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HOUSE BILL 375

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Roberto J. Gonzales

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATION; CHANGING PRIORITIES FOR ENROLLMENT IN
CHARTER SCHOOLS; PROVIDING FOR MEDIATION, ARBITRATION AND
DISPUTE RESOLUTION PROCESSES; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE 1999 CHARTER SCHOOLS ACT.

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

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

"22-8B-1. SHORT TITLE. -- [~~Sections 1 through 15 of this
act~~] Chapter 22, Article 8B NMSA 1978 may be cited as the "1999
Charter Schools Act". "

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

"22-8B-2. DEFINITIONS. -- As used in the 1999 Charter
Schools Act:

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1 A. "arbitration" means a process whereby a
2 decision-maker is selected by the interested parties or
3 appointed by the judiciary to act as an arbitrator and render a
4 binding decision in a dispute concerning the appeal of a
5 decision, other than a decision regarding the application of a
6 charter school or the denial, nonrenewal or revocation of a
7 charter, of a local school board or its designee;

8 B. "arbitrator" means an individual who is
9 independent of the parties to a dispute between a charter
10 school governing body and a school district and who is selected
11 to hold a hearing and render a binding decision regarding the
12 dispute;

13 ~~[A.]~~ C. "charter school" means a conversion school
14 or start-up school within a school district authorized by the
15 local school board to operate as a charter school;

16 ~~[B.]~~ D. "conversion school" means an existing
17 public school within a school district authorized by the local
18 school board to become a charter school;

19 ~~[C.]~~ E. "governing body" means the governing
20 structure of a charter school as set forth in the school's
21 charter; [and]

22 F. "interested party" means a charter school
23 applicant, charter school governing body or local school board
24 or its designee involved in a dispute that participates in
25 mediation or arbitration regarding that dispute;

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1 G. "mediation" means a process whereby a neutral
2 party not associated with the dispute concerning a decision of
3 a local school board or its designee helps the interested
4 parties try to resolve the dispute through negotiation and
5 problem solving;

6 H. "mediator" means an individual or organization
7 that is independent of the parties to a dispute concerning the
8 decision of a local school board or its designee and that acts
9 to assist the interested parties in the resolution of the
10 dispute; and

11 ~~D.~~ I. "start-up school" means a public school
12 developed by one or more parents, teachers or community members
13 authorized by the local school board of the school district in
14 which the school is located to become a charter school."

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

17 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
18 OPERATION. --

19 A. A charter school shall be subject to all federal
20 and state laws and constitutional provisions prohibiting
21 discrimination on the basis of disability, race, creed, color,
22 gender, national origin, religion, ancestry or need for special
23 education services.

24 B. A charter school shall be ~~[administered and]~~
25 governed by a governing body in the manner set forth in the

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1 charter.

2 C. A charter school shall be responsible for its
3 own operation, including preparation of a budget, contracting
4 for services and personnel matters.

5 D. A charter school may negotiate or contract with
6 a [~~hoea~~] school district, a university or college or any third
7 party for the use of a facility, its operation and maintenance
8 and the provision of any service or activity that the charter
9 school is required to perform in order to carry out the
10 educational program described in its charter.

11 E. In no event shall a charter school be required
12 to pay rent for space that is deemed available, as negotiated
13 by contract, in school district facilities; provided that the
14 facilities can be made available at no cost to the district.
15 All costs for the operation and maintenance of the facilities
16 used by the charter school shall be subject to negotiation
17 between the charter school and the district.

18 F. A charter school shall negotiate with a [~~hoea~~]
19 school district to provide transportation to students eligible
20 for transportation under the provisions of the Public School
21 Code. The [~~hoea~~] school district, in conjunction with the
22 charter school, may establish a limit for student
23 transportation to and from the charter school site not to
24 extend beyond the [~~hoea~~] school district boundary.

25 G. A charter school may negotiate with a [~~hoea~~]

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1 school district for capital expenditures.

2 H. A charter school shall be a nonsectarian,
3 nonreligious and non-home-based public school that operates
4 within a [~~public~~] school district.

5 I. Except as otherwise provided in the Public
6 School Code, a charter school shall not charge tuition or have
7 admission requirements.

8 J. A charter school shall be subject to the
9 provisions of Sections 22-1-6 and 22-2-8 NMSA 1978.

10 K. A charter school may acquire [~~pledge~~] and
11 dispose of property; provided that, upon termination of the
12 charter, all assets of the charter school shall revert to the
13 local school board that authorized the charter.

