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SENATE BILL 600

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

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING A CHARTER SCHOOLS DIVISION
IN THE PUBLIC EDUCATION DEPARTMENT; PROVIDING POWERS AND
DUTIES; PROVIDING FOR APPROVAL, DENIAL, RENEWAL, SUSPENSION OR
REVOCAION OF CHARTER SCHOOLS BY THE PUBLIC EDUCATION
COMMISSION; MAKING CHARTER SCHOOLS INDEPENDENT OF SCHOOL
DISTRICTS; REQUIRING CHARTER SCHOOLS TO BE BOARDS OF FINANCE;
CLARIFYING RESPONSIBILITIES OF CHARTER SCHOOLS AND GOVERNING
BODIES; CHANGING FUNDING PROVISIONS; REQUIRING FIVE-YEAR
FACILITIES PLANS FOR CAPITAL OUTLAY; 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.

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

Section 1. Section 9-24-4 NMSA 1978 (being Laws 2004,

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1 Chapter 27, Section 4, as amended) is amended to read:

2 "9-24-4. DEPARTMENT CREATED.--

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

6 (1) the administrative services division;

7 (2) the assessment and accountability
8 division;

9 (3) the charter schools division;

10 [~~(3)~~] (4) the educator quality division;

11 [~~(4)~~] (5) the Indian education division;

12 [~~(5)~~] (6) the information technology division;

13 [~~(6)~~] (7) the instructional support and
14 vocational education division;

15 [~~(7)~~] (8) the program support and student
16 transportation division;

17 [~~(8)~~] (9) the quality assurance and systems
18 integration division;

19 [~~(9)~~] (10) the rural education division; and

20 [~~(10)~~] (11) the vocational rehabilitation
21 division.

22 B. The secretary may organize the department and
23 divisions of the department and may transfer or merge functions
24 between divisions and bureaus in the interest of efficiency and
25 economy."

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

3 "22-8-2. DEFINITIONS.--As used in the Public School
4 Finance Act:

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

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

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

21 D. "cost differential factor" is the numerical
22 expression of the ratio of the cost of a particular segment of
23 the school program to the cost of the basic program in grades
24 four through six;

25 E. "department" or "division" means the public

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1 education department;

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

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

11 H. "operating budget" means the annual financial
12 plan required to be submitted by a local school board or
13 governing body of the charter school;

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

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

23 K. "program unit" is the product of the program
24 element multiplied by the applicable cost differential factor;

25 L. "public money" or "public funds" means all money

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1 from public or private sources received by a ~~[local]~~ school
2 ~~[board]~~ district or charter school or officer or employee of a
3 ~~[local]~~ school ~~[board]~~ district or charter school for public
4 use;

5 M. "qualified student" means a public school
6 student who:

7 (1) has not graduated from high school;

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

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

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

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

20 N. "state superintendent" means the secretary of
21 public education or the secretary's designee."

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

24 "22-8-6.1. ~~[CERTAIN SCHOOL DISTRICT]~~ CHARTER SCHOOL
25 BUDGETS.--Each charter school shall submit to the ~~[local school]~~

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1 ~~board]~~ charter schools division of the department a school-
2 based budget. For fiscal year 2008, and for the first year of
3 operation in any fiscal year thereafter, the budget of every
4 charter school shall be based ~~[upon]~~ on the projected number of
5 program units generated by that charter school and its
6 students, using the at-risk index and the instructional staff
7 training and experience index of the school district in which
8 it is geographically located. For second and subsequent fiscal
9 years of operation, the budgets of charter schools shall be
10 based on the projected number of program units generated by
11 that charter school and its students and its instructional
12 staff training and experience index and the at-risk index of
13 the school district in which the charter school is
14 geographically located. The budget shall be submitted to the
15 ~~[local school board]~~ division for approval or amendment ~~[The~~
16 ~~approval or amendment authority of the local school board~~
17 ~~relative to the charter school budget is limited to ensuring~~
18 ~~that sound fiscal practices are followed in the development of~~
19 ~~the budget and that the charter school budget is within the~~
20 ~~allotted resources. The local school board shall have no veto~~
21 ~~authority over individual line items within the charter~~
22 ~~school's proposed budget, but shall approve or disapprove the~~
23 ~~budget in its entirety. Upon final approval of the local~~
24 ~~budget by the local school board, the individual charter school~~
25 ~~budget shall be included separately in the budget submission to~~

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1 ~~the department of education required~~] pursuant to the Public
2 School Finance Act and the [1999] Charter Schools Act."

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

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

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

10 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

11 A. The department shall:

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

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

22 B. No school [~~board~~] district or charter school or
23 officer or employee of a school district or charter school
24 shall make any expenditure or incur any obligation for the
25 expenditure of public funds unless that expenditure or

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1 obligation is made in accordance with an operating budget
2 approved by the department. This prohibition does not prohibit
3 the transfer of funds pursuant to the department's rules and
4 procedures.

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

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

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

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

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

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

5 C. upon written request of [~~any~~] a local school
6 board or governing body of a charter school, the [~~state~~
7 ~~superintendent~~] secretary may authorize an increase in a budget
8 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 charter school, the [~~state~~
11 ~~superintendent~~] secretary, after notice and a public hearing,
12 may authorize an increase in a school budget in an amount
13 exceeding one thousand dollars (\$1,000). The notice of the
14 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 charter school notifies the parents of its students of
23 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 charter school shall submit annually, on or before October 15,
5 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 charter school as may
19 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 charter school for the succeeding fiscal year; and

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

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

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

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

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

15 "22-8-13. REPORTS.--

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

22 (1) the basic program MEM by grade in each
23 public school;

24 (2) the early childhood education MEM;

25 (3) the special education MEM in each public

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1 school in class C and class D programs as defined in Section
2 22-8-21 NMSA 1978;

3 (4) the number of class A and class B programs
4 as defined in Section 22-8-21 NMSA 1978; and

5 (5) the full-time-equivalent MEM for bilingual
6 multicultural education programs.

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

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

21 D. The department shall withhold allotments of
22 funds to any school district or charter school where the
23 superintendent or head administrator has failed to comply until
24 the superintendent or head administrator complies with and
25 agrees to continue complying with requirements of this section.

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

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

10 "22-8-14. PUBLIC SCHOOL FUND.--

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

12 B. [~~This~~] The public school fund shall be
13 distributed to school districts and charter schools in the
14 following parts:

15 (1) state equalization guarantee distribution;

16 (2) transportation distribution to school
17 districts; and

18 (3) supplemental distributions:

19 (a) out-of-state tuition to school
20 districts;

21 (b) emergency; and

22 (c) program enrichment.

23 C. The distributions of the public school fund
24 shall be made by the department within limits established by
25 law. The balance remaining in the public school fund at the

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1 end of each fiscal year shall revert to the general fund,
2 unless otherwise provided by law."

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

5 "22-8-15. ALLOCATION LIMITATION.--[A.] The department
6 shall determine the allocations to each school district and
7 charter school from each of the distributions of the public
8 school fund, subject to the limits established by law.

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

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

20 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED
21 INFORMATION.--

22 A. The program cost for each school district and
23 charter school shall be determined by the department in
24 accordance with the provisions of the Public School Finance
25 Act.

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1 B. The department is authorized to require from
2 each school district and charter school the information
3 necessary to make an accurate determination of the district's
4 or charter school's program cost."

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

7 "22-8-18. PROGRAM COST CALCULATION--LOCAL [~~SCHOOL BOARD~~]
8 RESPONSIBILITY.--

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

- 16 (1) early childhood education;
- 17 (2) basic education;
- 18 (3) special education, adjusted by subtracting
19 the units derived from membership in class D special education
20 programs in private, nonsectarian, nonprofit training centers;
- 21 (4) bilingual multicultural education;
- 22 (5) fine arts education;
- 23 (6) size adjustment;
- 24 (7) at-risk program;
- 25 (8) enrollment growth or new district

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1 adjustment;

2 (9) special education units derived from
3 membership in class D special education programs in private,
4 nonsectarian, nonprofit training centers; and

5 (10) national board for professional teaching
6 standards certification.

