

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 311

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING FOR THE INVOLVEMENT OF  
THE STATE BOARD OF EDUCATION IN THE APPROVAL OF CHARTER  
SCHOOLS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 22-8-6.1 NMSA 1978 (being Laws 1993,  
Chapter 227, Section 8, as amended) is amended to read:

"22-8-6.1. CERTAIN SCHOOL DISTRICT BUDGETS. -- Each  
charter school shall submit to the state board or the local  
school board a school-based budget. The budget shall be based  
upon the projected number of program units generated by that  
charter school and its students, using the at-risk index and  
the instructional staff training and experience index of the  
district. The budget shall be submitted to the state board or  
the local school board for approval or amendment. The

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1 approval or amendment authority of the state board or the  
2 local school board relative to the charter school budget is  
3 limited to ensuring that sound fiscal practices are followed  
4 in the development of the budget and that the charter school  
5 budget is within the allotted resources. The local school  
6 board shall have no veto authority over individual line items  
7 within the charter school's proposed budget, but shall approve  
8 or disapprove the budget in its entirety. Upon final approval  
9 [~~of the local budget by the local school board~~], the  
10 individual charter school budget shall be included separately  
11 in the budget submission to the department [~~of education~~]  
12 required pursuant to the Public School Finance Act and the  
13 1999 Charter Schools Act. "

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

16 "22-8B-2. DEFINITIONS. --As used in the 1999 Charter  
17 Schools Act:

18 A. "charter school" means a conversion school or  
19 start-up school within a school district authorized [~~by the~~  
20 ~~local school board~~] to operate as a charter school;

21 B. "conversion school" means an existing public  
22 school within a school district authorized [~~by the local~~  
23 ~~school board~~] to become a charter school;

24 C. "governing body" means the governing structure  
25 of a charter school as set forth in the school's charter; and

1 D. "start-up school" means a public school  
2 developed by one or more parents, teachers or community  
3 members authorized by the state board or the local school  
4 board of the school district in which the school is located to  
5 become a charter school."

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

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

10 A. A charter school shall be subject to all  
11 federal and state laws and constitutional provisions  
12 prohibiting discrimination on the basis of disability, race,  
13 creed, color, gender, national origin, religion, ancestry or  
14 need for special education services.

15 B. A charter school shall be administered and  
16 governed by a governing body in the manner set forth in the  
17 charter.

18 C. A charter school shall be responsible for its  
19 own operation, including preparation of a budget, contracting  
20 for services and personnel matters.

21 D. A charter school may negotiate or contract with  
22 a [~~local~~] school district, a university or college or any  
23 third party for the use of a facility, its operation and  
24 maintenance and the provision of any service or activity that  
25 the charter school is required to perform in order to carry

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1 out the educational program described in its charter.

2 E. In no event shall a charter school be required  
3 to pay rent for space that is deemed available, as negotiated  
4 by contract, in school district facilities; provided that the  
5 facilities can be made available at no cost to the district.  
6 All costs for the operation and maintenance of the facilities  
7 used by the charter school shall be subject to negotiation  
8 between the charter school and the district.

9 F. A charter school shall negotiate with a [~~local~~]  
10 school district to provide transportation to students eligible  
11 for transportation under the provisions of the Public School  
12 Code. The [~~local~~] school district, in conjunction with the  
13 charter school, may establish a limit for student  
14 transportation to and from the charter school site not to  
15 extend beyond the [~~local~~] school district boundary.

16 G. A charter school may negotiate with the state  
17 board or a [~~local~~] school district for capital expenditures.

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

21 I. Except as otherwise provided in the Public  
22 School Code, a charter school shall not charge tuition or have  
23 admission requirements.

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

1           K. A charter school may acquire, pledge and  
2 dispose of property; provided that, upon termination of the  
3 charter, all assets of the charter school shall revert to the  
4 local school board [~~that authorized the charter~~] of the school  
5 district where the charter school was located.

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

13           M A charter school may contract and sue and be  
14 sued. [A]

15           N. The state board or the local school board that  
16 [~~approves~~] approved a charter school shall not be liable for  
17 any acts or omissions of the charter school.

18           [~~N.~~] 0. A charter school shall comply with all  
19 state and federal health and safety requirements applicable to  
20 public schools. "

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

23           "22-8B-5. CHARTER SCHOOLS--LOCAL SCHOOL BOARD  
24 AUTHORITY--STATE BOARD AUTHORITY.--

25           A. The local school board may waive only locally

1 imposed school district requirements.

2 B. The state board shall waive requirements  
3 relating to individual class load and teaching load, length of  
4 the school day, staffing patterns, subject areas and the  
5 purchase of instructional material. The state board may waive  
6 state board requirements or rules and provisions of the Public  
7 School Code pertaining to graduation requirements, evaluation  
8 standards for school personnel, school principal duties and  
9 driver education. Any waivers granted pursuant to this  
10 section shall be for the term of the charter granted.

