

1 AN ACT

2 RELATING TO PUBLIC SCHOOLS; ALLOWING CHARTER SCHOOLS TO
3 DECIDE THEIR CHARTERING AUTHORITY; ALLOWING CHARTER SCHOOLS
4 TO CHANGE THEIR CHARTERING AUTHORITY WHEN RENEWING THEIR
5 CHARTERS; CREATING A CHARTER SCHOOLS DIVISION IN THE PUBLIC
6 EDUCATION DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING
7 FOR APPROVAL, DENIAL, RENEWAL, SUSPENSION OR REVOCATION OF
8 STATE-CHARTERED CHARTER SCHOOLS BY THE PUBLIC EDUCATION
9 COMMISSION; MAKING STATE-CHARTERED CHARTER SCHOOLS
10 INDEPENDENT OF SCHOOL DISTRICTS; REQUIRING STATE-CHARTERED
11 CHARTER SCHOOLS TO BE BOARDS OF FINANCE; CLARIFYING
12 RESPONSIBILITIES OF CHARTER SCHOOLS AND GOVERNING BODIES;
13 CHANGING FUNDING PROVISIONS; RECONCILING MULTIPLE AMENDMENTS
14 TO THE SAME SECTION OF LAW IN LAWS 2005 BY REPEALING LAWS
15 2005, CHAPTER 176, SECTION 12; AMENDING, REPEALING AND
16 ENACTING SECTIONS OF THE NMSA 1978.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 9-24-4 NMSA 1978 (being Laws 2004,
20 Chapter 27, Section 4, as amended) is amended to read:

21 "9-24-4. DEPARTMENT CREATED.--

22 A. The "public education department" is created in
23 the executive branch. The department is a cabinet department
24 and includes the following divisions:

25 (1) the administrative services division;

- 1 (2) the assessment and accountability
2 division;
- 3 (3) the charter schools division;
4 (4) the educator quality division;
5 (5) the Indian education division;
6 (6) the information technology division;
7 (7) the instructional support and vocational
8 education division;
- 9 (8) the program support and student
10 transportation division;
- 11 (9) the quality assurance and systems
12 integration division;
- 13 (10) the rural education division; and
14 (11) the vocational rehabilitation division.

15 B. The secretary may organize the department and
16 divisions of the department and may transfer or merge
17 functions between divisions and bureaus in the interest of
18 efficiency and economy."

19 Section 2. Section 22-8-2 NMSA 1978 (being Laws 1978,
20 Chapter 128, Section 3, as amended) is amended to read:

21 "22-8-2. DEFINITIONS.--As used in the Public School
22 Finance Act:

- 23 A. "ADM" or "MEM" means membership;
24 B. "membership" means the total enrollment of
25 qualified students on the current roll of a class or school

1 on a specified day. The current roll is established by the
2 addition of original entries and reentries minus withdrawals.
3 Withdrawals of students, in addition to students formally
4 withdrawn from the public school, include students absent
5 from the public school for as many as ten consecutive school
6 days; provided that withdrawals do not include truants and
7 habitual truants the school district is required to intervene
8 with and keep in an educational setting as provided in
9 Section 22-12-9 NMSA 1978;

10 C. "basic program ADM" or "basic program MEM"
11 means the MEM of qualified students but excludes the
12 full-time-equivalent MEM in early childhood education and
13 three- and four-year-old students receiving special education
14 services;

15 D. "cost differential factor" is the numerical
16 expression of the ratio of the cost of a particular segment
17 of the school program to the cost of the basic program in
18 grades four through six;

19 E. "department" or "division" means the public
20 education department;

21 F. "early childhood education ADM" or "early
22 childhood education MEM" means the full-time-equivalent MEM
23 of students attending approved early childhood education
24 programs;

25 G. "full-time-equivalent ADM" or

1 "full-time-equivalent MEM" is that membership calculated by
2 applying to the MEM in an approved public school program the
3 ratio of the number of hours per school day devoted to the
4 program to six hours or the number of hours per school week
5 devoted to the program to thirty hours;

6 H. "operating budget" means the annual financial
7 plan required to be submitted by a local school board or
8 governing body of a state-chartered charter school;

9 I. "program cost" is the product of the total
10 number of program units to which a school district is
11 entitled multiplied by the dollar value per program unit
12 established by the legislature;

13 J. "program element" is that component of a public
14 school system to which a cost differential factor is applied
15 to determine the number of program units to which a school
16 district is entitled, including but not limited to MEM,
17 full-time-equivalent MEM, teacher, classroom or public
18 school;

19 K. "program unit" is the product of the program
20 element multiplied by the applicable cost differential
21 factor;

22 L. "public money" or "public funds" means all
23 money from public or private sources received by a school
24 district or state-chartered charter school or officer or
25 employee of a school district or state-chartered charter

1 school for public use;

2 M. "qualified student" means a public school
3 student who:

4 (1) has not graduated from high school;

5 (2) is regularly enrolled in one-half or
6 more of the minimum course requirements approved by the
7 department for public school students; and

8 (3) is at least five years of age prior to
9 12:01 a.m. on September 1 of the school year; or

10 (4) is at least three years of age at any
11 time during the school year and is receiving special
12 education services pursuant to rules of the department; or

13 (5) has not reached the student's
14 twenty-second birthday on the first day of the school year
15 and is receiving special education services pursuant to rules
16 of the department; and

17 N. "state superintendent" means the secretary of
18 public education or the secretary's designee."

19 Section 3. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
20 Chapter 227, Section 8, as amended) is amended to read:

21 "22-8-6.1. CHARTER SCHOOL BUDGETS.--

22 A. Each state-chartered charter school shall
23 submit to the charter schools division of the department a
24 school-based budget. For fiscal year 2008, and for the first
25 year of operation in any fiscal year thereafter, the budget

1 of every state-chartered charter school shall be based on the
2 projected number of program units generated by that charter
3 school and its students, using the at-risk index and the
4 instructional staff training and experience index of the
5 school district in which it is geographically located. For
6 second and subsequent fiscal years of operation, the budgets
7 of state-chartered charter schools shall be based on the
8 number of program units generated using the average of the
9 eightieth and one hundred twentieth day MEM of the prior year
10 and its instructional staff training and experience index and
11 the at-risk index of the school district in which the
12 state-chartered charter school is geographically located.

13 The budget shall be submitted to the division for approval or
14 amendment pursuant to the Public School Finance Act and the
15 Charter Schools Act.

16 B. Each locally chartered charter school shall
17 submit to the local school board a school-based budget. For
18 fiscal year 2008, and for the first year of operation in any
19 fiscal year thereafter, the budget of every locally chartered
20 charter school shall be based on the projected number of
21 program units generated using the average of the eightieth
22 and one hundred twentieth day MEM of the prior year, using
23 the at-risk index and the instructional staff training and
24 experience index of the school district in which it is
25 geographically located. For second and subsequent fiscal

1 years of operation, the budgets of locally chartered charter
2 schools shall be based on the prior year program units
3 generated by that locally chartered charter school and its
4 students and its instructional staff training and experience
5 index and the at-risk index of the school district in which
6 the locally chartered charter school is geographically
7 located. The budget shall be submitted to the local school
8 board for approval or amendment. The approval or amendment
9 authority of the local school board relative to the charter
10 school budget is limited to ensuring that sound fiscal
11 practices are followed in the development of the budget and
12 that the charter school budget is within the allotted
13 resources. The local school board shall have no veto
14 authority over individual line items within the charter
15 school's proposed budget, but shall approve or disapprove the
16 budget in its entirety. Upon final approval of the local
17 budget by the local school board, the individual charter
18 school budget shall be included separately in the budget
19 submission to the department required pursuant to the Public
20 School Finance Act and the Charter Schools Act."

21 Section 4. Section 22-8-7 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 61, as amended) is amended to read:

23 "22-8-7. BUDGETS--FORM.--All budgets submitted to the
24 department by a school district or state-chartered charter
25 school shall be in a form specified by the department."

1 Section 5. Section 22-8-11 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 66, as amended) is amended to read:

3 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

4 A. The department shall:

5 (1) on or before July 1 of each year,
6 approve and certify to each local school board and governing
7 body of a state-chartered charter school an operating budget
8 for use by the school district or state-chartered charter
9 school; and

10 (2) make corrections, revisions and
11 amendments to the operating budgets fixed by the local school
12 boards or governing bodies of state-chartered charter schools
13 and the secretary to conform the budgets to the requirements
14 of law and to the department's rules and procedures.

15 B. No school district or state-chartered charter
16 school or officer or employee of a school district or state-
17 chartered charter school shall make any expenditure or incur
18 any obligation for the expenditure of public funds unless
19 that expenditure or obligation is made in accordance with an
20 operating budget approved by the department. This
21 prohibition does not prohibit the transfer of funds pursuant
22 to the department's rules and procedures.

23 C. The department shall not approve and certify an
24 operating budget of any school district or state-chartered
25 charter school that fails to demonstrate that parental

1 involvement in the budget process was solicited."

2 Section 6. Section 22-8-12 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 67, as amended) is amended to read:

4 "22-8-12. OPERATING BUDGETS--AMENDMENTS.--Operating
5 budgets shall not be altered or amended after approval and
6 certification by the department, except for the following
7 purposes and according to the following procedure:

8 A. upon written request of a local school board or
9 governing body of a state-chartered charter school, the
10 secretary may authorize transfer within the budget, or
11 provide for items not included, when the total amount of the
12 budget will not be increased thereby;

13 B. upon written request of a local school board or
14 governing body of a state-chartered charter school, the
15 secretary, in conformance with the rules of the department,
16 may authorize an increase in any budget if the increase is
17 necessary because of the receipt of revenue that was not
18 anticipated at the time the budget was fixed and if the
19 increase is directly related to a special project or program
20 for which the additional revenue was received. The secretary
21 shall make a written report to the legislative finance
22 committee of any such budget increase;

23 C. upon written request of a local school board or
24 governing body of a state-chartered charter school, the
25 secretary may authorize an increase in a budget of not more

1 than one thousand dollars (\$1,000); or

2 D. upon written request of a local school board or
3 governing body of a state-chartered charter school, the
4 secretary, after notice and a public hearing, may authorize
5 an increase in a school budget in an amount exceeding one
6 thousand dollars (\$1,000). The notice of the hearing shall
7 designate the school district that proposes to alter or amend
8 its budget, together with the time, place and date of the
9 hearing. The notice of the hearing shall be published at
10 least once a week for two consecutive weeks in a newspaper of
11 general circulation in the county in which the school
12 district is situated. The last publication of the notice
13 shall be at least three days prior to the date set for the
14 hearing. The charter schools division shall establish how a
15 state-chartered charter school notifies the parents of its
16 students of proposed increases in a charter school budget."

17 Section 7. Section 22-8-12.1 NMSA 1978 (being Laws
18 1978, Chapter 128, Section 5, as amended) is amended to read:

19 "22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET
20 REQUESTS.--

21 A. Each local school board or governing body of a
22 state-chartered charter school shall submit annually, on or
23 before October 15, to the department:

24 (1) an estimate for the succeeding fiscal
25 year of:

1 (a) the membership of qualified
2 students to be enrolled in the basic program;

3 (b) the full-time-equivalent membership
4 of students to be enrolled in approved early childhood
5 education programs; and

6 (c) the membership of students to be
7 enrolled in approved special education programs;

8 (2) all other information necessary to
9 calculate program costs; and

10 (3) any other information related to the
11 financial needs of the school district or state-chartered
12 charter school as may be requested by the department.

13 B. All information requested pursuant to
14 Subsection A of this section shall be submitted on forms
15 prescribed and furnished by the department and shall comply
16 with the department's rules and procedures.

