 Section 32. Section 22-8B-5 NMSA 1978 (being Laws 1999,
9 Chapter 281, Section 5) is amended to read:

10 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD
11 AUTHORITY [~~STATE BOARD AUTHORITY~~].--

12 A. The local school board may waive only locally
13 imposed school district requirements for locally chartered
14 charter schools.

15 B. A state-chartered charter school is exempt from
16 school district requirements. A state-chartered charter school
17 is responsible for developing its own written policies and
18 procedures in accordance with this section.

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

23 C. The department shall waive [state board]
24 requirements or rules and provisions of the Public School Code
25 pertaining to [~~graduation requirements~~] individual class load,

1 teaching load, length of the school day, staffing patterns,
 2 subject areas, purchase of instructional material, evaluation
 3 standards for school personnel, school principal duties and
 4 driver education. The department may waive requirements or
 5 rules and provisions of the Public School Code pertaining to
 6 graduation requirements. Any waivers granted pursuant to this
 7 section shall be for the term of the charter granted but may be
 8 suspended or revoked earlier by the department.

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

14 ~~[D. No]~~ E. A local school board shall not require
 15 any employee of the school district to be employed in a charter
 16 school.

17 ~~[E. No]~~ F. A local school board shall not require
 18 any student residing within the geographic boundary of its
 19 district to enroll in a charter school.

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

23 Section 33. Section 22-8B-6 NMSA 1978 (being Laws 1998,
 24 Chapter 281, Section 6, as amended) is amended to read:

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

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1 PROCESS--AUTHORIZATION--BOARD OF FINANCE DESIGNATION
2 REQUIRED.--

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

6 B. At least one hundred eighty days prior to
7 initial application, the organizers of a proposed charter
8 school shall provide written notification to the commission and
9 the school district in which the charter school is proposed to
10 be located of intent to establish a charter school. Failure to
11 notify may result in an application not being accepted.

12 C. A charter school applicant shall apply to either
13 a local school board or the commission for a charter. [An
14 applicant shall only submit an application in the district in
15 which the school is located.] If an application is submitted
16 to a chartering authority, it must process the application.
17 Applications for initial charters shall be submitted by July 1
18 to be eligible for consideration for the following fiscal year;
19 provided that the July 1 deadline may be waived upon agreement
20 of the applicant and the [~~local school board~~] chartering
21 authority.

22 D. An application shall include the total number of
23 grades the charter school proposes to provide, either
24 immediately or phased. A charter school may decrease the
25 number of grades it eventually offers, but it shall not

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1 increase the number of grades or the total number of students
 2 proposed to be served in each grade.

3 ~~[G.]~~ E. An application shall include a ~~[request]~~
 4 detailed description of the charter school's projected capital
 5 outlay needs, including projected requests for capital outlay
 6 ~~[funding]~~ assistance.

7 ~~[D.]~~ F. An application for a start-up school may be
 8 made by one or more teachers, parents or community members or
 9 by a public post-secondary educational institution or nonprofit
 10 organization. Municipalities, counties, private post-secondary
 11 educational institutions and for-profit business entities are
 12 not eligible to apply for or receive a charter.

13 G. An initial application for a charter school
 14 shall not be made after June 30, 2007 if the proposed charter
 15 school's proposed enrollment for all grades would equal or
 16 exceed ten percent of the total MEM of the school district in
 17 which the charter school will be geographically located and
 18 that school district has a total enrollment of not more than
 19 one thousand three hundred students.

20 H. A state-chartered charter school shall not be
 21 approved for operation unless its governing body has qualified
 22 to be a board of finance.

23 ~~[E.]~~ ~~An application for a conversion school shall~~
 24 ~~include a petition of support signed by no less than sixty-five~~
 25 ~~percent of the employees in the school. Additionally, a~~

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1 ~~petition in support of the charter school signed by a majority~~
2 ~~of the households whose children are enrolled in a proposed~~
3 ~~conversion school shall accompany the application.~~

4 ~~F.]~~ I. The ~~[local school board]~~ chartering
5 authority shall receive and review all applications for charter
6 schools submitted to it. The ~~[local school board]~~ chartering
7 authority shall not charge application fees. ~~[If the board~~
8 ~~finds the charter school application is incomplete, the board~~
9 ~~shall request the necessary information from the charter school~~
10 ~~applicant.~~

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

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1 accordance with the provisions of Section 22-8B-7 NMSA 1978.
2 The charter school applicant and the [~~local school board~~]
3 chartering authority may, however, jointly waive the deadlines
4 set forth in this section.

5 ~~[H. If the local school board denies a charter~~
6 ~~school application or imposes conditions that are unacceptable~~
7 ~~to the charter school applicant, the charter school applicant~~
8 ~~may appeal the decision to the secretary pursuant to Section~~
9 ~~22-8B-7 NMSA 1978.]~~

10 K. A chartering authority may approve, approve with
11 conditions or deny an application. A chartering authority may
12 deny an application if:

13 (1) the application is incomplete or
14 inadequate;

15 (2) the application does not propose to offer
16 an educational program consistent with the requirements and
17 purposes of the Charter Schools Act;

18 (3) the proposed head administrator or other
19 administrative or fiscal staff was involved with another
20 charter school whose charter was denied or revoked for fiscal
21 mismanagement or the proposed head administrator or other
22 administrative or fiscal staff was discharged from a public
23 school for fiscal mismanagement;

24 (4) for a proposed state-chartered charter
25 school, it does not request to have the governing body of the

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1 charter school designated as a board of finance or the
2 governing body does not qualify as a board of finance; or

3 (5) the application is otherwise contrary to
4 the best interests of the charter school's projected students,
5 the local community or the school district in whose geographic
6 boundaries the charter school applies to operate.

7 ~~[F.]~~ L. If [a local school board] the chartering
8 authority denies a charter school application or approves the
9 application with conditions, it shall state its reasons for the
10 denial or conditions in writing within fourteen days of the
11 meeting. If [a local school board] the chartering authority
12 grants a charter, [it shall send a copy of the approved charter
13 to the department within fifteen days after granting the
14 charter] the approved charter shall be provided to the
15 applicant together with any imposed conditions.

