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HOUSE BILL 74

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Christine Trujillo

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; REMOVING THE PUBLIC EDUCATION COMMISSION'S ADMINISTRATIVE ATTACHMENT TO THE PUBLIC EDUCATION DEPARTMENT; ESTABLISHING THE PUBLIC EDUCATION COMMISSION AS AN INDEPENDENT ENTITY; PROVIDING FOR PUBLIC EDUCATION COMMISSION RULEMAKING AUTHORITY AND STAFF SUPPORT; GRANTING THE PUBLIC EDUCATION COMMISSION THE AUTHORITY TO MAKE CHARTERING AUTHORITY DECISIONS TO GRANT, RENEW, DENY OR REVOKE THE CHARTER OF A STATE-CHARTERED CHARTER SCHOOL; MAKING AN APPROPRIATION.

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

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

"9-24-9. PUBLIC EDUCATION COMMISSION--CREATION--POWERS, AUTHORITY AND DUTIES--LEGISLATIVE AND EXECUTIVE OVERSIGHT.--

A. The "public education commission" is created

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1 pursuant to Article 12, Section 6 of the constitution of New
2 Mexico. [~~The commission shall be administratively attached to~~
3 ~~the department, with administrative staff provided by the~~
4 ~~department. Additional requests for staff services shall be~~
5 ~~made through the secretary.] The commission shall advise the
6 department on policy matters and shall perform other functions
7 pursuant to the Charter Schools Act and as otherwise provided
8 by law.~~

9 B. Upon approval of the secretary, the commission
10 shall promulgate and enforce such rules as may be necessary to
11 carry out its functions pursuant to the Charter Schools Act and
12 as otherwise provided by law.

13 [~~B.~~] C. The commission shall consist of ten members
14 elected from public education districts as provided in the
15 decennial educational redistricting act. Members shall be
16 entitled to receive per diem and mileage as provided in the Per
17 Diem and Mileage Act, but shall receive no other perquisite,
18 compensation or allowance.

19 [~~C.~~] D. The commission shall annually elect a
20 [~~chairman~~] chair, vice [~~chairman~~] chair and secretary from
21 among its membership. A majority of the members constitutes a
22 quorum for the conduct of business. The commission shall keep
23 a record of all proceedings of the commission.

24 [~~D.~~] E. The commission shall meet at the call of
25 the [~~chairman~~] chair at least quarterly or at the request of

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1 the majority of its members. Meetings of the commission shall
2 be held in Santa Fe and at other sites within the state at the
3 direction of the commission. [~~The chairman in consultation~~
4 ~~with the secretary shall call a meeting at the request of a~~
5 ~~majority of the members.~~] Commission members shall not vote by
6 proxy.

7 ~~[E.]~~ F. No member of the commission shall be
8 appointed secretary or be employed by the department on either
9 a full- or part-time basis.

10 G. Subject to appropriation by the legislature, the
11 commission shall employ staff as needed to assist the
12 commission in the performance of its duties. Staff shall be
13 subject to the provisions of the Personnel Act.

14 H. The commission shall prepare an annual budget.

15 I. Each year, the commission shall report to the
16 legislature and governor:

17 (1) the commission's policies and rules; and

18 (2) any actions that the commission takes to
19 grant, renew or deny an application for a state-chartered
20 charter school pursuant to the Charter Schools Act."

21 **SECTION 2.** Section 22-8-25 NMSA 1978 (being Laws 1981,
22 Chapter 176, Section 5, as amended) is amended to read:

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

25 A. The state equalization guarantee distribution is

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

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

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

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

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

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

11 (1) calculate the number of program units to
12 which each school district or charter school is entitled using
13 an average of the MEM on the second and third reporting dates
14 of the prior year; or

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

20 (3) calculate the number of program units to
21 which a school district or charter school with a MEM of two
22 hundred or less is entitled by using an average of the MEM on
23 the second and third reporting dates of the prior year or the
24 fortieth day of the current year, whichever is greater; and

25 (4) using the results of the calculations in

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

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

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

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

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

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

25 F. The amount of the state equalization guarantee

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1 distribution to which a school district is entitled is the
2 balance remaining after the deductions made in Paragraphs (6)
3 through (8) of Subsection D of this section.