17 C. The department shall:

18 (1) review the financial needs of each
19 school district or state-chartered charter school for the
20 succeeding fiscal year; and

21 (2) submit annually, on or before November
22 30, to the secretary of finance and administration the
23 recommendations of the department for:

24 (a) amendments to the public school
25 finance formula;

1 (b) appropriations for the succeeding
2 fiscal year to the public school fund for inclusion in the
3 executive budget document; and

4 (c) appropriations for the succeeding
5 fiscal year for pupil transportation and instructional
6 materials."

7 Section 8. Section 22-8-13 NMSA 1978 (being Laws 1974,
8 Chapter 8, Section 3, as amended) is amended to read:

9 "22-8-13. REPORTS.--

10 A. Each public school in a school district and
11 each state-chartered charter school shall keep accurate
12 records concerning membership in the public school. The
13 superintendent of each school district or head administrator
14 of a state-chartered charter school shall maintain the
15 following reports for each twenty-day reporting period:

16 (1) the basic program MEM by grade in each
17 public school;

18 (2) the early childhood education MEM;

19 (3) the special education MEM in each public
20 school in class C and class D programs as defined in Section
21 22-8-21 NMSA 1978;

22 (4) the number of class A and class B
23 programs as defined in Section 22-8-21 NMSA 1978; and

24 (5) the full-time-equivalent MEM for
25 bilingual multicultural education programs.

1 B. The superintendent of each school district and
2 the head administrator of each state-chartered charter school
3 shall furnish to the department reports of the information
4 required in Paragraphs (1) through (5) of Subsection A of
5 this section for the first forty days of the school year.
6 The forty-day report and all other reports required by law or
7 by the department shall be furnished within five days of the
8 close of the reporting period.

9 C. All information required pursuant to this
10 section shall be on forms prescribed and furnished by the
11 department. A copy of any report made pursuant to this
12 section shall be kept as a permanent record of the school
13 district or charter school and shall be subject to inspection
14 and audit at any reasonable time.

15 D. The department shall withhold allotments of
16 funds to any school district or state-chartered charter
17 school where the superintendent or head administrator has
18 failed to comply until the superintendent or head
19 administrator complies with and agrees to continue complying
20 with requirements of this section.

21 E. The provisions of this section may be modified
22 or suspended by the department for any school district or
23 school or state-chartered charter school operating under the
24 Variable School Calendar Act. The department shall require
25 MEM reports consistent with the calendar of operations of

1 such school district or school or state-chartered charter
2 school and shall calculate an equivalent MEM for use in
3 projecting school district revenue."

4 Section 9. Section 22-8-14 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 69, as amended) is amended to read:

6 "22-8-14. PUBLIC SCHOOL FUND.--

7 A. The "public school fund" is created.

8 B. The public school fund shall be distributed to
9 school districts and state-chartered charter schools in the
10 following parts:

11 (1) state equalization guarantee
12 distribution;

13 (2) transportation distribution; and

14 (3) supplemental distributions:

15 (a) out-of-state tuition to school
16 districts;

17 (b) emergency; and

18 (c) program enrichment.

19 C. The distributions of the public school fund
20 shall be made by the department within limits established by
21 law. The balance remaining in the public school fund at the
22 end of each fiscal year shall revert to the general fund,
23 unless otherwise provided by law."

24 Section 10. Section 22-8-15 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 70, as amended) is amended to read:

1 "22-8-15. ALLOCATION LIMITATION.--

2 A. The department shall determine the allocations
3 to each school district and charter school from each of the
4 distributions of the public school fund, subject to the
5 limits established by law.

6 B. The local school board in each school district
7 with locally chartered charter schools shall allocate the
8 appropriate distributions of the public school fund to
9 individual locally chartered charter schools pursuant to each
10 locally chartered charter school's school-based budget
11 approved by the local school board and the department. The
12 appropriate distribution of the public school fund shall flow
13 to the locally chartered charter school within five days
14 after the school district's receipt of the state equalization
15 guarantee for that month."

16 Section 11. Section 22-8-17 NMSA 1978 (being Laws 1974,
17 Chapter 8, Section 7, as amended) is amended to read:

18 "22-8-17. PROGRAM COST DETERMINATION--REQUIRED
19 INFORMATION.--

20 A. The program cost for each school district and
21 charter school shall be determined by the department in
22 accordance with the provisions of the Public School Finance
23 Act.

24 B. The department is authorized to require from
25 each school district and charter school the information

1 necessary to make an accurate determination of the district's
2 or charter school's program cost."

3 Section 12. Section 22-8-18 NMSA 1978 (being Laws 1974,
4 Chapter 8, Section 8, as amended) is amended to read:

5 "22-8-18. PROGRAM COST CALCULATION--LOCAL
6 RESPONSIBILITY.--

7 A. The total program units for the purpose of
8 computing the program cost shall be calculated by multiplying
9 the sum of the program units itemized as Paragraphs (1)
10 through (5) in this subsection by the instructional staff
11 training and experience index and adding the program units
12 itemized as Paragraphs (6) through (10) in this subsection.

13 The itemized program units are as follows:

- 14 (1) early childhood education;
- 15 (2) basic education;
- 16 (3) special education, adjusted by
17 subtracting the units derived from membership in class D
18 special education programs in private, nonsectarian,
19 nonprofit training centers;
- 20 (4) bilingual multicultural education;
- 21 (5) fine arts education;
- 22 (6) size adjustment;
- 23 (7) at-risk program;
- 24 (8) enrollment growth or new district
25 adjustment;

1 (9) special education units derived from
2 membership in class D special education programs in private,
3 nonsectarian, nonprofit training centers; and

4 (10) national board for professional
5 teaching standards certification.

6 B. The total program cost calculated as prescribed
7 in Subsection A of this section includes the cost of early
8 childhood, special, bilingual multicultural, fine arts and
9 vocational education and other remedial or enrichment
10 programs. It is the responsibility of the local school board
11 or governing body of a charter school to determine its
12 priorities in terms of the needs of the community served by
13 that board. Funds generated under the Public School Finance
14 Act are discretionary to local school boards and governing
15 bodies of charter schools, provided that the special program
16 needs as enumerated in this section are met."

17 Section 13. Section 22-8-23.1 NMSA 1978 (being Laws
18 1990 (1st S.S.), Chapter 3, Section 7, as amended by Laws
19 2003, Chapter 156, Section 1 and by Laws 2003, Chapter 386,
20 Section 1) is amended to read:

21 "22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

22 A. A school district or charter school with an
23 increase in MEM equal to or greater than one percent, when
24 compared with the immediately preceding year, is eligible for
25 additional program units. The increase in MEM shall be

1 calculated as follows:

2 (Current Year MEM - Previous Year MEM)

3 Previous Year MEM X 100 = Percent Increase.

4 The number of additional program units shall be calculated as
5 follows:

6 ((Current Year MEM - Previous Year MEM) - (Current Year
7 MEM x .01)) X 1.5 = Units.

8 B. In addition to the units calculated in

9 Subsection A of this section, a school district or charter
10 school with an increase in MEM equal to or greater than one

11 percent, when compared with the immediately preceding year,

12 is eligible for additional program units. The increase in

13 MEM shall be calculated in the following manner:

14 (Current Year MEM - Previous Year MEM)

15 Previous Year MEM X 100 = Percent Increase.

16 The number of additional program units to which an eligible
17 school district or charter school is entitled under this
18 subsection is the number of units computed in the following
19 manner:

20 (Current Year MEM - Previous Year MEM) X .50 = Units.

21 C. As used in this section:

22 (1) "current year MEM" means MEM on the
23 fortieth day of the current year;

24 (2) "MEM" means the total school district or
25 charter school membership, including early childhood

1 education full-time-equivalent membership and special
2 education membership, but excluding full-day kindergarten
3 membership for the first year that full-day kindergarten is
4 implemented in a school pursuant to Subsection D of Section
5 22-13-3.2 NMSA 1978; and

6 (3) "previous year MEM" means MEM on the
7 fortieth day of the previous year."

8 Section 14. Section 22-8-23.4 NMSA 1978 (being Laws
9 2003, Chapter 144, Section 2 and Laws 2003, Chapter 152,
10 Section 9) is amended to read:

11 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
12 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
13 program units for teachers certified by the national board
14 for professional teaching standards is determined by
15 multiplying by one and one-half the number of teachers
16 certified by the national board for professional teaching
17 standards employed by the school district or charter school
18 on or before the fortieth day of the school year and verified
19 by the department. Department approval of these units shall
20 be contingent on verification by the school district or
21 charter school that these teachers are receiving a one-time
22 salary differential equal to or greater than the amount
23 generated by the units multiplied by the program unit value
24 during the fiscal year in which the school district or
25 charter school will receive these units."

1 Section 15. A new section of the Public School Finance
2 Act is enacted to read:

3 "CHARTER SCHOOL STUDENT ACTIVITIES PROGRAM UNIT.--The
4 charter school student activities program unit for a school
5 district is determined by multiplying the number of charter
6 school students who are participating in school district
7 activities governed by the New Mexico activities association
8 by the cost differential factor of 0.1. The student
9 activities program unit shall be paid to the school district
10 in which it is generated. A charter school student is
11 eligible to participate in school district activities at the
12 public school in the attendance zone in which the student
13 resides, according to the New Mexico activities association
14 guidelines. If the student chooses to participate at a
15 public school other than the one in the attendance zone in
16 which the student resides, the student shall be subject to
17 New Mexico activities association transfer guidelines."

18 Section 16. Section 22-8-25 NMSA 1978 (being Laws 1981,
19 Chapter 176, Section 5, as amended by Laws 2005, Chapter 176,
20 Section 12 and by Laws 2005, Chapter 291, Section 1) is
21 amended to read:

22 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
23 DEFINITIONS--DETERMINATION OF AMOUNT.--

24 A. The state equalization guarantee distribution
25 is that amount of money distributed to each school district

1 to ensure that its operating revenue, including its local and
2 federal revenues as defined in this section, is at least
3 equal to the school district's program cost. For
4 state-chartered charter schools, the state equalization
5 guarantee distribution is the difference between the
6 state-chartered charter school's program cost and the two
7 percent withheld by the department for administrative
8 services.

9 B. "Local revenue", as used in this section, means
10 seventy-five percent of receipts to the school district
11 derived from that amount produced by a school district
12 property tax applied at the rate of fifty cents (\$.50) to
13 each one thousand dollars (\$1,000) of net taxable value of
14 property allocated to the school district and to the assessed
15 value of products severed and sold in the school district as
16 determined under the Oil and Gas Ad Valorem Production Tax
17 Act and upon the assessed value of equipment in the school
18 district as determined under the Oil and Gas Production
19 Equipment Ad Valorem Tax Act.

20 C. "Federal revenue", as used in this section,
21 means receipts to the school district, excluding amounts
22 that, if taken into account in the computation of the state
23 equalization guarantee distribution, result, under federal
24 law or regulations, in a reduction in or elimination of
25 federal school funding otherwise receivable by the school

1 district, derived from the following:

2 (1) seventy-five percent of the school
3 district's share of forest reserve funds distributed in
4 accordance with Section 22-8-33 NMSA 1978; and

5 (2) seventy-five percent of grants from the
6 federal government as assistance to those areas affected by
7 federal activity authorized in accordance with Title 20 of
8 the United States Code, commonly known as "PL 874 funds" or
9 "impact aid".