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

18 Section 13. Section 22-8-23.1 NMSA 1978 (being Laws 1990
19 (1st S.S.), Chapter 3, Section 7, as amended by Laws 2003,
20 Chapter 156, Section 1 and by Laws 2003, Chapter 386, Section
21 1) is amended to read:

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

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

3
$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase.}$$

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

7
$$((\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01)) \times 1.5 = \text{Units.}$$

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

15
$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase.}$$

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

21
$$(\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units.}$$

22 C. As used in this section:

- 23 (1) "current year MEM" means MEM on the
- 24 fortieth day of the current year;
- 25 (2) "MEM" means the total school district or

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1 charter school membership, including early childhood education
2 full-time-equivalent membership and special education
3 membership, but excluding full-day kindergarten membership for
4 the first year that full-day kindergarten is implemented in a
5 school pursuant to Subsection D of Section [~~22-2-19~~] 22-13-3.2
6 NMSA 1978; and

7 (3) "previous year MEM" means MEM on the
8 fortieth day of the previous year."

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

12 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
13 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
14 program units for teachers certified by the national board for
15 professional teaching standards is determined by multiplying by
16 one and one-half the number of teachers certified by the
17 national board for professional teaching standards employed by
18 the school district or charter school on or before the fortieth
19 day of the school year and verified by the department.

20 Department approval of these units shall be contingent on
21 verification by the school district or charter school that
22 these teachers are receiving a one-time salary differential
23 equal to or greater than the amount generated by the units
24 multiplied by the program unit value during the fiscal year in
25 which the school district or charter school will receive these

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1 units."

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

4 "[NEW MATERIAL] CHARTER SCHOOL STUDENT ACTIVITIES PROGRAM
5 UNIT.--The charter school student activities program unit for a
6 school district is determined by multiplying the number of
7 charter school students who are participating in school
8 district activities governed by the New Mexico activities
9 association by the cost differential factor of 0.1. The
10 student activities program unit shall be paid to the school
11 district in which it is generated."

12 Section 16. Section 22-8-25 NMSA 1978 (being Laws 1981,
13 Chapter 176, Section 5, as amended by Laws 2005, Chapter 176,
14 Section 12 and by Laws 2005, Chapter 291, Section 1) is amended
15 to read:

16 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
17 DEFINITIONS--DETERMINATION OF AMOUNT.--

18 A. The state equalization guarantee distribution is
19 that amount of money distributed to each school district to
20 ensure that [~~the school district's~~] its operating revenue,
21 including its local and federal revenues as defined in this
22 section, is at least equal to the school district's program
23 cost. For charter schools, the state equalization guarantee
24 distribution is the difference between a charter school's
25 program cost and the two percent withheld by the department for

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1 administrative services.

2 B. "Local revenue", as used in this section, means
3 seventy-five percent of receipts to the school district derived
4 from that amount produced by a school district property tax
5 applied at the rate of fifty cents (\$.50) to each one thousand
6 dollars (\$1,000) of net taxable value of property allocated to
7 the school district and to the assessed value of products
8 severed and sold in the school district as determined under the
9 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
10 value of equipment in the school district as determined under
11 the Oil and Gas Production Equipment Ad Valorem Tax Act.

12 C. "Federal revenue", as used in this section,
13 means receipts to the school district, excluding amounts that,
14 if taken into account in the computation of the state
15 equalization guarantee distribution, result, under federal law
16 or regulations, in a reduction in or elimination of federal
17 school funding otherwise receivable by the school district,
18 derived from the following:

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

22 (2) seventy-five percent of grants from the
23 federal government as assistance to those areas affected by
24 federal activity authorized in accordance with Title 20 of the
25 United States Code, commonly known as "PL 874 funds" or "impact

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1 aid".

2 D. To determine the amount of the state
3 equalization guarantee distribution, the department shall:

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

8 (2) calculate the number of program units to
9 which a school district or charter school operating under an
10 approved year-round school calendar is entitled using an
11 average of the MEM on appropriate dates established by the
12 department; or

13 (3) calculate the number of program units to
14 which a school district or charter school with a MEM of two
15 hundred or less is entitled by using an average of the MEM on
16 the eightieth and one hundred twentieth days of the prior year
17 or the fortieth day of the current year, whichever is greater;
18 and

19 (4) using the results of the calculations in
20 Paragraph (1), (2) or (3) of this subsection and the
21 instructional staff training and experience index from the
22 October report of the prior school year, establish a total
23 program cost of the school district or charter school;

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

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1 (6) deduct the sum of the calculations made in
2 Paragraph (5) of this subsection from the program cost
3 established in Paragraph (4) of this subsection;

4 (7) deduct the total amount of guaranteed
5 energy savings contract payments that the department determines
6 will be made to the school district from the public school
7 utility conservation fund during the fiscal year for which the
8 state equalization guarantee distribution is being computed;
9 and

10 (8) deduct ninety percent of the amount
11 certified for the school district by the department pursuant to
12 the Energy Efficiency and Renewable Energy Bonding Act [~~if that~~
13 ~~act becomes law pursuant to House Bill 32 or similar~~
14 ~~legislation of the first session of the forty-seventh~~
15 ~~legislature~~].

16 E. Reduction of a school district's state
17 equalization guarantee distribution shall cease when the school
18 district's cumulative reductions equal its proportional share
19 of the cumulative debt service payments necessary to service
20 the bonds issued pursuant to the Energy Efficiency and
21 Renewable Energy Bonding Act [~~if that act becomes law pursuant~~
22 ~~to House Bill 32 or similar legislation of the first session of~~
23 ~~the forty-seventh legislature~~].

24 F. The amount of the state equalization guarantee
25 distribution to which a school district is entitled is the

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1 balance remaining after the deductions made in Paragraphs (6)
2 through (8) of Subsection D of this section.

3 G. The state equalization guarantee distribution
4 shall be distributed prior to June 30 of each fiscal year. The
5 calculation shall be based on the local and federal revenues
6 specified in this section received from June 1 of the previous
7 fiscal year through May 31 of the fiscal year for which the
8 state equalization guarantee distribution is being computed.
9 In the event that a school district or charter school has
10 received more state equalization guarantee funds than its
11 entitlement, a refund shall be made by the school district or
12 charter school to the state general fund."

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

15 "22-8-30. SUPPLEMENTAL DISTRIBUTIONS.--

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

18 (1) to pay the out-of-state tuition of
19 students subject to the Compulsory School Attendance Law who
20 are attending school out-of-state because school facilities are
21 not reasonably available in the school district of their
22 residence;

23 (2) to make emergency distributions to school
24 districts or charter schools in financial need, but no money
25 shall be distributed to any school district or charter school

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1 having cash and invested reserves, or other resources or any
2 combination thereof, equaling five percent or more of the
3 school district's or charter school's operational budget;

4 (3) to make program enrichment distributions
5 in the amount of actual program expense to school districts and
6 charter schools for the purpose of providing specific programs
7 to meet particular educational requirements that cannot
8 otherwise be financed;

9 (4) a special vocational education
10 distribution to area vocational schools or state-supported
11 schools with [~~state board~~] department-approved vocational
12 programs to reimburse those schools for the cost of vocational
13 education programs for those students subject to the Compulsory
14 School Attendance Law who are enrolled in such programs; and

15 (5) to make emergency capital outlay
16 distributions to school districts or charter schools that have
17 experienced an unexpected capital outlay emergency demanding
18 immediate attention.

19 B. The [~~state superintendent~~] department shall
20 account for all supplemental distributions and shall make full
21 reports to the governor, legislative education study committee
22 and legislative finance committee of payments made as
23 authorized in Subsection A of this section.

24 C. The [~~state superintendent~~] department may divert
25 any unused or unneeded balances in any of the distributions

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1 made under the supplementary distribution authority to make any
2 other distribution made pursuant to the same authority."

3 Section 18. Section 22-8-38 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 96, as amended) is amended to read:

5 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--

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

15 [~~A.~~] (1) the local school board shows to the
16 satisfaction of the [~~state superintendent~~] department that it
17 has personnel properly trained to keep accurate and complete
18 fiscal records;

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

24 [~~C.~~] (3) the persons handling these funds are
25 adequately bonded to protect the funds entrusted to them from

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1 loss; and

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

5 B. As of August 1, 2007, all existing charter
6 schools are required to qualify for and be designated as boards
7 of finance.

