

AN ACT

RELATING TO EDUCATION; ESTABLISHING THE PUBLIC EDUCATION COMMISSION AS AN INDEPENDENT ENTITY AND REMOVING ITS ADMINISTRATIVE ATTACHMENT TO THE PUBLIC EDUCATION DEPARTMENT; PROVIDING FOR PUBLIC EDUCATION COMMISSION RULEMAKING AUTHORITY AND STAFF; REMOVING FROM THE PUBLIC EDUCATION DEPARTMENT AND GRANTING TO THE PUBLIC EDUCATION COMMISSION THE AUTHORITY TO REVIEW DECISIONS TO GRANT, RENEW, DENY OR REVOKE A CHARTER; PROVIDING FOR A TRANSFER OF FUNDS.

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

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

"9-24-9. PUBLIC EDUCATION COMMISSION--CREATION--POWERS AND DUTIES--LEGISLATIVE OVERSIGHT.--

A. The "public education commission" is created pursuant to Article 12, Section 6 of the constitution of New Mexico. The commission shall advise the department on policy matters and shall perform other functions pursuant to the Charter Schools Act and as otherwise provided by law.

B. The commission shall consist of ten members elected from public education districts as provided in the decennial educational redistricting act. Members shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other

perquisite, compensation or allowance.

C. The commission shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business. The commission shall keep a record of all proceedings of the commission.

D. The commission shall meet at the call of the chair at least quarterly or at the request of a majority of the members. Meetings of the commission shall be held in Santa Fe and at other sites within the state at the direction of the commission. Commission members shall not vote by proxy.

E. No member of the commission shall be appointed secretary or be employed by the department on either a full- or part-time basis.

F. Subject to appropriation by the legislature, the commission shall employ staff as needed to assist the commission in the performance of its duties. Staff shall be subject to the provisions of the Personnel Act.

G. The commission shall prepare an annual budget.

H. The commission may adopt policies and promulgate rules as necessary to implement the provisions of this act.

I. Each year, the commission shall report to the legislature and governor:

(1) the commission's policies and rules; and
(2) any actions the commission takes to grant, renew or deny an application for a charter or to review on appeal a granted or denied application pursuant to the Charter Schools Act."

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

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

A. A local school board has the authority to approve or deny an application for the establishment of or the renewal of a charter for a charter school within the school district in which it is located. The commission has the authority to approve or deny an application for the establishment of or the renewal of a charter for a state-chartered charter school.

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. No fees shall be assessed by the chartering

authority for consideration of the application.

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 the governing body of the charter school has qualified to be a board of finance.

I. 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. 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 before a decision to accept or deny an application is made. 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.

J. Provided that the application was submitted to the chartering authority by July 1, the chartering authority shall rule on the application for a charter school in a public hearing by the following September 1. The absence of a ruling pursuant to the provisions of this subsection shall constitute a final decision denying the charter application from which an applicant may appeal pursuant to the provisions of Subsection M of this section. The charter school applicant and the chartering authority may jointly waive the deadlines set forth in this section.

K. 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.

L. 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 hearing. If the chartering authority grants a charter, the approved charter shall be provided to the applicant together with any imposed conditions.

M. A denial of the charter application by a local school board may be appealed by the charter school applicant or governing body to the commission pursuant to the provisions of Section 22-8B-16 NMSA 1978. A denial of the charter application that is a final decision of the commission may be appealed by the charter school applicant or governing body to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"22-8B-7. COMMISSION REVIEW OF GRANTED OR RENEWED
CHARTERS--PROCEDURES--APPEAL.--

A. The commission, on its own motion, may review a local school board's decision to grant or renew a charter and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order; or
- (3) threaten the health and safety of students within the school district.

B. If the commission determines that the charter would violate the provisions set forth in Subsection A of this section, the commission shall revoke the charter. The commission may extend the time lines established in this section for good cause. The decision of the commission shall be final.

C. A charter school applicant or governing body may appeal a final decision of the commission in accordance with this section to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

SECTION 4. Section 22-8B-16 NMSA 1978 (being Laws 2006, Chapter 94, Section 29) is amended to read:

"22-8B-16. PUBLIC EDUCATION COMMISSION--APPEAL OF LOCAL

SCHOOL BOARD RULINGS AGAINST THE CHARTER SCHOOL APPLICANT OR GOVERNING BOARD.--

A. The commission, upon receipt of a notice of appeal from a charter school applicant or governing body, shall review a denial, nonrenewal, suspension or revocation of a charter by a local school board in accordance with the provisions of this section.

B. A charter school applicant or governing body may appeal a decision of the local school board to deny, not renew, suspend or revoke a charter by providing the commission with a notice of appeal within thirty days after the local school board's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds upon which the local school board based its decision. The notice shall include a brief statement of the reasons that the charter school applicant or governing body contends that the denial, nonrenewal, suspension or revocation of the charter by the local school board was erroneous. Within sixty days after receipt of the notice of appeal, the commission shall review the decision of the local school board. If the commission finds that the local school board acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence or did not act in accordance with law, the commission may grant to the charter school or charter school applicant a charter as a

state-chartered charter school. The decision of the commission shall be final.

C. A charter school applicant or governing body may appeal a final decision of the commission in accordance with this section to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

SECTION 5. FUNDS TRANSFER.--Three hundred seventy-five thousand dollars (\$375,000) of the program cost that is allowed to be withheld by the public education department for administrative support of charter schools pursuant to the Charter Schools Act is transferred from the department to the public education commission for fiscal year 2014.