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

21 M A charter school may contract and sue and be
22 sued. A local school board [~~that approves a charter school~~] or
23 its designee shall not be liable for any acts or omissions of
24 the charter school. If a local school board that approved a
25 charter school is sued because of an act or omission of the

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1 charter school, upon dismissal of the suit, the court shall
2 assess all costs and reasonable attorney fees against the
3 plaintiff.

4 N. A charter school shall comply with all state and
5 federal health and safety requirements applicable to public
6 schools. "

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

9 "22-8B-5. CHARTER SCHOOLS--LOCAL SCHOOL BOARD AUTHORITY--
10 STATE BOARD AUTHORITY.--

11 A. The local school board may waive only locally
12 imposed school district requirements.

13 B. The state board shall approve all reasonable
14 requests to waive requirements relating to individual class
15 load and teaching load, length of the school day, staffing
16 patterns, subject areas and the purchase of instructional
17 material. The state board may waive state board requirements
18 or rules and provisions of the Public School Code pertaining to
19 graduation requirements, evaluation standards for school
20 personnel, school principal duties and driver education. Any
21 waivers granted pursuant to this section shall be for the term
22 of the charter granted.

23 C. A charter school shall be a public school
24 accredited by the state board and shall be accountable to the
25 [~~school district's~~] local school board or its designee for

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1 [purposes of ensuring] compliance with applicable laws, rules
2 and charter provisions.

3 D. [No] A local school board shall not require any
4 employee of the school district to be employed in a charter
5 school.

6 E. [No] A local school board shall not require any
7 student residing within the geographic boundary of its district
8 to enroll in a charter school.

9 F. A student who is suspended or expelled from a
10 charter school shall be deemed to be suspended or expelled from
11 the school district in which the student resides. "

12 Section 5. Section 22-8B-6 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 6) is amended to read:

14 "22-8B-6. CHARTER SCHOOL REQUIREMENTS-- APPLICATION
15 PROCESS-- AUTHORIZATION. --

16 A. The local school board shall have the authority
17 to approve the establishment of a charter school within the
18 [~~local~~] school district in which it is located.

19 B. A charter school applicant shall apply to a
20 local school board for a charter. An applicant shall only
21 submit an application in the school district in which the
22 school is located. Applications shall be submitted by
23 [~~October~~] July 1 to be eligible for consideration for the
24 following [~~school~~] fiscal year. The [~~October~~] July 1 deadline
25 may be waived upon agreement of the applicant and the local

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1 school board.

2 C. An application for a start-up school may be made
3 by one or more teachers, parents or community members.

4 D. An application for a conversion school shall
5 include a petition of support signed by not less than sixty-
6 five percent of the employees in the school. Additionally, a
7 petition in support of the charter school signed by [a
8 majority] no fewer than two-thirds of the households whose
9 children are enrolled in a proposed conversion school [~~must~~
10 shall accompany the application.

11 E. The local school board shall receive and review
12 all applications for charter schools. The local school board
13 shall not charge application fees. If the local school board
14 finds the charter school application is incomplete, the local
15 school board shall request the necessary information from the
16 charter applicant.

17 F. The local school board shall hold at least [~~one~~
18 ~~meeting~~] two public meetings to obtain information and
19 community input to assist the local school board in its
20 decision whether to grant a charter school application. Upon
21 receipt of the charter application, the local school board
22 shall hold the first meeting to inform the community and begin
23 a discussion of the charter school application with the
24 applicants and other interested parties. The local school
25 board shall rule on the application for a charter school in a

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1 second public meeting within sixty days after receiving the
2 application. If not ruled upon within sixty days, the charter
3 application will be automatically reviewed by the state board
4 in accordance with the provisions of Section [~~7 of the 1999~~
5 ~~Charter Schools Act~~] 22-8B-7 NMSA 1978. The charter applicant
6 and the local school board may, however, jointly waive the
7 deadlines set forth in this section.

8 G. If the local school board denies a charter
9 school application or imposes conditions that are unacceptable
10 to the charter applicant, the charter applicant may appeal the
11 decision to the state board pursuant to Section [~~7 of the 1999~~
12 ~~Charter Schools Act~~] 22-8B-7 NMSA 1978.