8 C. A charter school applicant requesting a charter
9 from the commission shall submit a plan detailing how its
10 governing body will qualify for designation as a board of
11 finance for public school funds of the charter school. The
12 governing body of a charter school shall qualify as a board of
13 finance before the first year of operation of the charter
14 school. The governing body of a charter school designated as a
15 board of finance may require all funds distributed to,
16 allocated to or collected for the charter school to be
17 deposited with it. The commission shall designate the
18 governing body of a charter school as a board of finance if:

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

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

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

4 (4) the governing body was not a governing
5 body of a charter school that was suspended and not reinstated
6 as a board of finance.

7 D. Failure of the governing body of a charter
8 school to qualify for designation as a board of finance
9 constitutes good and just grounds for denial, nonrenewal or
10 revocation of its charter."

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

13 "22-8-39. BOARDS OF FINANCE--SUSPENSION.--The [~~state~~
14 ~~superintendent~~] department may at any time suspend a local
15 school board or governing body of a charter school from acting
16 as a board of finance if [~~he~~] the department reasonably
17 believes there is mismanagement, improper recording or improper
18 reporting of public school funds under [~~its~~] the local school
19 board's or governing body of a charter school's control. When
20 a local school board or governing body of a charter school is
21 suspended from acting as a board of finance, the [~~state~~
22 ~~superintendent~~] department shall:

23 A. immediately take control of all public school
24 funds under the control of the local school board or governing
25 body of a charter school acting as a board of finance;

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1 B. immediately have an audit made of all funds
2 under the control of the local school board or governing body
3 of a charter school acting as a board of finance and charge the
4 cost of the audit to the school district or charter school;

5 C. act as a fiscal agent for the school district or
6 charter school and take any action necessary to conform the
7 fiscal management of funds of the school district or charter
8 school to the requirements of law and good accounting
9 practices;

10 D. report any violations of the law to the proper
11 law enforcement officers;

12 E. act as fiscal agent for the school district or
13 charter school until [~~he~~] the department determines that the
14 local school board or governing body of a charter school is
15 capable of acting as a board of finance or until [~~he~~] the
16 department determines that the county treasurer should act as
17 fiscal agent for the school district [~~and~~] or charter school;

18 F. inform the local school board or governing body
19 of a charter school in writing of [~~his~~] the department's
20 determination as to who is to act as board of finance or fiscal
21 agent for the school district or charter school and also inform
22 the county treasurer in writing if [~~he~~] it determines that the
23 county treasurer should act as fiscal agent for the school
24 district or charter school; and

25 G. consider commencing proceedings before the

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1 commission to suspend, revoke or refuse to renew the charter of
2 the charter school in the case of a charter school that has
3 engaged in serious or repeated mismanagement, improper
4 recording or improper reporting of public school funds under
5 its control."

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

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

10 A. All public money in the custody of [~~local school~~
11 ~~boards which~~] school districts or charter schools that have
12 been designated as boards of finance shall be deposited in
13 qualified depositories in accordance with the terms of this
14 section.

15 B. Deposits of funds of the [~~local~~] school district
16 or charter school may be made in noninterest-bearing checking
17 accounts in one or more banks, savings and loan associations or
18 credit unions, as long as the credit union deposits are insured
19 by an agency of the United States, located within the
20 geographical limits of the school district.

21 C. Deposits of funds of the [~~local~~] school district
22 or charter school may be made in interest-bearing checking
23 accounts, commonly known as "NOW" accounts, in one or more
24 banks, savings and loan associations or credit unions, as long
25 as the credit union deposits are insured by an agency of the

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1 United States, located within the geographical limits of the
2 school district.

3 D. Public money placed in interest-bearing
4 deposits, in banks and savings and loan associations, other
5 than interest-bearing checking accounts as defined in
6 Subsection C of this section, shall be equitably distributed
7 among all banks and savings and loan associations having their
8 main or manned branch offices within the geographical
9 boundaries of the ~~[local]~~ school district ~~[which]~~ that have
10 qualified as public depositories by reason of insurance of the
11 account by an agency of the United States or by depositing
12 collateral security or by giving bond as provided by law in the
13 proportion that each such bank's or savings and loan
14 association's net worth bears to the total net worth of all
15 banks and savings and loan associations having their main
16 office or a manned branch office within the geographical
17 boundaries of the school district. The net worth of the main
18 office of a savings and loan association and its manned branch
19 offices within the geographical boundaries of a school district
20 is the total net worth of the association multiplied by the
21 percentage that deposits of the main office and the manned
22 branch offices located within the geographical boundaries of
23 the school district are of the total deposits of the
24 association. The net worth of each manned branch office or
25 aggregate of manned branch offices of a savings and loan

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1 association located outside the geographical boundaries of the
2 school district in which the main office is located is the
3 total net worth of the association multiplied by the percentage
4 that deposits of the branch or aggregate of branches located
5 outside the geographical boundaries of the school district in
6 which the main office is located are of the total deposits of
7 the association. The director of the financial institutions
8 division of the regulation and licensing department shall
9 promulgate a formula for determining the net worth of banks'
10 main offices and branches for the purposes of distribution of
11 public money as provided for by this section. "Net worth"
12 means assets less liabilities as reported by such banks and
13 savings and loan associations on their most recent semiannual
14 reports to the state or federal supervisory authority having
15 jurisdiction.

16 E. Notwithstanding the provisions of Subsection D
17 of this section, public money may be placed in interest-bearing
18 deposits, other than interest-bearing checking accounts as
19 defined in Subsection C of this section, at the discretion of
20 the board of finance, in credit unions having their main or
21 manned branch offices within the geographical boundaries of the
22 [~~local~~] school district to the extent such deposits are insured
23 by an agency of the United States.

24 F. The rate of interest for all public money
25 deposited in interest-bearing accounts in banks, savings and

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1 loan associations and credit unions shall be set by the state
2 board of finance, but in no case shall the rate of interest be
3 less than one hundred percent of the asked price on United
4 States treasury bills of the same maturity on the date of
5 deposit. Any bank or savings and loan association that fails
6 to pay the minimum rate of interest at the time of deposit
7 provided for herein for any respective deposit forfeits its
8 right to an equitable share of that deposit under this section.
9 If the deposit is part or all of the proceeds of a bond issue
10 and the interest rate prescribed in this subsection materially
11 exceeds the rate of interest of the bonds, the interest rate
12 prescribed by this subsection shall be reduced on the deposit
13 to an amount not materially exceeding the interest rate of the
14 bonds if the bond issue would lose its tax exempt status under
15 Section 103 of the United States Internal Revenue Code of 1954,
16 as amended.

17 G. Public money in excess of that for which banks
18 and savings and loan associations within the geographical
19 boundaries of the [~~local~~] school district have qualified may be
20 deposited in qualified depositories, including credit unions,
21 in other areas within the state under the same requirements for
22 payment of interest as if the money were deposited within the
23 geographical boundaries of the [~~local~~] school district.

24 H. The board of finance of the school district or
25 charter school may temporarily invest money held in demand

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1 deposits and not immediately needed for the operation of the
2 school district or charter school. Such temporary investments
3 shall be made only in securities [~~which~~] that are issued by the
4 state or by the United States government, or by their
5 departments or agencies, and [~~which~~] that are either direct
6 obligations of the state or the United States or are backed by
7 the full faith and credit of those governments.

8 I. The department of finance and administration may
9 monitor the deposits of public money by [~~local school boards~~]
10 school districts or charter schools to assure full compliance
11 with the provisions of this section."