16 M. A charter school that has received a notice from
17 the chartering authority denying approval of the charter shall
18 have a right to a hearing by the secretary as provided in
19 Section 22-8B-7 NMSA 1978."

20 Section 34. Section 22-8B-7 NMSA 1978 (being Laws 1999,
21 Chapter 281, Section 7, as amended) is amended to read:

22 "22-8B-7. ~~[CHARTER SCHOOL APPLICATION]~~ APPEAL OF DENIAL,
23 NONRENEWAL, SUSPENSION OR REVOCATION--~~[APPEAL]~~ PROCEDURES.--

24 A. The secretary, upon receipt of a notice of
25 appeal or upon the secretary's own motion, shall review

1 decisions of [~~a local school board~~] a chartering authority
2 concerning charter schools in accordance with the provisions of
3 this section.

4 B. A charter applicant or governing body that
5 wishes to appeal a decision of [~~a local school board~~] the
6 chartering authority concerning the denial, nonrenewal,
7 suspension or revocation of a charter school or the imposition
8 of conditions that are unacceptable to the charter school or
9 charter school applicant shall provide the secretary with a
10 notice of appeal within thirty days after the [~~local school~~
11 ~~board's~~] chartering authority's decision. The charter school
12 applicant or governing body bringing the appeal shall limit the
13 grounds of the appeal to the grounds for denial, nonrenewal,
14 suspension or revocation or the imposition of conditions that
15 were specified by the [~~local school board~~] chartering
16 authority. The notice shall include a brief statement of the
17 reasons the charter school applicant or governing body contends
18 the [~~local school board's~~] chartering authority's decision was
19 in error. Except as provided in Subsection E of this section,
20 the appeal and review process shall be as follows [~~(1)~~] within
21 sixty days after receipt of the notice of appeal, the
22 secretary, at a public hearing that may be held in the school
23 district in which the charter school is located or in which the
24 proposed charter school has applied for a charter, shall review
25 the decision of the [~~local school board~~] chartering authority

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1 and make findings. If the secretary finds that the [~~local~~
2 ~~school board's decision was contrary to the best interests of~~
3 ~~the students, school district or community, the secretary shall~~
4 ~~remand the decision to the local school board with written~~
5 ~~instructions for approval of the charter. The instructions~~
6 ~~shall include specific recommendations concerning approval of~~
7 ~~the charter]~~ chartering authority acted arbitrarily or
8 capriciously, rendered a decision not supported by substantial
9 evidence or did not act in accordance with law, the secretary
10 may reverse the decision of the chartering authority and order
11 the approval of the charter with or without conditions. The
12 decision of the secretary shall be final [~~and not subject to~~
13 ~~appeal; and~~

14 (2) ~~within thirty days following the remand of~~
15 ~~a decision by the secretary, the local school board, at a~~
16 ~~public hearing, shall approve the charter].~~

17 C. The secretary, on the secretary's own motion,
18 may review a [~~local school board's~~] chartering authority's
19 decision to grant a charter. Within sixty days after the
20 making of a motion to review by the secretary, the secretary,
21 at a public hearing that may be held in the school district in
22 which the proposed charter school that has applied for a
23 charter will be located, shall review the decision of the
24 [~~local school board~~] chartering authority and determine whether
25 the decision was arbitrary or capricious or whether the

1 establishment or operation of the proposed charter school
2 would:

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

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

18 E. If a [~~local school board~~] chartering authority
19 denies an application or refuses to renew a charter because the
20 public school capital outlay council has determined that the
21 facilities do not meet the standards required by Section
22 22-8B-4.2 NMSA 1978, the charter school applicant or charter
23 school may appeal the decision to the secretary as otherwise
24 provided in this section; provided that the secretary shall
25 reverse the decision of the [~~local school board~~] chartering

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1 authority only if the secretary determines that the decision
2 was arbitrary, capricious, not supported by substantial
3 evidence or otherwise not in accordance with the law.

4 F. A person aggrieved by a final decision of the
5 secretary may appeal the decision to the district court
6 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

7 Section 35. Section 22-8B-8 NMSA 1978 (being Laws 1999,
8 Chapter 281, Section 8) is amended to read:

9 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
10 school application [~~whether~~] for a start-up school [~~or a~~
11 ~~conversion school~~] shall be a proposed agreement between the
12 [~~local school board~~] chartering authority and the charter
13 school and shall include:

14 A. the mission statement of the charter school;

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

17 C. a description of the charter school's
18 educational program, student performance standards and
19 curriculum that must meet or exceed the [~~state board of~~
20 ~~education's~~] department's educational standards and must be
21 designed to enable each student to achieve those standards;

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

25 E. a description of the charter school's plan for

1 evaluating student performance, the types of assessments that
2 will be used to measure student progress toward achievement of
3 the state's standards and the school's student performance
4 standards, the time line for achievement of the standards and
5 the procedures for taking corrective action in the event that
6 student performance falls below the standards;

7 F. evidence that the plan for the charter school is
8 economically sound, including a proposed budget for the term of
9 the charter and a description of the manner in which the annual
10 audit of the financial and administrative operations of the
11 charter school is to be conducted;

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

15 H. evidence of a plan for the displacement of
16 students, teachers and other employees who will not attend or
17 be employed in the conversion school;

18 I. a description of the governing body and
19 operation of the charter school, including:

20 (1) how the initial governing body will be
21 selected;

22 (2) qualification and terms of members, how
23 vacancies on the governing body will be filled and procedures
24 for changing governing body membership; and

25 (3) the nature and extent of parental,

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1 professional educator and community involvement in the
2 governance and operation of the school [~~and the relationship~~
3 ~~between the governing body and the local school board~~];

4 J. an explanation of the relationship that will
5 exist between the proposed charter school and its employees,
6 including evidence that the terms and conditions of employment
7 will be addressed with affected employees and their recognized
8 representatives, if any;

9 K. the employment and student discipline policies
10 of the proposed charter school;

11 L. for a locally chartered charter school, an
12 agreement between the charter school and the local school board
13 regarding their respective legal liability and applicable
14 insurance coverage;

15 M. a description of how the charter school plans to
16 meet the transportation and food service needs of its students;

17 N. a description of the waivers that the charter
18 school is requesting from the local school board and the [~~state~~
19 ~~board~~] department and the charter school's plan for addressing
20 these waiver requests;

21 O. a description of the facilities the charter
22 school plans to use; and

23 P. any other information reasonably required by the
24 [~~local school board~~] chartering authority."

25 Section 36. Section 22-8B-9 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 9) is amended to read:

2 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

3 A. An approved charter application [~~shall be~~] is a
4 contract between the charter school and the [~~local school~~
5 ~~board~~] chartering authority.