13 H. If a local school board denies a charter school
14 application, it shall state in writing its reasons for the
15 denial and provide the applicant with the written reasons for
16 the denial within fifteen days of the date of denial. If a
17 local school board grants a charter, it shall send a copy of
18 the approved charter to the department of education within
19 fifteen days after granting the charter."

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

22 "22-8B-7. CHARTER SCHOOL APPLICATION APPEAL-- MEDIATION
23 PROCEDURES. --

24 A. The state board, upon receipt of a notice of
25 appeal or upon its own motion, shall review decisions regarding

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1 the denial, nonrenewal or revocation of a charter of any local
2 school board [~~concerning charter schools~~] in accordance with
3 the provisions of this section.

4 B. A charter applicant or governing body of a
5 charter school that wishes to appeal a decision of a local
6 school board concerning the denial, nonrenewal or revocation of
7 a charter school or the imposition of conditions that are
8 unacceptable to the charter school [~~or charter school~~
9 applicant] shall provide the state board with a notice of
10 appeal within thirty days [~~after~~] from the receipt of the local
11 school board's written decision. The charter school applicant
12 or governing body of the charter school bringing the appeal
13 shall limit the grounds of the appeal to the grounds for
14 denial, nonrenewal or revocation specified by the local school
15 board. The notice shall include a brief statement of the
16 reasons the charter school applicant or governing body contends
17 the local school board's decision was in error. The appeal and
18 review process shall be as follows:

19 (1) within sixty days after receipt of the
20 notice of appeal, the state board, at a public hearing that may
21 be held in the school district in which the proposed charter
22 school has applied for a charter or the charter school is
23 located, shall review the decision of the local school board
24 and make its findings. If the state board finds that the local
25 school board's decision was arbitrary, capricious or contrary

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1 to the best interests of the students residing in the school
2 district, the school district or the community, the state board
3 shall ~~[remand]~~ refer the decision back to the local school
4 board with written instructions for ~~[approval of the charter.~~
5 ~~The instructions shall include specific recommendations~~
6 ~~concerning approval of the charter. The decision of the state~~
7 ~~board shall be final and not subject to appeal; and]~~
8 reconsideration;

9 (2) within thirty days following the ~~[remand]~~
10 state board's referral of a decision ~~[by the state board]~~ to
11 the local school board, [at a public hearing, shall approve the
12 charter] if the local school board does not decide in favor of
13 the charter applicant or the governing body, the interested
14 parties shall enter mediation, as provided in Section 22-8B-16
15 NMSA 1978, in an effort to resolve the dispute concerning the
16 local school board's decision. The school district shall pay
17 the cost of the mediation; and

18 (3) at the conclusion of the mediation, if the
19 interested parties do not reach an agreement, either interested
20 party may appeal the unresolved issues in the dispute to the
21 state board. After review and consideration of the issues
22 mediated, the state board shall render its decision. The
23 decision of the state board shall be final and not subject to
24 appeal.

25 C. The state board, on its own motion, may review a

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

- 9 (1) violate any federal or state laws
10 concerning civil rights;
- 11 (2) violate any court order;
- 12 (3) threaten the health and safety of students
13 within the school district; or
- 14 (4) violate the provisions of Section [11 of
15 ~~the 1999 Charter Schools Act~~ 22-8B-11 NMSA 1978, prescribing
16 the permissible number of charter schools.

17 D. If the state board determines that the charter
18 would violate the provisions set forth in Subsection C of this
19 section, the state board shall remand the decision to the local
20 school board with instructions to deny the charter application.
21 The state board may extend the timelines established in this
22 section for good cause. The decision of the state board shall
23 be final and not subject to appeal."

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

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1 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
2 school application, whether for a start-up school or a
3 conversion school, shall be a proposed agreement between the
4 local school board and the charter school and shall include:
5 A. the mission statement of the charter school;
6 B. the goals, objectives and student performance
7 standards to be achieved by the charter school;
8 C. a description of the charter school's
9 educational program, student performance standards and
10 curriculum that must meet or exceed the state [~~board of~~
11 ~~education's~~] board's educational standards and must be designed
12 to enable each student to achieve those standards;
13 D. a description of the way [a] the charter
14 school's educational program will meet the individual needs of
15 the students, including those students determined to be at
16 risk;
17 E. a description of the charter school's plan for
18 evaluating student performance, the types of assessments that
19 will be used to measure student progress toward achievement of
20 the state's standards and the school's student performance
21 standards, the timeline for achievement of the standards and
22 the procedures for taking corrective action in the event that
23 student performance falls below the standards;
24 F. evidence that the plan for the charter school is
25 economically sound, including a proposed budget for the term of