10 D. To determine the amount of the state
11 equalization guarantee distribution, the department shall:

12 (1) calculate the number of program units to
13 which each school district or charter school is entitled
14 using an average of the MEM on the eightieth and one hundred
15 twentieth days of the prior year; or

16 (2) calculate the number of program units to
17 which a school district or charter school operating under an
18 approved year-round school calendar is entitled using an
19 average of the MEM on appropriate dates established by the
20 department; or

21 (3) calculate the number of program units to
22 which a school district or charter school with a MEM of two
23 hundred or less is entitled by using an average of the MEM on
24 the eightieth and one hundred twentieth days of the prior
25 year or the fortieth day of the current year, whichever is

1 greater; and

2 (4) using the results of the calculations in
3 Paragraph (1), (2) or (3) of this subsection and the
4 instructional staff training and experience index from the
5 October report of the prior school year, establish a total
6 program cost of the school district or charter school;

7 (5) for school districts, calculate the
8 local and federal revenues as defined in this section;

9 (6) deduct the sum of the calculations made
10 in Paragraph (5) of this subsection from the program cost
11 established in Paragraph (4) of this subsection;

12 (7) deduct the total amount of guaranteed
13 energy savings contract payments that the department
14 determines will be made to the school district from the
15 public school utility conservation fund during the fiscal
16 year for which the state equalization guarantee distribution
17 is being computed; and

18 (8) deduct ninety percent of the amount
19 certified for the school district by the department pursuant
20 to the Energy Efficiency and Renewable Energy Bonding Act.

21 E. Reduction of a school district's state
22 equalization guarantee distribution shall cease when the
23 school district's cumulative reductions equal its
24 proportional share of the cumulative debt service payments
25 necessary to service the bonds issued pursuant to the Energy

1 Efficiency and Renewable Energy Bonding Act.

2 F. The amount of the state equalization guarantee
3 distribution to which a school district is entitled is the
4 balance remaining after the deductions made in Paragraphs (6)
5 through (8) of Subsection D of this section.

6 G. The state equalization guarantee distribution
7 shall be distributed prior to June 30 of each fiscal year.
8 The calculation shall be based on the local and federal
9 revenues specified in this section received from June 1 of
10 the previous fiscal year through May 31 of the fiscal year
11 for which the state equalization guarantee distribution is
12 being computed. In the event that a school district or
13 charter school has received more state equalization guarantee
14 funds than its entitlement, a refund shall be made by the
15 school district or charter school to the state general fund."

16 Section 17. Section 22-8-26 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 76, as amended) is amended to read:

18 "22-8-26. TRANSPORTATION DISTRIBUTION.--

19 A. Money in the transportation distribution of the
20 public school fund shall be used only for the purpose of
21 making payments to each school district or state-chartered
22 charter school for the to-and-from school transportation
23 costs of students in grades kindergarten through twelve
24 attending public school within the school district or
25 state-chartered charter school and of three- and

1 four-year-old children who meet the department approved
2 criteria and definition of developmentally disabled and for
3 transportation of students to and from their regular
4 attendance centers and the place where vocational education
5 programs are being offered.

6 B. In the event a school district's or state-
7 chartered charter school's transportation allocation exceeds
8 the amount required to meet obligations to provide
9 to-and-from transportation, three- and four-year-old
10 developmentally disabled transportation and vocational
11 education transportation, fifty percent of the remaining
12 balance shall be deposited in the transportation emergency
13 fund.

14 C. Of the excess amount retained by the school
15 district or state-chartered charter school, at least
16 twenty-five percent shall be used for to-and-from
17 transportation-related services, excluding salaries and
18 benefits, and up to twenty-five percent may be used for other
19 transportation-related services, excluding salaries and
20 benefits as defined by rule of the department.

21 D. In the event the sum of the proposed
22 transportation allocations to each school district or state-
23 chartered charter school exceeds the amounts in the
24 transportation distribution, the allocation to each school
25 district or state-chartered charter school shall be reduced

1 in the proportion that the school district or state-chartered
2 charter school allocation bears to the total statewide
3 transportation distribution.

4 E. A local school board or governing body of a
5 state-chartered charter school, with the approval of the
6 state transportation director, may provide additional
7 transportation services pursuant to Section 22-16-4 NMSA 1978
8 to meet established program needs.

9 F. Nothing in this section prohibits the use of
10 school buses to transport the general public pursuant to the
11 Emergency Transportation Act."

12 Section 18. Section 22-8-27 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 77, as amended) is amended to read:

14 "22-8-27. TRANSPORTATION EQUIPMENT.--

15 A. The department shall establish a systematic
16 program for the purchase of necessary school bus
17 transportation equipment.

18 B. In establishing a system for the replacement of
19 school-district-owned buses, the department shall provide for
20 the replacement of school buses on a twelve-year cycle.

21 School districts requiring additional buses to accommodate
22 growth in the school district or to meet other special needs
23 may petition the department for additional buses. Under
24 exceptional circumstances, school districts may also petition
25 the department for permission to replace buses prior to the

1 completion of a twelve-year cycle or to use buses in excess
2 of twelve years contingent upon satisfactory annual safety
3 inspections.

4 C. In establishing a system for the use of
5 contractor-owned buses by school districts or state-chartered
6 charter schools, the department shall establish a schedule
7 for the payment of rental fees for the use of
8 contractor-owned buses. The department shall establish
9 procedures to ensure the systematic replacement of buses on a
10 twelve-year replacement cycle. School districts requiring
11 additional buses to accommodate growth in the school district
12 or to meet other special needs may petition the department
13 for additional buses. Under exceptional circumstances,
14 school districts may also petition the department for
15 permission to replace buses prior to the completion of a
16 twelve-year cycle or to use buses in excess of twelve years
17 contingent upon satisfactory annual safety inspections. No
18 school district shall pay rental fees for any one bus for a
19 period in excess of five years. In the event a school bus
20 service contract is terminated, the department shall
21 calculate the remaining number of years that a bus could be
22 used based on a twelve-year replacement cycle and calculate a
23 value reflecting that use. The school district shall deduct
24 an amount equal to that value from any remaining amount due
25 on the contract or if no balance remains on the contract, the

1 contractor shall reimburse the school district an amount
2 equal to the value calculated."

3 Section 19. Section 22-8-29 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 78, as amended) is amended to read:

5 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--
6 PAYMENTS.--

7 A. Prior to November 15 of each year, each local
8 school board of a school district and governing body of a
9 state-chartered charter school shall report to the state
10 transportation director, upon forms furnished by the state
11 transportation director, the following information concerning
12 the school district's or state-chartered charter school's
13 operation on the fortieth day of school:

14 (1) the number and designation of school bus
15 routes in operation in the school district;

16 (2) the number of miles traveled by each
17 school bus on each school bus route, showing the route
18 mileage in accordance with the type of road surface traveled;

19 (3) the number of students transported on
20 the fortieth day of school and adjusted for special education
21 students on December 1;

22 (4) the projected number of students to be
23 transported in the next school year;

24 (5) the seating capacity, age and mileage of
25 each bus used in the school district for student

1 transportation; and

2 (6) the number of total miles traveled for
3 each school district's or state-chartered charter school's
4 per capita feeder routes.

5 B. Each local school board of a school district
6 and governing body of a state-chartered charter school
7 maintaining a school bus route shall make further reports to
8 the state transportation director at other times specified by
9 the state transportation director.

10 C. The state transportation director shall certify
11 to the secretary that the allocations from the transportation
12 distributions to each school district and state-chartered
13 charter school are based upon the transportation distribution
14 formula established in the Public School Code. The
15 allocations for the first six months of a school year shall
16 be based upon the tentative transportation budget of the
17 school district or state-chartered charter school for the
18 current fiscal year. Allocations to a school district or
19 state-chartered charter school for the remainder of the
20 school year shall adjust the amount received by the school
21 district or state-chartered charter school so that it equals
22 the amount the school district or state-chartered charter
23 school is entitled to receive for the entire school year
24 based upon the November 15 report and subject to audit and
25 verification.

1 D. The department shall make periodic installment
2 payments to school districts and state-chartered charter
3 schools during the school year from the transportation
4 distributions, based upon the allocations certified by the
5 state transportation director."

6 Section 20. Section 22-8-29.1 NMSA 1978 (being Laws
7 1995, Chapter 208, Section 10, as amended) is amended to
8 read:

9 "22-8-29.1. CALCULATION OF TRANSPORTATION ALLOCATION.--

10 A. As used in this section:

11 (1) "annual variables" means the
12 coefficients calculated by regressing the total operational
13 expenditures from two years prior to the current school year
14 for each school district and state-chartered charter school
15 using the number of students transported and the numerical
16 value of site characteristics;

17 (2) "base amount" means the fixed amount
18 that is the same for all school districts and an amount
19 established by rule for state-chartered charter schools;

20 (3) "total operational expenditures" means
21 the sum of all to-and-from school transportation
22 expenditures, excluding expenditures incurred in accordance
23 with the provisions of Section 22-8-27 NMSA 1978; and

24 (4) "variable amount" means the sum of the
25 product of the annual variables multiplied by each school

1 district's or state-chartered charter school's numerical
2 value of the school district's and state-chartered charter
3 school's site characteristics multiplied by the number of
4 days of operation for each school district or state-chartered
5 charter school.

6 B. The department shall calculate the
7 transportation allocation for each school district and
8 state-chartered charter school.

9 C. The base amount is designated as product A.
10 Product A is the constant calculated by regressing the total
11 operations expenditures from the two years prior to the
12 current school year for school district or state-chartered
13 charter school operations using the numerical value of site
14 characteristics approved by the department. The legislative
15 education study committee and the legislative finance
16 committee may review the site characteristics developed by
17 the state transportation director prior to approval by the
18 department.

19 D. The variable amount is designated as product B.
20 Product B is the predicted additional expenditures for each
21 school district or state-chartered charter school based on
22 the regression analysis using the site characteristics as
23 predictor variables multiplied by the number of days.

24 E. The allocation to each school district and
25 state-chartered charter school shall be equal to product A

1 plus product B.

2 F. For the 2001-2002, 2002-2003 and 2003-2004
3 school years, the transportation allocation for each school
4 district shall not be less than ninety-five percent or more
5 than one hundred five percent of the prior school year's
6 transportation expenditure.

7 G. The adjustment factor shall be applied to the
8 allocation amount determined pursuant to Subsections E and F
9 of this section."

10 Section 21. Section 22-8-29.4 NMSA 1978 (being Laws
11 1995, Chapter 208, Section 13, as amended) is amended to
12 read:

13 "22-8-29.4. TRANSPORTATION DISTRIBUTION ADJUSTMENT
14 FACTOR.--

15 A. The department shall establish a transportation
16 distribution adjustment factor. The adjustment factor shall
17 be calculated as follows:

18 (1) calculate the unadjusted transportation
19 allocation for each school district and state-chartered
20 charter school, designated in Section 22-8-29.1 NMSA 1978 as
21 product A plus product B;

22 (2) the sum total of product A plus product
23 B in all school districts and state-chartered charter schools
24 added together equals product C; and

25 (3) subtract product C from the total

1 operational transportation distribution for the current year
2 and divide the result by product C and then add 1 in the
3 following manner:

4 "[total operational transportation distribution - C) ÷ C]
5 + 1". The result is the transportation distribution
6 adjustment factor.

7 B. As used in this section, "total operational
8 transportation distribution" means the total legislative
9 appropriation for the transportation distribution minus
10 amounts included for capital outlay expenses."

