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HOUSE BILL 283

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

W. Ken Martinez

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE  
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES  
FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR  
CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE  
ENTERING INTO A LEASE AGREEMENT OR LEASE-PURCHASE AGREEMENT FOR  
SCHOOL FACILITIES OR BEFORE APPLYING FOR A GRANT FOR LEASE  
PAYMENTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION  
OF LAW IN LAWS 2003.

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

**SECTION 1.** Section 13-6-2.1 NMSA 1978 (being Laws 1989,  
Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,  
Section 3 and by Laws 2003, Chapter 349, Section 22) is amended  
to read:

"13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF  
FINANCE APPROVAL.--

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1           A. Except as provided in Section 13-6-3 NMSA 1978,  
2 for state agencies, any sale, trade or lease for a period of  
3 more than five years of real property belonging to a state  
4 agency, local public body or school district or any sale, trade  
5 or lease of such real property for a consideration of more than  
6 twenty-five thousand dollars (\$25,000) shall not be valid  
7 unless it is approved prior to its effective date by the state  
8 board of finance.

9           B. The provisions of this section shall not be  
10 applicable [~~as~~] to:

11                   (1) those institutions specifically enumerated  
12 in Article 12, Section 11 of the constitution of New Mexico;

13                   (2) the state land office;

14                   (3) the state transportation commission; [~~or~~]

15                   (4) the economic development department when  
16 disposing of property acquired pursuant to the Statewide  
17 Economic Development Finance Act; or

18                   (5) a school district when leasing facilities  
19 to a locally chartered or state-chartered charter school."

20           SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,  
21 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,  
22 as amended) is amended to read:

23                   "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

24                   A. The facilities of a charter school that is  
25 approved on or after July 1, 2005 and before July 1, 2015 shall

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1 meet educational occupancy standards required by applicable New  
2 Mexico construction codes.

3 B. The facilities of a charter school whose charter  
4 has been renewed at least once shall be evaluated, prioritized  
5 and eligible for grants pursuant to the Public School Capital  
6 Outlay Act in the same manner as all other public schools in  
7 the state; provided that for charter school facilities in  
8 leased facilities, grants may be used to provide additional  
9 lease payments for leasehold improvements made by the lessor.

10 C. On or after July 1, 2011, a new charter school  
11 shall not open and an existing charter school shall not  
12 relocate unless the facilities of the new or relocated charter  
13 school, as measured by the New Mexico condition index, receive  
14 a condition rating equal to or better than the average  
15 condition for all New Mexico public schools for that year or  
16 the charter school demonstrates, within eighteen months of  
17 occupancy or renewal of the charter, the way in which the  
18 facilities will achieve a rating equal to or better than the  
19 average New Mexico condition index.

20 [~~G.~~] D. On or after July 1, 2015, a new charter  
21 school shall not open and an existing charter shall not be  
22 renewed unless the charter school:

23 (1) is housed in a building that is:

24 (a) owned by the charter school, the  
25 school district, the state, an institution of the state,

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1 another political subdivision of the state, the federal  
2 government or one of its agencies or a tribal government; or

3 (b) subject to a lease-purchase  
4 arrangement that has been entered into and approved pursuant to  
5 the Public School Lease Purchase Act; or

6 (2) if it is not housed in a building  
7 described in Paragraph (1) of this subsection, demonstrates  
8 that:

9 (a) the facility in which the charter  
10 school is housed meets the statewide adequacy standards  
11 developed pursuant to the Public School Capital Outlay Act and  
12 the owner of the facility is contractually obligated to  
13 maintain those standards at no additional cost to the charter  
14 school or the state; and

15 (b) either: 1) public buildings are not  
16 available or adequate for the educational program of the  
17 charter school; or 2) the owner of the facility is a nonprofit  
18 entity specifically organized for the purpose of providing the  
19 facility for the charter school.

20 E. Without the approval of the public school  
21 facilities authority pursuant to Section 22-20-1 NMSA 1978, a  
22 charter school shall not:

23 (1) on or after July 1, 2012, enter into a new  
24 lease agreement or renew an existing lease agreement; or

25 (2) enter into a lease-purchase agreement.

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1                   [~~D~~] F. The public school capital outlay council:

2                   (1) shall determine whether facilities of a  
3 charter school meet the educational occupancy standards  
4 pursuant to the requirements of Subsection A of this section  
5 or the requirements of Subsections B, [~~and~~] C and D of this  
6 section, as applicable; and

7                   (2) upon a determination that specific  
8 requirements are not appropriate or reasonable for a charter  
9 school, may grant a variance from those requirements for that  
10 charter school."

11                   SECTION 3. Section 22-20-1 NMSA 1978 (being Laws 1967,  
12 Chapter 16, Section 270, as amended) is amended to read:

13                   "22-20-1. SCHOOL CONSTRUCTION--LEASE AGREEMENTS--LEASE-  
14 PURCHASE AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL  
15 OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH  
16 STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE  
17 STANDARDS APPLICABLE.--

18                   A. Except as provided in Subsection [~~D~~] G of this  
19 section, each local school board or governing body of a charter  
20 school shall secure the approval of the director of the public  
21 school facilities authority or the director's designee prior  
22 to:

23                   (1) the construction or letting of contracts  
24 for construction of any school building or related school  
25 structure; [~~or before~~]

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1                   (2) entering into a new lease agreement on or  
2 after July 1, 2012 or renewing an existing lease agreement on  
3 or after that date for a building to be used as a school  
4 building or a related school structure;

5                   (3) entering into a lease-purchase agreement  
6 for a building to be used as a school building or a related  
7 school structure; or

8                   (4) reopening an existing structure that was  
9 ~~[formerly used as a school building but that has not been used~~  
10 ~~for that purpose]~~ not used as a school building during the  
11 previous year.

