

1 SENATE BILL 198

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Clemente Sanchez and Dennis J. Roch

5  
6  
7 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND  
8 THE LEGISLATIVE FINANCE COMMITTEE

9  
10 AN ACT

11 RELATING TO PUBLIC EDUCATION; CREATING A TRANSPORTATION  
12 DISTRIBUTION FOR SCHOOL DISTRICTS AND STATE-CHARTERED CHARTER  
13 SCHOOLS AND ESTABLISHING REQUIREMENTS FOR THE EXPENDITURE OF  
14 ITS PROCEEDS.

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

17 SECTION 1. Section 22-8-14 NMSA 1978 (being Laws 1967,  
18 Chapter 16, Section 69, as amended) is amended to read:

19 "22-8-14. PUBLIC SCHOOL FUND.--

20 A. The "public school fund" is created.

21 B. The public school fund shall be distributed to  
22 school districts and state-chartered charter schools in the  
23 following parts:

24 (1) state equalization guarantee distribution;

25 (2) school district transportation

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1 distribution; ~~and~~

2 (3) state-chartered charter school  
3 transportation distribution; and

4 ~~(3)~~ (4) supplemental distributions:

5 (a) out-of-state tuition to school  
6 districts;

7 (b) emergency; and

8 (c) program enrichment.

9 C. The distributions of the public school fund  
10 shall be made by the department within limits established by  
11 law. The balance remaining in the public school fund at the  
12 end of each fiscal year shall revert to the general fund,  
13 unless otherwise provided by law."

14 SECTION 2. Section 22-8-26 NMSA 1978 (being Laws 1967,  
15 Chapter 16, Section 76, as amended) is amended to read:

16 "22-8-26. TRANSPORTATION DISTRIBUTION.--

17 A. Money in the school district transportation  
18 distribution and the state-chartered charter school  
19 transportation distribution of the public school fund shall be  
20 used only for the purpose of making payments to each school  
21 district or state-chartered charter school for the to-and-from  
22 school transportation costs of students in grades kindergarten  
23 through twelve attending public school within the school  
24 district or state-chartered charter school and of three- and  
25 four-year-old children who meet the department-approved

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1 criteria and definition of developmentally disabled and for  
2 transportation of students to and from their regular attendance  
3 centers and the place where vocational education programs are  
4 being offered.

5 B. In the event a school district's [~~or state-~~  
6 ~~chartered charter school's~~] transportation allocation exceeds  
7 the amount required to meet obligations to provide  
8 to-and-from transportation, three- and four-year-old  
9 developmentally disabled transportation and vocational  
10 education transportation, fifty percent of the remaining  
11 balance shall be deposited in the transportation emergency  
12 fund.

13 C. In the event a state-chartered charter school's  
14 transportation allocation exceeds the amount required to meet  
15 obligations to provide to-and-from transportation, three- and  
16 four-year-old developmentally disabled transportation and  
17 vocational education transportation, one hundred percent of the  
18 remaining balance shall be deposited in the transportation  
19 emergency fund.

20 [~~G.~~] D. Of the excess amount retained by the school  
21 district [~~or state-chartered charter school~~], at least  
22 twenty-five percent shall be used for to-and-from  
23 transportation-related services, excluding salaries and  
24 benefits, and up to twenty-five percent may be used for other  
25 transportation-related services, excluding salaries and

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1 benefits as defined by rule of the department.

2 ~~[D. In the event the sum of the proposed~~  
3 ~~transportation allocations to each school district or state-~~  
4 ~~chartered charter school exceeds the amounts in the~~  
5 ~~transportation distribution, the allocation to each school~~  
6 ~~district or state-chartered charter school shall be reduced in~~  
7 ~~the proportion that the school district or state-chartered~~  
8 ~~charter school allocation bears to the total statewide~~  
9 ~~transportation distribution.]~~

10 E. A state-chartered charter school shall notify  
11 the department one year in advance of its request for public  
12 school transportation funding.

13 ~~[E.]~~ F. A local school board or governing body of a  
14 state-chartered charter school, with the approval of the state  
15 transportation director, may provide additional transportation  
16 services pursuant to Section 22-16-4 NMSA 1978 to meet  
17 established program needs.

18 ~~[F.]~~ G. Nothing in this section prohibits the use  
19 of school buses to transport the general public pursuant to the  
20 Emergency Transportation Act."

