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BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC EDUCATION; REMOVING THE PUBLIC EDUCATION COMMISSION'S ADMINISTRATIVE ATTACHMENT TO THE PUBLIC EDUCATION DEPARTMENT; ESTABLISHING THE PUBLIC EDUCATION COMMISSION AS AN INDEPENDENT ENTITY; PROVIDING FOR PUBLIC EDUCATION COMMISSION RULEMAKING AUTHORITY AND STAFF; GRANTING THE PUBLIC EDUCATION COMMISSION THE AUTHORITY TO MAKE CHARTERING AUTHORITY DECISIONS TO GRANT, RENEW, DENY OR REVOKE THE CHARTER OF A STATE-CHARTERED CHARTER SCHOOL; MAKING AN APPROPRIATION.

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, AUTHORITY AND DUTIES--LEGISLATIVE AND EXECUTIVE OVERSIGHT.--

A. The "public education commission" is created

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1 pursuant to Article 12, Section 6 of the constitution of New  
2 Mexico. [~~The commission shall be administratively attached to~~  
3 ~~the department, with administrative staff provided by the~~  
4 ~~department. Additional requests for staff services shall be~~  
5 ~~made through the secretary.] The commission shall advise the  
6 department on policy matters and shall perform other functions  
7 pursuant to the Charter Schools Act and as otherwise provided  
8 by law.~~

9 B. The commission shall promulgate and enforce such  
10 rules as may be necessary to carry out its functions pursuant  
11 to the Charter Schools Act and as otherwise provided by law.

12 [~~B.~~] C. The commission shall consist of ten members  
13 elected from public education districts as provided in the  
14 decennial educational redistricting act. Members shall be  
15 entitled to receive per diem and mileage as provided in the Per  
16 Diem and Mileage Act, but shall receive no other perquisite,  
17 compensation or allowance.

18 [~~C.~~] D. The commission shall annually elect a  
19 [~~chairman~~] chair, vice [~~chairman~~] chair and secretary from  
20 among its membership. A majority of the members constitutes a  
21 quorum for the conduct of business. The commission shall keep  
22 a record of all proceedings of the commission.

23 [~~D.~~] E. The commission shall meet at the call of  
24 the [~~chairman~~] chair at least quarterly or at the request of  
25 the majority of its members. Meetings of the commission shall

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1 be held in Santa Fe and at other sites within the state at the  
2 direction of the commission. [~~The chairman in consultation~~  
3 ~~with the secretary shall call a meeting at the request of a~~  
4 ~~majority of the members.~~] Commission members shall not vote by  
5 proxy.

6 [E.] F. No member of the commission shall be  
7 appointed secretary or be employed by the department on either  
8 a full- or part-time basis.

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

13 H. The commission shall prepare an annual budget.

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

16 (1) the commission's policies and rules; and

17 (2) any actions that the commission takes to  
18 grant, renew or deny an application for a state-chartered  
19 charter school pursuant to the Charter Schools Act."

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

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

25 A. A local school board has the authority to

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1 approve or deny the establishment or renewal of a locally  
2 chartered charter school within [~~the~~] that local school board's  
3 school district [~~in which it is located~~]. The commission has  
4 the authority to approve or deny an application for the  
5 establishment or renewal of a charter for a state-chartered  
6 charter school.

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

14 C. A charter school applicant shall apply to either  
15 a local school board or the commission for a charter. If an  
16 application is submitted to a chartering authority, [~~it~~] the  
17 chartering authority must process the application.

18 Applications for initial charters shall be submitted [~~between~~]  
19 by June 1 [~~and July 1~~] to be eligible for consideration for the  
20 following fiscal year; provided that the [~~July~~] June 1 deadline  
21 may be waived upon agreement of the applicant and the  
22 chartering authority.

23 D. No fees shall be assessed by a local school  
24 board when authorizing a locally chartered charter school or by  
25 the commission when authorizing a state-chartered charter

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1 school.