6 B. The [~~contract between the charter school and the~~
7 ~~local school board~~] charter shall reflect all agreements
8 regarding the release of the charter school from [~~school~~
9 ~~district~~] department rules and policies.

10 C. For locally chartered charter schools, the
11 contract between the charter school and the local school board
12 shall reflect all requests for release of the charter school
13 from [~~state board~~] department rules or the Public School Code.
14 Within ten days after the contract is approved by the local
15 school board, any request for release from [~~state board~~]
16 department rules or the Public School Code shall be delivered
17 by the local school board to the [~~state board~~] department. If
18 the [~~state board~~] department grants the request, it shall
19 notify the local school board and the charter school of its
20 decision. If the [~~state board~~] department denies the request,
21 it shall notify the local school board and the charter school
22 that the request is denied and specify the reasons for denial.

23 [~~D. Upon approval of the charter, by the local~~
24 ~~school board, the charter school shall be waived from the~~
25 ~~Public School Code provisions relating to individual class load~~

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1 ~~and teaching load requirements, length of school day, staffing~~
2 ~~patterns, subject areas and purchase of instructional~~
3 ~~materials.~~

4 ~~E.]~~ D. The charter school shall participate in the
5 public school insurance authority.

6 ~~[F.]~~ E. Any revision or amendment to the terms of
7 the ~~[contract may]~~ charter shall be made only with the approval
8 of the ~~[local school board]~~ chartering authority and the
9 governing body of the charter school.

10 ~~[G.]~~ F. For locally chartered charter schools, the
11 charter shall include procedures agreed upon by the charter
12 school and the local school board for the resolution of
13 disputes between the charter school and the local school board.

14 ~~[H.]~~ The charter shall include procedures that shall be agreed
15 upon by the charter school and the local school board in the
16 event that ~~[such]~~ the board determines that the charter shall
17 be revoked pursuant to the provisions of Section ~~[12 of the~~
18 ~~1999 Charter Schools Act]~~ 22-8B-12 NMSA 1978."

19 Section 37. Section 22-8B-10 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 10) is amended to read:

21 "22-8B-10. CHARTER SCHOOLS--~~[EMPLOYEE OPTIONS--HIRING~~
22 ~~AND FIRING]~~ EMPLOYEES.--

23 A. ~~[Notwithstanding the provisions of Section~~
24 ~~22-5-4 NMSA 1978]~~ A charter school shall hire its own
25 employees. The provisions of the School Personnel Act shall

1 ~~[otherwise]~~ apply to such employees; provided, however, that a
2 charter school may determine by indicating in its charter that
3 either its governing body or head administrator shall make all
4 employment decisions. The governing body shall be deemed to be
5 responsible for making all employment decisions if the charter
6 does not specify the decision maker.

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

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

18 ~~D. During the period of time that an employee is on~~
19 ~~a leave of absence from the school district and is actively~~
20 ~~employed by the charter school, the charter school shall~~
21 ~~continue the retirement or other benefits previously granted to~~
22 ~~the employee.~~

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

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1 ~~F. An employee who is on a leave of absence and~~
2 ~~actively teaching at a charter school and who submits a notice~~
3 ~~of intent to return to the school district in which the~~
4 ~~employee was employed immediately prior to employment in the~~
5 ~~charter school shall be given employment preference by the~~
6 ~~school district if:~~

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

10 ~~(2) if the employee is a teacher, a position~~
11 ~~for which the teacher is certified or is qualified to become~~
12 ~~certified is available. If the employee is not a teacher, a~~
13 ~~position for which the employee is qualified is available.~~

14 ~~G. An employee who is on leave of absence and~~
15 ~~employed by a charter school and is discharged or terminated~~
16 ~~for just cause by the charter school shall be considered~~
17 ~~discharged or terminated by the school district.]~~

18 B. A charter school shall not initially employ or
19 approve the initial employment of a head administrator who is
20 the spouse, father, father-in-law, mother, mother-in-law, son,
21 son-in-law, daughter or daughter-in-law of a member of the
22 governing body. A charter school shall not initially employ or
23 approve the initial employment of a licensed school employee
24 who is the spouse, father, father-in-law, mother, mother-in-
25 law, son, son-in-law, daughter or daughter-in-law of the head

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1 administrator. The governing body may waive the nepotism rule
 2 for family members of a head administrator.

3 C. Nothing in this section shall prohibit the
 4 continued employment of a person employed on or before July 1,
 5 2007."

6 Section 38. Section 22-8B-11 NMSA 1978 (being Laws 1999,
 7 Chapter 281, Section 11) is amended to read:

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

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

13 B. No more than fifteen start-up schools [~~and five~~
 14 ~~conversion schools~~] may be established per year statewide. The
 15 number of charter school slots remaining in that year shall be
 16 transferred to succeeding years up to a maximum of seventy-five
 17 start-up schools [~~and twenty-five conversion schools~~] in any
 18 five-year period. [~~The state board shall promptly notify the~~
 19 ~~local school board of each school district when the limits set~~
 20 ~~forth in this section have been reached.]"~~

21 Section 39. Section 22-8B-12 NMSA 1978 (being Laws 1999,
 22 Chapter 281, Section 12, as amended) is amended to read:

23 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
 24 GROUNDS FOR NONRENEWAL OR REVOCATION.--

25 A. A charter school may be approved for an initial

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1 term of six years; provided that the first year shall be used
2 exclusively for planning and not for completing the
3 application. A charter may be renewed for successive periods
4 of five years each. Approvals of less than five years may be
5 agreed to between the charter school and the [~~local school~~
6 ~~board~~] chartering authority.