11 C. A charter school shall be a public school,  
12 accredited by the state board and shall be accountable to the  
13 state board or the school district's local school board that  
14 approved the charter for purposes of ensuring compliance with  
15 applicable laws, rules and charter provisions.

16 D. ~~[Nø]~~ A local school board shall not require any  
17 employee of the school district to be employed in a charter  
18 school.

19 E. ~~[Nø]~~ A local school board shall not require any  
20 student residing within the geographic boundary of its  
21 district to enroll in a charter school.

22 F. A student who is suspended or expelled from a  
23 charter school shall be deemed to be suspended or expelled  
24 from the school district in which the student resides."

25 Section 5. Section 22-8B-6 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 6) is amended to read:

2 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION  
3 PROCESS--AUTHORIZATION.--

4 A. The local school board or the state board on  
5 appeal shall have the authority to approve the establishment  
6 of a charter school within the [~~local~~] school district in  
7 which it is located.

8 B. A charter school applicant shall apply to [a]  
9 the local school board for a charter [~~An applicant shall only~~  
10 ~~submit an application~~] in the district in which the school is  
11 located. Applications shall be submitted by October 1 to be  
12 eligible for consideration for the following school year. The  
13 October 1 deadline ~~may~~ be waived upon agreement of the  
14 applicant and the local school board.

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

17 D. An application for a conversion school shall  
18 include a petition of support signed by not less than sixty-  
19 five percent of the employees in the school. Additionally, a  
20 petition in support of the charter school signed by a majority  
21 of the households whose children are enrolled in a proposed  
22 conversion school ~~must~~ accompany the application.

23 E. The local school board shall receive and review  
24 [~~all~~] applications for charter schools. The local school  
25 board shall not charge application fees. If [~~the board finds~~]

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1 the charter school application is incomplete, the local school  
2 board shall request the necessary information from the charter  
3 applicant.

4 F. The local school board shall hold at least one  
5 meeting to obtain information and community input to assist  
6 the local school board in its decision whether to grant a  
7 charter school application. The local school board shall rule  
8 on the application for a charter school in a public meeting  
9 within sixty days after receiving the application. If not  
10 ruled upon within sixty days, the charter application will be  
11 automatically reviewed by the state board in accordance with  
12 the provisions of Section [~~7 of the 1999 Charter Schools Act~~]  
13 22-8B-7 NMSA 1978. The charter applicant and the local school  
14 board may, however, jointly waive the deadlines set forth in  
15 this section.

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

21 H. If [~~a~~] the local school board denies a charter  
22 school application, it shall state its reasons for the denial.  
23 If [~~a~~] the state board or the local school board grants a  
24 charter, it shall send a copy of the approved charter to the  
25 department of education within fifteen days after granting the



1 charter. "

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

4 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter  
5 school application, whether for a start-up school or a  
6 conversion school, shall be a proposed agreement between the  
7 state board or the local school board and the charter school  
8 and shall include:

9 A. the mission statement of the charter school;

10 B. the goals, objectives and student performance  
11 standards to be achieved by the charter school;

12 C. a description of the charter school's  
13 educational program, student performance standards and  
14 curriculum that must meet or exceed the state [~~board of~~  
15 ~~education's~~] board's educational standards and must be  
16 designed to enable each student to achieve those standards;

17 D. a description of the way a charter school's  
18 educational program will meet the individual needs of the  
19 students, including those students determined to be at risk;

20 E. a description of the charter school's plan for  
21 evaluating student performance, the types of assessments that  
22 will be used to measure student progress toward achievement of  
23 the state's standards and the school's student performance  
24 standards, the time line for achievement of the standards and  
25 the procedures for taking corrective action in the event that

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1 student performance falls below the standards;

2 F. evidence that the plan for the charter school  
3 is economically sound, including a proposed budget for the  
4 term of the charter and a description of the manner in which  
5 the annual audit of the financial and administrative  
6 operations of the charter school is to be conducted;

7 G. evidence that the fiscal management of the  
8 charter school complies with all applicable federal and state  
9 laws and regulations relative to fiscal procedures;

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

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

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

25 K. the employment and student discipline policies

1 of the proposed charter school;

2 L. an agreement between the charter school and the  
3 state board or the local school board regarding their  
4 respective legal liability and applicable insurance coverage;

5 M a description of how the charter school plans  
6 to meet the transportation and food service needs of its  
7 students;

8 N. a description of the waivers that the charter  
9 school is requesting from the local school board and the state  
10 board and the charter school's plan for addressing these  
11 waiver requests;

12 O. a description of the facilities the charter  
13 school plans to use; and

14 P. any other information reasonably required by  
15 the state board or the local school board. "

16 Section 7. Section 22-8B-9 NMSA 1978 (being Laws 1999,  
17 Chapter 281, Section 9) is amended to read:

18 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

19 A. An approved charter application shall be a  
20 contract between the charter school and the state board or the  
21 local school board.