2           ~~[D-]~~ E. An application shall include the total  
3 number of grades the charter school proposes to provide, either  
4 immediately or phased. A charter school may decrease the  
5 number of grades it eventually offers, but it shall not  
6 increase the number of grades or the total number of students  
7 proposed to be served in each grade.

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

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

21           ~~[G-]~~ H. An initial application for a charter school  
22 shall not be made after June 30, 2007 if the proposed charter  
23 school's proposed enrollment for all grades or the proposed  
24 charter school's proposed enrollment for all grades in  
25 combination with any other charter school's enrollment for all

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1 grades would equal or exceed ten percent of the total MEM of  
2 the school district in which the charter school will be  
3 geographically located and that school district has a total  
4 enrollment of not more than one thousand three hundred  
5 students.

6 ~~[H.]~~ I. A state-chartered charter school shall not  
7 be approved for operation unless ~~[its]~~ the governing body of  
8 the charter school has qualified to be a board of finance.

9 ~~[I. The chartering authority shall receive and~~  
10 ~~review all applications for charter schools submitted to it.~~  
11 ~~The chartering authority shall not charge application fees.]~~

12 J. The chartering authority shall hold at least  
13 one public hearing in the school district in which the charter  
14 school is proposed to be located to obtain information and  
15 community input to assist it in its decision whether to grant a  
16 charter school application. The chartering authority may  
17 designate a subcommittee of no fewer than three members to hold  
18 the public hearing, and, if so, the hearing shall be  
19 transcribed for later review by other members of the chartering  
20 authority. Any member of a chartering authority who was not  
21 present at the public hearing shall receive a transcript of the  
22 public hearing, together with documents submitted for the  
23 public hearing, before a chartering authority makes a decision  
24 to accept or deny an application or renewal of a charter.

25 Community input may include written or oral comments in favor

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1 of or in opposition to the application from the applicant, the  
2 local community and, for state-chartered charter schools, the  
3 local school board and school district in whose geographical  
4 boundaries the charter school is proposed to be located.

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

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

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

25 (2) the application does not propose to offer

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1 an educational program consistent with the requirements and  
2 purposes of the Charter Schools Act;

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

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

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

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

24 N. A charter school applicant or governing body  
25 that has received a notice from the chartering authority

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1 denying approval or renewal of the charter shall have a right  
2 to a hearing by the secretary as provided in Section 22-8B-7  
3 NMSA 1978."

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

6 "22-8B-7. APPEAL OF DENIAL, NONRENEWAL, SUSPENSION OR  
7 REVOCATION--PROCEDURES.--

8 A. The secretary, upon receipt of a notice of  
9 appeal or upon the secretary's own motion, shall review  
10 decisions of a chartering authority concerning charter schools  
11 in accordance with the provisions of this section.

12 B. A charter applicant or governing body that  
13 wishes to appeal a decision of the chartering authority  
14 concerning the denial, nonrenewal, suspension or revocation of  
15 a charter school or the imposition of conditions that are  
16 unacceptable to the charter school or charter school applicant  
17 shall provide the secretary with a notice of appeal within  
18 thirty days after the chartering authority's decision. The  
19 charter school applicant or governing body bringing the appeal  
20 shall limit the grounds of the appeal to the grounds for  
21 denial, nonrenewal, suspension or revocation or the imposition  
22 of conditions that were specified by the chartering authority.  
23 The notice shall include a brief statement of the reasons the  
24 charter school applicant or governing body contends the  
25 chartering authority's decision was in error. Except as

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1 provided in Subsection E of this section, [~~the appeal and~~  
2 ~~review process shall be as follows~~] within sixty days after  
3 receipt of the notice of appeal, the secretary, at a public  
4 hearing that may be held in the school district in which the  
5 charter school is located or in which the proposed charter  
6 school has applied for a charter, shall review the decision of  
7 the chartering authority and make findings. If the secretary  
8 finds that the chartering authority acted arbitrarily or  
9 capriciously, rendered a decision not supported by substantial  
10 evidence or did not act in accordance with law, the secretary  
11 may reverse the decision of the chartering authority and order  
12 the approval of the charter with or without conditions. The  
13 decision of the secretary shall be final.

