

HOUSE BILL 622

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PUBLIC SCHOOLS; MAKING CHARTER SCHOOLS LOCAL  
EDUCATIONAL AGENCIES; CLARIFYING THE STATUS OF CHARTER SCHOOLS  
VIS A VIS FEDERAL AND STATE LAWS; CLARIFYING WHO MAY START A  
CHARTER SCHOOL; REQUIRING ALL CHARTERS TO BE STATE CHARTERED;  
CLARIFYING THAT A GOVERNING BODY AND CHARTER SCHOOL EMPLOYEES  
MUST MANAGE AND ADMINISTER THE SCHOOL AND ITS EDUCATIONAL  
PROGRAM; PROVIDING FOR APPEALS FROM DECISIONS OF THE PUBLIC  
EDUCATION COMMISSION; TRANSFERRING THE CHARTER SCHOOLS DIVISION  
OF THE PUBLIC EDUCATION DEPARTMENT TO THE COMMISSION; REQUIRING  
DATA-SHARING AGREEMENTS BETWEEN THE COMMISSION AND THE  
DEPARTMENT; TRANSFERRING FUNCTIONS, APPROPRIATIONS, MONEY,  
RECORDS, OTHER PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY  
REFERENCES.

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

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

3           "22-8B-2. DEFINITIONS.--As used in the Charter Schools  
4 Act:

5           A. "charter school" means a conversion school or  
6 start-up school authorized by the [~~chartering authority~~]  
7 commission to operate as a public school;

8           ~~B. "chartering authority" means either a local~~  
9 ~~school board or the commission;~~

10           ~~G. "commission" means the public education~~  
11 ~~commission;~~

12           ~~D.]~~ B. "conversion school" means an existing public  
13 school within a school district that was authorized by a local  
14 school board to become a charter school prior to July 1, 2007;

15           ~~E.]~~ C. "division" means the charter schools  
16 division of the [~~department~~] commission;

17           ~~F.]~~ D. "governing body" means the governing  
18 structure of a charter school as set forth in the school's  
19 charter; and

20           ~~G.]~~ E. "start-up school" means a public school  
21 developed by one or more parents, teachers or community members  
22 authorized by the [~~chartering authority~~] commission to become a  
23 charter school."

24           SECTION 2. Section 22-8B-3 NMSA 1978 (being Laws 1999,  
25 Chapter 281, Section 3, as amended) is amended to read:

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1 "22-8B-3. PURPOSE.--The Charter Schools Act is enacted to  
2 enable individual schools to structure their educational  
3 curriculum to encourage the use of different and innovative  
4 teaching methods that are based on reliable research and  
5 effective practices or have been replicated successfully in  
6 schools with diverse characteristics; to allow the development  
7 of different and innovative forms of measuring student learning  
8 and achievement; to address the needs of all students,  
9 including those determined to be at risk; to create new  
10 professional opportunities for teachers, including the  
11 opportunity to be responsible for the learning program at the  
12 school site; to improve student achievement; to provide parents  
13 and students with an educational alternative to create new,  
14 innovative and more flexible ways of educating children within  
15 the public school system; to encourage parental and community  
16 involvement in the public school system; to develop and use  
17 site-based budgeting; ~~and~~ to hold charter schools accountable  
18 for meeting the department's educational standards and fiscal  
19 requirements; and to comply with federal and state laws."

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

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

24 A. A charter school ~~[shall be]~~ is subject to all  
25 federal and state laws and constitutional provisions

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1 prohibiting discrimination on the basis of disability, physical  
2 or mental handicap, serious medical condition, race, creed,  
3 color, sex, gender identity, sexual orientation, spousal  
4 affiliation, national origin, religion, ancestry or need for  
5 special education services.

6 B. A charter school is subject to all federal and  
7 state laws pertaining to educating students with disabilities.

8 ~~[B.]~~ C. A charter school shall be governed by a  
9 governing body in the manner set forth in the charter contract;  
10 provided that a governing body shall have at least five  
11 members, all of whom are residents of New Mexico; and provided  
12 further that no member of a governing body for a charter school  
13 that is initially approved on or after July 1, 2005 or whose  
14 charter is renewed on or after July 1, 2005 shall serve on the  
15 governing body of another charter school. No member of a local  
16 school board shall be a member of a governing body for a  
17 charter school or employed in any capacity by ~~[a locally~~  
18 ~~chartered]~~ another charter school ~~[located within the local~~  
19 ~~school board's school district]~~ during the term of office for  
20 which the member was elected or appointed.

21 ~~[C.]~~ D. A charter school shall be responsible for:  
22 (1) its own operation, including preparation  
23 of a budget, subject to audits pursuant to the Audit Act; and  
24 (2) contracting for services and personnel  
25 matters.

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1                    E. A charter school is an independent local  
2                    educational agency for purposes of the federal Individuals with  
3                    Disabilities Education Act.

4                    [~~D-~~] F. A charter school may contract with a school  
5                    district, a university or college, the state, another political  
6                    subdivision of the state, the federal government or one of its  
7                    agencies, a tribal government or any other third party for the  
8                    use of a facility, its operation and maintenance and the  
9                    provision of any service or activity that the charter school is  
10                    required to perform in order to carry out the educational  
11                    program described in its charter contract. Facilities used by  
12                    a charter school shall meet the standards required pursuant to  
13                    Section 22-8B-4.2 NMSA 1978.