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

10 C. Prior to the end of the planning year, a state-
11 chartered charter school shall demonstrate that it has
12 qualified as a board of finance and has satisfied any
13 conditions imposed by the commission before commencing full
14 operation for the remainder of its charter term. The
15 commission shall either issue or refuse to issue the
16 authorization to commence full operation within twenty-one days
17 of the request. If the commission refuses to issue the
18 authorization, it shall provide its reasons in writing to the
19 charter school.

20 [~~C.~~] D. No later than [~~January 1 of the year prior~~
21 ~~to the year~~] two hundred seventy days prior to the date in
22 which the charter expires, the governing body may submit a
23 renewal application to the [~~local school board~~] chartering
24 authority. A charter school may apply to a different
25 chartering authority for renewal. The [~~local school board~~]

1 chartering authority shall rule in a public hearing on the
2 renewal application no later than [~~March 1 of the fiscal year~~
3 ~~in which the charter expires, or on a mutually agreed-upon~~
4 ~~date~~] one hundred eighty days prior to the expiration of the
5 charter.

6 [~~D.~~] E. A charter school renewal application
7 submitted to the [~~local school board~~] chartering authority
8 shall contain:

9 (1) a report on the progress of the charter
10 school in achieving the goals, objectives, student performance
11 standards, state minimum educational standards and other terms
12 of the initial approved charter application, including the
13 accountability requirements set forth in the Assessment and
14 Accountability Act;

15 (2) a financial statement that discloses the
16 costs of administration, instruction and other spending
17 categories for the charter school that is understandable to the
18 general public, that allows comparison of costs to other
19 schools or comparable organizations and that is in a format
20 required by the department;

21 (3) contents of the charter application set
22 forth in Section 22-8B-8 NMSA 1978;

23 (4) a petition in support of the charter
24 school renewing its charter status signed by not less than
25 sixty-five percent of the employees in the charter school;

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1 (5) a petition in support of the charter
2 school renewing its charter status signed by ~~[a majority]~~ at
3 least seventy-five percent of the households whose children are
4 enrolled in the charter school; and

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

8 ~~[E.]~~ F. A charter may be suspended, revoked or not
9 renewed by the ~~[local school board]~~ chartering authority if the
10 ~~[board]~~ chartering authority determines that the charter school
11 did any of the following:

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

15 (2) failed to meet or make substantial
16 progress toward achievement of the ~~[state board]~~ department's
17 minimum educational standards or student performance standards
18 identified in the charter application;

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

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

23 ~~[F.]~~ G. If a ~~[local school board]~~ chartering
24 authority suspends, revokes or does not renew a charter, the
25 ~~[local school board]~~ chartering authority shall state in

1 writing its reasons for the suspension, revocation or
2 nonrenewal.

3 ~~[G.]~~ H. A decision to suspend, revoke or not to
4 renew a charter may be appealed by the governing body pursuant
5 to Section 22-8B-7 NMSA 1978."

6 Section 40. Section 22-8B-13 NMSA 1978 (being Laws 1999,
7 Chapter 281, Section 13) is amended to read:

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

9 A. The amount of funding allocated to ~~[the]~~ a
10 charter school shall be not less than ninety-eight percent of
11 the school-generated program cost. The school district or
12 division may withhold and use two percent of the school-
13 generated program cost for its administrative support of a
14 charter school.

15 B. That portion of money from state or federal
16 programs generated by students enrolled in a locally chartered
17 charter school shall be allocated to that charter ~~[schools]~~
18 school serving students eligible for that aid. Any other
19 public school program not offered by the locally chartered
20 charter school shall not be entitled to the share of money
21 generated by a charter school program.

22 C. When a state-chartered charter school is
23 designated as a board of finance pursuant to Section 22-8-38
24 NMSA 1978, it shall receive state and federal funds for which
25 it is eligible.

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1 D. Charter schools may apply for all federal funds
2 for which they are eligible.

3 [~~E.~~] E. All services centrally or otherwise
4 provided by [~~the~~] a local school district, including custodial,
5 maintenance and media services, libraries and warehousing shall
6 be subject to negotiation between the charter school and the
7 [~~local~~] school district. Any services for which a charter
8 school contracts with a school district shall be provided by
9 the district at a reasonable cost."

10 Section 41. Section 22-12-2 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 170, as amended) is amended to read:

12 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--
13 RESPONSIBILITY.--

14 A. Any qualified student and any person who because
15 of [~~his~~] the person's age is eligible to become a qualified
16 student as defined by the Public School Finance Act until
17 attaining the age of majority shall attend a public school, a
18 private school, a home school or a state institution. A person
19 shall be excused from this requirement if:

20 (1) the person is specifically exempted by law
21 from the provisions of this section;

22 (2) the person has graduated from a high
23 school;

24 (3) the person is at least seventeen years of
25 age and has been excused by the local school board or the

1 governing body of a state-chartered charter school or its
 2 authorized representative upon a finding that the person will
 3 be employed in a gainful trade or occupation or engaged in an
 4 alternative form of education sufficient for the person's
 5 educational needs and the parent [~~guardian or other person~~
 6 ~~having custody and control~~] consents; or

7 (4) with consent of the parent of the person
 8 to be excused, the person is excused from the provisions of
 9 this section by the superintendent of schools of the school
 10 district [~~in which the person is a resident~~] or by the head
 11 administrator of the state-chartered charter school and the
 12 person is under eight years of age.

