

1 HOUSE BILL 354

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Jim R. Trujillo

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7  
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9  
10 AN ACT

11 RELATING TO CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC  
12 SCHOOL CODE TO ALLOW THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL  
13 TO RECOMMEND SUSPENSION, NONRENEWAL OR REVOCATION OF A CHARTER  
14 BASED ON THE CHARTER SCHOOL'S FACILITY CONDITION.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,  
18 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,  
19 as amended) is amended to read:

20 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

21 A. The facilities of a charter school that is  
22 approved on or after July 1, 2005 and before July 1, 2015 shall  
23 meet educational occupancy standards required by applicable New  
24 Mexico construction codes.

25 B. The facilities of a charter school whose charter

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

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

17 D. On or after July 1, 2015, a new charter school  
18 shall not open and an existing charter shall not be renewed  
19 unless the charter school:

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

21 (a) owned by the charter school, the  
22 school district, the state, an institution of the state,  
23 another political subdivision of the state, the federal  
24 government or one of its agencies or a tribal government; or

25 (b) subject to a lease-purchase

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1 arrangement that has been entered into and approved pursuant to  
2 the Public School Lease Purchase Act; or

3 (2) if it is not housed in a building  
4 described in Paragraph (1) of this subsection, demonstrates  
5 that:

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

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

17 E. Without the approval of the public school  
18 facilities authority pursuant to Section 22-20-1 NMSA 1978, a  
19 charter school shall not enter into a lease-purchase agreement.

20 F. The public school capital outlay council:

21 (1) shall determine whether facilities of a  
22 charter school meet the educational occupancy standards  
23 pursuant to the requirements of Subsection A of this section  
24 or the requirements of Subsections B, C and D of this section,  
25 as applicable; and

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1                   (2) upon a determination that specific  
2 requirements are not appropriate or reasonable for a charter  
3 school, may grant a variance from those requirements for that  
4 charter school."

5           **SECTION 2.** Section 22-8B-5.3 NMSA 1978 (being Laws 2011,  
6 Chapter 14, Section 8) is amended to read:

7           "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--  
8 LIABILITY.--A chartering authority shall:

9                   A. evaluate charter applications;

10                   B. actively pursue the utilization of charter  
11 schools to satisfy identified education needs and promote a  
12 diversity of educational choices;

13                   C. approve charter applications that meet the  
14 requirements of the Charter Schools Act and the provisions of  
15 Section 22-8B-4.2 NMSA 1978;

16                   D. decline to approve charter applications that  
17 fail to meet the requirements of the Charter Schools Act and  
18 the provisions of Section 22-8B-4.2 NMSA 1978 or that are  
19 otherwise inadequate;

20                   E. negotiate and execute, in good faith, charter  
21 contracts that meet the requirements of the Charter Schools Act  
22 and the provisions of Section 22-8B-4.2 NMSA 1978 with each  
23 approved charter school;

24                   F. monitor, in accordance with the requirements of  
25 the Charter Schools Act and the provisions of Section 22-8B-4.2

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1 NMSA 1978, the terms of the charter [~~contract~~] contracts and  
2 the performance and legal compliance of charter schools under  
3 their authority;

4 G. determine whether a charter school merits  
5 suspension, revocation or nonrenewal; and

6 H. develop and maintain chartering policies and  
7 practices consistent with nationally recognized principles and  
8 standards for quality charter authorizing in all major areas of  
9 authorizing, including:

10 (1) organizational capacity and  
11 infrastructure;

12 (2) evaluating charter applications;

13 (3) performance contracting;

14 (4) charter school oversight and evaluation;

15 and

16 (5) charter school suspension, revocation and  
17 renewal processes."

18 SECTION 3. Section 22-24-5.1 NMSA 1978 (being Laws 2001,  
19 Chapter 338, Section 9) is amended to read:

20 "22-24-5.1. COUNCIL ASSISTANCE AND OVERSIGHT.--In  
21 providing grant assistance pursuant to Section 22-24-5 NMSA  
22 1978, the council shall:

23 A. assist school districts in identifying critical  
24 capital outlay needs and in preparing grant applications;

25 B. take such actions as are necessary to assist

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1 school districts in implementing the projects for which grants  
2 are made, including assistance with the preparation of requests  
3 for bids or proposals, contract negotiations and contract  
4 implementation;

5 C. take such actions as are necessary to ensure  
6 cost savings and efficiencies for those school districts that  
7 are not large enough to maintain their own construction  
8 management staff; ~~and~~

9 D. include such reporting requirements and  
10 conditions and take such actions as are necessary to ensure  
11 that the grants are expended in the most prudent manner  
12 possible and consistent with the original purpose for which  
13 they were made. In order to ensure compliance with the intent  
14 of this subsection, the council may:

15 (1) access the premises of a project and  
16 review any documentation relating to a project;

17 (2) withhold all or part of the amount of  
18 grant assistance available for a project for grounds  
19 established by rule of the council; and

20 (3) if it determines that a project is  
21 repeatedly in substantial noncompliance with any reporting  
22 requirement or condition, take over the direct administration  
23 of the project until the project is completed; and

24 E. recommend to a chartering authority the  
25 suspension, nonrenewal or revocation of a new or relocating

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1 charter school based upon the charter school's New Mexico  
2 condition index ranking pursuant to Section 22-8B-4.2 NMSA  
3 1978."

