

1 SENATE BILL 466

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Antonio Maestas

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9  
10 AN ACT

11 RELATING TO CHARTER SCHOOLS; REQUIRING ALL CHARTER SCHOOLS TO  
12 BE BOARDS OF FINANCE; SEPARATING CHARTER SCHOOL AUDITS FROM  
13 THOSE OF THEIR CHARTERING AUTHORITIES.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 12-6-4 NMSA 1978 (being Laws 1969,  
17 Chapter 68, Section 4, as amended) is amended to read:

18 "12-6-4. AUDITING COSTS.--

19 A. The reasonable cost of all audits shall be borne  
20 by the agency audited, except that:

21 [~~A.~~] (1) a public housing authority other than  
22 a regional housing authority shall not bear the cost of an  
23 audit conducted solely at the request of its local primary  
24 government entity; and

25 [~~B.~~] (2) the administrative office of the

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1 courts shall bear the cost of auditing the magistrate courts.  
2 A metropolitan court shall be treated as a single agency for  
3 the purpose of audit and shall be audited as a unit, and the  
4 cost of the audit shall be paid from the appropriation to the  
5 metropolitan court. The district courts of all counties within  
6 a judicial district shall be treated as a single agency for the  
7 purpose of audit and shall be audited as a unit, and the cost  
8 of the audit shall be paid from the appropriation to each  
9 judicial district. The court clerk trust account and the state  
10 treasurer account of each county's district court shall be  
11 included within the scope of the judicial district audit.

12 B. Each charter school shall have a separate audit  
13 from its chartering authority, but its audit shall be included  
14 with the chartering authority's audit. A charter school shall  
15 select its auditor, which need not be the same as the  
16 chartering authority's auditor. Each charter school shall pay  
17 the cost of its audit."

18 SECTION 2. Section 22-8-38 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 96, as amended) is amended to read:

20 "22-8-38. BOARDS OF FINANCE--DESIGNATION.--

21 A. Upon written application to and approval of the  
22 department, a local school board may be designated a board of  
23 finance for public school funds of the school district. A  
24 local school board designated as a board of finance may require  
25 all funds distributed to, allocated to or collected for the

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1 school district or the public schools under its jurisdiction to  
2 be deposited with it. The department shall designate a local  
3 school board as a board of finance if:

4 (1) the local school board shows to the  
5 satisfaction of the department that it has personnel properly  
6 trained to keep accurate and complete fiscal records;

7 (2) the local school board agrees to consult  
8 with the department on any matters not covered by the manual of  
9 accounting and budgeting before taking any action relating to  
10 funds held by it as a board of finance;

11 (3) the persons handling these funds are  
12 adequately bonded to protect the funds entrusted to them from  
13 loss; and

14 (4) the local school board making application  
15 has not been suspended and not reinstated as a board of finance  
16 within the past year.

17 B. A charter school applicant requesting a charter  
18 from the commission or local school board shall submit a plan  
19 detailing how its governing body will qualify for designation  
20 as a board of finance for public school funds of the charter  
21 school. The governing body of a proposed [~~state-chartered~~]  
22 charter school shall qualify as a board of finance before the  
23 first year of operation of the charter school. The governing  
24 body of a [~~state-chartered~~] charter school designated as a  
25 board of finance may require all funds distributed to,

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1 allocated to or collected for the [~~state-chartered~~] charter  
2 school to be deposited with the governing body. The  
3 [~~commission~~] chartering authority shall designate the governing  
4 body of a [~~state-chartered~~] charter school as a board of  
5 finance if:

6 (1) the governing body shows to the  
7 satisfaction of the [~~commission~~] chartering authority that it  
8 has personnel properly trained to keep accurate and complete  
9 fiscal records;

10 (2) the governing body agrees to consult with  
11 the [~~division~~] department on any matters not covered by the  
12 manual of accounting and budgeting before taking any action  
13 relating to funds held by it as a board of finance;

14 (3) the persons handling these funds are  
15 adequately bonded to protect the funds entrusted to them from  
16 loss; and

17 (4) the governing body was not a governing  
18 body of a charter school or does not have a member who was a  
19 member of a governing body of a charter school that was  
20 suspended and not reinstated as a board of finance.

21 C. Failure of the governing body of [~~a proposed~~  
22 ~~state-chartered~~] an applicant or charter school to qualify for  
23 designation as a board of finance constitutes good and just  
24 grounds for denial, nonrenewal or revocation of its charter.

25 D. Locally chartered charter schools shall qualify

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1 as boards of finance by July 1, 2024. Applicants, charter  
2 schools in their planning stage or charter schools seeking  
3 renewal shall qualify as boards of finance prior to final  
4 charter contracts being signed or charters renewed.