13 B. A person subject to the provisions of the
 14 Compulsory School Attendance Law shall attend school for at
 15 least the length of time of the school year that is established
 16 in the school district in which the person is a resident or the
 17 state-chartered charter school in which the person is enrolled.

18 C. Any parent of a person subject to the provisions
 19 of the Compulsory School Attendance Law is responsible for the
 20 school attendance of that person.

21 D. Each local school board and each governing
 22 [~~authority~~] body of a charter school or private school shall
 23 enforce the provisions of the Compulsory School Attendance Law
 24 for students enrolled in their respective schools."

25 Section 42. Section 22-12-3 NMSA 1978 (being Laws 1971,

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1 Chapter 238, Section 1, as amended) is amended to read:

2 "22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--A student may,
3 subject to the approval of the school principal, be excused
4 from school to participate in religious instruction for not
5 more than one class period each school day with the written
6 consent of [~~his~~] the student's parents at a time period not in
7 conflict with the academic program of the school. The local
8 school board or governing body of a charter school, and its
9 school employees, shall not assume responsibility for the
10 religious instruction or permit it to be conducted on school
11 property."

12 Section 43. Section 22-12-7 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 175, as amended) is amended to read:

14 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
15 TRUANTS--PENALTY.--

16 A. Each local school board and each governing
17 [~~authority~~] body of a charter school or private school shall
18 initiate the enforcement of the provisions of the Compulsory
19 School Attendance Law for students enrolled in their respective
20 schools.

21 B. To initiate enforcement of the provisions of the
22 Compulsory School Attendance Law against an habitual truant, a
23 local school board or governing [~~authority~~] body of a charter
24 school or private school or its authorized representatives
25 shall give written notice of the habitual truancy by certified

underscored material = new
[bracketed material] = delete

1 mail to or by personal service on the parent of the student
2 subject to and in noncompliance with the provisions of the
3 Compulsory School Attendance Law.

4 C. If unexcused absences continue after written
5 notice of habitual truancy as provided in Subsection B of this
6 section has occurred, the student shall be reported to the
7 probation services office of the judicial district where the
8 student resides for an investigation as to whether the student
9 shall be considered to be a neglected child or a child in a
10 family in need of services because of habitual truancy and thus
11 subject to the provisions of the Children's Code. In addition
12 to any other disposition, the children's court may order the
13 habitual truant's driving privileges to be suspended for a
14 specified time not to exceed ninety days on the first finding
15 of habitual truancy and not to exceed one year for a subsequent
16 finding of habitual truancy.

17 D. If, after review by the juvenile probation
18 office where the student resides, a determination and finding
19 is made that the habitual truancy by the student may have been
20 caused by the parent of the student, then the matter will be
21 referred by the juvenile probation office to the district
22 attorney's office or any law enforcement agency having
23 jurisdiction for appropriate investigation and filing of
24 charges allowed under the Compulsory School Attendance Law.
25 Charges against the parent may be filed in metropolitan court,

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1 magistrate court or district court.

2 E. A parent of the student who, after receiving
3 written notice as provided in Subsection B of this section and
4 after the matter has been reviewed in accordance with
5 Subsection D of this section, knowingly allows the student to
6 continue to violate the Compulsory School Attendance Law shall
7 be guilty of a petty misdemeanor. Upon the first conviction, a
8 fine of not less than twenty-five dollars (\$25.00) or more than
9 one hundred dollars (\$100) may be imposed, or the parent of the
10 student may be ordered to perform community service. If
11 violations of the Compulsory School Attendance Law continue,
12 upon the second and subsequent convictions, the parent of the
13 student who knowingly allows the student to continue to violate
14 the Compulsory School Attendance Law shall be guilty of a petty
15 misdemeanor and shall be subject to a fine of not more than
16 five hundred dollars (\$500) or imprisonment for a definite term
17 not to exceed six months or both.

18 F. The provisions of this section shall apply
19 beginning July 1, 2004."

20 Section 44. Section 22-12-8 NMSA 1978 (being Laws 1985,
21 Chapter 104, Section 1, as amended) is amended to read:

22 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND
23 TRUANCY.--Notwithstanding the provisions of Section 22-12-7
24 NMSA 1978, if a student is truant, the school district or
25 charter school shall contact the student's parent to inform the

1 parent that the student is truant and to discuss possible
 2 interventions. The provisions of this section do not apply to
 3 any absence if the parent has contacted the school to explain
 4 the absence."

5 Section 45. Section 22-12-9 NMSA 1978 (being Laws 2004,
 6 Chapter 28, Section 1, as amended) is amended to read:

7 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE
 8 POLICIES.--

9 A. As used in this section and Sections 22-12-7 and
 10 22-12-8 NMSA 1978:

11 (1) "habitual truant" means a student who has
 12 accumulated the equivalent of ten or more unexcused absences
 13 within a school year;

14 (2) "truant" means a student who has
 15 accumulated five unexcused absences within any twenty-day
 16 period; and

17 (3) "unexcused absence" means an absence from
 18 school or a class for which the student does not have an
 19 allowable excuse pursuant to the Compulsory School Attendance
 20 Law or rules of the local school board or governing authority
 21 of a charter school or private school.

22 B. Each school district and charter school shall
 23 maintain an attendance policy that:

24 (1) provides for early identification of
 25 students with unexcused absences, truants and habitual truants

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1 and provides intervention strategies that focus on keeping
2 truants in an educational setting and prohibit out-of-school
3 suspension and expulsion as the punishment for truancy;

4 (2) uses withdrawal as provided in Section
5 22-8-2 NMSA 1978 only after exhausting efforts to keep students
6 in educational settings; and

7 (3) requires that class attendance be taken
8 for every instructional day in every public school or school
9 program in the school district.

10 C. School districts and charter schools shall
11 report truancy and habitual truancy rates to the department in
12 a form and at such times as the department determines and shall
13 document efforts made to keep truants and habitual truants in
14 educational settings. Locally chartered charter schools shall
15 provide copies of their reports to the school district."