12 Section 21. Section 22-8B-1 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 1, as amended) is amended to read:

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

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

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

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

24 B. "chartering authority" means either a local
25 school board that approved the establishment of a charter

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1 school prior to July 1, 2007 or the commission;

2 C. "commission" means the public education
3 commission;

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

8 E. "division" means the charter schools division of
9 the department;

10 ~~[G-]~~ F. "governing body" means the governing
11 structure of a charter school as set forth in the school's
12 charter; and

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

18 Section 23. Section 22-8B-3 NMSA 1978 (being Laws 1999,
19 Chapter 281, Section 3) is amended to read:

20 "22-8B-3. PURPOSE.--The ~~[1999]~~ Charter Schools Act is
21 enacted to enable individual schools to restructure their
22 educational curriculum to encourage the use of different and
23 innovative teaching methods that are based on reliable research
24 and effective practices or have been replicated successfully in
25 schools with diverse characteristics; to allow the development

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1 of different and innovative forms of measuring student learning
2 and achievement; to address the needs of all students,
3 including those determined to be at risk; to create new
4 professional opportunities for teachers, including the
5 opportunity to be responsible for the learning program at the
6 school site; to improve student achievement; to provide parents
7 and students with an educational alternative to create new,
8 innovative and more flexible ways of educating children within
9 the public school system; to encourage parental and community
10 involvement in the public school system; to develop and use
11 site-based budgeting; and to hold charter schools accountable
12 for meeting [~~state board minimum~~] the department's educational
13 standards and fiscal requirements."

14 Section 24. A new section of the Charter Schools Act is
15 enacted to read:

16 "[NEW MATERIAL] PUBLIC EDUCATION COMMISSION--POWERS AND
17 DUTIES.--

18 A. The commission shall receive applications for
19 initial chartering and renewals of charters for charter schools
20 and approve or disapprove charter applications. The commission
21 may approve, deny, suspend or revoke the charter of a charter
22 school in accordance with the provisions of the Charter Schools
23 Act.

24 B. The chartering authority for a charter school
25 existing on July 1, 2007 shall be transferred to the

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1 commission; provided, however, that a school chartered under a
2 previous chartering authority shall continue its charter until
3 its renewal date unless it is suspended or revoked by the
4 commission. An application for a charter school filed with a
5 local school board prior to July 1, 2007, but not approved,
6 shall be transferred to the commission on July 1, 2007."

7 Section 25. A new section of the Charter Schools Act is
8 enacted to read:

9 "[NEW MATERIAL] CHARTER SCHOOLS DIVISION--DUTIES.--The
10 "charter schools division" is created in the department. The
11 division shall:

- 12 A. provide staff support to the commission;
- 13 B. provide technical support to charter schools;
- 14 C. review and approve charter school budget
15 matters; and
- 16 D. make recommendations to the commission regarding
17 the approval, denial, suspension or revocation of the charter
18 of a charter school."

19 Section 26. Section 22-8B-4 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 4, as amended) is amended to read:

21 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
22 OPERATION.--

- 23 A. A charter school shall be subject to all federal
24 and state laws and constitutional provisions prohibiting
25 discrimination on the basis of disability, race, creed, color,

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1 gender, national origin, religion, ancestry or need for special
2 education services.

3 B. A charter school shall be governed by a
4 governing body in the manner set forth in the charter; provided
5 that a governing body shall have at least five members; and
6 provided further that no member of a governing body for a
7 charter school that is initially approved on or after July 1,
8 2005 or whose charter is renewed on or after July 1, 2005 shall
9 serve on the governing body of another charter school.

10 C. A charter school shall be responsible for:
11 (1) its own operation, including preparation
12 of a budget, subject to audits pursuant to the Audit Act; and
13 (2) contracting for services and personnel
14 matters.

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

25 E. A conversion school chartered before July 1,

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1 2007 may choose to continue using the school district
2 facilities and equipment it had been using prior to conversion,
3 subject to the provisions of Subsection F of this section.

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

18 ~~G. A charter school may pay the costs of operation~~
19 ~~and maintenance of its facilities or may contract with the~~
20 ~~school district to provide facility operation and maintenance~~
21 ~~services.~~

22 ~~H. Charter school facilities are eligible for state~~
23 ~~and local capital outlay funds and shall be included in the~~
24 ~~school district's five-year facilities plan.]~~

25 G. The facilities of a charter school that was

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1 approved prior to July 1, 2007 are eligible for state capital
2 outlay funds. A charter school receiving its charter approval
3 on or after July 1, 2007 shall be eligible for lease payments
4 but shall not be eligible to apply for or receive state capital
5 outlay funds until after it renews its charter. A charter
6 school eligible to receive capital outlay funds shall develop
7 and maintain a five-year facilities plan.

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

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

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

21 [~~L.~~] K. With the approval of the [~~school district~~]
22 commission, a single charter school may maintain separate
23 facilities at two or more locations within the same school
24 district; but, for purposes of calculating program units
25 pursuant to the Public School Finance Act, the separate

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1 facilities shall be treated together as one school.

2 ~~[M.]~~ L. A charter school shall be subject to the
3 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
4 Accountability Act.

5 ~~[N.]~~ M. Within constitutional and statutory limits,
6 a charter school may acquire and dispose of property; provided
7 that, upon termination of the charter, all assets of the
8 charter school shall revert to the ~~[local school board]~~ state.

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

16 ~~[P. A charter school]~~ O. The governing body may
17 contract and sue and be sued. A local school board ~~[that~~
18 ~~approves a charter school]~~ shall not be liable for any acts or
19 omissions of the charter school.

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

24 Q. A charter school is a public school that may
25 contract with a school district or other party for provision of

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1 financial management, food services, transportation,
2 facilities, education-related services or other services. The
3 governing body shall not contract with a for-profit entity for
4 the management of the charter school.

5 R. To enable charter schools to submit required
6 data to the department, an accountability data system shall be
7 maintained by the department.

8 S. A charter school shall comply with all
9 applicable state and federal laws and rules related to
10 providing special education services. Charter school students
11 with disabilities and their parents retain all rights under the
12 federal Individuals with Disabilities Education Act and its
13 implementing state and federal rules. Each charter school is
14 responsible for identifying, evaluating and offering a free
15 appropriate public education to all eligible children who are
16 accepted for enrollment in that charter school. The charter
17 school, as a local educational agency, shall assume
18 responsibility for determining students' needs for special
19 education and related services. The division may promulgate
20 rules to implement the requirements of this subsection."

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

23 "22-8B-5. CHARTER SCHOOLS--~~STATUS--EXEMPTION FROM LOCAL~~
24 SCHOOL BOARD AUTHORITY [~~STATE BOARD AUTHORITY~~].--

25 A. [~~The local school board may waive only locally~~

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1 ~~imposed]~~ A charter school is exempt from school district
2 requirements. A charter school is responsible for developing
3 its own written policies and procedures in accordance with this
4 section.

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

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

23 D. ~~[No]~~ A local school board shall not require any
24 employee of the school district to be employed in a charter
25 school.

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

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

7 Section 28. Section 22-8B-6 NMSA 1978 (being Laws 1998,
8 Chapter 281, Section 6, as amended) is amended to read:

9 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
10 PROCESS--AUTHORIZATION--BOARD OF FINANCE DESIGNATION
11 REQUIRED.--

12 ~~[A. A local school board has the authority to~~
13 ~~approve the establishment of a charter school within the school~~
14 ~~district in which it is located.~~

15 ~~B.]~~ A. A charter school applicant shall apply to [~~a~~
16 ~~local school board]~~ the commission for a charter. [~~An~~
17 ~~applicant shall only submit an application in the district in~~
18 ~~which the school is located.] Applications for initial
19 charters shall be submitted by July 1 to be eligible for
20 consideration for the following fiscal year; provided that the
21 July 1 deadline may be waived upon agreement of the applicant
22 and the [~~local school board]~~ commission.~~

23 B. An application shall include the total number of
24 grades the charter school proposes to provide, either
25 immediately or phased. A charter school may decrease the

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1 number of grades it eventually offers, but it shall not
2 increase the number of grades or the total number of students
3 proposed to be served in each grade.

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

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

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

21 F. A charter school shall not be approved for
22 operation unless its governing body has qualified to be a board
23 of finance.