21 **SECTION 3.** Section 22-8-29 NMSA 1978 (being Laws 1967,  
22 Chapter 16, Section 78, as amended) is amended to read:

23 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--  
24 PAYMENTS.--

25 A. On the second reporting date and the third

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1 reporting date of each year, each local school board of a  
2 school district and governing body of a state-chartered charter  
3 school shall report to the state transportation director, upon  
4 forms furnished by the state transportation director, the  
5 following information concerning the school district's or  
6 state-chartered charter school's operation on each respective  
7 reporting date of the current year:

8 (1) the number and designation of school bus  
9 routes in operation in the school district;

10 (2) the number of miles traveled by each  
11 school bus on each school bus route, showing the route mileage  
12 in accordance with the type of road surface traveled;

13 (3) the number of students, including special  
14 education students, transported on each reporting date of the  
15 current year and adjusted for special education students on  
16 December 1;

17 (4) the projected number of students to be  
18 transported in the next school year;

19 (5) the seating capacity, age and mileage of  
20 each bus used in the school district for student  
21 transportation; and

22 (6) the number of total miles traveled for  
23 each school district's or state-chartered charter school's per  
24 capita feeder routes.

25 B. Each local school board of a school district and

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1 governing body of a state-chartered charter school maintaining  
2 a school bus route shall make further reports to the state  
3 transportation director at other times specified by the state  
4 transportation director.

5 C. The state transportation director shall certify  
6 to the secretary that the allocations to each school district  
7 from the school district transportation [~~distributions~~]  
8 distribution and to each [~~school district and~~] state-chartered  
9 charter school from the state-chartered charter school  
10 transportation distribution are based upon the transportation  
11 distribution [~~formula~~] formulas established in the Public  
12 School Code calculated and distributed for the entire school  
13 year using an average of the amounts reported on the second  
14 reporting date and third reporting date of the prior school  
15 year, and subject to audit and verification.

16 D. The department shall make periodic installment  
17 payments to school districts and state-chartered charter  
18 schools during the school year from the transportation  
19 distributions, based upon the allocations certified by the  
20 state transportation director."

21 SECTION 4. Section 22-8-29.1 NMSA 1978 (being Laws 1995,  
22 Chapter 208, Section 10, as amended) is amended to read:

23 "22-8-29.1. CALCULATION OF TRANSPORTATION ALLOCATION FOR  
24 SCHOOL DISTRICTS.--

25 A. As used in this section:

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1 (1) "annual variables" means the coefficients  
2 calculated by regressing the total operational expenditures  
3 from two years prior to the current school year for each school  
4 district [~~and state-chartered charter school~~] using the number  
5 of students transported and the numerical value of site  
6 characteristics;

7 (2) "base amount" means the fixed amount that  
8 is the same for all school districts [~~and an amount established  
9 by rule for state-chartered charter schools~~];

10 (3) "total operational expenditures" means the  
11 sum of all to-and-from school transportation expenditures,  
12 excluding expenditures incurred in accordance with the  
13 provisions of Section 22-8-27 NMSA 1978; and

14 (4) "variable amount" means the sum of the  
15 product of the annual variables multiplied by each school  
16 district's [~~or state-chartered charter school's~~] numerical  
17 value of the school district's [~~and state-chartered charter  
18 school's~~] site characteristics multiplied by the number of days  
19 of operation for each school district [~~or state-chartered  
20 charter school~~].

21 B. The department shall calculate the  
22 transportation allocation for each school district [~~and state-  
23 chartered charter school~~].

24 C. The base amount is designated as product A.  
25 Product A is the constant calculated by regressing the total

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1 operations expenditures from the two years prior to the current  
2 school year for school district [~~or state-chartered charter~~  
3 ~~school~~] operations using the numerical value of site  
4 characteristics approved by the department. The legislative  
5 education study committee and the legislative finance committee  
6 may review the site characteristics developed by the state  
7 transportation director prior to approval by the department.

8 D. The variable amount is designated as product B.  
9 Product B is the predicted additional expenditures for each  
10 school district [~~or state-chartered charter school~~] based on  
11 the regression analysis using the site characteristics as  
12 predictor variables multiplied by the number of days.

13 E. The unadjusted transportation allocation [~~to~~  
14 for each school district [~~and state-chartered charter school~~]  
15 shall be equal to product A plus product B.

