

1 SENATE BILL 429

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

11 RELATING TO VIRTUAL CHARTER SCHOOLS; REQUIRING THE PUBLIC
12 EDUCATION COMMISSION TO CHARTER VIRTUAL CHARTER SCHOOLS THAT
13 WILL DRAW STUDENTS FROM MORE THAN ONE SCHOOL DISTRICT; ALLOWING
14 A SCHOOL DISTRICT TO CHARTER A VIRTUAL CHARTER SCHOOL THAT WILL
15 ONLY ENROLL STUDENTS WHO RESIDE IN THE SCHOOL DISTRICT;
16 PROVIDING POWERS AND DUTIES; LIMITING THE NUMBER OF STUDENTS A
17 NEW VIRTUAL CHARTER SCHOOL MAY ENROLL UNTIL THE VIRTUAL CHARTER
18 SCHOOL HAS DEMONSTRATED THAT ITS PERFORMANCE MEETS OR EXCEEDS
19 ITS PERFORMANCE TARGETS; SETTING OUT ADDITIONAL REQUIREMENTS
20 FOR APPLICATIONS AND VIRTUAL CHARTER CONTRACTS; REQUIRING
21 ADDITIONAL, RIGOROUS MONITORING AND OVERSIGHT BY THE CHARTERING
22 AUTHORITY; ALLOWING FOR THE ELIMINATION OF UNDERPERFORMING
23 GRADES IN RENEWAL APPLICATIONS IF STUDENT PERFORMANCE DOES NOT
24 MEET CONTRACT REQUIREMENTS.

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

2 SECTION 1. A new section of the Charter Schools Act is
3 enacted to read:

4 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOLS--INITIAL
5 AUTHORIZATION OR RENEWAL--EXCEPTION--OVERSIGHT CHARGE.--

6 A. As used in Sections 1 through 6 of this 2019
7 act:

8 (1) "management" means:

9 (a) assuming administrative,
10 operational, supervisory and evaluative responsibility and
11 overall instructional leadership for the virtual charter
12 school, including disciplining students and the planning,
13 operation, supervision and evaluation of the educational
14 program, education-related activities, policies and procedures
15 of the school;

16 (b) employing, evaluating, promoting,
17 disciplining, discharging or terminating school employees and
18 developing professional development plans or job improvement
19 plans to assist school employees to improve;

20 (c) day-to-day direction of the virtual
21 charter school and its school employees, whether licensed or
22 unlicensed, and its contractors and subcontractors;

23 (d) maintaining the privacy of student
24 records and performance data at the school site;

25 (e) providing at least forty percent of

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1 the educational programming at the virtual charter school;

2 (f) developing a proposed budget for the
3 public school, with input from the governing body, and
4 submitting the proposed budget to the department or the local
5 school board; and

6 (g) implementing the policies of the
7 governing body;

8 (2) "necessarily small school district" means
9 a school district that has fewer than one thousand three
10 hundred students;

11 (3) "statewide" means enrolling students from
12 more than one school district in the state; and

13 (4) "virtual charter school" means a
14 specialized charter school that provides for the delivery of
15 more than sixty percent of instruction to students through
16 online distance learning technologies in which the students are
17 separated from their primary teachers by time or space or both.

18 B. The charter for a virtual charter school is for
19 a term of three school years, and renewals are also for three
20 years; provided that the initial charter shall be for four
21 years, with the first year being a planning year that does not
22 include students. The new or renewal charter for a virtual
23 charter school shall include all provisions of the Charter
24 Schools Act, unless otherwise provided by this section and
25 Sections 2 through 6 of this 2019 act, and shall include 4

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1 additional specific provisions in this 2019 act.

2 C. On and after the effective date of this 2019
3 act, only the commission may charter a new virtual charter
4 school that enrolls students on a statewide basis. Any
5 applications to start or renew a statewide virtual charter
6 school received by a local school board after December 30, 2018
7 shall be transferred to the commission on the effective date of
8 this 2019 act.

9 D. A local school board may charter a virtual
10 charter school in which the only students who attend the
11 virtual charter school are residents of the school district. A
12 local school board shall charter no more than one virtual
13 charter school in the school district.

14 E. The commission is responsible for monitoring and
15 overseeing statewide virtual charter schools and may delegate
16 those responsibilities to the division, except for final
17 actions. The local school board is responsible for monitoring
18 and overseeing a single-district virtual charter school.

19 F. The department shall promulgate rules to carry
20 out the provisions of this 2019 act.

21 G. The chartering authority shall charge no more
22 than one percent of the virtual charter school's state
23 equalization guarantee distribution to pay the costs of
24 monitoring and overseeing a virtual charter school.

25 H. A virtual charter school shall not be eligible

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1 for public school capital outlay, lease assistance or facility
2 maintenance funding pursuant to the Public School Capital
3 Outlay Act, the Public School Capital Improvements Act or the
4 Public School Buildings Act or transportation funding pursuant
5 to Chapter 22, Article 16 NMSA 1978."