24 ~~[E. An application for a conversion school shall~~
25 ~~include a petition of support signed by no less than sixty-five~~

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

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

11 G.] H. The [~~local school board~~] commission shall
12 hold at least one public meeting to obtain information and
13 community input to assist [~~the local school board~~] it in its
14 decision whether to grant a charter school application.
15 Community input may include written or oral comments in favor
16 of or in opposition to the application from the applicant, the
17 local community and the local school board and school district
18 in whose geographical boundaries the charter school is proposed
19 to be located. The [~~local school board~~] commission shall rule
20 on the application for a charter school in a public meeting
21 within sixty days after receiving the application. If not
22 ruled upon within sixty days, the charter application shall be
23 automatically reviewed by the secretary in accordance with the
24 provisions of Section 22-8B-7 NMSA 1978. The charter school
25 applicant and the [~~local school board~~] commission may, however,

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1 jointly waive the deadlines set forth in this section.

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

7 I. The commission may approve, approve with
8 conditions or deny the application. The commission may deny an
9 application if it is incomplete or inadequate, does not request
10 to have the governing body of the charter school designated as
11 a board of finance, or the governing body does not qualify as a
12 board of finance, or the application is otherwise contrary to
13 the best interests of the charter school's projected students,
14 the local community or the school district in whose geographic
15 boundary the charter school seeks to operate.

16 ~~[F.]~~ J. If [a local school board] the commission
17 denies a charter school application or approves the application
18 with conditions, it shall state its reasons for the denial or
19 conditions in writing within fourteen days of the meeting. If
20 ~~[a local school board] the commission grants a charter, [it~~
21 ~~shall send a copy of the approved charter to the department~~
22 ~~within fifteen days after granting the charter] the approved~~
23 charter shall be provided to the applicant together with any
24 imposed conditions.

25 K. A charter school that has received a notice from

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1 the commission denying approval of the charter shall have a
2 right to a hearing by the secretary as provided in the Charter
3 Schools Act."

4 Section 29. Section 22-8B-7 NMSA 1978 (being Laws 1999,
5 Chapter 281, Section 7, as amended) is amended to read:

6 "22-8B-7. [~~CHARTER SCHOOL APPLICATION~~] APPEAL OF DENIAL,
7 NONRENEWAL, SUSPENSION OR REVOCATION--[~~APPEAL~~] PROCEDURES.--

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

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

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1 applicant or governing body contends the [~~local school board's~~
2 commission's decision was in error. Except as provided in
3 Subsection E of this section, the appeal and review process
4 shall be as follows [~~(1)~~] within sixty days after receipt of
5 the notice of appeal, the secretary, at a public hearing that
6 may be held in the school district in which the charter school
7 is located or in which the proposed charter school has applied
8 for a charter, shall review the decision of the [~~local school~~
9 ~~board~~] commission and make findings. If the secretary finds
10 that the [~~local school board's decision was contrary to the~~
11 ~~best interests of the students, school district or community,~~
12 ~~the secretary shall remand the decision to the local school~~
13 ~~board with written instructions for approval of the charter.~~
14 ~~The instructions shall include specific recommendations~~
15 ~~concerning approval of the charter]~~ commission acted
16 arbitrarily or capriciously, rendered a decision not supported
17 by substantial evidence or did not act in accordance with law,
18 the secretary may reverse the decision of the commission and
19 order the approval of the charter with or without conditions.
20 The decision of the secretary shall be final [~~and not subject~~
21 ~~to appeal; and~~

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

25 C. The secretary, on the secretary's own motion,

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1 may review [~~a local school board's~~] the commission's decision
2 to grant a charter. Within sixty days after the making of a
3 motion to review by the secretary, the secretary, at a public
4 hearing that may be held in the school district in which the
5 proposed charter school that has applied for a charter will be
6 located, shall review the decision of the [~~local school board~~]
7 commission and determine whether the decision was arbitrary or
8 capricious or whether the establishment or operation of the
9 proposed charter school would:

- 10 (1) violate any federal or state laws
11 concerning civil rights;
- 12 (2) violate any court order;
- 13 (3) threaten the health and safety of students
14 within the school district; or
- 15 (4) violate the provisions of Section
16 22-8B-11 NMSA 1978, prescribing the permissible number of
17 charter schools.

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

25 E. If [~~a local school board~~] the commission denies

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1 an application or refuses to renew a charter because the public
2 school capital outlay council has determined that the
3 facilities do not meet the standards required by Section
4 22-8B-4.2 NMSA 1978, the charter school applicant or charter
5 school may appeal the decision to the secretary as otherwise
6 provided in this section; provided that the secretary shall
7 reverse the decision of the [~~local school board~~] commission
8 only if the secretary determines that the decision was
9 arbitrary, capricious, not supported by substantial evidence or
10 otherwise not in accordance with the law.

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

14 Section 30. Section 22-8B-8 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 8) is amended to read:

16 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
17 school application [~~whether~~] for a start-up school [~~or a~~
18 ~~conversion school~~] shall be a proposed agreement between the
19 [~~local school board~~] commission and the charter school and
20 shall include:

- 21 A. the mission statement of the charter school;
22 B. the goals, objectives and student performance
23 standards to be achieved by the charter school;
24 C. a description of the charter school's
25 educational program, student performance standards and

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1 curriculum that must meet or exceed the [~~state board of~~
2 ~~education's~~] department's educational standards and must be
3 designed to enable each student to achieve those standards;

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

7 E. a description of the charter school's plan for
8 evaluating student performance, the types of assessments that
9 will be used to measure student progress toward achievement of
10 the state's standards and the school's student performance
11 standards, the time line for achievement of the standards and
12 the procedures for taking corrective action in the event that
13 student performance falls below the standards;

14 F. evidence that the plan for the charter school is
15 economically sound, including a proposed budget for the term of
16 the charter and a description of the manner in which the annual
17 audit of the financial and administrative operations of the
18 charter school is to be conducted;

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

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

25 I. a description of the governing body and

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1 operation of the charter school, including:

2 (1) how the initial governing body will be
3 selected;

4 (2) qualification and terms of members, how
5 vacancies on the governing body will be filled and procedures
6 for changing governing body membership; and

7 (3) the nature and extent of parental,
8 professional educator and community involvement in the
9 governance and operation of the school [~~and the relationship~~
10 ~~between the governing body and the local school board~~];

11 J. an explanation of the relationship that will
12 exist between the proposed charter school and its employees,
13 including evidence that the terms and conditions of employment
14 will be addressed with affected employees and their recognized
15 representatives, if any;

16 K. the employment and student discipline policies
17 of the proposed charter school;

18 [~~L. an agreement between the charter school and the~~
19 ~~local school board regarding their respective legal liability~~
20 ~~and applicable insurance coverage;~~

21 ~~M.] L. a description of how the charter school
22 plans to meet the transportation and food service needs of its
23 students;~~

24 [~~N.] M. a description of the waivers that the
25 charter school is requesting from the [~~local school board and~~~~

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1 ~~the state board~~ department and the charter school's plan for
2 addressing these waiver requests;

3 ~~[O.]~~ N. a description of the facilities the charter
4 school plans to use; and

5 ~~[P.]~~ O. any other information reasonably required
6 by the ~~[local school board]~~ commission."

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

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

10 A. An approved charter application ~~[shall be]~~ is a
11 contract between the charter school and the ~~[local school~~
12 ~~board]~~ commission.

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

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

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1 ~~it shall notify the local school board and the charter school~~
2 ~~that the request is denied and specify the reasons for denial.~~

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

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

11 ~~[F.]~~ E. Any revision or amendment to the terms of
12 the [~~contract may]~~ charter shall be made only with the approval
13 of the [~~local school board]~~ commission and the governing body
14 of the charter school.

15 ~~[G.]~~ The charter shall include procedures agreed
16 upon by the charter school and the local school board for the
17 resolution of disputes between the charter school and the local
18 school board.

19 ~~H.~~ The charter shall include procedures that shall
20 be agreed upon by the charter school and the local school board
21 in the event that such board determines that the charter shall
22 be revoked pursuant to the provisions of Section 12 of the 1999
23 Charter Schools Act]"

24 Section 32. Section 22-8B-10 NMSA 1978 (being Laws 1999,
25 Chapter 281, Section 10) is amended to read:

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1 "22-8B-10. CHARTER SCHOOLS--~~[EMPLOYEE OPTIONS--HIRING AND~~
2 ~~FIRING]~~ EMPLOYEES.--

3 A. ~~[Notwithstanding the provisions of Section~~
4 ~~22-5-4 NMSA 1978]~~ A charter school shall hire its own
5 employees. The provisions of the School Personnel Act shall
6 ~~[otherwise]~~ apply to such employees; provided, however, that a
7 charter school may determine by indicating in its charter that
8 either its governing body or head administrator shall make all
9 employment decisions. The governing body shall be deemed to be
10 responsible for making all employment decisions if the charter
11 does not specify the decision maker.