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1 the charter and a description of the manner in which the annual
2 audit of the financial and administrative operations of the
3 charter school is to be conducted;

4 G. evidence that the fiscal management of the
5 charter school complies with all applicable federal and state
6 laws and regulations relative to fiscal procedures;

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

10 I. a description of the governing body and
11 operation of the charter school, including how the governing
12 body will be selected, the nature and extent of parental,
13 professional educator and community involvement in the
14 governance and operation of the school and the relationship
15 between the governing body and the local school board or its
16 designee;

17 J. an explanation of the relationship that will
18 exist between the proposed charter school and its employees,
19 including evidence that the terms and conditions of employment
20 will be addressed with affected employees and their recognized
21 representatives, if any;

22 K. the employment and student discipline policies
23 of the proposed charter school;

24 L. an agreement between the charter school and the
25 local school board regarding their respective legal liability

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1 and applicable insurance coverage;

2 M a description of how the charter school plans to
3 meet the transportation and food service needs of its students;

4 N. a description of the waivers that the charter
5 school is requesting from the local school board and the state
6 board and the charter school's plan for addressing these waiver
7 requests;

8 O. a description of the facilities the charter
9 school plans to use; and

10 P. any other information reasonably required by the
11 local school board. "

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

14 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES--
15 DISPUTE RESOLUTION--ARBITRATION. --

16 A. An approved charter application shall be a
17 contract between the charter school and the local school board.

18 B. The contract between the charter school and the
19 local school board shall reflect all agreements regarding the
20 release of the charter school from school district policies.

21 C. The contract between the charter school and the
22 local school board shall reflect all requests for release of
23 the charter school from state board rules or the Public School
24 Code. Within ten days after the contract is approved by the
25 local school board, any request for release from state board

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1 rules or the Public School Code shall be delivered by the local
2 school board to the state board. If the state board grants the
3 request, it shall notify the local school board and the charter
4 school of its decision. If the state board denies the request,
5 it shall notify the local school board and the charter school
6 that the request is denied and specify the reasons for denial.

7 ~~[D. Upon approval of the charter by the local~~
8 ~~school board, the charter school shall be waived from the~~
9 ~~Public School Code provisions relating to individual class load~~
10 ~~and teaching load requirements, length of school day, staffing~~
11 ~~patterns, subject areas and purchase of instructional~~
12 ~~materials.~~

13 ~~E.]~~ D. The charter school shall participate in the
14 public school insurance authority.

15 ~~[F.]~~ E. Any revision or amendment to the terms of
16 the contract may be made only with the approval of the local
17 school board and the governing body of the charter school.

18 ~~[G.]~~ F. The charter shall include procedures agreed
19 upon by the charter school and the local school board for the
20 resolution of disputes between the charter school and the local
21 school board. If the charter school and the local school board
22 do not reach an agreement regarding a dispute, the interested
23 parties shall enter mediation in an effort to resolve the
24 dispute.

25 ~~[H. The charter shall include procedures that shall~~

1 ~~be agreed upon by the charter school and the local school board~~
2 ~~in the event that such board determines that the charter shall~~
3 ~~be revoked pursuant to the provisions of Section 12 of the 1999~~
4 ~~Charter Schools Act.]~~

5 G. At the conclusion of the mediation, if the
6 issues mediated remain partially or wholly unresolved, either
7 interested party may apply to enter into arbitration as
8 provided in Section 22-8B-19 NMSA 1978 to resolve the issues
9 remaining in the dispute."

10 Section 9. Section 22-8B-11 NMSA 1978 (being Laws 1999,
11 Chapter 281, Section 11) is amended to read:

12 "22-8B-11. CHARTER SCHOOLS- - MAXIMUM NUMBER ESTABLISHED. - -

13 A. A local school [boards] board shall [authorize
14 the approval of both] approve or disapprove conversion and
15 start-up charter schools within [their] its school [districts]
16 district.