16 [~~F. For the 2001-2002, 2002-2003 and 2003-2004~~  
17 ~~school years, the transportation allocation for each school~~  
18 ~~district shall not be less than ninety-five percent or more~~  
19 ~~than one hundred five percent of the prior school year's~~  
20 ~~transportation expenditure.~~

21 G.] F. The allocation to each school district shall  
22 be equal to the unadjusted allocation multiplied by the school  
23 district transportation distribution adjustment factor [~~shall~~  
24 ~~be applied to the allocation amount determined pursuant to~~  
25 ~~Subsections E and F of this section]."~~

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1           SECTION 5. A new section of the Public School Finance Act  
2 is enacted to read:

3           "[NEW MATERIAL] CALCULATION OF TRANSPORTATION ALLOCATION  
4 FOR STATE-CHARTERED CHARTER SCHOOLS.--

5           A. As used in this section:

6                   (1) "annual variables" means the coefficients  
7 calculated by regressing the total operational expenditures  
8 from two years prior to the current school year for each state-  
9 chartered charter school using the number of students  
10 transported and the numerical value of site characteristics;

11                   (2) "base amount" means the fixed amount that  
12 is the same for all state-chartered charter schools;

13                   (3) "total operational expenditures" means the  
14 sum of all to-and-from school transportation expenditures,  
15 excluding expenditures incurred in accordance with the  
16 provisions of Section 22-8-27 NMSA 1978; and

17                   (4) "variable amount" means the sum of the  
18 product of the annual variables multiplied by each state-  
19 chartered charter school's numerical value of the state-  
20 chartered charter school's site characteristics multiplied by  
21 the number of days of operation for each state-chartered  
22 charter school.

23           B. The department shall calculate the  
24 transportation allocation for each state-chartered charter  
25 school.

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1 C. The base amount is designated as product A.  
2 Product A is the constant calculated by regressing the total  
3 operations expenditures from the two years prior to the current  
4 school year for state-chartered charter school operations using  
5 the numerical value of site characteristics approved by the  
6 department. The legislative education study committee and the  
7 legislative finance committee may review the site  
8 characteristics developed by the state transportation director  
9 prior to approval by the department.

10 D. The variable amount is designated as product B.  
11 Product B is the predicted additional expenditures for each  
12 state-chartered charter school based on the regression analysis  
13 using the site characteristics as predictor variables  
14 multiplied by the number of days.

15 E. The unadjusted transportation allocation for  
16 each state-chartered charter school shall be equal to product A  
17 plus product B.

18 F. The allocation to each state-chartered charter  
19 school shall be equal to the unadjusted allocation multiplied  
20 by the state-chartered charter school transportation  
21 distribution adjustment factor."

22 SECTION 6. Section 22-8-29.4 NMSA 1978 (being Laws 1995,  
23 Chapter 208, Section 13, as amended) is amended to read:

24 "22-8-29.4. TRANSPORTATION DISTRIBUTION ADJUSTMENT  
25 [~~FACTOR~~] FACTORS.--

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1           A. As used in this section:

2                   (1) "total school district operational  
3 transportation distribution" means the total legislative  
4 appropriation for the school district transportation  
5 distribution less amounts included for capital outlay expenses;  
6 and

7                   (2) "total state-chartered charter school  
8 operational transportation distribution" means the total  
9 legislative appropriation for the state-chartered charter  
10 school transportation distribution less amounts included for  
11 capital outlay expenses.

12           B. The department shall establish a school district  
13 transportation distribution adjustment factor. The adjustment  
14 factor shall be calculated as follows:

15                   (1) calculate the unadjusted transportation  
16 allocation for each school district [~~and state-chartered~~  
17 ~~charter school~~] designated in Section 22-8-29.1 NMSA 1978 as  
18 product A plus product B;

19                   (2) the sum total of product A plus product B  
20 in all school districts [~~and state-chartered charter schools~~]  
21 added together equals [~~product~~] C; and

22                   (3) subtract [~~product~~] C from the total school  
23 district operational transportation distribution for the  
24 current year and divide the result by [~~product~~] C and then add  
25 1 in the following manner: "[~~(total school district~~

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1 operational transportation distribution - C) ÷ C] + 1". The  
2 result is the school district transportation distribution  
3 adjustment factor.

4 ~~[B. As used in this section, "total operational~~  
5 ~~transportation distribution" means the total legislative~~  
6 ~~appropriation for the transportation distribution minus amounts~~  
7 ~~included for capital outlay expenses.]~~

8 C. The department shall establish a state-chartered  
9 charter school transportation distribution adjustment factor.  
10 The adjustment factor shall be calculated as follows:

11 (1) calculate the unadjusted transportation  
12 allocation for each state-chartered charter school designated  
13 in Section 5 of this 2016 act as product A plus product B;

14 (2) the sum total of product A plus product B  
15 in all state-chartered charter schools added together equals C;  
16 and

17 (3) subtract C from the total state-chartered  
18 charter school operational transportation distribution for the  
19 current year and divide the result by C and then add 1 in the  
20 following manner: "[total state-chartered charter school  
21 operational transportation distribution - C) ÷ C] + 1". The  
22 result is the state-chartered charter school transportation  
23 distribution adjustment factor."