14                    [~~E-~~] G. A conversion school chartered before July  
15                    1, 2007 may choose to continue using the school district  
16                    facilities and equipment it had been using prior to conversion,  
17                    subject to the provisions of Subsection [~~F~~] H of this section.

18                    [~~F-~~] H. The school district in which a charter  
19                    school is geographically located shall provide a charter school  
20                    with available facilities for the school's operations unless  
21                    the facilities are currently used for other educational  
22                    purposes. An agreement for the use of school district  
23                    facilities by a charter school may provide for reasonable lease  
24                    payments; provided that the payments do not exceed the sum of  
25                    the lease reimbursement rate provided in Subparagraph (b) of

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1 Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus  
2 any reimbursement for actual direct costs incurred by the  
3 school district in providing the facilities; and provided  
4 further that any lease payments received by a school district  
5 may be retained by the school district and shall not be  
6 considered to be cash balances in any calculation pursuant to  
7 Section 22-8-41 NMSA 1978. The available facilities provided  
8 by a school district to a charter school shall meet all  
9 occupancy standards as specified by the public school capital  
10 outlay council. As used in this subsection, "other educational  
11 purposes" includes health clinics, daycare centers, teacher  
12 training centers, school district administration functions and  
13 other ancillary services related to a school district's  
14 functions and operations.

15 [~~G.~~] I. A [~~locally chartered~~] charter school may  
16 pay the costs of operation and maintenance of its facilities or  
17 may contract with the school district to provide facility  
18 operation and maintenance services.

19 [~~H. Locally chartered~~] J. Charter school  
20 facilities are eligible for state and local capital outlay  
21 funds and shall be included in the school district's five-year  
22 facilities plan.

23 [~~F.~~] K. A [~~locally chartered~~] charter school  
24 [~~shall~~] may negotiate with a school district to provide  
25 transportation to students eligible for transportation under

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1 the provisions of the Public School Code. The school district,  
2 in conjunction with the charter school, may establish a limit  
3 for student transportation to and from the charter school site  
4 not to extend beyond the school district boundary.

5 ~~[J.]~~ L. A charter school shall be a nonsectarian,  
6 nonreligious and non-home-based public school and shall not be  
7 managed or administered by a private entity or allow its  
8 educational program to be managed or administered by a private  
9 entity.

10 ~~[K.]~~ M. Except as otherwise provided in the Public  
11 School Code, a charter school shall not charge tuition or have  
12 admission requirements.

13 ~~[L.]~~ N. With the approval of the ~~[chartering~~  
14 ~~authority]~~ commission, a single charter school may maintain  
15 separate facilities at two or more locations within the same  
16 school district; but, for purposes of calculating program units  
17 pursuant to the Public School Finance Act, the separate  
18 facilities shall be treated together as one school.

19 ~~[M.]~~ O. A charter school shall be subject to the  
20 provisions of Section 22-2-8 NMSA 1978, ~~[and]~~ the Assessment  
21 and Accountability Act and the Audit Act.

22 ~~[N.]~~ P. Within constitutional and statutory limits,  
23 a charter school may acquire and dispose of property; provided  
24 that, upon termination of the charter, all assets of the  
25 ~~[locally chartered]~~ charter school shall revert to the ~~[local]~~

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1 ~~school board and all assets of the state-chartered charter~~  
2 ~~school shall revert to the~~ state, except that if all or any  
3 portion of a [~~state-chartered~~] charter school facility is  
4 financed with the proceeds of general obligation bonds issued  
5 by a local school board, the facility shall revert to the local  
6 school board.

7 [Q-] Q. The governing body of a charter school may  
8 accept or reject any charitable gift, grant, devise or bequest;  
9 provided that no such gift, grant, devise or bequest shall be  
10 accepted if subject to any condition contrary to law or to the  
11 terms of the charter. The particular gift, grant, devise or  
12 bequest shall be considered an asset of the charter school to  
13 which it is given.

14 [P-] R. The governing body may contract and sue and  
15 be sued. A local school board shall not be liable for any acts  
16 or omissions of the charter school.

17 [Q-] S. A charter school shall comply with all  
18 state and federal health and safety requirements applicable to  
19 public schools, including those health and safety codes  
20 relating to educational building occupancy.

21 [R-] T. A charter school is a public school that may  
22 contract with a school district or other party for provision of  
23 financial management, food services, transportation, facilities,  
24 education-related services or other services; provided that a  
25 charter school shall not contract in such a manner that the

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1 administration is not responsible for the day-to-day operations  
2 of the charter school and the governing body is not responsible  
3 for the development and implementation by employees of the  
4 charter school of school and educational policies. The  
5 governing body shall not contract with a for-profit entity for  
6 the management or administration of the charter school or its  
7 educational program.