17 B. No more than fifteen start-up schools and five
18 conversion schools may be established per year statewide. The
19 [number of] charter school slots remaining in [that] any year
20 shall be transferred to succeeding years [up to]; provided that
21 a maximum of seventy-five start-up schools and twenty-five
22 conversion schools may be established in any five-year period.
23 The [state board] department of education shall [promptly]
24 notify the local school board of each school district or its
25 designee when the limits set forth in this section have been

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1 reached. "

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

4 "22-8B-12. CHARTER SCHOOLS--TERM-RENEWAL OF CHARTER--
5 GROUNDS FOR NONRENEWAL OR REVOCATION.--

6 A. A charter school may be approved for an initial
7 term of five or six years; provided that, if the approved term
8 is for six years, the first year is used for planning. A
9 charter may be renewed for successive periods of five years
10 each. Approvals of less than five years [~~can~~] may be agreed to
11 between the charter school and the local school board.

12 B. No later than [~~January~~] July 1 of the fiscal
13 year [~~prior to the year~~] in which the charter expires, the
14 governing body of a charter school may submit a renewal
15 application to the local school board. The local school board
16 shall rule in a public hearing on the renewal application no
17 later than [~~March~~] September 1 of the fiscal year in which the
18 charter expires, or on a mutually agreed date.

19 C. A charter school renewal application submitted
20 to the local school board shall contain:

21 (1) a report on the progress of the charter
22 school in achieving the goals, objectives, student performance
23 standards, state board minimum educational standards and other
24 terms of the initial approved charter application, including
25 the accountability requirements set forth in Section 22-1-6

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1 NMSA 1978;

2 (2) a financial statement that discloses the
3 costs of administration, instruction and other spending
4 categories for the charter school that is understandable to the
5 general public, that will allow comparison of costs to other
6 schools or comparable organizations and that is in a format
7 required by the state board;

8 (3) contents of the charter application set
9 forth in Section [~~8 of the 1999 Charter Schools Act~~] 22-8B-8
10 NMSA 1978;

11 (4) a petition in support of the charter
12 school renewing its charter status signed by not less than
13 sixty-five percent of the employees in the charter school; and

14 (5) a petition in support of the charter
15 school renewing its charter status signed by a majority of the
16 households whose children are enrolled in the charter school.

17 D. A charter may be revoked or not renewed by the
18 local school board if the board 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;

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

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1 identified in the charter application;

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 E. If a local school board revokes or does not
7 renew a charter, the local school board shall, [~~state in~~
8 ~~writing its~~] within fifteen days of the date that it revokes or
9 does not renew the charter, provide the charter school with
10 written reasons for the revocation or nonrenewal.

11 F. A decision to revoke or not to renew a charter
12 may be appealed by the governing body of the charter school
13 pursuant to Section [~~7 of the 1999 Charter Schools Act~~] 22-8B-7
14 NMSA 1978. "

15 Section 11. Section 22-8B-14 NMSA 1978 (being Laws 1999,
16 Chapter 281, Section 14) is amended to read:

17 "22-8B-14. CHARTER SCHOOLS STIMULUS FUND CREATED. --

18 A. The "charter schools stimulus fund" is created
19 in the state treasury. Money in the fund is appropriated to
20 the department of education to provide financial support to
21 charter schools, whether start-up or conversion, for initial
22 planning and start-up costs and initial costs associated with
23 renovating or remodeling existing buildings and structures [~~for~~
24 ~~expenditure in fiscal year 2000 and subsequent fiscal years~~].

25 The fund shall consist of money appropriated by the legislature
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1 and grants, gifts, devises and donations from any public or
2 private source. The department of education shall administer
3 the fund in accordance with rules adopted by the state board.
4 The department of education may use up to three percent of the
5 fund for administrative costs. Money in the fund shall not
6 revert to the general fund at the end of a fiscal year.

7 B. If the charter school receives an initial grant
8 and fails to begin operating a charter school within the next
9 [eighteen] twenty-four months, the charter school shall
10 immediately reimburse the fund."

11 Section 12. A new section of the 1999 Charter Schools
12 Act, Section 22-8B-16 NMSA 1978, is enacted to read:

13 "22-8B-16. [NEW MATERIAL] DISPUTE RESOLUTION--MEDIATION
14 REQUIREMENT--EXEMPTION--SELECTION OF MEDIATOR.--

15 A. If the dispute arising from a decision of a
16 local school board concerning the application of a charter
17 school or the denial, nonrenewal or revocation of a charter
18 remains wholly or partially unresolved thirty days after it was
19 referred to the local school board for reconsideration, prior
20 to an appeal to the state board the interested parties shall
21 enter mediation as provided in this section.