5 E. Nothing in this section changes the statutory or  
6 contractual requirements for a chartering authority to oversee  
7 and monitor its charter schools."

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

10 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--  
11 OPERATION.--

12 A. A charter school shall be subject to all federal  
13 and state laws and constitutional provisions prohibiting  
14 discrimination on the basis of disability, physical or mental  
15 handicap, serious medical condition, race, creed, color, sex,  
16 gender identity, sexual orientation, spousal affiliation,  
17 national origin, religion, ancestry or need for special  
18 education services and shall not allow for the imposition of  
19 discipline, discrimination or disparate treatment against a  
20 student based on the student's race, religion or culture or  
21 because of the student's use of protective hairstyles or  
22 cultural or religious headdresses.

23 B. A charter school shall be governed by a  
24 governing body in the manner set forth in the charter contract;  
25 provided that a governing body shall have at least five

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1 members; and provided further that no member of a governing  
2 body for a charter school that is initially approved on or  
3 after July 1, 2005 or whose charter is renewed on or after July  
4 1, 2005 shall serve on the governing body of another charter  
5 school. No member of a local school board shall be a member of  
6 a governing body for a charter school or employed in any  
7 capacity by a locally chartered charter school located within  
8 the local school board's school district during the term of  
9 office for which the member was elected or appointed.

10 C. A charter school shall be responsible for:

11 (1) qualifying and maintaining its status as a  
12 board of finance;

13 [~~(1)~~] (2) its own operation, including  
14 preparation of a budget, subject to audits pursuant to the  
15 Audit Act; provided that audits shall be separate from the  
16 audits of its chartering authority, but shall be included with  
17 the chartering authority's audit submitted to the state  
18 auditor; and

19 [~~(2)~~] (3) contracting for services and  
20 personnel matters.

21 D. A charter school may contract with a school  
22 district, a university or college, the state, another political  
23 subdivision of the state, the federal government or one of its  
24 agencies, a tribal government or any other third party for the  
25 use of a facility, its operation and maintenance and the

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1 provision of any service or activity that the charter school is  
2 required to perform in order to carry out the educational  
3 program described in its charter contract. Facilities used by  
4 a charter school shall meet the standards required pursuant to  
5 Section 22-8B-4.2 NMSA 1978.

6 E. A conversion school chartered before July 1,  
7 2007 may choose to continue using the school district  
8 facilities and equipment it had been using prior to conversion,  
9 subject to the provisions of Subsection F of this section.

10 F. A school district that has available land or one  
11 or more available facilities not currently used for other  
12 educational purposes shall make facilities and may make land  
13 available for lease, lease-purchase or purchase to the charter  
14 schools located in the school district for the charter schools'  
15 operations and shall notify the charter schools of that  
16 availability no later than May 1 of each year. The public  
17 school facilities authority shall annually ensure that each  
18 school district with available land or one or more available  
19 facilities has provided that notification. A school district  
20 may develop a facility prioritization plan that identifies  
21 which charter schools may lease, lease-purchase or purchase  
22 available school district facilities. School-district-owned  
23 land shall not be considered available to a charter school if  
24 the school district has justified future use of that land  
25 through its five-year facilities master plan. An agreement for

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

18 G. A locally chartered charter school may pay the  
19 costs of operation and maintenance of its facilities or may  
20 contract with the school district to provide facility operation  
21 and maintenance services.

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

25 I. A locally chartered charter school shall

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

7 J. A charter school shall be a nonsectarian,  
8 nonreligious and non-home-based public school.

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

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

18 M. A charter school shall be subject to the  
19 provisions of Section 22-2-8 NMSA 1978 and the Assessment and  
20 Accountability Act.

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

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

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

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

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

20 R. A charter school is a public school that may  
21 contract with a school district or other party for provision of  
22 financial management, food services, transportation,  
23 facilities, education-related services or other services. The  
24 governing body shall not contract with a for-profit entity for  
25 the management of the charter school.

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

4           T. A charter school shall comply with all  
5 applicable state and federal laws and rules related to  
6 providing special education services. Charter school students  
7 with disabilities and their parents retain all rights under the  
8 federal Individuals with Disabilities Education Act and its  
9 implementing state and federal rules. Each charter school is  
10 responsible for identifying, evaluating and offering a free  
11 appropriate public education to all eligible children who are  
12 accepted for enrollment in that charter school. The [~~state-~~  
13 ~~chartered~~] charter school, as a local educational agency, shall  
14 assume responsibility for determining students' needs for  
15 special education and related services. The division may  
16 promulgate rules to implement the requirements of this  
17 subsection.

