

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 FINANCE APPROVAL.--

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

B. The provisions of this section shall not be applicable to:

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

(2) the state land office;

(3) the state transportation commission;

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

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

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

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

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other

public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

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

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

(1) is housed in a building that is:

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

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

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

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

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

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

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific

requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."

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

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

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

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

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, it must process the application. Applications for initial charters shall be submitted between June 1 and July 1 to be

eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the chartering authority.

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

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

F. An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

G. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed

charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

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

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

J. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school

district in whose geographical boundaries the charter school is proposed to be located.

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

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

(1) the application is incomplete or inadequate;

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

(3) the proposed head administrator or other administrative or fiscal staff was involved with another

charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;

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

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

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

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

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

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

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

(1) the construction or letting of contracts for construction of any school building or related school structure;

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

(3) reopening an existing structure that was not used as a school building during the previous year.

B. A written application shall be submitted to the director requesting approval of the construction, lease-purchase agreement or reopening, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

(1) a statement of need;

(2) the anticipated number of students affected;

(3) the estimated cost;

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

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

(6) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and

(7) other information as may be required by the director.

C. With respect to an application for the approval of construction, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

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

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

(3) the construction is feasible;

(4) the cost of the construction is reasonable;

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

(a) enrollment projections;

(b) a current preventive maintenance plan;

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

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

(6) the construction project:

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

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

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

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

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

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

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

E. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local

school board or governing body of a charter school making the application and the department of approval or disapproval of the application.

F. By rule, the public school capital outlay council may:

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

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

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

H. A local school board or governing body of a charter school shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the

Public School Capital Outlay Act, provided that, for a contract funded in whole or in part with insurance proceeds:

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

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

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

J. The provisions of Subsection I of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

K. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting and for which the estimated total cost exceeds two hundred

thousand dollars (\$200,000)."

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

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