22 B. Prior to entering an arbitration process
23 regarding the appeal of a decision of a local school board or
24 its designee pursuant to Section 22-8B-9 NMSA 1978, the
25 governing body and the local school board or its designee shall

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1 enter mediation as provided in this section.

2 C. The provisions of this section shall not apply
3 in a dispute:

4 (1) between a charter school employee and the
5 charter school or the school district; or

6 (2) arising as a result of the negotiation of
7 a contract, or from a contract agreement, between a charter
8 school and any person other than the local school board or its
9 designee.

10 D. The mediator hired to perform a mediation
11 pursuant to this section shall be agreed to by each interested
12 party.

13 E. The local board or its designee entering
14 mediation shall provide written notice of the date, time and
15 location of the mediation session to all interested parties at
16 least fourteen days prior to the first session and at least
17 five days prior to each succeeding session.

18 F. The mediation session shall take place at a
19 neutral location providing no advantage to any interested
20 party. The location shall be within the boundaries of the
21 school district in which the charter school is proposed to be
22 established or is located. The mediator has final authority
23 regarding the location of a mediation session if the interested
24 parties are unable to agree on a location. "

25 Section 13. A new section of the 1999 Charter Schools

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1 Act, Section 22-8B-17 NMSA 1978, is enacted to read:

2 "22-8B-17. [NEW MATERIAL] INTERESTED PARTIES

3 PREPARATION--WRITTEN SUMMARIES--ATTENDANCE--DURATION.--

4 A. Prior to the first mediation session, each
5 interested party shall prepare a written summary that contains
6 a list of the issues to be resolved in the mediation and that
7 party's position relative to each issue. The summary shall not
8 exceed five pages and shall be delivered to the mediator seven
9 days prior to the first mediation session. A mediator may
10 request additional information from any interested party.

11 B. All interested parties properly notified of a
12 mediation session shall attend the session for a minimum of
13 eight hours unless otherwise agreed to by all other interested
14 parties and the mediator. An interested party attending a
15 mediation session may enter into a settlement of any issue
16 being mediated.

17 C. The mediation of the dispute shall be completed
18 within forty-five days from the date of the first mediation
19 session. "

20 Section 14. A new section of the 1999 Charter Schools
21 Act, Section 22-8B-18 NMSA 1978, is enacted to read:

22 "22-8B-18. [NEW MATERIAL] MEDIATION REPORT--COSTS.--

23 A. Within ten days of the completion of the
24 mediation process, the mediator shall provide each interested
25 party and the state board a copy of the mediation report. The

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1 report shall state:

- 2 (1) the issues that were mediated;
 - 3 (2) which issues, if any, were resolved; and
 - 4 (3) which issues, if any, remain partially or
- 5 wholly unresolved and suggestions of the mediator for
6 resolution of unresolved issues.

7 B. Except as otherwise provided in Section 22-8B-7
8 NMSA 1978, the costs associated with a mediation between a
9 charter school and the local school board or its designee shall
10 be borne equally by the interested parties to the dispute."

11 Section 15. A new section of the 1999 Charter Schools
12 Act, Section 22-8B-19 NMSA 1978, is enacted to read:

13 "22-8B-19. [NEW MATERIAL] DISPUTE RESOLUTION--
14 ARBITRATION--SELECTION OF ARBITRATOR. --

15 A. After participation in mediation with the local
16 school board or its designee to resolve a dispute as provided
17 in Section 22-8B-16 NMSA 1978, if a governing body remains
18 aggrieved by the decision of the local school board or its
19 designee, or the issues mediated remain partially or wholly
20 unresolved regarding a dispute other than a dispute concerning
21 the denial of a charter application or the renewal, nonrenewal
22 or revocation of a charter, the governing body may appeal the
23 decision or unresolved issues to an independent arbitrator. A
24 written notice of appeal shall be submitted to the local school
25 board or its designee within fifteen days of receipt of the

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1 mediation report.

2 B. After participation in mediation with a
3 governing body to resolve a dispute with a charter school, as
4 provided in Section 22-8B-16 NMSA 1978, regarding a dispute
5 other than a dispute concerning the denial of a charter
6 application or the renewal, nonrenewal or revocation of a
7 charter, if the issues mediated remain partially or wholly
8 unresolved, the local school board or its designee may appeal
9 the unresolved issues to an independent arbitrator. A written
10 notice of the appeal shall be submitted to the governing body
11 within fifteen days of receipt of the mediation report.