12                   B. A written application shall be submitted to the  
13 director requesting approval of the construction, lease  
14 agreement, lease-purchase agreement or reopening, and, upon  
15 receipt, the director shall forward a copy of the application  
16 to the secretary. The director shall prescribe the form of the  
17 application, which shall include the following:

18                               (1) a statement of need;  
19                               (2) the anticipated number of students  
20 affected ~~[by the construction];~~

21                               (3) the estimated cost;  
22                               (4) for approval of construction, a  
23 description of the proposed construction project;

24                               (5) for approval of a lease agreement, a  
25 lease-purchase agreement or a reopening of an existing

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1 structure, a description of the structure to be leased or  
2 reopened, including its location, square footage, interior  
3 layout and facilities, such as bathrooms, kitchens and handicap  
4 access, a description of the prior use of the structure and a  
5 description of how the facility and supplemental shared  
6 facilities and resources will fulfill the functions necessary  
7 to support the educational programs of the school district or  
8 charter school;

9 [~~5~~] (6) a map of the area showing existing  
10 school attendance centers within a five-mile radius and any  
11 obstructions to attending the attendance centers, such as  
12 railroad tracks, rivers and limited-access highways; and

13 [~~6~~] (7) other information as may be required  
14 by the director.

15 [~~B~~] C. With respect to an application for the  
16 approval of construction, the director or the director's  
17 designee shall give approval to an application if the director  
18 or designee reasonably determines that:

19 (1) the construction will not cause an  
20 unnecessary proliferation of school construction;

21 (2) the construction is needed in the school  
22 district or by the charter school;

23 (3) the construction is feasible;

24 (4) the cost of the construction is  
25 reasonable;

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1 (5) the school district or charter school has  
2 submitted a five-year facilities plan that includes:

3 (a) enrollment projections;  
4 (b) a current preventive maintenance  
5 plan;

6 (c) the capital needs of charter schools  
7 chartered by the school district, if applicable, or the capital  
8 needs of the charter school if it is state-chartered; and

9 (d) projections for the facilities  
10 needed in order to maintain a full-day kindergarten program;

11 (6) the construction project:

12 (a) is in compliance with the statewide  
13 adequacy standards adopted pursuant to the Public School  
14 Capital Outlay Act; and

15 (b) is appropriately integrated into the  
16 school district or charter school five-year facilities plan;

17 (7) the school district or charter school is  
18 financially able to pay for the construction; and

19 (8) the secretary has certified that the  
20 construction will support the educational program of the school  
21 district or charter school.

22 D. With respect to an application for the approval  
23 of a lease agreement, the director or the director's designee  
24 shall give approval to an application if the director  
25 reasonably determines that the buildings to be leased meet

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1 educational occupancy standards required by applicable New  
2 Mexico construction codes.

3 E. With respect to an application for the approval  
4 of a lease-purchase agreement or for the reopening of an  
5 existing structure, the director or the director's designee  
6 shall give approval to an application if the director or  
7 designee reasonably determines that:

8 (1) the buildings to be reopened or leased for  
9 purchase meet the applicable statewide adequacy standards  
10 adopted pursuant to the Public School Capital Outlay Act or the  
11 buildings can be brought into compliance with those standards  
12 within a reasonable time and at a reasonable cost and that  
13 money or other resources will be available to the school  
14 district or charter school to bring the buildings up to those  
15 standards; and

16 (2) the buildings to be reopened or leased for  
17 purchase have, as measured by the New Mexico condition index, a  
18 condition rating equal to or better than the average condition  
19 for all New Mexico public schools for that year.

20 [~~G.~~] F. Within thirty days after the receipt of an  
21 application filed pursuant to this section, the director or the  
22 director's designee shall in writing notify the local school  
23 board or governing body of a charter school making the  
24 application and the department of approval or disapproval of  
25 the application.

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1                   ~~[D-]~~ G. By rule, the public school capital outlay  
2 council may:

3                               (1) exempt classes or types of construction  
4 from the application and approval requirements of this section;  
5 or

6                               (2) exempt classes or types of construction  
7 from the requirement of approval but, if the council determines  
8 that information concerning the construction is necessary for  
9 the maintenance of the facilities assessment database, require  
10 a description of the proposed construction project and related  
11 information to be submitted to the public school facilities  
12 authority.

13                   H. A school district or a charter school shall not  
14 apply for a lease payment grant pursuant to Subsection I of  
15 Section 22-24-4 NMSA 1978 unless the lease agreement or the  
16 lease-purchase agreement has been approved pursuant to this  
17 section, except that the approval requirement of this  
18 subsection shall not apply for a lease agreement in effect on  
19 June 30, 2012 until the agreement is subsequently renewed.

20                   ~~[E-]~~ I. 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 with  
25 the statewide adequacy standards adopted pursuant to the Public

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

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

22 ~~[H.]~~ L. As used in this section, "construction"  
23 means any project for which the construction industries  
24 division of the regulation and licensing department requires  
25 permitting and for which the estimated total cost exceeds two

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1 hundred thousand dollars (\$200,000)."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2011.

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