11 Section 22. Section 22-8-30 NMSA 1978 (being Laws 1974,
12 Chapter 8, Section 17, as amended) is amended to read:

13 "22-8-30. SUPPLEMENTAL DISTRIBUTIONS.--

14 A. The department shall make supplemental
15 distributions only for the following purposes:

16 (1) to pay the out-of-state tuition of
17 students subject to the Compulsory School Attendance Law who
18 are attending school out-of-state because school facilities
19 are not reasonably available in the school district of their
20 residence;

21 (2) to make emergency distributions to
22 school districts or state-chartered charter schools in
23 financial need, but no money shall be distributed to any
24 school district or state-chartered charter school having cash
25 and invested reserves, or other resources or any combination

1 thereof, equaling five percent or more of the school
2 district's or state-chartered charter school's operational
3 budget;

4 (3) to make program enrichment distributions
5 in the amount of actual program expense to school districts
6 and state-chartered charter schools for the purpose of
7 providing specific programs to meet particular educational
8 requirements that cannot otherwise be financed;

9 (4) a special vocational education
10 distribution to area vocational schools or state-supported
11 schools with department-approved vocational programs to
12 reimburse those schools for the cost of vocational education
13 programs for those students subject to the Compulsory School
14 Attendance Law who are enrolled in such programs; and

15 (5) to make emergency capital outlay
16 distributions to school districts or state-chartered charter
17 schools that have experienced an unexpected capital outlay
18 emergency demanding immediate attention.

19 B. The department shall account for all
20 supplemental distributions and shall make full reports to the
21 governor, legislative education study committee and
22 legislative finance committee of payments made as authorized
23 in Subsection A of this section.

24 C. The department may divert any unused or
25 unneeded balances in any of the distributions made under the

1 supplementary distribution authority to make any other
2 distribution made pursuant to the same authority."

3 Section 23. Section 22-8-38 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 96, as amended) is amended to read:

5 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--

6 A. Upon written application to and approval of the
7 department, a local school board may be designated a board of
8 finance for public school funds of the school district. A
9 local school board designated as a board of finance may
10 require all funds distributed to, allocated to or collected
11 for the school district or the public schools under its
12 jurisdiction to be deposited with it. The department shall
13 designate a local school board as a board of finance if:

14 (1) the local school board shows to the
15 satisfaction of the department that it has personnel properly
16 trained to keep accurate and complete fiscal records;

17 (2) the local school board agrees to consult
18 with the department on any matters not covered by the manual
19 of accounting and budgeting before taking any action relating
20 to funds held by it as a board of finance;

21 (3) the persons handling these funds are
22 adequately bonded to protect the funds entrusted to them from
23 loss; and

24 (4) the local school board making
25 application has not been suspended and not reinstated as a

1 board of finance within the past year.

2 B. A charter school applicant requesting a charter
3 from the commission shall submit a plan detailing how its
4 governing body will qualify for designation as a board of
5 finance for public school funds of the charter school. The
6 governing body of a proposed state-chartered charter school
7 shall qualify as a board of finance before the first year of
8 operation of the charter school. The governing body of a
9 state-chartered charter school designated as a board of
10 finance may require all funds distributed to, allocated to or
11 collected for the state-chartered charter school to be
12 deposited with the governing body. The commission shall
13 designate the governing body of a state-chartered charter
14 school as a board of finance if:

15 (1) the governing body shows to the
16 satisfaction of the commission that it has personnel properly
17 trained to keep accurate and complete fiscal records;

18 (2) the governing body agrees to consult
19 with the division on any matters not covered by the manual of
20 accounting and budgeting before taking any action relating to
21 funds held by it as a board of finance;

22 (3) the persons handling these funds are
23 adequately bonded to protect the funds entrusted to them from
24 loss; and

25 (4) the governing body was not a governing

1 body of a charter school or does not have a member who was a
2 member of a governing body of a charter school that was
3 suspended and not reinstated as a board of finance.

4 C. Failure of the governing body of a proposed
5 state-chartered charter school to qualify for designation as
6 a board of finance constitutes good and just grounds for
7 denial, nonrenewal or revocation of its charter."

8 Section 24. Section 22-8-39 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 97, as amended) is amended to read:

10 "22-8-39. BOARDS OF FINANCE--SUSPENSION.--The
11 department may at any time suspend a local school board or
12 governing body of a state-chartered charter school from
13 acting as a board of finance if the department reasonably
14 believes there is mismanagement, improper recording or
15 improper reporting of public school funds under the local
16 school board's or governing body of a state-chartered charter
17 school's control. When a local school board or governing
18 body of a state-chartered charter school is suspended from
19 acting as a board of finance, the department shall:

20 A. immediately take control of all public school
21 funds under the control of the local school board or
22 governing body of a state-chartered charter school acting as
23 a board of finance;

24 B. immediately have an audit made of all funds
25 under the control of the local school board or governing body

1 of a state-chartered charter school acting as a board of
2 finance and charge the cost of the audit to the school
3 district or state-chartered charter school;

4 C. act as a fiscal agent for the school district
5 or state-chartered charter school and take any action
6 necessary to conform the fiscal management of funds of the
7 school district or state-chartered charter school to the
8 requirements of law and good accounting practices;

9 D. report any violations of the law to the proper
10 law enforcement officers;

11 E. act as fiscal agent for the school district or
12 state-chartered charter school until the department
13 determines that the local school board or governing body of a
14 state-chartered charter school is capable of acting as a
15 board of finance or until the department determines that the
16 county treasurer should act as fiscal agent for the school
17 district or state-chartered charter school;

18 F. inform the local school board or governing
19 body of a state-chartered charter school in writing of the
20 department's determination as to who is to act as board of
21 finance or fiscal agent for the school district or
22 state-chartered charter school and also inform the county
23 treasurer in writing if it determines that the county
24 treasurer should act as fiscal agent for the school district
25 or state-chartered charter school; and

1 G. consider commencing proceedings before the
2 commission to suspend, revoke or refuse to renew the charter
3 of the state-chartered charter school in the case of a
4 state-chartered charter school that has engaged in serious or
5 repeated mismanagement, improper recording or improper
6 reporting of public school funds under its control."

7 Section 25. Section 22-8-40 NMSA 1978 (being Laws
8 1977, Chapter 136, Section 2, as amended) is amended to read:

9 "22-8-40. DEPOSIT OF PUBLIC SCHOOL FUNDS--
10 DISTRIBUTION--INTEREST.--

11 A. All public money in the custody of school
12 districts or state-chartered charter schools that have been
13 designated as boards of finance shall be deposited in
14 qualified depositories in accordance with the terms of this
15 section.

16 B. Deposits of funds of the school district or
17 state-chartered charter school may be made in
18 noninterest-bearing checking accounts in one or more banks,
19 savings and loan associations or credit unions, as long as
20 the credit union deposits are insured by an agency of the
21 United States, located within the geographical limits of the
22 school district.

23 C. Deposits of funds of the school district or
24 state-chartered charter school may be made in
25 interest-bearing checking accounts, commonly known as "NOW"

1 accounts, in one or more banks, savings and loan associations
2 or credit unions, as long as the credit union deposits are
3 insured by an agency of the United States, located within the
4 geographical limits of the school district.

5 D. Public money placed in interest-bearing
6 deposits, in banks and savings and loan associations, other
7 than interest-bearing checking accounts as defined in
8 Subsection C of this section, shall be equitably distributed
9 among all banks and savings and loan associations having
10 their main or manned branch offices within the geographical
11 boundaries of the school district that have qualified as
12 public depositories by reason of insurance of the account by
13 an agency of the United States or by depositing collateral
14 security or by giving bond as provided by law in the
15 proportion that each such bank's or savings and loan
16 association's net worth bears to the total net worth of all
17 banks and savings and loan associations having their main
18 office or a manned branch office within the geographical
19 boundaries of the school district. The net worth of the main
20 office of a savings and loan association and its manned
21 branch offices within the geographical boundaries of a school
22 district is the total net worth of the association multiplied
23 by the percentage that deposits of the main office and the
24 manned branch offices located within the geographical
25 boundaries of the school district are of the total deposits

1 of the association. The net worth of each manned branch
2 office or aggregate of manned branch offices of a savings and
3 loan association located outside the geographical boundaries
4 of the school district in which the main office is located is
5 the total net worth of the association multiplied by the
6 percentage that deposits of the branch or aggregate of
7 branches located outside the geographical boundaries of the
8 school district in which the main office is located are of
9 the total deposits of the association. The director of the
10 financial institutions division of the regulation and
11 licensing department shall promulgate a formula for
12 determining the net worth of banks' main offices and branches
13 for the purposes of distribution of public money as provided
14 for by this section. "Net worth" means assets less
15 liabilities as reported by such banks and savings and loan
16 associations on their most recent semiannual reports to the
17 state or federal supervisory authority having jurisdiction.

18 E. Notwithstanding the provisions of Subsection D
19 of this section, public money may be placed in interest-
20 bearing deposits, other than interest-bearing checking
21 accounts as defined in Subsection C of this section, at the
22 discretion of the board of finance, in credit unions having
23 their main or manned branch offices within the geographical
24 boundaries of the school district to the extent such deposits
25 are insured by an agency of the United States.

1 F. The rate of interest for all public money
2 deposited in interest-bearing accounts in banks, savings and
3 loan associations and credit unions shall be set by the state
4 board of finance, but in no case shall the rate of interest
5 be less than one hundred percent of the asked price on United
6 States treasury bills of the same maturity on the date of
7 deposit. Any bank or savings and loan association that fails
8 to pay the minimum rate of interest at the time of deposit
9 provided for herein for any respective deposit forfeits its
10 right to an equitable share of that deposit under this
11 section.

12 If the deposit is part or all of the proceeds of a bond issue
13 and the interest rate prescribed in this subsection
14 materially exceeds the rate of interest of the bonds, the
15 interest rate prescribed by this subsection shall be reduced
16 on the deposit to an amount not materially exceeding the
17 interest rate of the bonds if the bond issue would lose its
18 tax exempt status under Section 103 of the United States
19 Internal Revenue Code of 1954, as amended.

20 G. Public money in excess of that for which banks
21 and savings and loan associations within the geographical
22 boundaries of the school district have qualified may be
23 deposited in qualified depositories, including credit unions,
24 in other areas within the state under the same requirements
25 for payment of interest as if the money were deposited within

1 the geographical boundaries of the school district.

2 H. The board of finance of the school district or
3 state-chartered charter school may temporarily invest money
4 held in demand deposits and not immediately needed for the
5 operation of the school district or state-chartered charter
6 school. Such temporary investments shall be made only in
7 securities that are issued by the state or by the United
8 States government, or by their departments or agencies, and
9 that are either direct obligations of the state or the United
10 States or are backed by the full faith and credit of those
11 governments.

12 I. The department of finance and administration
13 may monitor the deposits of public money by school districts
14 or state-chartered charter schools to assure full compliance
15 with the provisions of this section."

16 Section 26. Section 22-8B-1 NMSA 1978 (being Laws
17 1999, Chapter 281, Section 1, as amended) is amended to read:

18 "22-8B-1. SHORT TITLE.--Chapter 22, Article 8B NMSA
19 1978 may be cited as the "Charter Schools Act"."

20 Section 27. Section 22-8B-2 NMSA 1978 (being Laws
21 1999, Chapter 281, Section 2) is amended to read:

22 "22-8B-2. DEFINITIONS.--As used in the Charter Schools
23 Act:

24 A. "charter school" means a conversion school or
25 start-up school authorized by the chartering authority to

1 operate as a public school;

2 B. "chartering authority" means either a local
3 school board or the commission;

4 C. "commission" means the public education
5 commission;

6 D. "conversion school" means an existing public
7 school within a school district that was authorized by a
8 local school board to become a charter school prior to July
9 1, 2007;

10 E. "division" means the charter schools division
11 of the department;

12 F. "governing body" means the governing structure
13 of a charter school as set forth in the school's charter; and

14 G. "start-up school" means a public school
15 developed by one or more parents, teachers or community
16 members authorized by the chartering authority to become a
17 charter school."