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

14 SECTION 3. Section 22-8B-6 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 6, as amended) is amended to read:

16 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
17 PROCESS--AUTHORIZATION--STATE BOARD OF FINANCE DESIGNATION
18 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES--APPEALS.--

19 A. A local school board has the authority to
20 approve or deny the establishment or renewal of a locally
21 chartered charter school within ~~[the]~~ that local school board's
22 school district ~~[in which it is located]~~. The commission has
23 the authority to approve or deny an application for the
24 establishment or renewal of a charter for a state-chartered
25 charter school.

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1 B. No later than the second Tuesday of January of
2 the year in which an application will be filed, the organizers
3 of a proposed charter school shall provide written notification
4 to the commission and the local school board of the school
5 district in which the charter school is proposed to be located
6 of their intent to establish a charter school. Failure to
7 notify may result in an application not being accepted.

8 C. A charter school applicant shall apply to either
9 a local school board or the commission for a charter. If an
10 application is submitted to a chartering authority, [~~it~~] the
11 chartering authority must process the application.

12 Applications for initial charters shall be submitted [~~between~~]
13 by June 1 [~~and July 1~~] to be eligible for consideration for the
14 following fiscal year; provided that the [~~July~~] June 1 deadline
15 may be waived upon agreement of the applicant and the
16 chartering authority.

17 D. No fees for the authorization process shall be
18 assessed by a local school board when authorizing a locally
19 chartered charter school or by the commission when authorizing
20 a state-chartered charter school.

21 [~~D.~~] E. An application shall include the total
22 number of grades the charter school proposes to provide, either
23 immediately or phased. A charter school may decrease the
24 number of grades it eventually offers, but it shall not
25 increase the number of grades or the total number of students

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1 proposed to be served in each grade.

2 ~~[E-]~~ F. An application shall include a detailed
3 description of the charter school's projected facility needs,
4 including projected requests for capital outlay assistance that
5 have been approved by the director of the public school
6 facilities authority or the director's designee. The director
7 shall respond to a written request for review from a charter
8 applicant within forty-five days of the request.

9 ~~[F-]~~ G. An application may be made by one or more
10 teachers, parents or community members or by a public post-
11 secondary educational institution or nonprofit organization.
12 Municipalities, counties, private post-secondary educational
13 institutions and for-profit business entities are not eligible
14 to apply for or receive a charter.

15 ~~[G-]~~ H. An initial application for a charter school
16 shall not be made after June 30, 2007 if the proposed charter
17 school's proposed enrollment for all grades or the proposed
18 charter school's proposed enrollment for all grades in
19 combination with any other charter school's enrollment for all
20 grades would equal or exceed ten percent of the total MEM of
21 the school district in which the charter school will be
22 geographically located and that school district has a total
23 enrollment of not more than one thousand three hundred
24 students.

25 ~~[H-]~~ I. A state-chartered charter school shall not

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1 be approved for operation unless [~~its~~] the governing body of
2 the charter school has qualified to be a board of finance.

3 ~~[I. The chartering authority shall receive and~~
4 ~~review all applications for charter schools submitted to it.~~
5 ~~The chartering authority shall not charge application fees.]~~

6 J. The chartering authority shall hold at least
7 one public hearing in the school district in which the charter
8 school is proposed to be located to obtain information and
9 community input to assist it in its decision whether to grant a
10 charter school application. The chartering authority may
11 designate a subcommittee of no fewer than three members to hold
12 the public hearing, and, if so, the hearing shall be
13 transcribed for later review by other members of the chartering
14 authority. Any member of a chartering authority who was not
15 present at the public hearing shall receive a transcript of the
16 public hearing, together with documents submitted for the
17 public hearing, before a chartering authority makes a decision
18 to accept or deny an application or renewal of a charter.