4 SECTION 4. Section 22-24-9 NMSA 1978 (being Laws 2003,  
5 Chapter 147, Section 1, as amended) is amended to read:

6 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--  
7 CREATION--POWERS AND DUTIES.--

8 A. The "public school facilities authority" is  
9 created under the council. The authority shall be headed by a  
10 director, selected by the council, who shall be versed in  
11 construction, architecture or project management. The director  
12 may hire no more than two deputies with the approval of the  
13 council, and, subject to budgetary constraints set out in  
14 Subsection G of Section 22-24-4 NMSA 1978, shall employ or  
15 contract with such technical and administrative personnel as  
16 are necessary to carry out the provisions of this section. The  
17 director, deputies and all other employees of the authority  
18 shall be exempt from the provisions of the Personnel Act.

19 B. The authority shall:  
20 (1) serve as staff to the council;  
21 (2) as directed by the council, provide those  
22 assistance and oversight functions required of the council by  
23 Section 22-24-5.1 NMSA 1978;  
24 (3) assist school districts with:  
25 (a) the development and implementation

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1 of five-year facilities plans and preventive maintenance plans;

2 (b) procurement of architectural and  
3 engineering services;

4 (c) management and oversight of  
5 construction activities; and

6 (d) training programs;

7 (4) conduct ongoing reviews of five-year  
8 facilities plans, preventive maintenance plans and performance  
9 pursuant to those plans;

10 (5) as directed by the council, assist school  
11 districts in analyzing and assessing their space utilization  
12 options;

13 (6) ensure that public school capital outlay  
14 projects are in compliance with applicable building codes;

15 (7) conduct on-site inspections as necessary  
16 to ensure that the construction specifications are being met  
17 and periodically inspect all of the documents related to  
18 projects;

19 (8) require the use of standardized  
20 construction documents and the use of a standardized process  
21 for change orders;

22 (9) have access to the premises of a project  
23 and any documentation relating to the project;

24 (10) after consulting with the department,  
25 recommend building standards for public school facilities to

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1 the council and ensure compliance with building standards  
2 adopted by the council;

3 (11) notwithstanding the provisions of  
4 Subsection D of Section 22-24-6 NMSA 1978, account for all  
5 distributions of grant assistance from the fund for which the  
6 initial award was made after July 1, 2004, and make annual  
7 reports to the department, the governor, the legislative  
8 education study committee, the legislative finance committee  
9 and the legislature;

10 (12) maintain a database of the condition of  
11 school facilities and maintenance schedules;

12 (13) advise the council regarding the New  
13 Mexico condition index ranking of a new or renewing charter  
14 school; and

15 [~~(13)~~] (14) as a central purchasing office  
16 pursuant to the Procurement Code and as directed by the  
17 council, select contractors and enter into and administer  
18 contracts for certain emergency projects funded pursuant to  
19 Subparagraph (b) of Paragraph (2) of Subsection B of Section  
20 22-24-5 NMSA 1978 [~~and~~

21 ~~(14) ensure that outstanding deficiencies are~~  
22 ~~corrected pursuant to Section 22-24-4.1 NMSA 1978. In the~~  
23 ~~performance of this duty, the authority:~~

24 ~~(a) shall work with school districts to~~  
25 ~~validate the assessment of the outstanding deficiencies and the~~

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1 ~~projected costs to correct the deficiencies;~~

2 ~~(b) shall work with school districts to~~  
3 ~~provide direct oversight of the management and construction of~~  
4 ~~the projects that will correct the outstanding deficiencies;~~

5 ~~(c) shall oversee all aspects of the~~  
6 ~~contracts entered into by the council to correct the~~  
7 ~~outstanding deficiencies;~~

8 ~~(d) may conduct on-site inspections~~  
9 ~~while the deficiencies correction work is being done to ensure~~  
10 ~~that the construction specifications are being met and may~~  
11 ~~periodically inspect all of the documents relating to the~~  
12 ~~projects;~~

13 ~~(e) may require the use of standardized~~  
14 ~~construction documents and the use of a standardized process~~  
15 ~~for change orders;~~

16 ~~(f) may access the premises of a project~~  
17 ~~and any documentation relating to the project; and~~

18 ~~(g) shall maintain, track and account~~  
19 ~~for deficiency correction projects separately from other~~  
20 ~~capital outlay projects funded pursuant to the Public School~~  
21 ~~Capital Outlay Act].~~

22 C. All actions taken by the authority shall be  
23 consistent with educational programs conducted pursuant to the  
24 Public School Code. In the event of any potential or perceived  
25 conflict between a proposed action of the authority and an

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1 educational program, the authority shall consult with the  
2 secretary.

3 D. A school district, aggrieved by a decision or  
4 recommendation of the authority, may appeal the matter to the  
5 council by filing a notice of appeal with the council within  
6 thirty days of the authority's decision or recommendation.

7 Upon filing of the notice:

8 (1) the decision or recommendation of the  
9 authority shall be suspended until the matter is decided by the  
10 council;

11 (2) the council shall hear the matter at its  
12 next regularly scheduled hearing or at a special hearing called  
13 by the chair for that purpose;

14 (3) at the hearing, the school district, the  
15 authority and other interested parties may make informal  
16 presentations to the council; and

17 (4) the council shall finally decide the  
18 matter within ten days after the hearing."

19 SECTION 5. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2013.