22 B. The contract between the charter school and the  
23 state board or the local school board shall reflect all  
24 agreements regarding the release of the charter school from  
25 school district policies.

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1           C. The contract between the charter school and the  
2 state board or the local school board shall reflect all  
3 requests for release of the charter school from state board  
4 rules or the Public School Code. Within ten days after the  
5 contract is approved by the state board or the local school  
6 board, any request for release from state board rules or the  
7 Public School Code shall be delivered [~~by the local school~~  
8 ~~board~~] to the state board. If the state board grants the  
9 request, it shall notify the local school board, if  
10 applicable, and the charter school of its decision. If the  
11 state board denies the request, it shall notify the local  
12 school board, if applicable, and the charter school that the  
13 request is denied and specify the reasons for denial.

14           D. Upon approval of the charter by the state board  
15 or the local school board, the charter school shall be waived  
16 from the Public School Code provisions relating to individual  
17 class load and teaching load requirements, length of school  
18 day, staffing patterns, subject areas and purchase of  
19 instructional materials.

20           E. The charter school shall participate in the  
21 public school insurance authority.

22           F. Any revision or amendment to the terms of the  
23 contract may be made only with the approval of the state board  
24 or the local school board and the governing body of the  
25 charter school.

1           G. The charter shall include procedures agreed  
2 upon by the charter school and the state board or the local  
3 school board for the resolution of disputes between the  
4 charter school and the state board or the local school board.

5           H. The charter shall include procedures that shall  
6 be agreed upon by the charter school and the state board or  
7 the local school board in the event that [such board  
8 determines] it is determined that the charter shall be revoked  
9 pursuant to the provisions of Section [~~12 of the 1999 Charter~~  
10 ~~Schools Act]~~ 22-8B-12 NMSA 1978.

11           I. An existing charter school, regardless of when  
12 the charter was granted, may elect to have the contract  
13 pursuant to Subsection A of this section transferred from the  
14 local school board to the state board or from the state board  
15 to the local school board; provided that the state board or  
16 the local school board is allowed a review, comment and  
17 amendment period of not less than thirty days from the charter  
18 school's notification to transfer."

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

21           "22-8B-11. CHARTER SCHOOLS-- MAXIMUM NUMBER  
22 ESTABLISHED. --

23           A. The state board or the local school [boards]  
24 board shall authorize the approval of both conversion and  
25 start-up charter schools within [their] the school [districts]

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1 district where the school is located.

2 B. No more than fifteen start-up schools and five  
3 conversion schools may be established per year statewide. The  
4 number of charter school slots remaining in that year shall be  
5 transferred to succeeding years up to a maximum of seventy-  
6 five start-up schools and twenty-five conversion schools in  
7 any five-year period. The state board shall promptly notify  
8 the local school board of each school district when the limits  
9 set forth in this section have been reached. "

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

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

14 A. A charter school may be approved for an initial  
15 term of five years. A charter may be renewed for successive  
16 periods of five years each. Approvals of less than five years  
17 can be agreed to between the charter school and the local  
18 school board.

19 B. No later than January 1 of the year prior to  
20 the year in which the charter expires, the governing body of a  
21 charter school may submit a renewal application to the local  
22 school board. The local school board shall rule in a public  
23 hearing on the renewal application no later than March 1 of  
24 the year in which the charter expires, or on a mutually agreed  
25 upon date.

1 C. A charter school renewal application submitted  
2 to the local school board shall contain:

3 (1) a report on the progress of the charter  
4 school in achieving the goals, objectives, student performance  
5 standards, state board minimum educational standards and other  
6 terms of the initial approved charter application, including  
7 the accountability requirements set forth in Section 22-1-6  
8 NMSA 1978;

9 (2) a financial statement that discloses the  
10 costs of administration, instruction and other spending  
11 categories for the charter school that is understandable to  
12 the general public, that will allow comparison of costs to  
13 other schools or comparable organizations and that is in a  
14 format required by the state board;

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

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

21 (5) a petition in support of the charter  
22 school renewing its charter status signed by a majority of the  
23 households whose children are enrolled in the charter school.

24 D. A charter may be revoked or not renewed by the  
25 local school board if [~~the board determines~~] it is determined

1 that the charter school did any of the following:

2 (1) committed a material violation of any of  
3 the conditions, standards or procedures set forth in the  
4 charter;

5 (2) failed to meet or make substantial  
6 progress toward achievement of the state board minimum  
7 educational standards or student performance standards  
8 identified in the charter application;

9 (3) failed to meet generally accepted  
10 standards of fiscal management; or

11 (4) violated any provision of law from which  
12 the charter school was not specifically exempted.

13 E. If [a] the local school board revokes or does  
14 not renew a charter, the state board or the local school board  
15 shall state in writing its reasons for the revocation or  
16 nonrenewal.

17 F. A decision to revoke or not to renew a charter  
18 may be appealed by the governing body of the charter school  
19 pursuant to Section [~~7 of the 1999 Charter Schools Act~~]  
20 22-8B-7 NMSA 1978. "