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

11 [F.] V. A charter school shall comply with all  
12 applicable state and federal laws and rules related to  
13 providing special education services. Charter school students  
14 with disabilities and their parents retain all rights under the  
15 federal Individuals with Disabilities Education Act and its  
16 implementing state and federal rules. Each charter school is  
17 responsible for identifying, evaluating and offering a free  
18 appropriate public education to all eligible children who are  
19 accepted for enrollment in that charter school. The [~~state-~~  
20 ~~chartered~~] charter school, as a local educational agency, shall  
21 assume responsibility for determining students' needs for  
22 special education and related services. The division may  
23 promulgate rules to implement the requirements of this  
24 subsection."

25 SECTION 4. Section 22-8B-5 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 5, as amended) is amended to read:

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

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

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

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

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

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1           ~~[E-]~~ D. A local school board shall not require any  
2 employee of the school district to be employed in a charter  
3 school.

4           ~~[F-]~~ E. A local school board shall not require any  
5 student residing within the geographic boundary of its district  
6 to enroll in a charter school.

7           ~~[G-]~~ F. A student who is suspended or expelled from  
8 a charter school shall be deemed to be suspended or expelled  
9 from the school district in which the student resides."

10           **SECTION 5.** Section 22-8B-5.2 NMSA 1978 (being Laws 2011,  
11 Chapter 14, Section 7) is amended to read:

12           "22-8B-5.2. GOVERNING BODY CONFLICTS OF INTEREST.--

13           A. A person shall not serve as a member of a  
14 governing body of a charter school if the person or an  
15 immediate family member of the person is an owner, agent of,  
16 contractor with or otherwise has a financial interest in ~~[a~~  
17 ~~for-profit or nonprofit]~~ an entity with which the charter  
18 school contracts directly for professional services, goods or  
19 facilities. A violation of this subsection renders the  
20 contract between the person or the person's immediate family  
21 member and the charter school voidable at the option of the  
22 ~~[chartering authority]~~ commission, the department or the  
23 governing body. A person who knowingly violates this  
24 subsection may be individually liable to the charter school for  
25 any financial damage caused by the violation.

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1           B. No member of a governing body or employee,  
2 officer or agent of a charter school shall participate in  
3 selecting, awarding or administering a contract with the  
4 charter school if a conflict of interest exists. A conflict of  
5 interest exists when the member, employee, officer or agent or  
6 an immediate family member of the member, employee, officer or  
7 agent has a financial interest in the entity with which the  
8 charter school is contracting. A violation of this subsection  
9 renders the contract voidable.

10           C. Any employee, agent or board member of the  
11 [~~chartering authority~~] commission who participates in the  
12 initial review, approval, ongoing oversight, evaluation or  
13 charter renewal process of a charter school is ineligible to  
14 serve on the governing body of the charter school chartered by  
15 the [~~chartering authority~~] commission.

16           D. As used in this section, "immediate family  
17 member" means spouse, father, father-in-law, mother, mother-in-  
18 law, son, son-in-law, daughter, daughter-in-law, brother,  
19 brother-in-law, sister, sister-in-law or any other relative who  
20 is financially supported."

21           **SECTION 6.** Section 22-8B-5.3 NMSA 1978 (being Laws 2011,  
22 Chapter 14, Section 8) is amended to read:

23           "22-8B-5.3. [~~CHARTERING AUTHORITY~~] COMMISSION--POWERS--  
24 DUTIES--LIABILITY.--[~~A chartering authority~~] The commission  
25 shall:

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- 1           A. evaluate charter applications;
- 2           B. actively pursue the [~~utilization~~] use of charter  
3 schools to satisfy identified education needs and promote a  
4 diversity of educational choices;
- 5           C. approve charter applications that meet the  
6 requirements of the Charter Schools Act;
- 7           D. decline to approve charter applications that  
8 fail to meet the requirements of the Charter Schools Act or are  
9 otherwise inadequate;
- 10          E. negotiate and execute, in good faith, charter  
11 contracts that meet the requirements of the Charter Schools Act  
12 with each approved charter school;
- 13          F. monitor, in accordance with the requirements of  
14 the Charter Schools Act and the terms of the charter contract,  
15 the performance and legal compliance of charter schools under  
16 [~~their~~] its authority;
- 17          G. determine whether a charter school merits  
18 suspension, revocation or nonrenewal; and
- 19          H. develop and maintain chartering policies and  
20 practices consistent with nationally recognized principles and  
21 standards for quality charter authorizing in all major areas of  
22 authorizing, including:
- 23               (1) organizational capacity and  
24 infrastructure;
- 25               (2) evaluating charter applications;

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- 1 (3) performance contracting;  
2 (4) charter school oversight and evaluation;  
3 and  
4 (5) charter school suspension, revocation and  
5 renewal processes."

6 SECTION 7. Section 22-8B-6 NMSA 1978 (being Laws 1999,  
7 Chapter 281, Section 6, as amended) is amended to read:

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

11 [~~A.~~ ~~A local school board has the authority to~~  
12 ~~approve the establishment of a charter school within the school~~  
13 ~~district in which it is located.~~

14 ~~B.]~~ A. No later than the second Tuesday of January  
15 of the year in which an application will be filed, the  
16 organizers of a proposed charter school shall provide written  
17 notification to the commission and the school district in which  
18 the charter school is proposed to be located of their intent to  
19 establish a charter school. Failure to notify may result in an  
20 application not being accepted.

