

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 429

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

AN ACT

RELATING TO VIRTUAL CHARTER SCHOOLS; ENACTING THE VIRTUAL
CHARTER SCHOOLS ACT; REQUIRING THE PUBLIC EDUCATION COMMISSION
TO CHARTER VIRTUAL CHARTER SCHOOLS THAT DRAW STUDENTS FROM MORE
THAN ONE SCHOOL DISTRICT; ALLOWING A SCHOOL DISTRICT TO CHARTER
A VIRTUAL CHARTER SCHOOL THAT ENROLLS ONLY STUDENTS WHO RESIDE
IN THE SCHOOL DISTRICT; PROVIDING POWERS AND DUTIES; LIMITING
THE NUMBER OF STUDENTS A NEW VIRTUAL CHARTER SCHOOL MAY ENROLL
UNTIL THE VIRTUAL CHARTER SCHOOL HAS DEMONSTRATED THAT ITS
PERFORMANCE MEETS OR EXCEEDS ITS PERFORMANCE TARGETS; SETTING
OUT ADDITIONAL REQUIREMENTS FOR APPLICATIONS AND VIRTUAL
CHARTER CONTRACTS; REQUIRING ADDITIONAL, RIGOROUS MONITORING
AND OVERSIGHT BY THE CHARTERING AUTHORITY.

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

SECTION 1. A new section of the Public School Code is

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1 enacted to read:

2 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this
3 act may be cited as the "Virtual Charter Schools Act"."

4 SECTION 2. A new section of the Public School Code is
5 enacted to read:

6 "[NEW MATERIAL] DEFINITIONS.--As used in the Virtual
7 Charter Schools Act:

8 A. "management" means:

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

16 (2) 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 (3) directing the day-to-day activities of a
21 virtual charter school and its school employees, whether
22 licensed or unlicensed, and its contractors and subcontractors;

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

25 (5) providing at least forty percent of the

1 educational programming at a virtual charter school;

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

6 (7) implementing the policies of the governing
7 body of a virtual charter school;

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

11 C. "statewide" means enrolling students from more
12 than one school district in the state; and

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

18 SECTION 3. A new section of the Public School Code is
19 enacted to read:

20 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOL TERMS--SITE
21 VISITS.--

22 A. A virtual charter school may be approved for an
23 initial term of four years; provided that the first year shall
24 be used exclusively for planning and not for completing the
25 application. A virtual charter school may be renewed for

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1 successive periods of three years each. Approvals of less than
2 three years may be agreed upon between the virtual charter
3 school and the chartering authority.

4 B. On or after July 1, 2019, the commission shall
5 be the chartering authority for all statewide virtual charter
6 schools. A local school board shall not authorize or renew a
7 statewide virtual charter school after the effective date of
8 the Virtual Charter Schools Act; however, the local school
9 board shall continue to provide oversight and administrative
10 support for a statewide virtual charter school that the local
11 school board chartered until the statewide virtual charter
12 school's next charter renewal period, at which time the
13 statewide virtual charter school shall seek renewal from the
14 commission unless the statewide virtual charter school offers
15 to limit its enrollment only to students who are residents of
16 the school district.

17 C. A local school board may charter a virtual
18 charter school in which the only students who attend the
19 virtual charter school are residents of the school district.

20 D. The commission is responsible for monitoring and
21 overseeing statewide virtual charter schools and may delegate
22 those responsibilities to the charter schools division, except
23 for final actions.

24 E. A virtual charter school shall not be eligible
25 for funding pursuant to the Public School Capital Outlay Act,

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1 the Public School Capital Improvements Act or the Public School
2 Buildings Act or transportation funding pursuant to Chapter 22,
3 Article 16 NMSA 1978.

4 F. The department shall promulgate rules to carry
5 out the provisions of the Virtual Charter Schools Act."

6 SECTION 4. A new section of the Public School Code is
7 enacted to read:

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

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

15 B. A virtual charter school existing on July 1,
16 2019 that seeks renewal after that date shall not be authorized
17 to operate as a public school for students in kindergarten
18 through fourth grade; provided that enrolled kindergarten
19 through fourth grade students that were enrolled in the
20 immediately preceding year prior to the renewal year may
21 continue in those grades, but the virtual charter school shall
22 not enroll any new kindergarten through fourth grade students.

23 C. A statewide virtual charter school chartered
24 after January 1, 2019 shall not enroll more than two hundred
25 students per year until the virtual charter school has met or

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1 exceeded its annual performance targets. At no time shall a
2 statewide virtual charter school chartered after January 1,
3 2019 enroll more than one thousand students unless the school
4 has demonstrated to the commission that the virtual charter
5 school's performance exceeds its annual performance targets and
6 its students are passing their courses and are on track toward
7 timely or early graduation and receipt of diplomas of
8 excellence.

9 D. A locally chartered virtual charter school
10 chartered after January 1, 2019 shall not enroll more than two
11 hundred students per year until the virtual charter school has
12 demonstrated to the local school board that the virtual charter
13 school has met or exceeded its annual performance targets.

14 E. A virtual charter school chartered after January
15 1, 2019 is prohibited from accepting students from a
16 necessarily small school district if the virtual charter
17 school's proposed enrollment for all grades or the virtual
18 charter school's proposed enrollment for all grades in
19 combination with any other charter schools' enrollment for all
20 grades would equal or exceed ten percent of the necessarily
21 small school district's total membership.