18 Section 28. Section 22-8B-3 NMSA 1978 (being Laws
19 1999, Chapter 281, Section 3) is amended to read:

20 "22-8B-3. PURPOSE.--The Charter Schools Act is enacted
21 to enable individual schools to structure their educational
22 curriculum to encourage the use of different and innovative
23 teaching methods that are based on reliable research and
24 effective practices or have been replicated successfully in
25 schools with diverse characteristics; to allow the

1 development of different and innovative forms of measuring
2 student learning and achievement; to address the needs of all
3 students, including those determined to be at risk; to create
4 new professional opportunities for teachers, including the
5 opportunity to be responsible for the learning program at the
6 school site; to improve student achievement; to provide
7 parents and students with an educational alternative to
8 create new, innovative and more flexible ways of educating
9 children within the public school system; to encourage
10 parental and community involvement in the public school
11 system; to develop and use site-based budgeting; and to hold
12 charter schools accountable for meeting the department's
13 educational standards and fiscal requirements."

14 Section 29. A new section of the Charter Schools Act
15 is enacted to read:

16 "PUBLIC EDUCATION COMMISSION--POWERS AND DUTIES.--The
17 commission shall receive applications for initial chartering
18 and renewals of charters for charter schools that want to be
19 chartered by the state and approve or disapprove those
20 charter applications. The commission may approve, deny,
21 suspend or revoke the charter of a state-chartered charter
22 school in accordance with the provisions of the Charter
23 Schools Act. The chartering authority for a charter school
24 existing on July 1, 2007 may be transferred to the
25 commission; provided, however, that if a school chartered

1 under a previous chartering authority chooses to transfer its
2 chartering authority, it shall continue to operate under the
3 provisions of that charter until its renewal date unless it
4 is suspended or revoked by the commission. An application
5 for a charter school filed with a local school board prior to
6 July 1, 2007, but not approved, may be transferred to the
7 commission on July 1, 2007."

8 Section 30. A new section of the Charter Schools Act
9 is enacted to read:

10 "CHARTER SCHOOLS DIVISION--DUTIES.--The "charter
11 schools division" is created in the department. The division
12 shall:

- 13 A. provide staff support to the commission;
- 14 B. provide technical support to all charter
15 schools;
- 16 C. review and approve state-chartered charter
17 school budget matters; and
- 18 D. make recommendations to the commission
19 regarding the approval, denial, suspension or revocation of
20 the charter of a state-chartered charter school."

21 Section 31. Section 22-8B-4 NMSA 1978 (being Laws
22 1999, Chapter 281, Section 4, as amended) is amended to read:

23 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND
24 RESPONSIBILITIES--OPERATION.--

- 25 A. A charter school shall be subject to all

1 federal and state laws and constitutional provisions
2 prohibiting discrimination on the basis of disability, race,
3 creed, color, gender, national origin, religion, ancestry or
4 need for special education services.

5 B. A charter school shall be governed by a
6 governing body in the manner set forth in the charter;
7 provided that a governing body shall have at least five
8 members; and provided further that no member of a governing
9 body for a charter school that is initially approved on or
10 after July 1, 2005 or whose charter is renewed on or after
11 July 1, 2005 shall serve on the governing body of another
12 charter school.

13 C. A charter school shall be responsible for:

14 (1) its own operation, including
15 preparation of a budget, subject to audits pursuant to the
16 Audit Act; and

17 (2) contracting for services and personnel
18 matters.

19 D. A charter school may contract with a school
20 district, a university or college, the state, another
21 political subdivision of the state, the federal government or
22 one of its agencies, a tribal government or any other third
23 party for the use of a facility, its operation and
24 maintenance and the provision of any service or activity that
25 the charter school is required to perform in order to carry

1 out the educational program described in its charter.
2 Facilities used by a charter school shall meet the standards
3 required pursuant to Section 22-8B-4.2 NMSA 1978.

4 E. A conversion school chartered before July 1,
5 2007 may choose to continue using the school district
6 facilities and equipment it had been using prior to
7 conversion, subject to the provisions of Subsection F of this
8 section.

9 F. The school district in which a charter school
10 is geographically located shall provide a charter school with
11 available facilities for the school's operations unless the
12 facilities are currently used for other educational purposes.
13 A charter school shall not be required to pay rent for the
14 school district facilities if the facilities can be provided
15 at no cost to the school district. If facilities are
16 available but cannot be provided at no cost to the school
17 district, the school district shall not charge more than the
18 actual direct cost of providing the facilities. The
19 available facilities provided by a school district to a
20 charter school shall meet all occupancy standards as
21 specified by the public school capital outlay council. As
22 used in this subsection, "other educational purposes"
23 includes health clinics, daycare centers, teacher training
24 centers, school district administration functions and other
25 ancillary services related to a school district's functions

1 and operations.

2 G. A locally chartered charter school may pay the
3 costs of operation and maintenance of its facilities or may
4 contract with the school district to provide facility
5 operation and maintenance services.

6 H. Locally chartered charter school facilities
7 are eligible for state and local capital outlay funds and
8 shall be included in the school district's five-year
9 facilities plan.

10 I. A locally chartered charter school shall
11 negotiate with a school district to provide transportation to
12 students eligible for transportation under the provisions of
13 the Public School Code. The school district, in conjunction
14 with the charter school, may establish a limit for student
15 transportation to and from the charter school site not to
16 extend beyond the school district boundary.

17 J. A charter school shall be a nonsectarian,
18 nonreligious and non-home-based public school.

19 K. Except as otherwise provided in the Public
20 School Code, a charter school shall not charge tuition or
21 have admission requirements.

22 L. With the approval of the chartering authority,
23 a single charter school may maintain separate facilities at
24 two or more locations within the same school district; but,
25 for purposes of calculating program units pursuant to the

1 Public School Finance Act, the separate facilities shall be
2 treated together as one school.

3 M. A charter school shall be subject to the
4 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
5 Accountability Act.

6 N. Within constitutional and statutory limits, a
7 charter school may acquire and dispose of property; provided
8 that, upon termination of the charter, all assets of the
9 locally chartered charter school shall revert to the local
10 school board and all assets of the state-chartered charter
11 school shall revert to the state.

12 O. The governing body of a charter school may
13 accept or reject any charitable gift, grant, devise or
14 bequest; provided that no such gift, grant, devise or bequest
15 shall be accepted if subject to any condition contrary to law
16 or to the terms of the charter. The particular gift, grant,
17 devise or bequest shall be considered an asset of the charter
18 school to which it is given.

19 P. The governing body may contract and sue and be
20 sued. A local school board shall not be liable for any acts
21 or omissions of the charter school.

22 Q. A charter school shall comply with all state
23 and federal health and safety requirements applicable to
24 public schools, including those health and safety codes
25 relating to educational building occupancy.

1 R. A charter school is a public school that may
2 contract with a school district or other party for provision
3 of financial management, food services, transportation,
4 facilities, education-related services or other services.
5 The governing body shall not contract with a for-profit
6 entity for the management of the charter school.

7 S. To enable state-chartered charter schools to
8 submit required data to the department, an accountability
9 data system shall be maintained by the department.

10 T. A charter school shall comply with all
11 applicable state and federal laws and rules related to
12 providing special education services. Charter school
13 students with disabilities and their parents retain all
14 rights under the federal Individuals with Disabilities
15 Education Act and its implementing state and federal rules.
16 Each charter school is responsible for identifying,
17 evaluating and offering a free appropriate public education
18 to all eligible children who are accepted for enrollment in
19 that charter school. The state-chartered charter school, as
20 a local educational agency, shall assume responsibility for
21 determining students' needs for special education and related
22 services. The division may promulgate rules to implement the
23 requirements of this subsection."

24 Section 32. Section 22-8B-5 NMSA 1978 (being Laws
25 1999, Chapter 281, Section 5) is amended to read:

1 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD
2 AUTHORITY.--

3 A. The local school board may waive only locally
4 imposed school district requirements for locally chartered
5 charter schools.

6 B. A state-chartered charter school is exempt
7 from school district requirements. A state-chartered charter
8 school is responsible for developing its own written policies
9 and procedures in accordance with this section.

10 C. The department shall waive requirements or
11 rules and provisions of the Public School Code pertaining to
12 individual class load, teaching load, length of the school
13 day, staffing patterns, subject areas, purchase of
14 instructional material, evaluation standards for school
15 personnel, school principal duties and driver education. The
16 department may waive requirements or rules and provisions of
17 the Public School Code pertaining to graduation requirements.
18 Any waivers granted pursuant to this section shall be for the
19 term of the charter granted but may be suspended or revoked
20 earlier by the department.

21 D. A charter school shall be a public school
22 accredited by the department and shall be accountable to the
23 chartering authority for purposes of ensuring compliance with
24 applicable laws, rules and charter provisions.

25 E. A local school board shall not require any

1 employee of the school district to be employed in a charter
2 school.

3 F. A local school board shall not require any
4 student residing within the geographic boundary of its
5 district to enroll in a charter school.

6 G. A student who is suspended or expelled from a
7 charter school shall be deemed to be suspended or expelled
8 from the school district in which the student resides."

9 Section 33. Section 22-8B-6 NMSA 1978 (being Laws
10 1998, Chapter 281, Section 6, as amended) is amended to read:

11 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
12 PROCESS--AUTHORIZATION--BOARD OF FINANCE DESIGNATION
13 REQUIRED.--

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

17 B. At least one hundred eighty days prior to
18 initial application, the organizers of a proposed charter
19 school shall provide written notification to the commission
20 and the school district in which the charter school is
21 proposed to be located of intent to establish a charter
22 school. Failure to notify may result in an application not
23 being accepted.

24 C. A charter school applicant shall apply to
25 either a local school board or the commission for a charter.

1 If an application is submitted to a chartering authority, it
2 must process the application. Applications for initial
3 charters shall be submitted by July 1 to be eligible for
4 consideration for the following fiscal year; provided that
5 the July 1 deadline may be waived upon agreement of the
6 applicant and the chartering authority.

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

13 E. An application shall include a detailed
14 description of the charter school's projected capital outlay
15 needs, including projected requests for capital outlay
16 assistance.

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

24 G. An initial application for a charter school
25 shall not be made after June 30, 2007 if the proposed charter

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

6 H. A state-chartered charter school shall not be
7 approved for operation unless its governing body has
8 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 meeting in the school district in which the
14 charter school is proposed to be located to obtain
15 information and community input to assist it in its decision
16 whether to grant a charter school application. Community
17 input may include written or oral comments in favor of or in
18 opposition to the application from the applicant, the local
19 community and, for state-chartered charter schools, the local
20 school board and school district in whose geographical
21 boundaries the charter school is proposed to be located. The
22 chartering authority shall rule on the application for a
23 charter school in a public meeting within sixty days after
24 receiving the application. If not ruled upon within sixty
25 days, the charter application shall be automatically reviewed

1 by the secretary in accordance with the provisions of Section
2 22-8B-7 NMSA 1978. The charter school applicant and the
3 chartering authority may, however, jointly waive the
4 deadlines set forth in this section.

5 K. A chartering authority may approve, approve
6 with conditions or deny an application. A chartering
7 authority may deny an application if:

8 (1) the application is incomplete or
9 inadequate;

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

13 (3) the proposed head administrator or
14 other administrative or fiscal staff was involved with
15 another charter school whose charter was denied or revoked
16 for fiscal mismanagement or the proposed head administrator
17 or other administrative or fiscal staff was discharged from a
18 public school for fiscal mismanagement;

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

23 (5) the application is otherwise contrary
24 to the best interests of the charter school's projected
25 students, the local community or the school district in whose

1 geographic boundaries the charter school applies to operate.

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

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

13 Section 34. Section 22-8B-7 NMSA 1978 (being Laws
14 1999, Chapter 281, Section 7, as amended) is amended to read:

15 "22-8B-7. APPEAL OF DENIAL, NONRENEWAL, SUSPENSION OR
16 REVOCATION--PROCEDURES.--

17 A. The secretary, upon receipt of a notice of
18 appeal or upon the secretary's own motion, shall review
19 decisions of a chartering authority concerning charter
20 schools in accordance with the provisions of this section.