12 C. The interested parties in the dispute that is
13 the subject of the appeal shall meet to select an arbitrator
14 within ten days from the date the governing body or the local
15 school board or its designee receives the notice of appeal. If
16 the interested parties do not agree to the selection of an
17 arbitrator, the local school board or its designee shall
18 request the presiding judge in the judicial district in which
19 the charter school is located to select an independent
20 arbitrator. The presiding judge shall select the arbitrator
21 and notify the local school board or its designee of the
22 selection within five days from the date the request is
23 received. The local school board or its designee shall provide
24 the governing body with the name, address and phone number of
25 the selected arbitrator within three days of receiving the

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1 selection from the presiding judge.

2 D. An individual shall not be appointed to serve as
3 the arbitrator if the individual:

4 (1) has any direct or indirect financial
5 interest in the outcome of the proceeding;

6 (2) has any relationship to any interested
7 party in the proceeding;

8 (3) is employed by the local school board, the
9 charter school or any member of the governing body; or

10 (4) is employed by a professional organization
11 of which charter school staff or school district staff are
12 members. "

13 Section 16. A new section of the 1999 Charter Schools
14 Act, Section 22-8B-20 NMSA 1978, is enacted to read:

15 "22-8B-20. [NEW MATERIAL] ARBITRATION PROCESS AND
16 PROCEDURES. --

17 A. An appeal to an arbitrator of a dispute between
18 a governing body and a local school board or its designee shall
19 be decided after a de novo hearing before an arbitrator.

20 B. The hearing shall commence within thirty days
21 from the date of the selection of the arbitrator. The
22 arbitrator shall provide all interested parties with written
23 notice of the date, time and place of the hearing.

24 C. Each interested party may be represented by
25 counsel at the hearing before the arbitrator.

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1 D. Discovery shall be limited to depositions and
2 requests for production of documents, and shall be allowed on a
3 time schedule set by the arbitrator.

4 E. An arbitrator may issue subpoenas for the
5 attendance of witnesses and for the production of books,
6 records, documents and other evidence and shall have the power
7 to administer oaths. Subpoenas issued by the arbitrator shall
8 be served and enforced in the manner provided by law for the
9 service and enforcement of subpoenas in a civil action.

10 F. The rules of civil procedure shall not apply;
11 however, the arbitrator shall allow either interested party to
12 call and examine witnesses, cross-examine witnesses and
13 introduce exhibits. The rules of evidence shall not apply, but
14 in ruling on the admissibility of evidence, the arbitrator may
15 require reasonable substantiation of statements or records
16 tendered, the accuracy or truth of which is in reasonable
17 doubt.

18 G. An official record of the hearing shall be made.
19 Either interested party may order and pay for a transcript of
20 the hearing. "

21 Section 17. A new section of the 1999 Charter Schools
22 Act, Section 22-8B-21 NMSA 1978, is enacted to read:

23 "22-8B-21. [NEW MATERIAL] DECISION OF ARBITRATOR--
24 HARMLESS ERROR-- COSTS. --

25 A. The arbitrator shall render a decision affirming
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1 or reversing the action of the local school board or its
2 designee. The decision shall contain findings of fact and
3 conclusions of law. The arbitrator shall provide each
4 interested party and the state board with a copy of the
5 decision within thirty days from the date of the conclusion of
6 the hearing.

7 B. Unless an interested party can demonstrate
8 prejudice arising from a departure from procedures established
9 in this section, the departure shall be presumed to constitute
10 a harmless error.

11 C. The decision of the arbitrator shall be final
12 and binding on all interested parties and shall not be
13 appealable except if the decision was procured by corruption or
14 collusion, in which case it may be appealed to the court of
15 appeals by filing a notice of appeal as provided in the New
16 Mexico rules of appellate procedure.

17 D. Each interested party in an appeal decided by an
18 arbitrator shall bear its own costs and expenses. The
19 arbitrator's fees and expenses incurred in the conduct of the
20 arbitration shall be assigned at the discretion of the
21 arbitrator. "

22 Section 18. REPEAL. -- Section 22-8B-15 NMSA 1978 (being
23 Laws 1999, Chapter 281, Section 15) is repealed.