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

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1 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--  
2 OPERATION.--

3 A. A charter school shall be subject to all federal  
4 and state laws and constitutional provisions prohibiting  
5 discrimination on the basis of disability, physical or mental  
6 handicap, serious medical condition, race, creed, color, sex,  
7 gender identity, sexual orientation, spousal affiliation,  
8 national origin, religion, ancestry or need for special  
9 education services.

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

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

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1 matters.

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

12 E. A conversion school chartered before July 1,  
13 2007 may choose to continue using the school district  
14 facilities and equipment it had been using prior to conversion,  
15 subject to the provisions of Subsection F of this section.

16 F. The school district in which a charter school is  
17 geographically located shall provide a charter school with  
18 available facilities for the school's operations unless the  
19 facilities are currently used for other educational purposes.  
20 An agreement for the use of school district facilities by a  
21 charter school may provide for reasonable lease payments;  
22 provided that the payments do not exceed the sum of the lease  
23 reimbursement rate provided in Subparagraph (b) of Paragraph  
24 (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any  
25 reimbursement for actual direct costs incurred by the school

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

13 G. A locally chartered charter school may pay the  
14 costs of operation and maintenance of its facilities or may  
15 contract with the school district to provide facility operation  
16 and maintenance services.

17 H. Locally chartered charter school facilities are  
18 eligible for state and local capital outlay funds and shall be  
19 included in the school district's five-year facilities plan.

20 I. A locally chartered charter school shall  
21 negotiate with a school district to provide transportation to  
22 students eligible for transportation under the provisions of  
23 the Public School Code. The school district, in conjunction  
24 with the charter school, may establish a limit for student  
25 transportation to and from the charter school site not to

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1 extend beyond the school district boundary.

2 J. A state-chartered charter school providing  
3 transportation to students eligible for transportation pursuant  
4 to the provisions of the Public School Code shall establish a  
5 limit for student transportation to and from the charter school  
6 site not to exceed the boundaries of the school district in  
7 which the state-chartered charter school is geographically  
8 located.

9 [~~J.~~] K. A charter school shall be a nonsectarian,  
10 nonreligious and non-home-based public school.

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

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

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

23 [~~N.~~] O. Within constitutional and statutory limits,  
24 a charter school may acquire and dispose of property; provided  
25 that, upon termination of the charter, all assets of the



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

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

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

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

22 ~~[R-]~~ S. A charter school is a public school that may  
23 contract with a school district or other party for provision of  
24 financial management, food services, transportation, facilities,  
25 education-related services or other services. The governing

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1 body shall not contract with a for-profit entity for the  
2 management of the charter school.

3 ~~[S.]~~ T. To enable state-chartered charter schools  
4 to submit required data to the department, an accountability  
5 data system shall be maintained by the department.

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

20 **SECTION 8.** Section 22-16-4 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 222, as amended) is amended to read:

22 "22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--  
23 MINIMUM REQUIREMENTS.--

24 A. Bus routes shall be established by the local  
25 school district.

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1                   B. Bus routes shall be established by a state-  
2 chartered charter school receiving a transportation  
3 distribution pursuant to the provisions of the Public School  
4 Finance Act.

5                   ~~[B-]~~ C. Except as provided in Subsections ~~[C-and]~~ D  
6 and E of this section, no school bus route shall be maintained  
7 for distances less than:

8                               (1) one mile one way for students in grades  
9 kindergarten through six;

10                              (2) one and one-half miles one way for  
11 students in grades seven through nine; and

12                              (3) two miles one way for students in grades  
13 ten through twelve.

14                   ~~[G-]~~ D. In school districts and state-chartered  
15 charter schools having hazardous walking conditions as  
16 determined by the local school board or the governing body of a  
17 state-chartered charter school and confirmed by the state  
18 transportation director, students of any grade may be  
19 transported a lesser distance than that provided in Subsection  
20 ~~[B]~~ C of this section. General standards for determining  
21 hazardous walking conditions shall be established by the state  
22 transportation division of the department ~~[of education]~~ with  
23 the approval of the ~~[state board]~~ department, but the standards  
24 shall be flexibly and not rigidly applied by the local school  
25 board and the state transportation director to prevent

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accidents and help ensure student safety.

~~[D-]~~ E. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the ~~[state board approved]~~ department-approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection ~~[B]~~ C of this section."