6 SECTION 2. A new section of the Charter Schools Act is
7 enacted to read:

8 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOL GRADE
9 LIMITATIONS--PERFORMANCE--ENROLLMENT LIMITATIONS.--

10 A. Beginning with charter applications submitted in
11 2019 and subsequent years, qualified applicants for a new
12 virtual charter school may operate only as a public school for
13 students in any grades from fifth through twelfth grade and
14 shall not be chartered to operate a school for kindergarten
15 through fourth grade.

16 B. Beginning in 2019, upon an application for
17 renewal of a charter, the chartering authority shall review the
18 performance of the virtual charter school grade by grade and,
19 if the chartering authority finds that the virtual charter
20 school has not met its performance target for any grade, the
21 virtual charter school shall not offer that grade during the
22 next three-year chartering period.

23 C. Beginning in 2019, if the chartering authority
24 finds during a virtual charter school renewal application that
25 the virtual charter school has not met its grade-level

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1 performance targets, the chartering authority and the virtual
2 charter school shall develop a transition plan that includes,
3 at a minimum, how the virtual charter school shall provide
4 timely notification of grade closure to students and families,
5 teachers and other school personnel; timely notification to
6 school districts materially affected by the grade closure; and
7 how the virtual charter school shall manage the timely and
8 orderly transfer of student records to other schools.

9 D. A new statewide virtual charter school shall not
10 enroll more than two hundred students per year until the
11 virtual charter school has demonstrated to the commission's
12 satisfaction that the virtual charter school's performance
13 meets or exceeds its performance targets. At no time shall a
14 new statewide virtual charter school chartered after January 1,
15 2019 enroll more than one thousand students unless the school's
16 performance exceeds its performance targets and its students
17 are passing their courses and are on track toward timely or
18 early graduation and receipt of diplomas of excellence.

19 E. A new locally chartered virtual charter school
20 shall not enroll more than two hundred students per year until
21 the virtual charter school has demonstrated to the local school
22 board's satisfaction that the virtual charter school's
23 performance meets or exceeds its performance targets.

24 F. A new virtual charter school is prohibited from
25 accepting full-time students from a necessarily small school

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1 district if the virtual charter school's proposed enrollment
2 for all grades or the virtual charter school's proposed
3 enrollment for all grades in combination with any other charter
4 schools' enrollment of all grades would equal or exceed ten
5 percent of the necessarily small school district's total
6 membership.

7 G. A new virtual charter school shall not enroll a
8 student who needs class C or D special education unless the
9 student's student assistance team, or its equivalent, at the
10 school or public or private educational training center or
11 residential treatment center in which the student is or had
12 been enrolled determines that the virtual charter school is an
13 appropriate placement for the student and the student's parent
14 and the student's medical and psychosocial specialists agree
15 with the placement."

16 SECTION 3. A new section of the Charter Schools Act is
17 enacted to read:

18 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOL APPLICATION
19 PROCESS--BOARD OF FINANCE DESIGNATION REQUIRED.--The
20 application for a new or renewing virtual charter school shall
21 be the same as other charter applications, except for the
22 following provisions:

23 A. a detailed description of how the virtual
24 charter school's management and educational program will be
25 provided and the name and contact information of the owners or

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1 board members of any proposed management- and education-related
2 service contractors and the names and contact information of
3 board members of other business entities that the virtual
4 charter school proposes to contract with and the services to be
5 provided by those contractors;

6 B. a detailed description of the way the virtual
7 charter school's educational program will meet the individual
8 needs of the students, including those students determined to
9 be at risk or in need of an individualized education plan
10 pursuant to the federal Individuals with Disabilities Education
11 Act;

12 C. a description of how the virtual charter school
13 will maintain student performance data at the school site and
14 the process by which the virtual charter school will comply
15 with the requirements of the federal Family Educational Rights
16 and Privacy Act of 1974 if sharing student information and
17 performance data with any education-related contractors; and

18 D. a virtual charter school whose governing body
19 does not qualify as a board of finance shall not be approved
20 for operation. If the governing body loses its board of
21 finance status, the chartering authority shall suspend or
22 revoke the charter."

23 SECTION 4. A new section of the Charter Schools Act is
24 enacted to read:

25 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOL CONTRACT--

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1 CONTENTS--RULES.--

2 A. The chartering authority shall enter into a
3 three-year contract with the governing body of the applicant
4 virtual charter school within thirty days of approval of the
5 charter application. The term of renewal of a virtual charter
6 school contract shall be for no more than three years.