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

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

23 D. ~~During the period of time that an employee is on~~
24 ~~a leave of absence from the school district and is actively~~
25 ~~employed by the charter school, the charter school shall~~

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1 ~~continue the retirement or other benefits previously granted to~~
2 ~~the employee.~~

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

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

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

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

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

23 B. A charter school shall not initially employ or
24 approve the initial employment of a head administrator who is
25 the spouse, father, father-in-law, mother, mother-in-law, son,

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1 son-in-law, daughter or daughter-in-law of a member of the
2 governing body. A charter school shall not initially employ or
3 approve the initial employment of a licensed school employee
4 who is the spouse, father, father-in-law, mother, mother-in-
5 law, son, son-in-law, daughter or daughter-in-law of the head
6 administrator. The governing body may waive the nepotism rule
7 for family members of a head administrator.

8 C. Nothing in this section shall prohibit the
9 continued employment of a person employed on or before July 1,
10 2007."

11 Section 33. Section 22-8B-11 NMSA 1978 (being Laws 1999,
12 Chapter 281, Section 11) is amended to read:

13 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED.--

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

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

25 Section 34. Section 22-8B-12 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 12, as amended) is amended to read:

2 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
3 GROUNDS FOR NONRENEWAL OR REVOCATION.--

4 A. A charter school may be approved for an initial
5 term of six years; provided that the first year shall be used
6 exclusively for planning and not for completing the
7 application. A charter may be renewed for successive periods
8 of five years each. Approvals of less than five years may be
9 agreed to between the charter school and the [~~local school~~
10 ~~board~~] commission.

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

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

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

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1 commission. The [~~local school board~~] commission shall rule in
2 a public hearing on the renewal application no later than
3 [~~March~~] September 1 of the [~~fiscal~~] year in which the charter
4 expires, or on a mutually agreed-upon date.

5 [~~D.~~] E. A charter school renewal application
6 submitted to the [~~local school board~~] commission shall contain:

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

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

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

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

24 (5) a petition in support of the charter
25 school renewing its charter status signed by [~~a majority~~] at

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1 least seventy-five percent of the households whose children are
2 enrolled in the charter school; and

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

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

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

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

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

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

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

25 [~~G.~~] H. A decision to suspend, revoke or not to

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1 renew a charter may be appealed by the governing body pursuant
2 to Section 22-8B-7 NMSA 1978."

3 Section 35. Section 22-8B-13 NMSA 1978 (being Laws 1999,
4 Chapter 281, Section 13) is amended to read:

5 "22-8B-13. CHARTER SCHOOL FINANCING.--

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

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

17 B. When a charter school is designated as a board
18 of finance pursuant to Section 22-8-38 NMSA 1978, it shall
19 receive state and federal funds for which it is eligible.
20 Charter schools may apply for all federal funds for which they
21 are eligible.

22 C. All services centrally or otherwise provided by
23 the local school district, including custodial, maintenance and
24 media services, libraries and warehousing shall be subject to
25 negotiation between the charter school and the ~~[local]~~ school

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1 district. Any services for which a charter school contracts
2 with a school district shall be provided by the district at a
3 reasonable cost."

4 Section 36. Section 22-12-2 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 170, as amended) is amended to read:

6 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--RESPONSIBILITY.--

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

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

15 (2) the person has graduated from a high
16 school;

17 (3) the person is at least seventeen years of
18 age and has been excused by the local school board or the
19 governing body of a charter school or its authorized
20 representative upon a finding that the person will be employed
21 in a gainful trade or occupation or engaged in an alternative
22 form of education sufficient for the person's educational needs
23 and the parent ~~[guardian or other person having custody and~~
24 ~~control]~~ consents; or

25 (4) with consent of the parent of the person

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1 to be excused, the person is excused from the provisions of
2 this section by the superintendent of schools of the school
3 district [~~in which the person is a resident~~] or by the head
4 administrator of the charter school and the person is under
5 eight years of age.

6 B. A person subject to the provisions of the
7 Compulsory School Attendance Law shall attend school for at
8 least the length of time of the school year that is established
9 in the school district or charter school in which the person is
10 a resident.

11 C. Any parent of a person subject to the provisions
12 of the Compulsory School Attendance Law is responsible for the
13 school attendance of that person.

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

18 Section 37. Section 22-12-3 NMSA 1978 (being Laws 1971,
19 Chapter 238, Section 1, as amended) is amended to read:

20 "22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--A student may,
21 subject to the approval of the school principal, be excused
22 from school to participate in religious instruction for not
23 more than one class period each school day with the written
24 consent of [~~his~~] the student's parents at a time period not in
25 conflict with the academic program of the school. The local

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1 school board or governing body of a charter school, and its
2 school employees, shall not assume responsibility for the
3 religious instruction or permit it to be conducted on school
4 property."

5 Section 38. Section 22-12-7 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 175, as amended) is amended to read:

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

9 A. Each local school board and each governing
10 [~~authority~~] body of a charter school or private school shall
11 initiate the enforcement of the provisions of the Compulsory
12 School Attendance Law for students enrolled in their respective
13 schools.

14 B. To initiate enforcement of the provisions of the
15 Compulsory School Attendance Law against an habitual truant, a
16 local school board or governing [~~authority~~] body of a charter
17 school or private school or its authorized representatives
18 shall give written notice of the habitual truancy by certified
19 mail to or by personal service on the parent of the student
20 subject to and in noncompliance with the provisions of the
21 Compulsory School Attendance Law.

22 C. If unexcused absences continue after written
23 notice of habitual truancy as provided in Subsection B of this
24 section has occurred, the student shall be reported to the
25 probation services office of the judicial district where the

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1 student resides for an investigation as to whether the student
2 shall be considered to be a neglected child or a child in a
3 family in need of services because of habitual truancy and thus
4 subject to the provisions of the Children's Code. In addition
5 to any other disposition, the children's court may order the
6 habitual truant's driving privileges to be suspended for a
7 specified time not to exceed ninety days on the first finding
8 of habitual truancy and not to exceed one year for a subsequent
9 finding of habitual truancy.

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

20 E. A parent of the student who, after receiving
21 written notice as provided in Subsection B of this section and
22 after the matter has been reviewed in accordance with
23 Subsection D of this section, knowingly allows the student to
24 continue to violate the Compulsory School Attendance Law shall
25 be guilty of a petty misdemeanor. Upon the first conviction, a

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1 fine of not less than twenty-five dollars (\$25.00) or more than
2 one hundred dollars (\$100) may be imposed, or the parent of the
3 student may be ordered to perform community service. If
4 violations of the Compulsory School Attendance Law continue,
5 upon the second and subsequent convictions, the parent of the
6 student who knowingly allows the student to continue to violate
7 the Compulsory School Attendance Law shall be guilty of a petty
8 misdemeanor and shall be subject to a fine of not more than
9 five hundred dollars (\$500) or imprisonment for a definite term
10 not to exceed six months or both.

11 F. The provisions of this section shall apply
12 beginning July 1, 2004."

13 Section 39. Section 22-12-8 NMSA 1978 (being Laws 1985,
14 Chapter 104, Section 1, as amended) is amended to read:

15 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND
16 TRUANCY.--Notwithstanding the provisions of Section 22-12-7
17 NMSA 1978, if a student is truant, the school district or
18 charter school shall contact the student's parent to inform the
19 parent that the student is truant and to discuss possible
20 interventions. The provisions of this section do not apply to
21 any absence if the parent has contacted the school to explain
22 the absence."