22 F. A virtual charter school chartered after January
23 1, 2019 shall not enroll a student who needs class C or D
24 special education unless the student's student assistance team,
25 or its equivalent, at the school or public or private

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1 educational training center or residential treatment center in
2 which the student is or had been enrolled determines that the
3 virtual charter school is an appropriate placement for the
4 student and the student's parent and the student's medical and
5 psychosocial specialists agree with the placement."

6 SECTION 5. A new section of the Public School Code is
7 enacted to read:

8 "[NEW MATERIAL] ADDITIONAL VIRTUAL CHARTER SCHOOL

9 APPLICATION CONTENTS--PROCESS.--The application for a new or
10 renewing virtual charter school shall be the same as for other
11 charter applications, except for the following provisions:

12 A. a detailed description of how the virtual
13 charter school's management and educational program will be
14 provided;

15 B. a detailed description of the way the virtual
16 charter school's educational program will meet the individual
17 needs of the students, including those students determined to
18 be at risk or in need of an individualized education plan
19 pursuant to the federal Individuals with Disabilities Education
20 Act; and

21 C. a description of how the virtual charter school
22 will maintain student performance data at the school site and
23 the process by which the virtual charter school will comply
24 with the requirements of the federal Family Educational Rights
25 and Privacy Act of 1974 if sharing student information and

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1 performance data with any education-related contractors."

2 SECTION 6. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] ADDITIONAL VIRTUAL CHARTER SCHOOL CONTRACT
5 REQUIREMENTS.--In addition to contract requirements in the
6 Charter Schools Act, the contract shall include the chartering
7 authority's duties to the virtual charter school, including a
8 detailed description of the criteria, processes and procedures
9 that the chartering authority will use for ongoing oversight
10 and evaluation of governance, operational and financial
11 performance of the virtual charter school and the academic
12 performance and progress of its students."

13 SECTION 7. A new section of the Public School Code is
14 enacted to read:

15 "[NEW MATERIAL] PROCUREMENT--CONTRACTS--CONTRACT
16 REQUIREMENTS.--

17 A. A virtual charter school is subject to the
18 Procurement Code. Notwithstanding the Procurement Code, a
19 virtual charter school shall not enter into a sole source
20 contract.

21 B. Except for small purchases made pursuant to
22 Section 13-1-125 NMSA 1978, the chartering authority may
23 require that any requests for proposals or procurement be
24 subject to its review. A virtual charter school shall not
25 artificially divide any requests for proposals or procurement

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1 so as to constitute a small purchase under this subsection.

2 C. Any contract for management or educational
3 services shall include:

4 (1) clear identification of all fees to be
5 paid to the contractor;

6 (2) detailed invoices from the contractor to
7 allow the chartering authority to compare costs for specific
8 items or services purchased by the virtual charter school;

9 (3) a statement of the respective roles and
10 responsibilities of the governing body, the virtual charter
11 school staff and the management or educational services
12 provider;

13 (4) performance evaluation measures and time
14 lines;

15 (5) the methods of contract oversight and
16 enforcement;

17 (6) the conditions for renewal and termination
18 of the contract; and

19 (7) the process by which the virtual charter
20 school shall comply with the federal Family Educational Rights
21 and Privacy Act of 1974 if sharing student data and performance
22 data with any education-related contractor and how the virtual
23 charter school will maintain student data and performance data
24 at the school site.

25 D. A virtual charter school may contract with one

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1 or more school districts, universities or colleges, political
2 subdivisions of the state or tribal governments for the use of
3 appropriate testing sites when the virtual charter school's
4 students are required to take national or state tests, and such
5 tests shall be proctored.

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

10 SECTION 8. A new section of the Public School Code is
11 enacted to read:

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

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

22 B. At the end of each school year, a chartering
23 authority shall notify the department of any virtual charter
24 school that failed to meet its annual performance targets.

25 C. At the end of the second or a subsequent

1 charter term, a chartering authority shall not renew the
 2 charter of a virtual charter school that has had its program
 3 cost withheld for two or more consecutive years because it is
 4 not meeting its annual performance targets in accordance with
 5 Section 10 of this 2019 act. Nothing in this section shall be
 6 construed to limit a chartering authority's power to revoke or
 7 refuse to renew a virtual charter school's charter.

8 D. If a chartering authority revokes or refuses to
 9 renew a virtual charter school's charter, that decision is a
 10 final agency decision and may not be appealed to the secretary,
 11 but may be appealed to the district court as provided in
 12 Section 39-3-1.1 NMSA 1978."

13 SECTION 9. A new section of the Public School Code is
 14 enacted to read:

15 "[NEW MATERIAL] APPLICABILITY.--A virtual charter school
 16 is a charter school subject to the provisions of the Public
 17 School Code that are applicable to charter schools, except as
 18 provided in the Virtual Charter Schools Act and the Public
 19 School Finance Act."

20 SECTION 10. A new section of the Public School Finance
 21 Act is enacted to read:

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

24 A. For fiscal year 2020 and subsequent fiscal
 25 years, the total program units for the purpose of computing the

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1 program cost of virtual charter schools shall be calculated by
2 multiplying the program units itemized in Paragraph (1) of this
3 subsection by the staffing cost multiplier and adding the
4 program units itemized in Paragraph (2) and (3) of this
5 subsection. The itemized program units are as follows:

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

11 B. On notification by the chartering authority
12 pursuant to Subsection B of Section 8 of the Virtual Charter
13 Schools Act, the department shall withhold ten percent of the
14 program cost of a virtual charter school that does not meet the
15 annual performance targets established in its performance
16 framework; provided that the withholding shall be during the
17 immediately subsequent school year and shall continue until the
18 virtual charter school meets its annual performance targets."

19 SECTION 11. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.