

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 283

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE ENTERING INTO A LEASE-PURCHASE AGREEMENT FOR SCHOOL FACILITIES OR BEFORE APPLYING FOR A GRANT FOR LEASE PAYMENTS; PROVIDING FOR A TIME LIMIT FOR RESPONSE TO A REQUEST FOR REVIEW FROM A CHARTER APPLICANT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2003 AND LAWS 2009.

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

SECTION 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1, as amended by Laws 2003, Chapter 142, Section 3 and by Laws 2003, Chapter 349, Section 22) is amended to read:

"13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF

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underscored material = new
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1 FINANCE APPROVAL.--

2 A. Except as provided in Section 13-6-3 NMSA 1978,
3 for state agencies, any sale, trade or lease for a period of
4 more than five years of real property belonging to a state
5 agency, local public body or school district or any sale, trade
6 or lease of such real property for a consideration of more than
7 twenty-five thousand dollars (\$25,000) shall not be valid
8 unless it is approved prior to its effective date by the state
9 board of finance.

10 B. The provisions of this section shall not be
11 applicable [~~as~~] to:

12 (1) those institutions specifically enumerated
13 in Article 12, Section 11 of the constitution of New Mexico;

14 (2) the state land office;

15 (3) the state transportation commission; [~~or~~]

16 (4) the economic development department when
17 disposing of property acquired pursuant to the Statewide
18 Economic Development Finance Act; or

19 (5) a school district when leasing facilities
20 to a locally chartered or state-chartered charter school."

21 SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
22 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
23 as amended) is amended to read:

24 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

25 A. The facilities of a charter school that is

1 approved on or after July 1, 2005 and before July 1, 2015 shall
 2 meet educational occupancy standards required by applicable New
 3 Mexico construction codes.

4 B. The facilities of a charter school whose charter
 5 has been renewed at least once shall be evaluated, prioritized
 6 and eligible for grants pursuant to the Public School Capital
 7 Outlay Act in the same manner as all other public schools in
 8 the state; provided that for charter school facilities in
 9 leased facilities, grants may be used to provide additional
 10 lease payments for leasehold improvements made by the lessor.

11 C. On or after July 1, 2011, a new charter school
 12 shall not open and an existing charter school shall not
 13 relocate unless the facilities of the new or relocated charter
 14 school, as measured by the New Mexico condition index, receive
 15 a condition rating equal to or better than the average
 16 condition for all New Mexico public schools for that year or
 17 the charter school demonstrates, within eighteen months of
 18 occupancy or relocation of the charter, the way in which the
 19 facilities will achieve a rating equal to or better than the
 20 average New Mexico condition index.

21 [~~G.~~] D. On or after July 1, 2015, a new charter
 22 school shall not open and an existing charter shall not be
 23 renewed unless the charter school:

24 (1) is housed in a building that is:

25 (a) owned by the charter school, the

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1 school district, the state, an institution of the state,
2 another political subdivision of the state, the federal
3 government or one of its agencies or a tribal government; or

4 (b) subject to a lease-purchase
5 arrangement that has been entered into and approved pursuant to
6 the Public School Lease Purchase Act; or

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

10 (a) the facility in which the charter
11 school is housed meets the statewide adequacy standards
12 developed pursuant to the Public School Capital Outlay Act and
13 the owner of the facility is contractually obligated to
14 maintain those standards at no additional cost to the charter
15 school or the state; and

16 (b) either: 1) public buildings are not
17 available or adequate for the educational program of the
18 charter school; or 2) the owner of the facility is a nonprofit
19 entity specifically organized for the purpose of providing the
20 facility for the charter school.

21 E. Without the approval of the public school
22 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
23 charter school shall not enter into a lease-purchase agreement.

24 [~~D.~~] F. The public school capital outlay council:

25 (1) shall determine whether facilities of a

1 charter school meet the educational occupancy standards
 2 pursuant to the requirements of Subsection A of this section
 3 or the requirements of Subsections B, [~~and~~] C and D of this
 4 section, as applicable; and

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

9 SECTION 3. Section 22-8B-6 NMSA 1978 (being Laws 1999,
 10 Chapter 281, Section 6, as amended by Laws 2009, Chapter 6,
 11 Section 1 and by Laws 2009, Chapter 12, Section 1) is amended
 12 to read:

13 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
 14 PROCESS--AUTHORIZATION--BOARD OF FINANCE DESIGNATION
 15 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES.--

16 A. A local school board has the authority to
 17 approve the establishment of a charter school within the school
 18 district in which it is located.

19 B. No later than the second Tuesday of January of
 20 the year in which an application will be filed, the organizers
 21 of a proposed charter school shall provide written notification
 22 to the commission and the school district in which the charter
 23 school is proposed to be located of their intent to establish a
 24 charter school. Failure to notify may result in an application
 25 not being accepted.

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1 C. A charter school applicant shall apply to either
2 a local school board or the commission for a charter. If an
3 application is submitted to a chartering authority, it must
4 process the application. Applications for initial charters
5 shall be submitted between June 1 and July 1 to be eligible for
6 consideration for the following fiscal year; provided that the
7 July 1 deadline may be waived upon agreement of the applicant
8 and the chartering authority.