23 Section 40. Section 22-12-9 NMSA 1978 (being Laws 2004,
24 Chapter 28, Section 1, as amended) is amended to read:

25 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE

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1 POLICIES.--

2 A. As used in this section and Sections 22-12-7 and
3 22-12-8 NMSA 1978:

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

7 (2) "truant" means a student who has
8 accumulated five unexcused absences within any twenty-day
9 period; and

10 (3) "unexcused absence" means an absence from
11 school or a class for which the student does not have an
12 allowable excuse pursuant to the Compulsory School Attendance
13 Law or rules of the local school board or governing authority
14 of a charter school or private school.

15 B. Each school district and charter school shall
16 maintain an attendance policy that:

17 (1) provides for early identification of
18 students with unexcused absences, truants and habitual truants
19 and provides intervention strategies that focus on keeping
20 truants in an educational setting and prohibit out-of-school
21 suspension and expulsion as the punishment for truancy;

22 (2) uses withdrawal as provided in Section
23 22-8-2 NMSA 1978 only after exhausting efforts to keep students
24 in educational settings; and

25 (3) requires that class attendance be taken

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1 for every instructional day in every public school or school
2 program in the school district.

3 C. School districts and charter schools shall
4 report truancy and habitual truancy rates to the department in
5 a form and at such times as the department determines and shall
6 document efforts made to keep truants and habitual truants in
7 educational settings."

8 Section 41. Section 22-13-3.7 NMSA 1978 (being Laws 1989,
9 Chapter 113, Section 5, as amended) is amended to read:

10 "22-13-3.7. DISBURSEMENT OF FUNDS--APPROVED PROJECTS.--

11 A. Any school district or charter school may apply
12 for a grant from the literacy for children at risk fund for the
13 purpose of acquiring, equipping and staffing a learning
14 laboratory.

15 B. The department shall adopt [~~regulations~~] rules
16 setting forth the criteria that a school district or charter
17 school shall meet in order to qualify for a grant from the
18 literacy for children at risk fund. The criteria to qualify
19 for a grant shall include, but are not limited to, the
20 following:

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

25 (2) the learning laboratory shall encompass

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1 the teaching of children in kindergarten through grade twelve
2 who are reading below grade level;

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

5 (4) the learning laboratory shall have the
6 capability to self-monitor the performance of both the learning
7 laboratory and the children at risk [~~utilizing~~] using the
8 laboratory.

9 C. The amount of any grant awarded under
10 Subsections A and B of this section shall be equal to eighty
11 percent of the total cost of acquiring, equipping and staffing
12 a learning laboratory. Any grant awarded is contingent upon
13 the qualifying school district or charter school demonstrating
14 to the department's satisfaction that it can pay for twenty
15 percent of the total cost of the learning laboratory.

16 D. Any school district or charter school that
17 establishes a learning laboratory under this section may use
18 the laboratory for any other reading, writing or math literacy
19 program when it is not in use for the purposes of the Literacy
20 For Children At Risk Act.

21 E. The department, after approving the application
22 of a school district or charter school to receive a grant under
23 the Literacy For Children At Risk Act, shall authorize a
24 disbursement of funds, in an amount equal to the grant, from
25 the literacy for children at risk fund directly to the approved

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1 school district or charter school."

2 Section 42. Section 22-15-2 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 206, as amended) is amended to read:

4 "22-15-2. DEFINITIONS.--As used in the Instructional
5 Material Law:

6 A. "division" or "bureau" means the instructional
7 material bureau of the department;

8 B. "director" or "chief" means the chief of the
9 bureau;

10 C. "instructional material" means school textbooks
11 and other educational media that are used as the basis for
12 instruction, including combinations of textbooks, learning
13 kits, supplementary material and electronic media;

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

16 E. "membership" means the total enrollment of
17 qualified students on the fortieth day of the school year
18 entitled to the free use of instructional material pursuant to
19 the Instructional Material Law; [~~and~~]

20 F. "additional pupil" means a pupil in a school
21 district's, state institution's or private school's current
22 year's certified forty-day membership above the number
23 certified in the school district's, state institution's or
24 private school's prior year's forty-day membership; and

25 G. "school district" includes charter schools."

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1 Section 43. Section 22-15C-1 NMSA 1978 (being Laws 2003,
2 Chapter 149, Section 1) is amended to read:

3 "22-15C-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article
4 15C NMSA 1978 may be cited as the "School Library Material
5 Act"."

6 Section 44. Section 22-15C-2 NMSA 1978 (being Laws 2003,
7 Chapter 149, Section 2) is amended to read:

8 "22-15C-2. DEFINITIONS.--As used in the School Library
9 Material Act:

10 A. "additional student" means a student in the
11 certified forty-day membership of the current year for a school
12 district or state institution above the number certified in the
13 forty-day membership of the prior year for the school district
14 or state institution;

15 B. "bureau" means the instructional material bureau
16 of the department ~~[of education]~~;

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

18 D. "library material processing" means cataloging
19 of school library material, including in electronic format,
20 according to nationally accepted standards, and the application
21 of bar code labels and call-number classification labels to the
22 material;

23 E. "membership" means the total enrollment of
24 qualified students on the fortieth day of the school year
25 entitled to the free use of school library material pursuant to

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1 the School Library Material Act;

2 F. "qualified student" means a public school
3 student who:

4 (1) has not graduated from high school;
5 (2) is regularly enrolled in one-half or more
6 of the minimum course requirements approved by the [~~state~~
7 ~~board~~] department for public school students; and

8 (3) is at least five years of age prior to
9 12:01 a.m. on September 1 of the school year; or

10 (4) is at least three years of age at any time
11 during the school year and is receiving special education
12 services pursuant to regulation of the [~~state board and~~
13 department];

14 G. "school library material" means books and other
15 educational media, including online reference and periodical
16 databases, that are made available in a school library to
17 students for circulation and use in the library; and

18 H. "school district" includes charter schools."

19 Section 45. Section 22-15D-1 NMSA 1978 (being Laws 2003,
20 Chapter 152, Section 1) is amended to read:

21 "22-15D-1. SHORT TITLE.--[~~Sections 1 through 6 of this~~
22 ~~act~~] Chapter 22, Article 15D NMSA 1978 may be cited as the
23 "Fine Arts Education Act"."

24 Section 46. Section 22-15D-2 NMSA 1978 (being Laws 2003,
25 Chapter 152, Section 2) is amended to read:

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1 "22-15D-2. PURPOSE.--

2 A. The purpose of the Fine Arts Education Act is to
3 encourage school districts and charter schools to offer
4 opportunities for elementary school students to participate in
5 fine arts activities, including visual arts, music, theater and
6 dance.

7 B. Participation in fine arts programs encourages
8 cognitive and affective development by:

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

11 (2) training students in complex thinking and
12 learning;

13 (3) helping students to devise creative
14 solutions for problems;

15 (4) providing students new challenges; and

16 (5) teaching students how to work
17 cooperatively with others and to understand and value diverse
18 cultures."

19 Section 47. Section 22-15D-4 NMSA 1978 (being Laws 2003,
20 Chapter 152, Section 4) is amended to read:

21 "22-15D-4. [~~STATE BOARD AND~~] DEPARTMENT [~~OF EDUCATION~~]
22 POWERS AND DUTIES.--[A.] The [~~state board~~] department shall
23 issue guidelines for the development and implementation of fine
24 arts education programs. [B.] The department [~~of education~~]
25 shall:

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

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

5 Section 48. Section 22-15D-5 NMSA 1978 (being Laws 2003,
6 Chapter 152, Section 5) is amended to read:

7 "22-15D-5. PROGRAM PLAN AND EVALUATION.--

8 A. A ~~[local]~~ school ~~[board]~~ district or charter
9 school may prepare and submit to the department ~~[of education]~~
10 a fine arts education program plan in accordance with
11 guidelines issued by the ~~[state board]~~ department.

12 B. At a minimum, the plan shall include the fine
13 arts education programs being taught, the ways in which the
14 fine arts are being integrated into the curriculum and an
15 evaluation component.

16 C. At yearly intervals, the ~~[local]~~ school ~~[board]~~
17 district or charter school, the department ~~[of education]~~ and a
18 parent advisory committee from the school district or charter
19 school shall review the goals and priorities of the plan and
20 make appropriate recommendations to the ~~[state board]~~
21 secretary."