16 Section 46. Section 22-13-3.7 NMSA 1978 (being Laws
17 1989, Chapter 113, Section 5, as amended) is amended to read:

18 "22-13-3.7. DISBURSEMENT OF FUNDS--APPROVED PROJECTS.--

19 A. Any school district or state-chartered charter
20 school may apply for a grant from the literacy for children at
21 risk fund for the purpose of acquiring, equipping and staffing
22 a learning laboratory.

23 B. The department shall adopt [~~regulations~~] rules
24 setting forth the criteria that a school district or state-
25 chartered charter school shall meet in order to qualify for a

1 grant from the literacy for children at risk fund. The
2 criteria to qualify for a grant shall include, but are not
3 limited to, the following:

4 (1) the learning laboratory shall improve the
5 reading, writing or math literacy levels of children at risk by
6 at least one grade level per year, as demonstrated to the
7 department's satisfaction;

8 (2) the learning laboratory shall encompass
9 the teaching of children in kindergarten through grade twelve
10 who are reading below grade level;

11 (3) the learning laboratory shall have reading
12 diagnostic capabilities; and

13 (4) the learning laboratory shall have the
14 capability to self-monitor the performance of both the learning
15 laboratory and the children at risk [~~utilizing~~] using the
16 laboratory.

17 C. The amount of any grant awarded under
18 Subsections A and B of this section shall be equal to eighty
19 percent of the total cost of acquiring, equipping and staffing
20 a learning laboratory. Any grant awarded is contingent upon
21 the qualifying school district or state-chartered charter
22 school demonstrating to the department's satisfaction that it
23 can pay for twenty percent of the total cost of the learning
24 laboratory.

25 D. Any school district or state-chartered charter

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1 school that establishes a learning laboratory under this
2 section may use the laboratory for any other reading, writing
3 or math literacy program when it is not in use for the purposes
4 of the Literacy For Children At Risk Act.

5 E. The department, after approving the application
6 of a school district or state-chartered charter school to
7 receive a grant under the Literacy For Children At Risk Act,
8 shall authorize a disbursement of funds, in an amount equal to
9 the grant, from the literacy for children at risk fund directly
10 to the approved school district or charter school."

11 Section 47. Section 22-15-2 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 206, as amended) is amended to read:

13 "22-15-2. DEFINITIONS.--As used in the Instructional
14 Material Law:

15 A. "division" or "bureau" means the instructional
16 material bureau of the department;

17 B. "director" or "chief" means the chief of the
18 bureau;

19 C. "instructional material" means school textbooks
20 and other educational media that are used as the basis for
21 instruction, including combinations of textbooks, learning
22 kits, supplementary material and electronic media;

23 D. "multiple list" means a written list of those
24 instructional materials approved by the department;

25 E. "membership" means the total enrollment of

1 qualified students on the fortieth day of the school year
2 entitled to the free use of instructional material pursuant to
3 the Instructional Material Law; ~~and~~

4 F. "additional pupil" means a pupil in a school
5 district's, state institution's or private school's current
6 year's certified forty-day membership above the number
7 certified in the school district's, state institution's or
8 private school's prior year's forty-day membership; and

9 G. "school district" includes state-chartered
10 charter schools."

11 Section 48. Section 22-15C-1 NMSA 1978 (being Laws 2003,
12 Chapter 149, Section 1) is amended to read:

13 "22-15C-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article
14 15C NMSA 1978 may be cited as the "School Library Material
15 Act"."

16 Section 49. Section 22-15C-2 NMSA 1978 (being Laws 2003,
17 Chapter 149, Section 2) is amended to read:

18 "22-15C-2. DEFINITIONS.--As used in the School Library
19 Material Act:

20 A. "additional student" means a student in the
21 certified forty-day membership of the current year for a school
22 district or state institution above the number certified in the
23 forty-day membership of the prior year for the school district
24 or state institution;

25 B. "bureau" means the instructional material bureau

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1 of the department [~~of education~~];

2 C. "fund" means the school library material fund;

3 D. "library material processing" means cataloging
4 of school library material, including in electronic format,
5 according to nationally accepted standards, and the application
6 of bar code labels and call-number classification labels to the
7 material;

8 E. "membership" means the total enrollment of
9 qualified students on the fortieth day of the school year
10 entitled to the free use of school library material pursuant to
11 the School Library Material Act;

12 F. "qualified student" means a public school
13 student who:

14 (1) has not graduated from high school;

15 (2) is regularly enrolled in one-half or more
16 of the minimum course requirements approved by the [~~state~~
17 ~~board~~] department for public school students; and

18 (3) is at least five years of age prior to
19 12:01 a.m. on September 1 of the school year; or

20 (4) is at least three years of age at any time
21 during the school year and is receiving special education
22 services pursuant to regulation of the [~~state board and~~
23 department];

24 G. "school library material" means books and other
25 educational media, including online reference and periodical

1 databases, that are made available in a school library to
 2 students for circulation and use in the library; and

3 H. "school district" includes state-chartered
 4 charter schools."

5 Section 50. Section 22-15D-1 NMSA 1978 (being Laws 2003,
 6 Chapter 152, Section 1) is amended to read:

7 "22-15D-1. SHORT TITLE.--~~[Sections 1 through 6 of this~~
 8 ~~act]~~ Chapter 22, Article 15D NMSA 1978 may be cited as the
 9 "Fine Arts Education Act"."

10 Section 51. Section 22-15D-2 NMSA 1978 (being Laws 2003,
 11 Chapter 152, Section 2) is amended to read:

12 "22-15D-2. PURPOSE.--

13 A. The purpose of the Fine Arts Education Act is to
 14 encourage school districts and state-chartered charter schools
 15 to offer opportunities for elementary school students to
 16 participate in fine arts activities, including visual arts,
 17 music, theater and dance.

18 B. Participation in fine arts programs encourages
 19 cognitive and affective development by:

20 (1) focusing on a variety of learning styles
 21 and engaging students who might otherwise fail;

22 (2) training students in complex thinking and
 23 learning;

24 (3) helping students to devise creative
 25 solutions for problems;

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1 (4) providing students new challenges; and
2 (5) teaching students how to work
3 cooperatively with others and to understand and value diverse
4 cultures."