9 D. An application shall include the total number of
10 grades the charter school proposes to provide, either
11 immediately or phased. A charter school may decrease the
12 number of grades it eventually offers, but it shall not
13 increase the number of grades or the total number of students
14 proposed to be served in each grade.

15 E. An application shall include a detailed
16 description of the charter school's projected facility [~~capital~~
17 ~~outlay~~] needs, including projected requests for capital outlay
18 assistance that have been approved by the director of the
19 public school facilities authority or the director's designee.
20 The director shall respond to a written request for review from
21 a charter applicant within forty-five days of the request.

22 F. An application may be made by one or more
23 teachers, parents or community members or by a public post-
24 secondary educational institution or nonprofit organization.
25 Municipalities, counties, private post-secondary educational

1 institutions and for-profit business entities are not eligible
2 to apply for or receive a charter.

3 G. An initial application for a charter school
4 shall not be made after June 30, 2007 if the proposed charter
5 school's proposed enrollment for all grades or the proposed
6 charter school's proposed enrollment for all grades in
7 combination with any other charter school's enrollment for all
8 grades would equal or exceed ten percent of the total MEM of
9 the school district in which the charter school will be
10 geographically located and that school district has a total
11 enrollment of not more than one thousand three hundred
12 students.

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

16 I. The chartering authority shall receive and
17 review all applications for charter schools submitted to it.
18 The chartering authority shall not charge application fees.

19 J. The chartering authority shall hold at least one
20 public hearing in the school district in which the charter
21 school is proposed to be located to obtain information and
22 community input to assist it in its decision whether to grant a
23 charter school application. The chartering authority may
24 designate a subcommittee of no fewer than three members to hold
25 the public hearing, and, if so, the hearing shall be

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1 transcribed for later review by other members of the chartering
2 authority. Community input may include written or oral
3 comments in favor of or in opposition to the application from
4 the applicant, the local community and, for state-chartered
5 charter schools, the local school board and school district in
6 whose geographical boundaries the charter school is proposed to
7 be located.

8 K. The chartering authority shall rule on the
9 application for a charter school in a public meeting by
10 September 1 of the year the application was received; provided,
11 however, that prior to ruling on the application for which a
12 designated subcommittee was used, any member of the chartering
13 authority who was not present at the public hearing shall
14 receive the transcript of the public hearing together with
15 documents submitted for the public hearing. If not ruled upon
16 by that date, the charter application shall be automatically
17 reviewed by the secretary in accordance with the provisions of
18 Section 22-8B-7 NMSA 1978. The charter school applicant and
19 the chartering authority may, however, jointly waive the
20 deadlines set forth in this section.

21 L. A chartering authority may approve, approve with
22 conditions or deny an application. A chartering authority may
23 deny an application if:

24 (1) the application is incomplete or
25 inadequate;

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

4 (3) the proposed head administrator or other
5 administrative or fiscal staff was involved with another
6 charter school whose charter was denied or revoked for fiscal
7 mismanagement or the proposed head administrator or other
8 administrative or fiscal staff was discharged from a public
9 school for fiscal mismanagement;

10 (4) for a proposed state-chartered charter
11 school, it does not request to have the governing body of the
12 charter school designated as a board of finance or the
13 governing body does not qualify as a board of finance; or

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

18 M. If the chartering authority denies a charter
19 school application or approves the application with conditions,
20 it shall state its reasons for the denial or conditions in
21 writing within fourteen days of the meeting. If the chartering
22 authority grants a charter, the approved charter shall be
23 provided to the applicant together with any imposed conditions.

24 N. A charter school that has received a notice from
25 the chartering authority denying approval of the charter shall

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1 have a right to a hearing by the secretary as provided in
2 Section 22-8B-7 NMSA 1978."

3 SECTION 4. Section 22-20-1 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 270, as amended) is amended to read:

5 "22-20-1. SCHOOL CONSTRUCTION--LEASE AGREEMENTS--LEASE-
6 PURCHASE AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL
7 OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH
8 STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE
9 STANDARDS APPLICABLE.--

10 A. Except as provided in Subsection [D] F of this
11 section, each local school board or governing body of a charter
12 school shall secure the approval of the director of the public
13 school facilities authority or the director's designee prior
14 to:

15 (1) the construction or letting of contracts
16 for construction of any school building or related school
17 structure; [~~or before~~]

18 (2) entering into a lease-purchase agreement
19 for a building to be used as a school building or a related
20 school structure; or

21 (3) reopening an existing structure that was
22 [~~formerly used as a school building but that has not been used~~
23 ~~for that purpose~~] not used as a school building during the
24 previous year.