21 B. A charter applicant or governing body that
22 wishes to appeal a decision of the chartering authority
23 concerning the denial, nonrenewal, suspension or revocation
24 of a charter school or the imposition of conditions that are
25 unacceptable to the charter school or charter school

1 applicant shall provide the secretary with a notice of appeal
2 within thirty days after the chartering authority's decision.
3 The charter school applicant or governing body bringing the
4 appeal shall limit the grounds of the appeal to the grounds
5 for denial, nonrenewal, suspension or revocation or the
6 imposition of conditions that were specified by the
7 chartering authority. The notice shall include a brief
8 statement of the reasons the charter school applicant or
9 governing body contends the chartering authority's decision
10 was in error. Except as provided in Subsection E of this
11 section, the appeal and review process shall be as follows
12 within sixty days after receipt of the notice of appeal, the
13 secretary, at a public hearing that may be held in the school
14 district in which the charter school is located or in which
15 the proposed charter school has applied for a charter, shall
16 review the decision of the chartering authority and make
17 findings. If the secretary finds that the chartering
18 authority acted arbitrarily or capriciously, rendered a
19 decision not supported by substantial evidence or did not act
20 in accordance with law, the secretary may reverse the
21 decision of the chartering authority and order the approval
22 of the charter with or without conditions. The decision of
23 the secretary shall be final.

24 C. The secretary, on the secretary's own motion,
25 may review a chartering authority's decision to grant a

1 charter. Within sixty days after the making of a motion to
2 review by the secretary, the secretary, at a public hearing
3 that may be held in the school district in which the proposed
4 charter school that has applied for a charter will be
5 located, shall review the decision of the chartering
6 authority and determine whether the decision was arbitrary or
7 capricious or whether the establishment or operation of the
8 proposed charter school would:

9 (1) violate any federal or state laws
10 concerning civil rights;

11 (2) violate any court order; or

12 (3) threaten the health and safety of
13 students within the school district.

14 D. If the secretary determines that the charter
15 would violate the provisions set forth in Subsection C of
16 this section, the secretary shall deny the charter
17 application. The secretary may extend the time lines
18 established in this section for good cause. The decision of
19 the secretary shall be final.

20 E. If a chartering authority denies an
21 application or refuses to renew a charter because the public
22 school capital outlay council has determined that the
23 facilities do not meet the standards required by Section
24 22-8B-4.2 NMSA 1978, the charter school applicant or charter
25 school may appeal the decision to the secretary as otherwise

1 provided in this section; provided that the secretary shall
2 reverse the decision of the chartering authority only if the
3 secretary determines that the decision was arbitrary,
4 capricious, not supported by substantial evidence or
5 otherwise not in accordance with the law.

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

9 Section 35. Section 22-8B-8 NMSA 1978 (being Laws
10 1999, Chapter 281, Section 8) is amended to read:

11 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
12 school application for a start-up school shall be a proposed
13 agreement between the chartering authority and the charter
14 school and shall include:

15 A. the mission statement of the charter school;

16 B. the goals, objectives and student performance
17 standards to be achieved by the charter school;

18 C. a description of the charter school's
19 educational program, student performance standards and
20 curriculum that must meet or exceed the department's
21 educational standards and must be designed to enable each
22 student to achieve those standards;

23 D. a description of the way a charter school's
24 educational program will meet the individual needs of the
25 students, including those students determined to be at risk;

1 E. a description of the charter school's plan for
2 evaluating student performance, the types of assessments that
3 will be used to measure student progress toward achievement
4 of the state's standards and the school's student performance
5 standards, the time line for achievement of the standards and
6 the procedures for taking corrective action in the event that
7 student performance falls below the standards;

8 F. evidence that the plan for the charter school
9 is economically sound, including a proposed budget for the
10 term of the charter and a description of the manner in which
11 the annual audit of the financial and administrative
12 operations of the charter school is to be conducted;

13 G. evidence that the fiscal management of the
14 charter school complies with all applicable federal and state
15 laws and rules relative to fiscal procedures;

16 H. evidence of a plan for the displacement of
17 students, teachers and other employees who will not attend or
18 be employed in the conversion school;

19 I. a description of the governing body and
20 operation of the charter school, including:

21 (1) how the initial governing body will be
22 selected;

23 (2) qualification and terms of members, how
24 vacancies on the governing body will be filled and procedures
25 for changing governing body membership; and

1 (3) the nature and extent of parental,
2 professional educator and community involvement in the
3 governance and operation of the school;

4 J. an explanation of the relationship that will
5 exist between the proposed charter school and its employees,
6 including evidence that the terms and conditions of
7 employment will be addressed with affected employees and
8 their recognized representatives, if any;

9 K. the employment and student discipline policies
10 of the proposed charter school;

11 L. for a locally chartered charter school, an
12 agreement between the charter school and the local school
13 board regarding their respective legal liability and
14 applicable insurance coverage;

15 M. a description of how the charter school plans
16 to meet the transportation and food service needs of its
17 students;

18 N. a description of the waivers that the charter
19 school is requesting from the local school board and the
20 department and the charter school's plan for addressing these
21 waiver requests;

22 O. a description of the facilities the charter
23 school plans to use; and

24 P. any other information reasonably required by
25 the chartering authority."

1 Section 36. Section 22-8B-9 NMSA 1978 (being Laws
2 1999, Chapter 281, Section 9) is amended to read:

3 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

4 A. An approved charter application is a contract
5 between the charter school and the chartering authority.

6 B. The charter shall reflect all agreements
7 regarding the release of the charter school from department
8 rules and policies.

9 C. For locally chartered charter schools, the
10 contract between the charter school and the local school
11 board shall reflect all requests for release of the charter
12 school from department rules or the Public School Code.
13 Within ten days after the contract is approved by the local
14 school board, any request for release from department rules
15 or the Public School Code shall be delivered by the local
16 school board to the department. If the department grants the
17 request, it shall notify the local school board and the
18 charter school of its decision. If the department denies the
19 request, it shall notify the local school board and the
20 charter school that the request is denied and specify the
21 reasons for denial.

22 D. The charter school shall participate in the
23 public school insurance authority.

24 E. Any revision or amendment to the terms of the
25 charter shall be made only with the approval of the

1 chartering authority and the governing body of the charter
2 school.

3 F. For locally chartered charter schools, the
4 charter shall include procedures agreed upon by the charter
5 school and the local school board for the resolution of
6 disputes between the charter school and the local school
7 board. The charter shall include procedures that shall be
8 agreed upon by the charter school and the local school board
9 in the event that the board determines that the charter shall
10 be revoked pursuant to the provisions of Section 22-8B-12
11 NMSA 1978."

12 Section 37. Section 22-8B-10 NMSA 1978 (being Laws
13 1999, Chapter 281, Section 10) is amended to read:

14 "22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

15 A. A charter school shall hire its own employees.
16 The provisions of the School Personnel Act shall apply to
17 such employees; provided, however, that a charter school may
18 determine by indicating in its charter that either its
19 governing body or head administrator shall make all
20 employment decisions. The governing body shall be deemed to
21 be responsible for making all employment decisions if the
22 charter does not specify the decision maker.

23 B. A charter school shall not initially employ or
24 approve the initial employment of a head administrator who is
25 the spouse, father, father-in-law, mother, mother-in-law,

1 son, son-in-law, daughter or daughter-in-law of a member of
2 the governing body. A charter school shall not initially
3 employ or approve the initial employment of a licensed school
4 employee who is the spouse, father, father-in-law, mother,
5 mother-in-law, son, son-in-law, daughter or daughter-in-law
6 of the head administrator. The governing body may waive the
7 nepotism rule for family members of a head administrator.

8 C. Nothing in this section shall prohibit the
9 continued employment of a person employed on or before July
10 1, 2007."

11 Section 38. Section 22-8B-11 NMSA 1978 (being Laws
12 1999, Chapter 281, Section 11) is amended to read:

13 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER
14 ESTABLISHED.--

15 A. The commission shall authorize the approval of
16 start-up charter schools.

17 B. No more than fifteen start-up schools may be
18 established per year statewide. The number of charter school
19 slots remaining in that year shall be transferred to
20 succeeding years up to a maximum of seventy-five start-up
21 schools in any five-year period."

22 Section 39. Section 22-8B-12 NMSA 1978 (being Laws
23 1999, Chapter 281, Section 12, as amended) is amended to
24 read:

25 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--

1 GROUND FOR NONRENEWAL OR REVOCATION.--

2 A. A charter school may be approved for an
3 initial term of six years; provided that the first year shall
4 be used exclusively for planning and not for completing the
5 application. A charter may be renewed for successive periods
6 of five years each. Approvals of less than five years may be
7 agreed to between the charter school and the chartering
8 authority.

9 B. Prior to the end of the planning year, the
10 charter school shall demonstrate that its facilities meet the
11 requirements of Section 22-8B-4.2 NMSA 1978.

12 C. Prior to the end of the planning year, a
13 state-chartered charter school shall demonstrate that it has
14 qualified as a board of finance and has satisfied any
15 conditions imposed by the commission before commencing full
16 operation for the remainder of its charter term. The
17 commission shall either issue or refuse to issue the
18 authorization to commence full operation within twenty-one
19 days of the request. If the commission refuses to issue the
20 authorization, it shall provide its reasons in writing to the
21 charter school.

22 D. No later than two hundred seventy days prior
23 to the date in which the charter expires, the governing body
24 may submit a renewal application to the chartering authority.
25 A charter school may apply to a different chartering

1 authority for renewal. The chartering authority shall rule
2 in a public hearing on the renewal application no later than
3 one hundred eighty days prior to the expiration of the
4 charter.

5 E. A charter school renewal application submitted
6 to the chartering authority shall contain:

7 (1) a report on the progress of the charter
8 school in achieving the goals, objectives, student
9 performance standards, state minimum educational standards
10 and other terms of the initial approved charter application,
11 including the accountability requirements set forth in the
12 Assessment and Accountability Act;

13 (2) a financial statement that discloses
14 the costs of administration, instruction and other spending
15 categories for the charter school that is understandable to
16 the general public, that allows comparison of costs to other
17 schools or comparable organizations and that is in a format
18 required by the department;

19 (3) contents of the charter application set
20 forth in Section 22-8B-8 NMSA 1978;

21 (4) a petition in support of the charter
22 school renewing its charter status signed by not less than
23 sixty-five percent of the employees in the charter school;

24 (5) a petition in support of the charter
25 school renewing its charter status signed by at least

1 seventy-five percent of the households whose children are
2 enrolled in the charter school; and

3 (6) a description of the charter school
4 facilities and assurances that the facilities are in
5 compliance with the requirements of Section 22-8B-4.2 NMSA
6 1978.

7 F. A charter may be suspended, revoked or not
8 renewed by the chartering authority if the chartering
9 authority determines that the charter school did any of the
10 following:

11 (1) committed a material violation of any
12 of the conditions, standards or procedures set forth in the
13 charter;

14 (2) failed to meet or make substantial
15 progress toward achievement of the department's minimum
16 educational standards or student performance standards
17 identified in the charter application;

18 (3) failed to meet generally accepted
19 standards of fiscal management; or

20 (4) violated any provision of law from
21 which the charter school was not specifically exempted.

22 G. If a chartering authority suspends, revokes or
23 does not renew a charter, the chartering authority shall
24 state in writing its reasons for the suspension, revocation
25 or nonrenewal.

1 H. A decision to suspend, revoke or not to renew
2 a charter may be appealed by the governing body pursuant to
3 Section 22-8B-7 NMSA 1978."