5 Section 52. Section 22-15D-4 NMSA 1978 (being Laws 2003,
6 Chapter 152, Section 4) is amended to read:

7 "22-15D-4. [~~STATE BOARD AND~~] DEPARTMENT [~~OF EDUCATION~~]-
8 POWERS AND DUTIES.--[A.] The [~~state board~~] department shall
9 issue guidelines for the development and implementation of fine
10 arts education programs. [B.] The department [~~of education~~]
11 shall:

12 [~~(1)~~] A. administer and enforce the provisions of
13 the Fine Arts Education Act; and

14 [~~(2)~~] B. assist [~~local~~] school [~~boards~~] districts
15 and charter schools in developing and evaluating programs."

16 Section 53. Section 22-15D-5 NMSA 1978 (being Laws 2003,
17 Chapter 152, Section 5) is amended to read:

18 "22-15D-5. PROGRAM PLAN AND EVALUATION.--

19 A. A [~~local~~] school [~~board~~] district or state-
20 chartered charter school may prepare and submit to the
21 department [~~of education~~] a fine arts education program plan in
22 accordance with guidelines issued by the [~~state board~~]
23 department.

24 B. At a minimum, the plan shall include the fine
25 arts education programs being taught, the ways in which the

1 fine arts are being integrated into the curriculum and an
2 evaluation component.

3 C. At yearly intervals, the [~~local~~] school [~~board~~]
4 district or state-chartered charter school, the department [~~of~~
5 ~~education~~] and a parent advisory committee from the school
6 district or charter school shall review the goals and
7 priorities of the plan and make appropriate recommendations to
8 the [~~state board~~] secretary."

9 Section 54. Section 22-20-1 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 270, as amended) is amended to read:

11 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
12 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY
13 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

14 A. Each local school board or governing body of a
15 charter school shall secure the approval of the director of the
16 public school facilities authority or the director's designee
17 prior to the construction or letting of contracts for
18 construction of any school building or related school structure
19 or before reopening an existing structure that was formerly
20 used as a school building but that has not been used for that
21 purpose during the previous year. A written application shall
22 be submitted to the director requesting approval of the
23 construction, and, upon receipt, the director shall forward a
24 copy of the application to the secretary. The director shall
25 prescribe the form of the application, which shall include the

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1 following:

- 2 (1) a statement of need;
- 3 (2) the anticipated number of students
4 affected by the construction;
- 5 (3) the estimated cost;
- 6 (4) a description of the proposed construction
7 project;
- 8 (5) a map of the area showing existing school
9 attendance centers within a five-mile radius and any
10 obstructions to attending the attendance centers, such as
11 railroad tracks, rivers and limited-access highways; and
- 12 (6) such other information as may be required
13 by the director.

14 B. The director or the director's designee shall
15 give approval to an application if the director or designee
16 reasonably determines that:

- 17 (1) the construction will not cause an
18 unnecessary proliferation of school construction;
- 19 (2) the construction is needed in the school
20 district or by the charter school;
- 21 (3) the construction is feasible;
- 22 (4) the cost of the construction is
23 reasonable;
- 24 (5) the construction project:
 - 25 (a) is in compliance with the statewide

1 adequacy standards adopted pursuant to the Public School
2 Capital Outlay Act; and

3 (b) if relevant, is appropriately
4 integrated into the school district or charter school master
5 plan;

6 (6) the school district or charter school is
7 financially able to pay for the construction; and

8 (7) the secretary has certified that the
9 construction will support the educational program of the school
10 district or charter school.

11 C. Within thirty days after the receipt of an
12 application filed pursuant to this section, the director or the
13 director's designee shall in writing notify the local school
14 board or governing body of a charter school making the
15 application and the department of approval or disapproval of
16 the application.

17 D. A local school board or governing body of a
18 charter school shall not enter into a contract for the
19 construction of a public school facility, including contracts
20 funded with insurance proceeds, unless the contract contains
21 provisions requiring the construction to be in compliance with
22 the statewide adequacy standards adopted pursuant to the Public
23 School Capital Outlay Act; provided that for a contract funded
24 in whole or in part with insurance proceeds:

25 (1) the cost of settlement of any insurance

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1 claim shall not be increased by inclusion of the insurance
2 proceeds in the construction contract; and

3 (2) insurance claims settlements shall
4 continue to be governed by insurance policies, memoranda of
5 coverage and rules related to them.

6 E. Public school facilities shall be constructed
7 pursuant to state standards or codes promulgated pursuant to
8 the Construction Industries Licensing Act and rules adopted
9 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and
10 control of fires in public occupancies. Building standards or
11 codes adopted by a municipality or county do not apply to the
12 construction of public school facilities, except those
13 structures constructed as a part of an educational program of a
14 school district or charter school.

15 F. The provisions of Subsection E of this section
16 relating to fire protection shall not be effective until the
17 public regulation commission has adopted the International Fire
18 Code and all standards related to that code.

19 G. As used in this section, "construction" means
20 any project for which the construction industries division of
21 the regulation and licensing department requires permitting."

22 Section 55. Section 22-20-2 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 271) is amended to read:

24 "22-20-2. SCHOOL BUILDING CONSTRUCTION--DISTANCE FROM
25 HIGHWAYS.--

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1 A. No local school board or governing body of a
 2 charter school shall construct or cause the construction of any
 3 public school building within four hundred feet of any main
 4 artery of travel without the prior written approval of the
 5 [~~state board~~] department.

6 B. The district court may enforce the provisions of
 7 this section by any appropriate civil remedy in an action
 8 brought by an interested party.

9 C. As used in this section, "main artery of travel"
 10 means any designated state or federal-aid highway used
 11 primarily to accommodate transient motor traffic through a
 12 municipality and any type of public highway used primarily to
 13 accommodate transient motor traffic through a rural community
 14 or area."