19 Community input may include written or oral comments in favor
20 of or in opposition to the application from the applicant, the
21 local community and, for state-chartered charter schools, the
22 local school board and school district in whose geographical
23 boundaries the charter school is proposed to be located.

24 K. Provided that the application was submitted to
25 the chartering authority by June 1, the chartering authority

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

14 L. A chartering authority may approve, approve with
15 conditions or deny an application. A chartering authority may
16 deny an application if:

17 (1) the application is incomplete or
18 inadequate;

19 (2) the application does not propose to offer
20 an educational program consistent with the requirements and
21 purposes of the Charter Schools Act;

22 (3) the proposed head administrator or other
23 administrative or fiscal staff was involved with another
24 charter school whose charter was denied or revoked for fiscal
25 mismanagement or the proposed head administrator or other

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1 administrative or fiscal staff was discharged from a public
2 school for fiscal mismanagement;

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

7 (5) the application is otherwise contrary to
8 the best interests of the charter school's projected students,
9 the local community or the school district in whose geographic
10 boundaries the charter school applies to operate.

11 M. If the chartering authority denies a charter
12 school application or approves the application with conditions,
13 it shall state its reasons for the denial or conditions in
14 writing within fourteen days of the ~~[meeting]~~ hearing. If the
15 chartering authority grants a charter, the approved charter
16 shall be provided to the applicant together with any imposed
17 conditions.

18 N. A charter school applicant or governing body
19 that has received a notice from the chartering authority
20 denying approval or renewal of the charter shall have a right
21 to a hearing by the secretary as provided in Section 22-8B-7
22 NMSA 1978."

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

25 "22-8B-7. APPEAL OF DENIAL, NONRENEWAL, SUSPENSION OR
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1 REVOCATION--PROCEDURES.--

2 A. The secretary, upon receipt of a notice of
3 appeal or upon the secretary's own motion, shall review
4 decisions of a chartering authority concerning charter schools
5 in accordance with the provisions of this section.

6 B. A charter applicant or governing body that
7 wishes to appeal a decision of the chartering authority
8 concerning the denial, nonrenewal, suspension or revocation of
9 a charter school or the imposition of conditions that are
10 unacceptable to the charter school or charter school applicant
11 shall provide the secretary with a notice of appeal within
12 thirty days after the chartering authority's decision. The
13 charter school applicant or governing body bringing the appeal
14 shall limit the grounds of the appeal to the grounds for
15 denial, nonrenewal, suspension or revocation or the imposition
16 of conditions that were specified by the chartering authority.
17 The notice shall include a brief statement of the reasons the
18 charter school applicant or governing body contends the
19 chartering authority's decision was in error. Except as
20 provided in Subsection E of this section, [~~the appeal and~~
21 ~~review process shall be as follows~~] within sixty days after
22 receipt of the notice of appeal, the secretary, at a public
23 hearing that may be held in the school district in which the
24 charter school is located or in which the proposed charter
25 school has applied for a charter, shall review the decision of

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1 the chartering authority and make findings. If the secretary
2 finds that the chartering authority acted arbitrarily or
3 capriciously, rendered a decision not supported by substantial
4 evidence or did not act in accordance with law, the secretary
5 may reverse the decision of the chartering authority and order
6 the approval of the charter with or without conditions. The
7 decision of the secretary shall be final.

8 C. The secretary on the secretary's own motion may
9 review a chartering authority's decision to grant a charter.
10 Within sixty days after the making of a motion to review by the
11 secretary, the secretary, at a public hearing that may be held
12 in the school district in which the proposed charter school
13 that has applied for a charter will be located, shall review
14 the decision of the chartering authority and determine whether
15 the decision was arbitrary or capricious or whether the
16 establishment or operation of the proposed charter school
17 would:

- 18 (1) violate any federal or state laws
19 concerning civil rights;
20 (2) violate any court order; or
21 (3) threaten the health and safety of students
22 within the school district.

23 D. If the secretary determines that the charter
24 would violate the provisions set forth in Subsection C of this
25 section, the secretary shall deny the charter application. The

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1 secretary may extend the time lines established in this section
2 for good cause. The decision of the secretary shall be final.