7 B. The contract shall include:

8 (1) the chartering authority's duties to the
9 virtual charter school, including a detailed description of the
10 criteria, processes and procedures that the chartering
11 authority will use for ongoing oversight and evaluation of
12 governance, operational and financial performance of the
13 virtual charter school and the academic performance and
14 progress of its students and how the department or local school
15 board will use the withheld percentage of the state
16 equalization guarantee distribution to perform its monitoring
17 and oversight responsibilities;

18 (2) the requirement that the virtual charter
19 school participate in the public school insurance authority;

20 (3) if the virtual charter school proposes to
21 contract with a third-party provider for any management- or
22 education-related services:

23 (a) the corporate status of the proposed
24 contractor;

25 (b) a term sheet setting forth the

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1 proposed duration of a service contract;

2 (c) the respective roles and
3 responsibilities of the governing body, the virtual charter
4 school staff and the third-party provider;

5 (d) the scope of services and resources
6 to be provided by the third-party provider;

7 (e) performance evaluation measures and
8 time lines;

9 (f) the compensation structure,
10 including clear identification of all fees to be paid to the
11 third-party provider;

12 (g) methods of contract oversight and
13 enforcement;

14 (h) investment disclosure;

15 (i) conditions for renewal and
16 termination of the contract; and

17 (j) detailed invoices to allow the
18 chartering authority to compare costs for specific items or
19 services purchased by the virtual charter school;

20 (4) the provision of data to the chartering
21 authority for monitoring and oversight purposes, funding and
22 renewal and closure decisions; and

23 (5) the process by which the virtual charter
24 school shall comply with the federal Family Educational Rights
25 and Privacy Act of 1974 if sharing student data and performance

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1 data with any education-related contractor and how the virtual
2 charter school will maintain student data and performance data
3 at the school site."

4 SECTION 5. A new section of the Charter Schools Act is
5 enacted to read:

6 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOL--GOVERNING BODY--
7 OPERATION--CONFLICT--NEPOTISM.--

8 A. A person shall not serve as a member of a
9 virtual charter school governing body if the person or an
10 immediate family member of the person is employed at the school
11 or is an owner or agent of or contractor with or otherwise has
12 a financial interest in a for-profit or nonprofit entity with
13 which the virtual charter school contracts directly or
14 indirectly for professional services or goods. A violation of
15 this subsection renders the contract between the person or the
16 person's immediate family member and the virtual charter school
17 voidable at the option of the chartering authority or governing
18 body. A person who knowingly violates this subsection may be
19 individually liable to the virtual charter school for any
20 financial damage caused by the violation. A virtual charter
21 school board or head administrator shall not employ an
22 immediate family member of a board member, officer or employee
23 of the virtual charter school. As used in this subsection,
24 "immediate family member" means a spouse, father, father-in-
25 law, mother, mother-in-law, son, son-in-law, daughter,

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1 daughter-in-law, brother, brother-in-law, sister, sister-in-law
2 or any other relative who is financially supported by the
3 person.

4 B. A governing body, or member of the governing
5 body, or an employee, officer or agent of a virtual charter
6 school shall not participate in selecting, awarding or
7 administering a contract with the virtual charter school if a
8 conflict of interest exists. A conflict of interest exists
9 when the member, employee, officer or agent or an immediate
10 family member of the member, employee, officer or agent has a
11 financial interest in the entity with which the virtual charter
12 school is contracting. A violation of this subsection renders
13 the contract voidable at the option of the chartering authority
14 or governing body.

15 C. A virtual charter school may contract with one
16 or more school districts, universities or colleges, political
17 subdivisions of the state or tribal governments for the use of
18 appropriate testing sites when the virtual charter school's
19 students are required to take national or state tests; such
20 tests shall be proctored.

21 D. A virtual charter school is subject to the
22 Procurement Code. Any sole source purchases shall be approved
23 by the chartering authority. The chartering authority may
24 require that requests for proposals and personal service
25 contracts over sixty thousand dollars (\$60,000) be subject to

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1 its review. Requests for proposals and procurements shall not
2 be artificially divided so as to constitute a small purchase
3 under this subsection.

4 E. The department shall not waive the statutory
5 instructional time required of public schools, and a virtual
6 charter school shall ensure that its students are meeting the
7 required number of instructional hours during a school year."

8 SECTION 6. A new section of the Charter Schools Act is
9 enacted to read:

10 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOLS--OVERSIGHT AND
11 CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS
12 FOR NONRENEWAL OR REVOCATION.--

13 A. As part of a chartering authority's performance
14 review of a virtual charter school, a chartering authority
15 shall visit a virtual charter school under its authority at
16 least twice a school year to provide technical assistance to
17 the virtual charter school and to determine the status of the
18 virtual charter school and the progress toward the performance
19 framework goals in its virtual charter school contract.

20 B. If a chartering authority suspends, revokes or
21 refuses to renew a virtual charter school's charter, that
22 decision is a final agency decision and may not be appealed to
23 the secretary."

24 SECTION 7. A new section of the Public School Finance
25 Act is enacted to read:

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"[NEW MATERIAL] VIRTUAL CHARTER SCHOOL PROGRAM COST
CALCULATION--LOCAL RESPONSIBILITY.--

A. For fiscal year 2020 and subsequent fiscal years, the total program units for the purpose of computing the program cost of virtual charter schools shall be calculated by adding together the itemized program units as follows:

- (1) basic education;
- (2) special education, if generated; and
- (3) national board for professional teaching standards certification, only if the certified teacher is a resident of New Mexico and is licensed by the department.

B. Except as otherwise provided in this section, funds generated under the Public School Finance Act are discretionary to governing bodies; provided that the special program needs as enumerated in this section are met; and provided further that if a virtual charter school does not meet its performance targets, the virtual charter school shall lose ten percent of its program cost for subsequent school years until the virtual charter school meets those targets."