21 [~~G.]~~ B. A charter school applicant shall apply to  
22 [~~either a local school board or~~] the commission for a charter.  
23 If an application is submitted, [~~to a chartering authority, it~~]  
24 the commission must process the application. Applications for  
25 initial charters shall be submitted between June 1 and July 1

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1 to be eligible for consideration for the following fiscal year;  
2 provided that the July 1 deadline may be waived upon agreement  
3 of the applicant and the [~~chartering authority~~] commission.

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

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

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

23 [~~G.~~] F. An initial application for a charter school  
24 shall not be made after June 30, 2007 if the proposed charter  
25 school's proposed enrollment for all grades or the proposed

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

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

11 [~~F.~~] H. The [~~chartering authority~~] commission shall  
12 receive and review all applications for charter schools  
13 submitted to it [~~The chartering authority~~] and shall not charge  
14 application fees.

15 [~~J.~~] I. The [~~chartering authority~~] commission shall  
16 hold at least one public hearing in the school district in  
17 which the charter school is proposed to be located to obtain  
18 information and community input to assist it in its decision  
19 whether to grant a charter school application. The [~~chartering~~  
20 ~~authority~~] commission may designate a subcommittee of no fewer  
21 than three members to hold the public hearing, and, if so, the  
22 hearing shall be transcribed for later review by other members  
23 of the [~~chartering authority~~] commission. Community input may  
24 include written or oral comments in favor of or in opposition  
25 to the application from the applicant, the local community and,

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1 for ~~[state-chartered]~~ charter schools, the local school board  
2 and school district in whose geographical boundaries the  
3 charter school is proposed to be located.

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

18 ~~[L. A chartering authority]~~ K. The commission may  
19 approve, approve with conditions or deny an application. ~~[A  
20 chartering authority]~~ The commission may deny an application  
21 if:

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

24 (2) the application does not propose to offer  
25 an educational program consistent with the requirements and

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1 purposes of the Charter Schools Act;

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

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

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

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

23 [~~N.~~] M. A charter school that has received a notice  
24 from the [~~chartering authority~~] commission denying approval of  
25 the charter [~~shall have a right to a hearing by the secretary~~

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1 ~~as provided in Section 22-8B-7 NMSA 1978]~~ may appeal the final  
2 decision of the commission as provided in Section 39-3-1.1 NMSA  
3 1978."

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

6 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter  
7 school application shall include:

8 A. the mission statement of the charter school;

9 B. the goals, objectives and student performance  
10 outcomes to be achieved by the charter school;

11 C. a description of the charter school's  
12 educational program, student performance standards and  
13 curriculum that must meet or exceed the department's  
14 educational standards and must be designed to enable each  
15 student to achieve those standards;

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

19 E. a description of the charter school's plan for  
20 evaluating student performance, the types of assessments that  
21 will be used to measure student progress toward achievement of  
22 the state's standards and the school's student performance  
23 outcomes, the time line for achievement of the outcomes and the  
24 procedures for taking corrective action in the event that  
25 student performance falls below the standards;

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1 F. evidence that the plan for the charter school is  
2 economically sound, including a proposed budget for the term of  
3 the charter and a description of the manner in which the annual  
4 audit of the financial and administrative operations of the  
5 charter school is to be conducted;

6 G. evidence that the fiscal management of the  
7 charter school complies with all applicable federal and state  
8 laws and rules relative to fiscal procedures;

9 ~~[H. evidence of a plan for the displacement of~~  
10 ~~students, teachers and other employees who will not attend or~~  
11 ~~be employed in the conversion school;~~

12 ~~[F.]~~ H. a description of the governing body and  
13 operation of the charter school, including:

14 (1) how the governing body will be selected;

15 (2) qualification and terms of members, how  
16 vacancies on the governing body will be filled and procedures  
17 for changing governing body membership; and

18 (3) the nature and extent of parental,  
19 professional educator and community involvement in the  
20 governance and operation of the school;

21 ~~[J.]~~ I. an explanation of the relationship that  
22 will exist between the proposed charter school and its  
23 employees, including evidence that the terms and conditions of  
24 employment will be addressed with affected employees and their  
25 recognized representatives, if any;

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1           ~~[K.]~~ J. the employment and student discipline  
2 policies of the proposed charter school;

3           ~~[L.]~~ K. an agreement between the charter school and  
4 the ~~[chartering authority]~~ commission regarding their  
5 respective legal liability and applicable insurance coverage;

6           ~~[M.]~~ L. a description of how the charter school  
7 plans to meet the transportation and food service needs of its  
8 students;

9           ~~[N.]~~ M. a description of both the discretionary  
10 waivers and the waivers provided for in Section 22-8B-5 NMSA  
11 1978 that the charter school is requesting or that will be  
12 provided ~~[from the local school board or]~~ by the department and  
13 the charter school's plan for addressing and using these waiver  
14 requests; ~~[and~~

15           ~~[O.]~~ N. a description of the facilities the charter  
16 school plans to use; and

17           O. a statement that the charter school will not  
18 contract for the management or administration of the charter  
19 school or its education program."