3 E. If a chartering authority denies an application
4 or refuses to renew a charter because the public school capital
5 outlay council has determined that the facilities do not meet
6 the standards required by Section 22-8B-4.2 NMSA 1978, the
7 charter school applicant or charter school may appeal the
8 decision to the secretary as otherwise provided in this
9 section; provided that the secretary shall reverse the decision
10 of the chartering authority only if the secretary determines
11 that the decision was arbitrary, capricious, not supported by
12 substantial evidence or otherwise not in accordance with the
13 law.

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

17 SECTION 5. Section 22-8B-13 NMSA 1978 (being Laws 1999,
18 Chapter 281, Section 13, as amended) is amended to read:

19 "22-8B-13. CHARTER SCHOOL FINANCING.--

20 A. The amount of funding allocated to a charter
21 school shall be not less than ninety-eight percent of the
22 school-generated program cost. The [~~school district or~~
23 ~~division~~] chartering authority may withhold and use two percent
24 of the school-generated program cost for its administrative
25 support of a charter school.

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1 B. That portion of money from state or federal
2 programs generated by students enrolled in a locally chartered
3 charter school shall be allocated to that charter school
4 serving students eligible for that aid. Any other public
5 school program not offered by the locally chartered charter
6 school shall not be entitled to the share of money generated by
7 a charter school program.

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

12 D. Charter schools may apply for all federal funds
13 for which they are eligible.

14 E. All services centrally or otherwise provided by
15 a local school district, including custodial, maintenance and
16 media services, libraries and warehousing, shall be subject to
17 negotiation between the charter school and the school district.
18 Any services for which a charter school contracts with a school
19 district shall be provided by the district at a reasonable
20 cost."

21 **SECTION 6.** Section 22-8B-16 NMSA 1978 (being Laws 2006,
22 Chapter 94, Section 29) is amended to read:

23 "22-8B-16. PUBLIC EDUCATION COMMISSION--POWERS AND
24 DUTIES.--The commission shall receive applications for initial
25 chartering and renewals of charters for charter schools that

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1 want to be chartered by the state and approve or disapprove
2 those charter applications. The commission may approve, deny,
3 suspend or revoke the charter of a state-chartered charter
4 school in accordance with the provisions of the Charter Schools
5 Act. ~~[The chartering authority for a charter school existing
6 on July 1, 2007 may be transferred to the commission; provided,
7 however, that if a school chartered under a previous chartering
8 authority chooses to transfer its chartering authority, it
9 shall continue to operate under the provisions of that charter
10 until its renewal date unless it is suspended or revoked by the
11 commission. An application for a charter school filed with a
12 local school board prior to July 1, 2007, but not approved, may
13 be transferred to the commission on July 1, 2007.]"~~

14 SECTION 7. Section 22-8B-17 NMSA 1978 (being Laws 2006,
15 Chapter 94, Section 30) is amended to read:

16 "22-8B-17. CHARTER SCHOOLS DIVISION--DUTIES.--The
17 "charter schools division" is created in the department. The
18 division shall:

19 A. provide staff support to the commission; for
20 purposes of this section, "staff support" means employees who
21 are directed to perform duties as delegated to them by the
22 commission in order to render technical assistance to charter
23 schools and to assist the commission in the performance of its
24 statutory duties;

25 B. provide technical support to all charter

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1 schools;

2 C. review, [~~and~~] approve and report to the
3 commission on state-chartered charter school budget matters;
4 and

5 D. make recommendations to the commission regarding
6 the approval, denial, suspension or revocation of the charter
7 of a state-chartered charter school."

8 SECTION 8. APPROPRIATION.--One million one hundred
9 thousand dollars (\$1,100,000) is appropriated from the general
10 fund to the public education commission for expenditure in
11 fiscal year 2016 to carry out the provisions of this act. Any
12 unexpended or unencumbered balance remaining at the end of
13 fiscal year 2016 shall revert to the general fund.

14 SECTION 9. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2015.