22 Section 49. Section 22-20-1 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 270, as amended) is amended to read:

24 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
25 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY

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1 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

2 A. Each local school board or governing body of a
3 charter school shall secure the approval of the director of the
4 public school facilities authority or the director's designee
5 prior to the construction or letting of contracts for
6 construction of any school building or related school structure
7 or before reopening an existing structure that was formerly
8 used as a school building but that has not been used for that
9 purpose during the previous year. A written application shall
10 be submitted to the director requesting approval of the
11 construction, and, upon receipt, the director shall forward a
12 copy of the application to the secretary. The director shall
13 prescribe the form of the application, which shall include the
14 following:

- 15 (1) a statement of need;
- 16 (2) the anticipated number of students
17 affected by the construction;
- 18 (3) the estimated cost;
- 19 (4) a description of the proposed construction
20 project;
- 21 (5) a map of the area showing existing school
22 attendance centers within a five-mile radius and any
23 obstructions to attending the attendance centers, such as
24 railroad tracks, rivers and limited-access highways; and
25 (6) such other information as may be required

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1 by the director.

2 B. The director or the director's designee shall
3 give approval to an application if the director or designee
4 reasonably determines that:

5 (1) the construction will not cause an
6 unnecessary proliferation of school construction;

7 (2) the construction is needed in the school
8 district or by the charter school;

9 (3) the construction is feasible;

10 (4) the cost of the construction is
11 reasonable;

12 (5) the construction project:

13 (a) is in compliance with the statewide
14 adequacy standards adopted pursuant to the Public School
15 Capital Outlay Act; and

16 (b) if relevant, is appropriately
17 integrated into the school district or charter school master
18 plan;

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

21 (7) the secretary has certified that the
22 construction will support the educational program of the school
23 district or charter school.

24 C. Within thirty days after the receipt of an
25 application filed pursuant to this section, the director or the

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1 director's designee shall in writing notify the local school
2 board or governing body of a charter school making the
3 application and the department of approval or disapproval of
4 the application.

5 D. A local school board or governing body of a
6 charter school shall not enter into a contract for the
7 construction of a public school facility, including contracts
8 funded with insurance proceeds, unless the contract contains
9 provisions requiring the construction to be in compliance with
10 the statewide adequacy standards adopted pursuant to the Public
11 School Capital Outlay Act; provided that for a contract funded
12 in whole or in part with insurance proceeds:

13 (1) the cost of settlement of any insurance
14 claim shall not be increased by inclusion of the insurance
15 proceeds in the construction contract; and

16 (2) insurance claims settlements shall
17 continue to be governed by insurance policies, memoranda of
18 coverage and rules related to them.

19 E. Public school facilities shall be constructed
20 pursuant to state standards or codes promulgated pursuant to
21 the Construction Industries Licensing Act and rules adopted
22 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and
23 control of fires in public occupancies. Building standards or
24 codes adopted by a municipality or county do not apply to the
25 construction of public school facilities, except those

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1 structures constructed as a part of an educational program of a
2 school district or charter school.

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

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

10 Section 50. Section 22-20-2 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 271) is amended to read:

12 "22-20-2. SCHOOL BUILDING CONSTRUCTION--DISTANCE FROM
13 HIGHWAYS.--

14 A. No local school board or governing body of a
15 charter school shall construct or cause the construction of any
16 public school building within four hundred feet of any main
17 artery of travel without the prior written approval of the
18 [~~state board~~] department.

19 B. The district court may enforce the provisions of
20 this section by any appropriate civil remedy in an action
21 brought by an interested party.

22 C. As used in this section, "main artery of travel"
23 means any designated state or federal-aid highway used
24 primarily to accommodate transient motor traffic through a
25 municipality and any type of public highway used primarily to

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1 accommodate transient motor traffic through a rural community
2 or area."

3 Section 51. Section 22-21-1 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 282, as amended) is amended to read:

5 "22-21-1. PROHIBITING SALES TO THE DEPARTMENT [~~OF~~
6 ~~EDUCATION~~], TO SCHOOL DISTRICTS AND TO SCHOOL PERSONNEL--
7 EXCEPTION--PENALTY.--

8 A. A member of the [~~state board~~] commission, a
9 member of a local school board, a member of the governing body
10 of a charter school, the [~~state superintendent~~] secretary, an
11 employee of the department [~~of education, a certified school~~
12 ~~instructor or a certified school administrator~~] or a school
13 employee shall not, directly or indirectly, sell or be a party
14 to any transaction to sell any instructional material,
15 furniture, equipment, insurance, school supplies or work under
16 contract to the department [~~of education~~], school district or
17 public school with which [~~he~~] such person is associated or
18 employed. No such person shall receive any commission or
19 profit from the sale or any transaction to sell any
20 instructional material, furniture, equipment, insurance, school
21 supplies or work under contract to the department [~~of~~
22 ~~education~~], school district or public school with which [~~he~~]
23 the person is associated or employed.

24 B. The provisions of this section shall not apply
25 to a person making a sale in the regular course of [~~his~~]

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1 business who complies with the provisions of Sections [~~13-1-1~~
2 ~~through 13-1-26~~] 13-1-21, 13-1-21.2 and 13-1-22 NMSA 1978. The
3 provisions of this section shall not apply in cases in which
4 [~~certified school instructors or certified school~~
5 ~~administrators~~] school employees contract to perform special
6 services with the department [~~of education~~], school district or
7 public school with which they are associated or employed during
8 time periods wherein service is not required under a contract
9 for instruction, [~~or~~] administration or other employment.

10 C. No member of the [~~state board~~] commission,
11 member of a local school board, [~~state superintendent~~] member
12 of the governing body of a charter school, the secretary,
13 employee of the department [~~of education, certified school~~
14 ~~instructor or certified school administrator~~] or school
15 employee shall solicit or sell or be a party to a transaction
16 to solicit or sell insurance or investment securities to any
17 employee of the department [~~of education~~] or any employee of
18 the school district whom [~~he~~] such person supervises. Nothing
19 in this subsection shall prohibit a financial institution from
20 requiring the purchase of insurance in connection with a loan
21 or offering and selling such insurance in accordance with the
22 provisions of the New Mexico Insurance Code.

23 D. No state employee who supervises or exercises
24 control over [~~local~~] school districts or charter schools, which
25 supervision or control includes but is not limited to school

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1 programs, capital outlay and operating budgets, shall enter
2 into any business relationship with an employee of a local
3 school district or charter school over which ~~[he]~~ the state
4 employee exercises supervision or control.

5 E. Any person violating any provision of this
6 section is guilty of a fourth degree felony under the Criminal
7 Code. The ~~[state board of education]~~ department may suspend or
8 revoke the ~~[certification of a certified school administrator~~
9 ~~or a certified school instructor]~~ licensure of a licensed
10 school employee for violation of this section."

11 Section 52. Section 22-23-2 NMSA 1978 (being Laws 1973,
12 Chapter 285, Section 2, as amended) is amended to read:

13 "22-23-2. DEFINITIONS.--As used in the Bilingual
14 Multicultural Education Act:

15 A. "bilingual multicultural education program"
16 means a program using two languages, including English and the
17 home or heritage language, as a medium of instruction in the
18 teaching and learning process;

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

24 C. "department" means the public education
25 department;

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1 D. "district" means a public school or any
2 combination of public schools in a district or a charter
3 school;

4 E. "English language learner" means a student whose
5 first or heritage language is not English and who is unable to
6 read, write, speak or understand English at a level comparable
7 to grade level English proficient peers and native English
8 speakers;

9 F. "heritage language" means a language other than
10 English that is inherited from a family, tribe, community or
11 country of origin;

12 G. "home language" means a language other than
13 English that is the primary or heritage language spoken at home
14 or in the community;

15 H. "school board" means a local school board or
16 governing body of a charter school; and

17 I. "standardized curriculum" means a district
18 curriculum that is aligned with the state academic content
19 standards, benchmarks and performance standards."

20 Section 53. Section 22-24-3 NMSA 1978 (being Laws 1975,
21 Chapter 235, Section 3, as amended) is amended to read:

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

24 A. "council" means the public school capital outlay
25 council; [~~and~~]

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