25 B. A written application shall be submitted to the

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1 director requesting approval of the construction, lease-
 2 purchase agreement or reopening, and, upon receipt, the
 3 director shall forward a copy of the application to the
 4 secretary. The director shall prescribe the form of the
 5 application, which shall include the following:

6 (1) a statement of need;

7 (2) the anticipated number of students
 8 affected [~~by the construction~~];

9 (3) the estimated cost;

10 (4) for approval of construction, a
 11 description of the proposed construction project;

12 (5) for approval of a lease-purchase agreement
 13 or a reopening of an existing structure, a description of the
 14 structure to be leased or reopened, including its location,
 15 square footage, interior layout and facilities, such as
 16 bathrooms, kitchens and handicap access, a description of the
 17 prior use of the structure and a description of how the
 18 facility and supplemental shared facilities and resources will
 19 fulfill the functions necessary to support the educational
 20 programs of the school district or charter school;

21 [~~(5)~~] (6) a map of the area showing existing
 22 school 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)~~] (7) other information as may be required

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1 by the director.

2 ~~[B-]~~ C. With respect to an application for the
3 approval of construction, the director or the director's
4 designee shall give approval to an application if the director
5 or designee reasonably determines that:

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

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

10 (3) the construction is feasible;

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

13 (5) the school district or charter school has
14 submitted a five-year facilities plan that includes:

15 (a) enrollment projections;

16 (b) a current preventive maintenance
17 plan;

18 (c) the capital needs of charter schools
19 chartered by the school district, if applicable, or the capital
20 needs of the charter school if it is state-chartered; and

21 (d) projections for the facilities
22 needed in order to maintain a full-day kindergarten program;

23 (6) the construction project:

24 (a) is in compliance with the statewide
25 adequacy standards adopted pursuant to the Public School

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1 Capital Outlay Act; and

2 (b) is appropriately integrated into the
3 school district or charter school five-year facilities plan;

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

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

9 D. With respect to an application for the approval
10 of a lease-purchase agreement or for the reopening of an
11 existing structure, the director or the director's designee
12 shall give approval to an application if the director or
13 designee reasonably determines that:

14 (1) the buildings to be reopened or leased for
15 purchase meet the applicable statewide adequacy standards
16 adopted pursuant to the Public School Capital Outlay Act or the
17 buildings can be brought into compliance with those standards
18 within a reasonable time and at a reasonable cost and that
19 money or other resources will be available to the school
20 district or charter school to bring the buildings up to those
21 standards; and

22 (2) the buildings to be reopened or leased for
23 purchase have, as measured by the New Mexico condition index, a
24 condition rating equal to or better than the average condition
25 for all New Mexico public schools for that year.

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1 ~~[G.]~~ E. Within thirty days after the receipt of an
2 application filed pursuant to this section, the director or the
3 director's designee shall in writing notify the local school
4 board or governing body of a charter school making the
5 application and the department of approval or disapproval of
6 the application.

7 ~~[D.]~~ F. By rule, the public school capital outlay
8 council may:

9 (1) exempt classes or types of construction
10 from the application and approval requirements of this section;
11 or

12 (2) exempt classes or types of construction
13 from the requirement of approval but, if the council determines
14 that information concerning the construction is necessary for
15 the maintenance of the facilities assessment database, require
16 a description of the proposed construction project and related
17 information to be submitted to the public school facilities
18 authority.

19 G. A school district or a charter school shall not
20 apply for a lease payment grant pursuant to Subsection I of
21 Section 22-24-4 NMSA 1978 unless the lease-purchase agreement
22 has been approved pursuant to this section.

23 ~~[E.]~~ H. A local school board or governing body of a
24 charter school shall not enter into a contract for the
25 construction of a public school facility, including contracts

1 funded with insurance proceeds, unless the contract contains
 2 provisions requiring the construction to be in compliance with
 3 the statewide adequacy standards adopted pursuant to the Public
 4 School Capital Outlay Act, provided that, for a contract funded
 5 in whole or in part with insurance proceeds:

6 (1) the cost of settlement of any insurance
 7 claim shall not be increased by inclusion of the insurance
 8 proceeds in the construction contract; and

9 (2) insurance claims settlements shall
 10 continue to be governed by insurance policies, memoranda of
 11 coverage and rules related to them.

12 [~~F.~~] I. Public school facilities shall be
 13 constructed pursuant to state standards or codes promulgated
 14 pursuant to the Construction Industries Licensing Act and rules
 15 adopted pursuant to Section 59A-52-15 NMSA 1978 for the
 16 prevention and control of fires in public occupancies.
 17 Building standards or codes adopted by a municipality or county
 18 do not apply to the construction of public school facilities,
 19 except those structures constructed as a part of an educational
 20 program of a school district or charter school.

21 [~~G.~~] J. The provisions of Subsection [~~F.~~] I. of this
 22 section relating to fire protection shall not be effective
 23 until the public regulation commission has adopted the
 24 International Fire Code and all standards related to that code.

25 [~~H.~~] K. As used in this section, "construction"

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1 means any project for which the construction industries
2 division of the regulation and licensing department requires
3 permitting and for which the estimated total cost exceeds two
4 hundred thousand dollars (\$200,000)."

5 SECTION 5. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.

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underscoring = new
~~bracketed material~~ = delete