20           SECTION 9. Section 22-8B-9 NMSA 1978 (being Laws 1999,  
21 Chapter 281, Section 9, as amended) is amended to read:

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

23           A. The ~~[chartering authority]~~ commission shall  
24 enter into a contract with the governing body of the applicant  
25 charter school within thirty days of approval of the charter

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1 application. The charter contract shall be the final  
2 authorization for the charter school and shall be part of the  
3 charter. [~~If the chartering authority and the applicant~~  
4 ~~charter school fail to agree upon the terms of or enter into a~~  
5 ~~contract within thirty days of the approval of the charter~~  
6 ~~application, either party may appeal to the secretary to~~  
7 ~~finalize the terms of the contract; provided that such appeal~~  
8 ~~must be provided in writing to the secretary within forty-five~~  
9 ~~days of the approval of the charter application.~~] Failure to  
10 enter into a charter contract [~~or appeal to the secretary~~  
11 ~~pursuant to this section~~] precludes the [~~chartering authority~~]  
12 commission from chartering the school.

13 B. The charter contract shall include:

14 (1) all agreements regarding the release of  
15 the charter school from department [~~and local school board~~]  
16 rules and policies, including discretionary waivers and waivers  
17 provided for in Section 22-8B-5 NMSA 1978;

18 (2) any material term of the charter  
19 application as determined by the parties to the contract;

20 (3) the mission statement of the charter  
21 school and how the charter school will report on implementation  
22 of its mission;

23 (4) the [~~chartering authority's~~] commission's  
24 duties to the charter school and liabilities of the [~~chartering~~  
25 ~~authority~~] commission as provided in Section [~~8 of this 2011~~

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1 ~~act]~~ 22-8B-5.3 NMSA 1978;

2 (5) a statement of admission policies and  
3 procedures;

4 (6) signed assurances from the charter  
5 school's governing body members regarding compliance with all  
6 federal and state laws governing organizational, programmatic  
7 and financial requirements applicable to charter schools;

8 (7) the criteria, processes and procedures  
9 that the [~~chartering authority~~] commission will use for ongoing  
10 oversight of operational, financial and academic performance of  
11 the charter school;

12 (8) a detailed description of how the  
13 [~~chartering authority~~] commission will use the withheld two  
14 percent of the school-generated program cost as provided in  
15 Section 22-8B-13 NMSA 1978;

16 (9) the types and amounts of insurance  
17 liability coverage to be obtained by the charter school;

18 (10) the term of the contract;

19 (11) the process and criteria that the  
20 [~~chartering authority~~] commission intends to use to annually  
21 monitor and evaluate the fiscal, overall governance and student  
22 performance of the charter school, including the method that  
23 the [~~chartering authority~~] commission intends to use to conduct  
24 the evaluation as required by Section 22-8B-12 NMSA 1978;

25 (12) the dispute resolution processes agreed

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1 upon by the [~~chartering authority~~] commission and the charter  
2 school, provided that the processes shall, at a minimum,  
3 include:

4 (a) written notice of the intent to  
5 invoke the dispute resolution process, which notice shall  
6 include a description of the matter in dispute;

7 (b) a time limit for response to the  
8 notice and cure of the matter in dispute;

9 (c) a procedure for selection of a  
10 neutral third party to assist in resolving the dispute;

11 (d) a process for apportionment of all  
12 costs related to the dispute resolution process; and

13 (e) a process for final resolution of  
14 the issue reviewed under the dispute resolution process;

15 (13) the criteria, procedures and time lines,  
16 agreed upon by the charter school and the [~~chartering~~  
17 ~~authority~~] commission, addressing charter revocation and  
18 deficiencies found in the annual status report pursuant to the  
19 provisions of Section 22-8B-12 NMSA 1978;

20 (14) if the charter school contracts with a  
21 third-party provider for services that do not constitute the  
22 management or administration of the charter school or its  
23 educational program, the criteria and procedures for the  
24 [~~chartering authority~~] commission to review the provider's  
25 contract and the charter school's financial independence from

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1 the provider;

2 (15) all requests for release of the charter  
3 school from department rules or the Public School Code. Within  
4 ten days after the contract is approved by the [~~local school~~  
5 ~~board~~] commission, any request for release from department  
6 rules or the Public School Code shall be delivered by the  
7 [~~local school board~~] charter school to the department. If the  
8 department grants the request, it shall notify the [~~local~~  
9 ~~school board~~] commission and the charter school of its  
10 decision. If the department denies the request, it shall  
11 notify the [~~local school board~~] commission and the charter  
12 school that the request is denied and specify the reasons for  
13 denial;

14 (16) an agreement that the charter school will  
15 participate in the public school insurance authority;

16 (17) [~~if the charter school is a state-~~  
17 ~~chartered charter school~~] a process for qualification of and  
18 review of the school as a qualified board of finance and  
19 provisions for assurance that the school has satisfied any  
20 conditions imposed by the commission; and

21 (18) any other information reasonably required  
22 by either party to the contract.