4 Section 40. Section 22-8B-13 NMSA 1978 (being Laws
5 1999, Chapter 281, Section 13) is amended to read:

6 "22-8B-13. CHARTER SCHOOL FINANCING.--

7 A. The amount of funding allocated to a charter
8 school shall be not less than ninety-eight percent of the
9 school-generated program cost. The school district or
10 division may withhold and use two percent of the
11 school-generated program cost for its administrative support
12 of a charter school.

13 B. That portion of money from state or federal
14 programs generated by students enrolled in a locally
15 chartered charter school shall be allocated to that charter
16 school serving students eligible for that aid. Any other
17 public school program not offered by the locally chartered
18 charter school shall not be entitled to the share of money
19 generated by a charter school program.

20 C. When a state-chartered charter school is
21 designated as a board of finance pursuant to Section 22-8-38
22 NMSA 1978, it shall receive state and federal funds for which
23 it is eligible.

24 D. Charter schools may apply for all federal
25 funds for which they are eligible.

1 E. All services centrally or otherwise provided
2 by a local school district, including custodial, maintenance
3 and media services, libraries and warehousing shall be
4 subject to negotiation between the charter school and the
5 school district. Any services for which a charter school
6 contracts with a school district shall be provided by the
7 district at a reasonable cost."

8 Section 41. Section 22-12-2 NMSA 1978 (being Laws
9 1967, Chapter 16, Section 170, as amended) is amended to
10 read:

11 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--
12 RESPONSIBILITY.--

13 A. Any qualified student and any person who
14 because of the person's age is eligible to become a qualified
15 student as defined by the Public School Finance Act until
16 attaining the age of majority shall attend a public school, a
17 private school, a home school or a state institution. A
18 person shall be excused from this requirement if:

19 (1) the person is specifically exempted by
20 law from the provisions of this section;

21 (2) the person has graduated from a high
22 school;

23 (3) the person is at least seventeen years
24 of age and has been excused by the local school board or the
25 governing body of a state-chartered charter school or its

1 authorized representative upon a finding that the person will
2 be employed in a gainful trade or occupation or engaged in an
3 alternative form of education sufficient for the person's
4 educational needs and the parent consents; or

5 (4) with consent of the parent of the
6 person to be excused, the person is excused from the
7 provisions of this section by the superintendent of schools
8 of the school district or by the head administrator of the
9 state-chartered charter school and the person is under eight
10 years of age.

11 B. A person subject to the provisions of the
12 Compulsory School Attendance Law shall attend school for at
13 least the length of time of the school year that is
14 established in the school district in which the person is a
15 resident or the state-chartered charter school in which the
16 person is enrolled.

17 C. Any parent of a person subject to the
18 provisions of the Compulsory School Attendance Law is
19 responsible for the school attendance of that person.

20 D. Each local school board and each governing
21 body of a charter school or private school shall enforce the
22 provisions of the Compulsory School Attendance Law for
23 students enrolled in their respective schools."

24 Section 42. Section 22-12-3 NMSA 1978 (being Laws
25 1971, Chapter 238, Section 1, as amended) is amended to read:

1 "22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--A student
2 may, subject to the approval of the school principal, be
3 excused from school to participate in religious instruction
4 for not more than one class period each school day with the
5 written consent of the student's parents at a time period not
6 in conflict with the academic program of the school. The
7 local school board or governing body of a charter school, and
8 its school employees, shall not assume responsibility for the
9 religious instruction or permit it to be conducted on school
10 property."

11 Section 43. Section 22-12-7 NMSA 1978 (being Laws
12 1967, Chapter 16, Section 175, as amended) is amended to
13 read:

14 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
15 TRUANTS--PENALTY.--

16 A. Each local school board and each governing
17 body of a charter school or private school shall initiate the
18 enforcement of the provisions of the Compulsory School
19 Attendance Law for students enrolled in their respective
20 schools.

21 B. To initiate enforcement of the provisions of
22 the Compulsory School Attendance Law against an habitual
23 truant, a local school board or governing body of a charter
24 school or private school or its authorized representatives
25 shall give written notice of the habitual truancy by

1 certified mail to or by personal service on the parent of the
2 student subject to and in noncompliance with the provisions
3 of the Compulsory School Attendance Law.

4 C. If unexcused absences continue after written
5 notice of habitual truancy as provided in Subsection B of
6 this section has occurred, the student shall be reported to
7 the probation services office of the judicial district where
8 the student resides for an investigation as to whether the
9 student shall be considered to be a neglected child or a
10 child in a family in need of services because of habitual
11 truancy and thus subject to the provisions of the Children's
12 Code. In addition to any other disposition, the children's
13 court may order the habitual truant's driving privileges to
14 be suspended for a specified time not to exceed ninety days
15 on the first finding of habitual truancy and not to exceed
16 one year for a subsequent finding of habitual truancy.

17 D. If, after review by the juvenile probation
18 office where the student resides, a determination and finding
19 is made that the habitual truancy by the student may have
20 been caused by the parent of the student, then the matter
21 will be referred by the juvenile probation office to the
22 district attorney's office or any law enforcement agency
23 having jurisdiction for appropriate investigation and filing
24 of charges allowed under the Compulsory School Attendance
25 Law. Charges against the parent may be filed in metropolitan

1 court, magistrate court or district court.

2 E. A parent of the student who, after receiving
3 written notice as provided in Subsection B of this section
4 and after the matter has been reviewed in accordance with
5 Subsection D of this section, knowingly allows the student to
6 continue to violate the Compulsory School Attendance Law
7 shall be guilty of a petty misdemeanor. Upon the first
8 conviction, a fine of not less than twenty-five dollars
9 (\$25.00) or more than one hundred dollars (\$100) may be
10 imposed, or the parent of the student may be ordered to
11 perform community service. If violations of the Compulsory
12 School Attendance Law continue, upon the second and
13 subsequent convictions, the parent of the student who
14 knowingly allows the student to continue to violate the
15 Compulsory School Attendance Law shall be guilty of a petty
16 misdemeanor and shall be subject to a fine of not more than
17 five hundred dollars (\$500) or imprisonment for a definite
18 term not to exceed six months or both.

19 F. The provisions of this section shall apply
20 beginning July 1, 2004."

21 Section 44. Section 22-12-8 NMSA 1978 (being Laws
22 1985, Chapter 104, Section 1, as amended) is amended to read:

23 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND
24 TRUANCY.--Notwithstanding the provisions of Section 22-12-7
25 NMSA 1978, if a student is truant, the school district or

1 charter school shall contact the student's parent to inform
2 the parent that the student is truant and to discuss possible
3 interventions. The provisions of this section do not apply
4 to any absence if the parent has contacted the school to
5 explain the absence."

6 Section 45. Section 22-12-9 NMSA 1978 (being Laws
7 2004, Chapter 28, Section 1, as amended) is amended to read:

8 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE
9 POLICIES.--

10 A. As used in this section and Sections 22-12-7
11 and 22-12-8 NMSA 1978:

12 (1) "habitual truant" means a student who
13 has accumulated the equivalent of ten or more unexcused
14 absences within a school year;

15 (2) "truant" means a student who has
16 accumulated five unexcused absences within any twenty-day
17 period; and

18 (3) "unexcused absence" means an absence
19 from school or a class for which the student does not have an
20 allowable excuse pursuant to the Compulsory School Attendance
21 Law or rules of the local school board or governing authority
22 of a charter school or private school.

23 B. Each school district and charter school shall
24 maintain an attendance policy that:

25 (1) provides for early identification of

1 students with unexcused absences, truants and habitual
2 truants and provides intervention strategies that focus on
3 keeping truants in an educational setting and prohibit
4 out-of-school suspension and expulsion as the punishment for
5 truancy;

6 (2) uses withdrawal as provided in Section
7 22-8-2 NMSA 1978 only after exhausting efforts to keep
8 students in educational settings; and

9 (3) requires that class attendance be taken
10 for every instructional day in every public school or school
11 program in the school district.

12 C. School districts and charter schools shall
13 report truancy and habitual truancy rates to the department
14 in a form and at such times as the department determines and
15 shall document efforts made to keep truants and habitual
16 truants in educational settings. Locally chartered charter
17 schools shall provide copies of their reports to the school
18 district."

19 Section 46. Section 22-13-3.7 NMSA 1978 (being Laws
20 1989, Chapter 113, Section 5, as amended) is amended to read:

21 "22-13-3.7. DISBURSEMENT OF FUNDS--APPROVED
22 PROJECTS.--

23 A. Any school district or state-chartered charter
24 school may apply for a grant from the literacy for children
25 at risk fund for the purpose of acquiring, equipping and

1 staffing a learning laboratory.

2 B. The department shall adopt rules setting forth
3 the criteria that a school district or state-chartered
4 charter school shall meet in order to qualify for a grant
5 from the literacy for children at risk fund. The criteria to
6 qualify for a grant shall include, but are not limited to,
7 the following:

8 (1) the learning laboratory shall improve
9 the reading, writing or math literacy levels of children at
10 risk by at least one grade level per year, as demonstrated to
11 the department's satisfaction;

12 (2) the learning laboratory shall encompass
13 the teaching of children in kindergarten through grade twelve
14 who are reading below grade level;

15 (3) the learning laboratory shall have
16 reading diagnostic capabilities; and

17 (4) the learning laboratory shall have the
18 capability to self-monitor the performance of both the
19 learning laboratory and the children at risk using the
20 laboratory.

21 C. The amount of any grant awarded under
22 Subsections A and B of this section shall be equal to eighty
23 percent of the total cost of acquiring, equipping and
24 staffing a learning laboratory. Any grant awarded is
25 contingent upon the qualifying school district or

1 state-chartered charter school demonstrating to the
2 department's satisfaction that it can pay for twenty percent
3 of the total cost of the learning laboratory.

4 D. Any school district or state-chartered charter
5 school that establishes a learning laboratory under this
6 section may use the laboratory for any other reading, writing
7 or math literacy program when it is not in use for the
8 purposes of the Literacy For Children At Risk Act.

9 E. The department, after approving the
10 application of a school district or state-chartered charter
11 school to receive a grant under the Literacy For Children At
12 Risk Act, shall authorize a disbursement of funds, in an
13 amount equal to the grant, from the literacy for children at
14 risk fund directly to the approved school district or charter
15 school."

16 Section 47. Section 22-15-2 NMSA 1978 (being Laws
17 1967, Chapter 16, Section 206, as amended) is amended to
18 read:

19 "22-15-2. DEFINITIONS.--As used in the Instructional
20 Material Law:

21 A. "division" or "bureau" means the instructional
22 material bureau of the department;

23 B. "director" or "chief" means the chief of the
24 bureau;

25 C. "instructional material" means school

1 textbooks and other educational media that are used as the
2 basis for instruction, including combinations of textbooks,
3 learning kits, supplementary material and electronic media;

4 D. "multiple list" means a written list of those
5 instructional materials approved by the department;

6 E. "membership" means the total enrollment of
7 qualified students on the fortieth day of the school year
8 entitled to the free use of instructional material pursuant
9 to the Instructional Material Law;

10 F. "additional pupil" means a pupil in a school
11 district's, state institution's or private school's current
12 year's certified forty-day membership above the number
13 certified in the school district's, state institution's or
14 private school's prior year's forty-day membership; and

15 G. "school district" includes state-chartered
16 charter schools."

17 Section 48. Section 22-15C-1 NMSA 1978 (being Laws
18 2003, Chapter 149, Section 1) is amended to read:

19 "22-15C-1. SHORT TITLE.--Chapter 22, Article 15C NMSA
20 1978 may be cited as the "School Library Material Act"."