15 Section 56. Section 22-21-1 NMSA 1978 (being Laws 1967,
 16 Chapter 16, Section 282, as amended) is amended to read:

17 "22-21-1. PROHIBITING SALES TO THE DEPARTMENT [~~OF~~
 18 ~~EDUCATION~~], TO SCHOOL DISTRICTS AND TO SCHOOL PERSONNEL--
 19 EXCEPTION--PENALTY.--

20 A. A member of the [~~state board~~] commission, a
 21 member of a local school board, a member of the governing body
 22 of a charter school, the [~~state superintendent~~] secretary, an
 23 employee of the department [~~of education, a certified school~~
 24 ~~instructor or a certified school administrator~~] or a school
 25 employee shall not, directly or indirectly, sell or be a party

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1 to any transaction to sell any instructional material,
2 furniture, equipment, insurance, school supplies or work under
3 contract to the department [~~of education~~], school district or
4 public school with which [~~he~~] such person is associated or
5 employed. No such person shall receive any commission or
6 profit from the sale or any transaction to sell any
7 instructional material, furniture, equipment, insurance, school
8 supplies or work under contract to the department [~~of~~
9 ~~education~~], school district or public school with which [~~he~~]
10 the person is associated or employed.

11 B. The provisions of this section shall not apply
12 to a person making a sale in the regular course of [~~his~~]
13 business who complies with the provisions of Sections [~~13-1-1~~
14 ~~through 13-1-26~~] 13-1-21, 13-1-21.2 and 13-1-22 NMSA 1978. The
15 provisions of this section shall not apply in cases in which
16 [~~certified school instructors or certified school~~
17 ~~administrators~~] school employees contract to perform special
18 services with the department [~~of education~~], school district or
19 public school with which they are associated or employed during
20 time periods wherein service is not required under a contract
21 for instruction, [~~or~~] administration or other employment.

22 C. No member of the [~~state board~~] commission,
23 member of a local school board, [~~state superintendent~~] member
24 of the governing body of a charter school, the secretary,
25 employee of the department [~~of education, certified school~~

1 ~~instructor or certified school administrator]~~ or school
 2 employee shall solicit or sell or be a party to a transaction
 3 to solicit or sell insurance or investment securities to any
 4 employee of the department [~~of education~~] or any employee of
 5 the school district whom [~~he~~] such person supervises. Nothing
 6 in this subsection shall prohibit a financial institution from
 7 requiring the purchase of insurance in connection with a loan
 8 or offering and selling such insurance in accordance with the
 9 provisions of the New Mexico Insurance Code.

10 D. No state employee who supervises or exercises
 11 control over [~~local~~] school districts or charter schools, which
 12 supervision or control includes but is not limited to school
 13 programs, capital outlay and operating budgets, shall enter
 14 into any business relationship with an employee of a local
 15 school district or charter school over which [~~he~~] the state
 16 employee exercises supervision or control.

17 E. Any person violating any provision of this
 18 section is guilty of a fourth degree felony under the Criminal
 19 Code. The [~~state board of education~~] department may suspend or
 20 revoke the [~~certification of a certified school administrator~~
 21 ~~or a certified school instructor~~] licensure of a licensed
 22 school employee for violation of this section."

23 Section 57. Section 22-23-2 NMSA 1978 (being Laws 1973,
 24 Chapter 285, Section 2, as amended) is amended to read:

25 "22-23-2. DEFINITIONS.--As used in the Bilingual

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1 Multicultural Education Act:

2 A. "bilingual multicultural education program"
3 means a program using two languages, including English and the
4 home or heritage language, as a medium of instruction in the
5 teaching and learning process;

6 B. "culturally and linguistically different" means
7 students who are of a different cultural background than
8 mainstream United States culture and whose home or heritage
9 language, inherited from the student's family, tribe or country
10 of origin, is a language other than English;

11 C. "department" means the public education
12 department;

13 D. "district" means a public school or any
14 combination of public schools in a district or a charter
15 school;

16 E. "English language learner" means a student whose
17 first or heritage language is not English and who is unable to
18 read, write, speak or understand English at a level comparable
19 to grade level English proficient peers and native English
20 speakers;

21 F. "heritage language" means a language other than
22 English that is inherited from a family, tribe, community or
23 country of origin;

24 G. "home language" means a language other than
25 English that is the primary or heritage language spoken at home

.162440.2

1 or in the community;

2 H. "school board" means a local school board or
3 governing body of a state-chartered charter school; and

4 I. "standardized curriculum" means a district
5 curriculum that is aligned with the state academic content
6 standards, benchmarks and performance standards."

7 Section 58. Section 22-24-3 NMSA 1978 (being Laws 1975,
8 Chapter 235, Section 3, as amended) is amended to read:

9 "22-24-3. DEFINITIONS.--As used in the Public School
10 Capital Outlay Act:

11 A. "council" means the public school capital outlay
12 council; [~~and~~]

13 B. "fund" means the public school capital outlay
14 fund; and

15 C. "school district" includes state-chartered
16 charter schools."

17 Section 59. TEMPORARY PROVISION--CAPITAL OUTLAY STUDY.--
18 The public school capital outlay oversight task force, in
19 consultation with the public school capital outlay council, the
20 public education department and the public school facilities
21 authority, shall study statutory provisions governing the
22 funding of charter school capital outlay facilities,
23 transportation costs and any other capital outlay issues
24 concerning charter schools and shall make recommendations to
25 the legislative education study committee, the legislative

.162440.2

1 finance committee and the governor by November 1, 2006.

2 Section 60. REPEAL.--

3 A. Section 22-8B-15 NMSA 1978 (being Laws 1999,
4 Chapter 281, Section 15) is repealed.

5 B. Laws 2005, Chapter 176, Section 12 is repealed.

6 Section 61. EFFECTIVE DATE.--The effective date of the
7 provisions of Section 59 of this act is May 17, 2006. The
8 effective date of the provisions of Sections 1 through 57 and
9 60 of this act is July 1, 2007.