23 C. The process for revision or amendment to the  
24 terms of the charter contract shall be made only with the  
25 approval of the [~~chartering authority~~] commission and the

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1 governing body of the charter school. [~~If they cannot agree,~~  
2 ~~either party may appeal to the secretary as provided in~~  
3 ~~Subsection A of this section.]"~~

4 SECTION 10. Section 22-8B-9.1 NMSA 1978 (being Laws 2011,  
5 Chapter 14, Section 4) is amended to read:

6 "22-2B-9.1. PERFORMANCE FRAMEWORK.--

7 A. The performance provisions in the charter  
8 contract shall be based on a framework that clearly sets forth  
9 the academic and operations performance indicators, measures  
10 and metrics that will guide the [~~chartering authority's~~  
11 commission's evaluation of each charter school. The  
12 performance framework shall include indicators, measures and  
13 metrics for, at a minimum:

- 14 (1) student academic performance;
- 15 (2) student academic growth;
- 16 (3) achievement gaps in both proficiency and  
17 growth between student subgroups;
- 18 (4) attendance;
- 19 (5) recurrent enrollment from year to year;
- 20 (6) if the charter school is a high school,  
21 post-secondary readiness;
- 22 (7) if the charter school is a high school,  
23 graduation rate;
- 24 (8) financial performance and sustainability;

25 and

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1 (9) governing body performance, including  
2 compliance with all applicable laws, rules and terms of the  
3 charter contract.

4 B. Annual performance targets shall be set by [~~each~~  
5 ~~chartering authority~~] the commission in consultation with its  
6 charter schools and shall be designed to help each charter  
7 school meet applicable federal, state and [~~chartering~~  
8 ~~authority~~] commission expectations as set forth in the charter  
9 contracts [~~to which the authority is a party~~].

10 C. The performance framework shall allow for the  
11 inclusion of additional rigorous, valid and reliable indicators  
12 proposed by a charter school to augment external evaluations of  
13 its performance, provided that the [~~chartering authority~~]  
14 commission shall approve the quality and rigor of such proposed  
15 indicators and the indicators are consistent with the purposes  
16 of the Charter Schools Act.

17 D. The performance framework shall require the  
18 disaggregation of all student performance data collected in  
19 compliance with this section by student subgroup, including  
20 gender, race, poverty status, special education or gifted  
21 status and English language learner.

22 E. The [~~chartering authority~~] commission shall  
23 collect, analyze and report all data from state assessment  
24 tests in accordance with the performance framework set forth in  
25 the charter contract for each charter school [~~overseen by that~~

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1 ~~chartering authority~~]."

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

4 "22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND  
5 CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS  
6 FOR NONRENEWAL OR REVOCATION.--

7 A. A charter school may be approved for an initial  
8 term of six years; provided that the first year shall be used  
9 exclusively for planning and not for completing the  
10 application. A charter may be renewed for successive periods  
11 of five years each. Approvals of less than five years may be  
12 agreed to between the charter school and the ~~chartering~~  
13 ~~authority~~ commission.

14 B. During the planning year, the charter school  
15 shall file a minimum of three status reports with the  
16 ~~chartering authority~~ commission and the department for the  
17 purpose of demonstrating that the charter school's  
18 implementation progress is consistent with the conditions,  
19 standards and procedures of its approved charter. The report  
20 content, format and schedule for submission shall be agreed to  
21 by the ~~chartering authority~~ commission and the charter school  
22 and become part of the charter contract.

23 C. Prior to the end of the planning year, the  
24 charter school shall demonstrate that its facilities meet the  
25 requirements of Section 22-8B-4.2 NMSA 1978.

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1           D. ~~[A chartering authority]~~ The commission shall  
2 monitor the fiscal, overall governance and student performance  
3 and legal compliance of the charter schools that it oversees,  
4 including reviewing the data provided by the charter school to  
5 support ongoing evaluation according to the charter contract.  
6 ~~[Every chartering authority]~~ The commission may conduct or  
7 require oversight activities that allow the ~~[chartering~~  
8 ~~authority]~~ commission to fulfill its responsibilities under the  
9 Charter Schools Act, including conducting appropriate inquiries  
10 and investigations; provided that the ~~[chartering authority]~~  
11 commission complies with the provisions of the Charter Schools  
12 Act and the terms of the charter contract and does not unduly  
13 inhibit the autonomy granted to the charter schools that it  
14 governs.

15           E. As part of its performance review of a charter  
16 school, ~~[a chartering authority]~~ the commission shall visit a  
17 charter school under its authority at least once annually to  
18 provide technical assistance to the charter school and to  
19 determine the status of the charter school and the progress of  
20 the charter school toward the performance framework goals in  
21 its charter contract.

22           F. If, based on the performance review conducted by  
23 the ~~[chartering authority]~~ commission pursuant to Subsection D  
24 of this section, a charter school's fiscal, overall governance  
25 or student performance or legal compliance appears

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1       unsatisfactory, the [~~chartering authority~~] commission shall  
2       promptly notify the governing body of the charter school of the  
3       unsatisfactory review and provide reasonable opportunity for  
4       the governing body to remedy the problem; provided that if the  
5       unsatisfactory review warrants revocation, the revocation  
6       procedures set forth in this section shall apply. [A  
7       ~~chartering authority~~] The commission may take appropriate  
8       corrective actions or exercise sanctions, as long as such  
9       sanctions do not constitute revocation, in response to the  
10      unsatisfactory review. Such actions or sanctions by the  
11      [~~chartering authority~~] commission may include requiring a  
12      governing body to develop and execute a corrective action plan  
13      with the [~~chartering authority~~] commission that sets forth time  
14      frames for compliance.