14 C. The secretary on the secretary's own motion may  
15 review a chartering authority's decision to grant a charter.  
16 Within sixty days after the making of a motion to review by the  
17 secretary, the secretary, at a public hearing that may be held  
18 in the school district in which the proposed charter school  
19 that has applied for a charter will be located, shall review  
20 the decision of the chartering authority and determine whether  
21 the decision was arbitrary or capricious or whether the  
22 establishment or operation of the proposed charter school  
23 would:

24 (1) violate any federal or state laws  
25 concerning civil rights;

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- 1 (2) violate any court order; or  
2 (3) threaten the health and safety of students  
3 within the school district.

4 D. If the secretary determines that the charter  
5 would violate the provisions set forth in Subsection C of this  
6 section, the secretary shall deny the charter application. The  
7 secretary may extend the time lines established in this section  
8 for good cause. The decision of the secretary shall be final.

9 E. If a chartering authority denies an application  
10 or refuses to renew a charter because the public school capital  
11 outlay council has determined that the facilities do not meet  
12 the standards required by Section 22-8B-4.2 NMSA 1978, the  
13 charter school applicant or charter school may appeal the  
14 decision to the secretary as otherwise provided in this  
15 section; provided that the secretary shall reverse the decision  
16 of the chartering authority only if the secretary determines  
17 that the decision was arbitrary, capricious, not supported by  
18 substantial evidence or otherwise not in accordance with the  
19 law.

20 F. A person aggrieved by a final decision of the  
21 secretary may appeal the decision to the district court  
22 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

25 "22-8B-16. PUBLIC EDUCATION COMMISSION--POWERS AND  
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1 DUTIES.--The commission shall receive applications for initial  
2 chartering and renewals of charters for charter schools that  
3 want to be chartered by the state and approve or disapprove  
4 those charter applications. The commission may approve, deny,  
5 suspend or revoke the charter of a state-chartered charter  
6 school in accordance with the provisions of the Charter Schools  
7 Act. ~~[The chartering authority for a charter school existing~~  
8 ~~on July 1, 2007 may be transferred to the commission; provided,~~  
9 ~~however, that if a school chartered under a previous chartering~~  
10 ~~authority chooses to transfer its chartering authority, it~~  
11 ~~shall continue to operate under the provisions of that charter~~  
12 ~~until its renewal date unless it is suspended or revoked by the~~  
13 ~~commission. An application for a charter school filed with a~~  
14 ~~local school board prior to July 1, 2007, but not approved, may~~  
15 ~~be transferred to the commission on July 1, 2007.]"~~

16 SECTION 5. Section 22-8B-17 NMSA 1978 (being Laws 2006,  
17 Chapter 94, Section 30) is amended to read:

18 "22-8B-17. CHARTER SCHOOLS DIVISION--DUTIES.--The  
19 "charter schools division" is created in the department. The  
20 division shall:

- 21 A. provide staff support to the commission;  
22 B. provide technical support to all charter  
23 schools;  
24 C. review, ~~[and]~~ approve and report to the  
25 commission on state-chartered charter school budget matters;

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1 and

2 D. make recommendations to the commission regarding  
3 the approval, denial, suspension or revocation of the charter  
4 of a state-chartered charter school."

5 SECTION 6. APPROPRIATION.--One million one hundred  
6 thousand dollars (\$1,100,000) is appropriated from the general  
7 fund to the public education commission for expenditure in  
8 fiscal year 2016 to carry out the provisions of this act. Any  
9 unexpended or unencumbered balance remaining at the end of  
10 fiscal year 2016 shall revert to the general fund.

11 SECTION 7. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2015.