18           U. As used in this section:

19                   (1) "cultural or religious headdresses"  
20 includes hijabs, head wraps or other headdresses used as part  
21 of [~~an individual's~~] a person's personal cultural or religious  
22 beliefs;

23                   (2) "protective hairstyles" includes such  
24 hairstyles as braids, locs, twists, tight coils or curls,  
25 cornrows, bantu knots, afros, weaves, wigs or head wraps; and

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1 (3) "race" includes traits historically  
2 associated with race, including hair texture, length of hair,  
3 protective hairstyles or cultural or religious headdresses."

4 SECTION 4. Section 22-8B-6 NMSA 1978 (being Laws 1999,  
5 Chapter 281, Section 6, as amended by Laws 2019, Chapter 174,  
6 Section 4 and by Laws 2019, Chapter 206, Section 20 and also by  
7 Laws 2019, Chapter 207, Section 20) is amended to read:

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

11 A. A local school board has the authority to  
12 approve the establishment of a locally chartered charter school  
13 within that local school board's district.

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

21 C. A charter school applicant shall apply to either  
22 a local school board or the commission for a charter. If an  
23 application is submitted to a chartering authority, the  
24 chartering authority shall process the application.

25 Applications for initial charters shall be submitted by June 1

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

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

10 E. An application shall include the total number of  
11 students the charter school proposes to serve in each of the  
12 charter school's first three years of operation. No later than  
13 June 15, each local school board and the commission shall  
14 notify the department as to the number of students each charter  
15 school applicant proposes to serve in each year.

16 F. An application shall include a detailed  
17 description of the charter school's projected facility needs,  
18 including projected requests for capital outlay assistance that  
19 have been approved by the director of the public school  
20 facilities authority or the director's designee. The director  
21 shall respond to a written request for review from a charter  
22 applicant within forty-five days of the request.

23 G. An application may be made by one or more  
24 teachers, parents or community members or by a public post-  
25 secondary educational institution or nonprofit organization.

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1 Municipalities, counties, private post-secondary educational  
2 institutions and for-profit business entities are not eligible  
3 to apply for or receive a charter.

4 H. An initial application for a charter school  
5 shall not be made after June 30, 2007 if the proposed charter  
6 school's proposed enrollment for all grades or the proposed  
7 charter school's proposed enrollment for all grades in  
8 combination with any other charter school's enrollment for all  
9 grades would equal or exceed ten percent of the total MEM of  
10 the school district in which the charter school will be  
11 geographically located and that school district has a total  
12 enrollment of not more than one thousand three hundred  
13 students.

14 I. A [~~state-chartered~~] charter school existing on  
15 the effective date of this 2023 act shall not be approved for  
16 operation unless its governing body has qualified to be a board  
17 of finance by July 1, 2024.

18 J. The chartering authority shall receive and  
19 review all applications for charter schools submitted to it.  
20 The chartering authority shall not charge application fees.

21 K. The chartering authority shall hold at least one  
22 public hearing in the school district in which the charter  
23 school is proposed to be located to obtain information and  
24 community input to assist it in its decision whether to grant a  
25 charter school application. The chartering authority may

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1 designate a subcommittee of no fewer than three members to hold  
2 the public hearing, and, if so, the hearing shall be  
3 transcribed for later review by other members of the chartering  
4 authority. Community input may include written or oral  
5 comments in favor of or in opposition to the application from  
6 the applicant, the local community and, for state-chartered  
7 charter schools, the local school board and school district in  
8 whose geographical boundaries the charter school is proposed to  
9 be located.

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

23 M. A chartering authority may approve, approve with  
24 conditions or deny an application. A chartering authority may  
25 deny an application if:

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1 (1) the application is incomplete or  
2 inadequate;

3 (2) the application does not propose to offer  
4 an educational program consistent with the requirements and  
5 purposes of the Charter Schools Act;

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

12 (4) [~~for a proposed state-chartered charter~~  
13 ~~school, it does not request to have~~] the governing body of the  
14 charter school has not been designated as a board of finance or  
15 the governing body does not qualify as a board of finance;

16 (5) for a proposed charter school on tribal  
17 land, it fails to receive approval from the tribal government;  
18 or

19 (6) the application is otherwise contrary to  
20 the best interests of the charter school's projected students,  
21 the local community or the school district in whose geographic  
22 boundaries the charter school applies to operate.

23 N. If the chartering authority denies a charter  
24 school application or approves the application with conditions,  
25 it shall state its reasons for the denial or conditions in

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1 writing within fourteen days of the meeting. If the chartering  
2 authority grants a charter, the approved charter shall be  
3 provided to the applicant together with any imposed conditions.

4 0. A charter school that has received a notice from  
5 the chartering authority denying approval of the charter shall  
6 have a right to a hearing by the secretary as provided in  
7 Section 22-8B-7 NMSA 1978."