15               G. [~~Every chartering authority~~] The commission  
16      shall submit an annual report to the [~~division~~] department,  
17      including a performance report for each charter school, [~~that~~  
18      ~~it oversees~~] in accordance with the performance framework set  
19      forth in the charter contract.

20               H. The department shall review the annual report  
21      received from the [~~chartering authority~~] commission to  
22      determine if the department [~~or local school board~~] rules and  
23      policies from which the charter school was released pursuant to  
24      the provisions of Section 22-8B-5 NMSA 1978 assisted or impeded  
25      the charter school in meeting its stated goals and objectives.

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1 The department shall use the annual reports received from the  
2 [~~chartering authorities~~] commission as part of its report to  
3 the governor, the legislative finance committee and the  
4 legislative education study committee as required by the  
5 Charter Schools Act.

6 I. No later than two hundred seventy days prior to  
7 the date in which the charter expires, the governing body may  
8 submit a renewal application to the [~~chartering authority. A~~  
9 ~~charter school may apply to a different chartering authority~~  
10 ~~for renewal. The chartering authority~~] commission. The  
11 commission shall rule in a public hearing on the renewal  
12 application no later than one hundred eighty days prior to the  
13 expiration of the charter.

14 J. A charter school renewal application [~~submitted~~  
15 ~~to the chartering authority~~] shall contain:

16 (1) a report on the progress of meeting the  
17 academic performance, financial compliance and governance  
18 responsibilities of the charter school, including achieving the  
19 goals, objectives, student performance outcomes, state minimum  
20 educational standards and other terms of the charter contract,  
21 including the accountability requirements set forth in the  
22 Assessment and Accountability Act;

23 (2) a financial statement that discloses the  
24 costs of administration, instruction and other spending  
25 categories for the charter school that is understandable to the

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1 general public, that allows comparison of costs to other  
2 schools or comparable organizations and that is in a format  
3 required by the department;

4 (3) a copy of the charter contract executed in  
5 compliance with the provisions of Section 22-8B-9 NMSA 1978;

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

9 (5) a petition in support of the charter  
10 school renewing its charter status signed by at least seventy-  
11 five percent of the households whose children are enrolled in  
12 the charter school; and

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

16 K. A charter may be suspended, revoked or not  
17 renewed by the [~~chartering authority~~] commission if the  
18 [~~chartering authority~~] commission determines that the charter  
19 school did any of the following:

20 (1) committed a material violation of any of  
21 the conditions, standards or procedures set forth in the  
22 charter contract;

23 (2) failed to meet or make substantial  
24 progress toward achievement of the department's minimum  
25 educational standards or student performance standards

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1 identified in the charter contract;

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

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

6 L. The [~~chartering authority~~] commission shall  
7 develop processes for suspension, revocation or nonrenewal of a  
8 charter that:

9 (1) provide the charter school with timely  
10 notification of the prospect of suspension, revocation or  
11 nonrenewal of the charter and the reasons for such action;

12 (2) allow the charter school a reasonable  
13 amount of time to prepare and submit a response to the  
14 [~~chartering authority's~~] commission's action; and

15 (3) require the final determination made by  
16 the [~~chartering authority~~] commission to be submitted to the  
17 department.

18 M. If [~~a chartering authority~~] the commission  
19 suspends, revokes or does not renew a charter, the [~~chartering~~  
20 ~~authority~~] commission shall state in writing its reasons for  
21 the suspension, revocation or nonrenewal.

22 N. A decision to suspend, revoke or not to renew a  
23 charter may be appealed by the governing body pursuant to  
24 Section [~~22-8B-7~~] 39-3-1.1 NMSA 1978."

25 SECTION 12. Section 22-8B-12.1 NMSA 1978 (being Laws

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1 2011, Chapter 14, Section 6) is amended to read:

2 "22-8B-12.1. CHARTER SCHOOL CLOSURE--~~[CHARTERING~~  
3 ~~AUTHORITY]~~ COMMISSION PROTOCOLS--~~[CHARTERING AUTHORITY]~~  
4 DUTIES--DISTRIBUTION OF ASSETS.--

5 A. Prior to any charter school closure decision,  
6 the ~~[chartering authority]~~ commission shall develop a charter  
7 school closure protocol to ensure timely notification to  
8 parents, orderly transition of students and student records to  
9 new schools and proper disposition of school funds, property  
10 and assets in accordance with the provisions of Subsection C of  
11 this section. The protocol shall specify tasks, time lines and  
12 responsible parties, including delineating the respective  
13 duties of the charter school, the governing body and the  
14 ~~[chartering authority]~~ commission.

15 B. If a charter school is ordered closed for any  
16 reason, prior to closure, the ~~[chartering authority]~~ commission  
17 shall oversee and work with the closing school to ensure a  
18 smooth and orderly closure and transition for students and  
19 parents according to the closure protocol.