21 Section 49. Section 22-15C-2 NMSA 1978 (being Laws
22 2003, Chapter 149, Section 2) is amended to read:

23 "22-15C-2. DEFINITIONS.--As used in the School Library
24 Material Act:

25 A. "additional student" means a student in the

1 certified forty-day membership of the current year for a
2 school district or state institution above the number
3 certified in the forty-day membership of the prior year for
4 the school district or state institution;

5 B. "bureau" means the instructional material
6 bureau of the department;

7 C. "fund" means the school library material fund;

8 D. "library material processing" means cataloging
9 of school library material, including in electronic format,
10 according to nationally accepted standards, and the
11 application of bar code labels and call-number classification
12 labels to the material;

13 E. "membership" means the total enrollment of
14 qualified students on the fortieth day of the school year
15 entitled to the free use of school library material pursuant
16 to the School Library Material Act;

17 F. "qualified student" means a public school
18 student who:

19 (1) has not graduated from high school;

20 (2) is regularly enrolled in one-half or
21 more of the minimum course requirements approved by the
22 department for public school students; and

23 (3) is at least five years of age prior to
24 12:01 a.m. on September 1 of the school year; or

25 (4) is at least three years of age at any

1 time during the school year and is receiving special
2 education services pursuant to regulation of the department;

3 G. "school library material" means books and
4 other educational media, including online reference and
5 periodical databases, that are made available in a school
6 library to students for circulation and use in the library;
7 and

8 H. "school district" includes state-chartered
9 charter schools."

10 Section 50. Section 22-15D-1 NMSA 1978 (being Laws
11 2003, Chapter 152, Section 1) is amended to read:

12 "22-15D-1. SHORT TITLE.--Chapter 22, Article 15D NMSA
13 1978 may be cited as the "Fine Arts Education Act"."

14 Section 51. Section 22-15D-2 NMSA 1978 (being Laws
15 2003, Chapter 152, Section 2) is amended to read:

16 "22-15D-2. PURPOSE.--

17 A. The purpose of the Fine Arts Education Act is
18 to encourage school districts and state-chartered charter
19 schools to offer opportunities for elementary school students
20 to participate in fine arts activities, including visual
21 arts, music, theater and dance.

22 B. Participation in fine arts programs encourages
23 cognitive and affective development by:

24 (1) focusing on a variety of learning
25 styles and engaging students who might otherwise fail;

- 1 (2) training students in complex thinking
2 and learning;
- 3 (3) helping students to devise creative
4 solutions for problems;
- 5 (4) providing students new challenges; and
6 (5) teaching students how to work
7 cooperatively with others and to understand and value diverse
8 cultures."

9 Section 52. Section 22-15D-4 NMSA 1978 (being Laws
10 2003, Chapter 152, Section 4) is amended to read:

11 "22-15D-4. DEPARTMENT--POWERS AND DUTIES.--The
12 department shall issue guidelines for the development and
13 implementation of fine arts education programs. The
14 department shall:

15 A. administer and enforce the provisions of the
16 Fine Arts Education Act; and

17 B. assist school districts and charter schools in
18 developing and evaluating programs."

19 Section 53. Section 22-15D-5 NMSA 1978 (being Laws
20 2003, Chapter 152, Section 5) is amended to read:

21 "22-15D-5. PROGRAM PLAN AND EVALUATION.--

22 A. A school district or state-chartered charter
23 school may prepare and submit to the department a fine arts
24 education program plan in accordance with guidelines issued
25 by the department.

1 B. At a minimum, the plan shall include the fine
2 arts education programs being taught, the ways in which the
3 fine arts are being integrated into the curriculum and an
4 evaluation component.

5 C. At yearly intervals, the school district or
6 state-chartered charter school, the department and a parent
7 advisory committee from the school district or charter school
8 shall review the goals and priorities of the plan and make
9 appropriate recommendations to the secretary."

10 Section 54. Section 22-20-1 NMSA 1978 (being Laws
11 1967, Chapter 16, Section 270, as amended) is amended to
12 read:

13 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
14 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE
15 ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS
16 APPLICABLE.--

17 A. Each local school board or governing body of a
18 charter school shall secure the approval of the director of
19 the public school facilities authority or the director's
20 designee prior to the construction or letting of contracts
21 for construction of any school building or related school
22 structure or before reopening an existing structure that was
23 formerly used as a school building but that has not been used
24 for that purpose during the previous year. A written
25 application shall be submitted to the director requesting

1 approval of the construction, and, upon receipt, the director
2 shall forward a copy of the application to the secretary.
3 The director shall prescribe the form of the application,
4 which shall include the following:

- 5 (1) a statement of need;
- 6 (2) the anticipated number of students
7 affected by the construction;
- 8 (3) the estimated cost;
- 9 (4) a description of the proposed
10 construction project;
- 11 (5) a map of the area showing existing
12 school attendance centers within a five-mile radius and any
13 obstructions to attending the attendance centers, such as
14 railroad tracks, rivers and limited-access highways; and
15 (6) such other information as may be
16 required by the director.

17 B. The director or the director's designee shall
18 give approval to an application if the director or designee
19 reasonably determines that:

- 20 (1) the construction will not cause an
21 unnecessary proliferation of school construction;
- 22 (2) the construction is needed in the
23 school district or by the charter school;
- 24 (3) the construction is feasible;
- 25 (4) the cost of the construction is

1 reasonable;

2 (5) the construction project:

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

6 (b) if relevant, is appropriately
7 integrated into the school district or charter school master
8 plan;

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

11 (7) the secretary has certified that the
12 construction will support the educational program of the
13 school district or charter school.

14 C. Within thirty days after the receipt of an
15 application filed pursuant to this section, the director or
16 the director's designee shall in writing notify the local
17 school board or governing body of a charter school making the
18 application and the department of approval or disapproval of
19 the application.

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

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

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

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

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

18 F. The provisions of Subsection E of this section
19 relating to fire protection shall not be effective until the
20 public regulation commission has adopted the International
21 Fire Code and all standards related to that code.

22 G. As used in this section, "construction" means
23 any project for which the construction industries division of
24 the regulation and licensing department requires permitting."

25 Section 55. Section 22-20-2 NMSA 1978 (being Laws

1 1967, Chapter 16, Section 271) is amended to read:

2 "22-20-2. SCHOOL BUILDING CONSTRUCTION--DISTANCE FROM
3 HIGHWAYS.--

4 A. No local school board or governing body of a
5 charter school shall construct or cause the construction of
6 any public school building within four hundred feet of any
7 main artery of travel without the prior written approval of
8 the department.

9 B. The district court may enforce the provisions
10 of this section by any appropriate civil remedy in an action
11 brought by an interested party.

12 C. As used in this section, "main artery of
13 travel" means any designated state or federal-aid highway
14 used primarily to accommodate transient motor traffic through
15 a municipality and any type of public highway used primarily
16 to accommodate transient motor traffic through a rural
17 community or area."

18 Section 56. Section 22-21-1 NMSA 1978 (being Laws
19 1967, Chapter 16, Section 282, as amended) is amended to
20 read:

21 "22-21-1. PROHIBITING SALES TO THE DEPARTMENT, TO
22 SCHOOL DISTRICTS AND TO SCHOOL PERSONNEL--EXCEPTION--
23 PENALTY.--

24 A. A member of the commission, a member of a
25 local school board, a member of the governing body of a

1 charter school, the secretary, an employee of the department
2 or a school employee shall not, directly or indirectly, sell
3 or be a party to any transaction to sell any instructional
4 material, furniture, equipment, insurance, school supplies or
5 work under contract to the department, school district or
6 public school with which such person is associated or
7 employed. No such person shall receive any commission or
8 profit from the sale or any transaction to sell any
9 instructional material, furniture, equipment, insurance,
10 school supplies or work under contract to the department,
11 school district or public school with which the person is
12 associated or employed.

13 B. The provisions of this section shall not apply
14 to a person making a sale in the regular course of business
15 who complies with the provisions of Sections 13-1-21,
16 13-1-21.2 and 13-1-22 NMSA 1978. The provisions of this
17 section shall not apply in cases in which school employees
18 contract to perform special services with the department,
19 school district or public school with which they are
20 associated or employed during time periods wherein service is
21 not required under a contract for instruction, administration
22 or other employment.

23 C. No member of the commission, member of a local
24 school board, member of the governing body of a charter
25 school, the secretary, employee of the department or school

1 employee shall solicit or sell or be a party to a transaction
2 to solicit or sell insurance or investment securities to any
3 employee of the department or any employee of the school
4 district whom such person supervises. Nothing in this
5 subsection shall prohibit a financial institution from
6 requiring the purchase of insurance in connection with a loan
7 or offering and selling such insurance in accordance with the
8 provisions of the New Mexico Insurance Code.

9 D. No state employee who supervises or exercises
10 control over school districts or charter schools, which
11 supervision or control includes but is not limited to school
12 programs, capital outlay and operating budgets, shall enter
13 into any business relationship with an employee of a local
14 school district or charter school over which the state
15 employee exercises supervision or control.

16 E. Any person violating any provision of this
17 section is guilty of a fourth degree felony under the
18 Criminal Code. The department may suspend or revoke the
19 licensure of a licensed school employee for violation of this
20 section."

21 Section 57. Section 22-23-2 NMSA 1978 (being Laws
22 1973, Chapter 285, Section 2, as amended) is amended to read:

23 "22-23-2. DEFINITIONS.--As used in the Bilingual
24 Multicultural Education Act:

25 A. "bilingual multicultural education program"

1 means a program using two languages, including English and
2 the home or heritage language, as a medium of instruction in
3 the teaching and learning process;

4 B. "culturally and linguistically different"
5 means students who are of a different cultural background
6 than mainstream United States culture and whose home or
7 heritage language, inherited from the student's family, tribe
8 or country of origin, is a language other than English;

9 C. "department" means the public education
10 department;

11 D. "district" means a public school or any
12 combination of public schools in a district or a charter
13 school;

14 E. "English language learner" means a student
15 whose first or heritage language is not English and who is
16 unable to read, write, speak or understand English at a level
17 comparable to grade level English proficient peers and native
18 English speakers;

19 F. "heritage language" means a language other
20 than English that is inherited from a family, tribe,
21 community or country of origin;

22 G. "home language" means a language other than
23 English that is the primary or heritage language spoken at
24 home or in the community;

25 H. "school board" means a local school board or

1 governing body of a state-chartered charter school; and

2 I. "standardized curriculum" means a district
3 curriculum that is aligned with the state academic content
4 standards, benchmarks and performance standards."

5 Section 58. Section 22-24-3 NMSA 1978 (being Laws
6 1975, Chapter 235, Section 3, as amended) is amended to read:

7 "22-24-3. DEFINITIONS.--As used in the Public School
8 Capital Outlay Act:

9 A. "council" means the public school capital
10 outlay council;

11 B. "fund" means the public school capital outlay
12 fund; and

13 C. "school district" includes state-chartered
14 charter schools."

15 Section 59. TEMPORARY PROVISION--CAPITAL OUTLAY
16 STUDY.--The public school capital outlay oversight task
17 force, in consultation with the public school capital outlay
18 council, the public education department and the public
19 school facilities authority, shall study statutory provisions
20 governing the funding of charter school capital outlay
21 facilities, transportation costs and any other capital outlay
22 issues concerning charter schools and shall make
23 recommendations to the legislative education study committee,
24 the legislative finance committee and the governor by
25 November 1, 2006.

1 Section 60. REPEAL.--

2 A. Section 22-8B-15 NMSA 1978 (being Laws 1999,
3 Chapter 281, Section 15) is repealed.

4 B. Laws 2005, Chapter 176, Section 12 is
5 repealed.

6 Section 61. EFFECTIVE DATE.--The effective date of the
7 provisions of Section 59 of this act is May 17, 2006. The
8 effective date of the provisions of Sections 1 through 57 and
9 60 of this act is July 1, 2007. _____

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