20 C. When a charter school is closed, the assets of  
21 the school shall be distributed first to satisfy outstanding  
22 payroll obligations for employees of the school, then to  
23 creditors of the school and then to the state treasury to the  
24 credit of the current school fund; except that if all or any  
25 portion of a charter school facility was financed with the

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1 proceeds of general obligation bonds issued by a local school  
2 board, the facility shall revert to the school district. If  
3 the assets of the school are insufficient to pay all parties to  
4 whom the [~~schools~~] school owes compensation, the prioritization  
5 of the distribution of assets may be determined by decree of a  
6 court of law."

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

9 "22-8B-13. CHARTER SCHOOL FINANCING.--

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

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

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

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1 it is eligible.

2 D. Charter schools may apply for all federal funds  
3 for which they are eligible.

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

11 SECTION 14. Section 22-8B-16 NMSA 1978 (being Laws 2006,  
12 Chapter 94, Section 29) is amended to read:

13 "22-8B-16. PUBLIC EDUCATION COMMISSION--POWERS AND  
14 DUTIES.--The commission shall receive applications for initial  
15 chartering and renewals of charters for charter schools [~~that~~  
16 ~~want to be chartered by the state~~] and approve or disapprove  
17 those charter applications. The commission may approve, deny,  
18 suspend or revoke the charter of a [~~state-chartered~~] charter  
19 school in accordance with the provisions of the Charter Schools  
20 Act. The chartering authority for a charter school existing on  
21 July 1, [~~2007 may~~] 2013 shall be transferred to the commission  
22 [~~provided, however, that if a school chartered under a previous~~  
23 ~~chartering authority chooses to transfer its chartering~~  
24 ~~authority, it~~] and shall continue to operate under the  
25 provisions of that charter until its renewal date unless it is

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1 suspended or revoked by the commission. An application for a  
2 charter school filed with a local school board prior to July 1,  
3 [2007] 2013, but not approved, may be transferred to the  
4 commission on July 1, [2007] 2013."

5 SECTION 15. Section 22-8B-17 NMSA 1978 (being Laws 2006,  
6 Chapter 94, Section 30) is amended to read:

7 "22-8B-17. CHARTER SCHOOLS DIVISION--DUTIES.--

8 A. The "charter schools division" is created in the  
9 [department] commission. The division shall:

10 [A.] (1) provide staff support to the  
11 commission;

12 [B.] (2) provide technical support to all  
13 charter schools;

14 [C.] (3) review and approve [~~state-chartered~~]  
15 charter school budget matters; and

16 [D.] (4) make recommendations to the  
17 commission regarding the approval, denial, suspension or  
18 revocation of the charter of a [~~state-chartered~~] charter  
19 school.

20 B. The division is administratively attached to the  
21 department, and the department shall provide administrative  
22 services for the division. To contain costs, the division  
23 shall continue to use the department's information technology  
24 resources in the same way it had as a division of the  
25 department. The commission and the department shall enter into

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1 data-sharing agreements so that the commission and the division  
2 may have access to department data while ensuring the privacy  
3 of any person whose personally identifiable information is  
4 contained in the data."

5 SECTION 16. Section 22-8B-17.1 NMSA 1978 (being Laws  
6 2011, Chapter 14, Section 9) is amended to read:

7 "22-8B-17.1. DIVISION--ANNUAL REPORT.--By December 1  
8 annually, the division shall issue to the governor, the  
9 legislative finance committee and the legislative education  
10 study committee a report on the state's charter schools for the  
11 school year ending in the preceding calendar year, drawing from  
12 the annual reports submitted by every [~~chartering authority~~]  
13 charter school as well as any relevant data compiled by the  
14 division. The annual report shall include a comparison of the  
15 performance of charter school students with the performance of  
16 academically, ethnically and economically comparable groups of  
17 students in noncharter public schools. The report shall also  
18 include an assessment of the successes, challenges and areas  
19 for improvement in meeting the purposes of the Charter Schools  
20 Act, including the division's assessment of the sufficiency of  
21 funding for charter schools, the efficacy of the state formula  
22 for [~~chartering authority~~] commission and division funding and  
23 any suggested changes to state law or policy necessary to  
24 strengthen the state's charter schools. The annual report  
25 shall be published on the department's web site."

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1           SECTION 17. TEMPORARY PROVISION--TRANSFERS OF FUNCTIONS,  
2 APPROPRIATIONS, MONEY, RECORDS AND OTHER PROPERTY--CONTRACTUAL  
3 OBLIGATIONS--STATUTORY REFERENCES.--

4           A. On July 1, 2013, all functions, appropriations,  
5 money, records, furniture, equipment, supplies and other  
6 property of the charter schools division of the public  
7 education department shall be transferred to the charter  
8 schools division of the public education commission.

9           B. On July 1, 2013, all contractual obligations of  
10 the charter schools division of the public education department  
11 shall be binding on the public education commission.

12           C. On July 1, 2013, all references in law to the  
13 charter schools division of the public education department  
14 shall be deemed to be references to the charter schools  
15 division of the public education commission.

16           SECTION 18. REPEAL.--Section 22-8B-7 NMSA 1978 (being  
17 Laws 1999, Chapter 281, Section 7, as amended) is repealed.

18           SECTION 19. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2013.