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SENATE BILL 808

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO PUBLIC SCHOOLS; MAKING CHARTER SCHOOLS INDEPENDENT
OF SCHOOL DISTRICTS FOR PURPOSES OTHER THAN CAPITAL OUTLAY AND
TRANSPORTATION; PROVIDING FOR CHARTERING AUTHORITIES.

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 AND CHARTER SCHOOL
BUDGETS. --

A. For charter schools approved prior to July 1,
2005, each charter school shall submit to 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

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

15 B. For charter schools approved after July 1, 2005,
16 each charter school shall submit to the department a school-
17 based budget. The budget shall be based upon the projected
18 number of program units generated by that charter school and
19 its students using the at-risk index and the instructional
20 staff training and experience index of the school district
21 where the charter school is geographically located. Upon final
22 approval of the budget by each governing charter body, the
23 individual charter school budget shall be submitted to the
24 department pursuant to the Public School Finance Act and the
25 Charter Schools Act."

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

3 "22-8-38. BOARDS OF FINANCE-- DESIGNATION. --

4 A. Upon written application to and approval of the
5 [~~state superintendent, any~~] department, a local school board
6 may be designated a board of finance for public school funds of
7 the school district. [~~Any~~] A local school board designated a
8 board of finance may require all funds distributed to,
9 allocated to or collected for the school district or the public
10 schools under its jurisdiction to be deposited with it. The
11 [~~state superintendent~~] department shall designate a local
12 school board as a board of finance if:

13 [~~A.~~] (1) the local school board shows to the
14 satisfaction of the [~~state superintendent~~] department that it
15 has personnel properly trained to keep accurate and complete
16 fiscal records;

17 [~~B.~~] (2) the local school board agrees to
18 consult with the [~~state superintendent~~] department on any
19 matters not covered by the manual of accounting and budgeting
20 before taking any action relating to funds held by it as a
21 board of finance;

22 [~~C.~~] (3) the persons handling these funds are
23 adequately bonded to protect the funds entrusted to them from
24 loss; and

25 [~~D.~~] (4) the local school board making

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1 application has not been suspended and not reinstated as a
2 board of finance within the past year.

3 B. A charter school applicant requesting an initial
4 or renewal charter from either a school district or the
5 department shall qualify for designation as a board of finance
6 for public school funds of the charter school. Upon initial
7 application for charter school approval or upon such additional
8 time granted by the department for good cause shown, the
9 applicant shall request designation as a board of finance. A
10 charter school designated a board of finance may require all
11 funds distributed to, allocated to or collected for the charter
12 school to be deposited with it. The department shall designate
13 a charter school as a board of finance if:

14 (1) the charter school shows to the
15 satisfaction of the department that it has personnel properly
16 trained to keep accurate and complete fiscal records;

17 (2) the charter school agrees to consult with
18 the department on any matters not covered by the manual of
19 accounting and budgeting before taking any action relating to
20 funds held by it as a board of finance;

21 (3) the persons handling these funds are
22 adequately bonded to protect the funds entrusted to them from
23 loss; and

24 (4) the charter school making application has
25 not been suspended and not reinstated as a board of finance

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1 within the past year, including a substantially similar
2 governing body that operated a charter school within the past
3 year under a different name.

4 C. Failure of a charter school to qualify for
5 designation as a board of finance shall constitute good and
6 just grounds for denial or revocation of its charter."

7 Section 3. Section 22-8-39 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 97, as amended) is amended to read:

9 "22-8-39. BOARDS OF FINANCE--SUSPENSION.--The [~~state~~
10 ~~superintendent~~] department may at any time suspend a local
11 school board or charter school from acting as a board of
12 finance if [~~he~~] the department reasonably believes there is
13 mismanagement, improper recording or improper reporting of
14 public school funds under [~~its~~] the local school board's or
15 charter school's control. When a local school board or charter
16 school is suspended from acting as a board of finance, the
17 [~~state superintendent~~] department shall:

18 A. immediately take control of all public school
19 funds under the control of the local school board or charter
20 school acting as a board of finance;

21 B. immediately have an audit made of all funds
22 under the control of the local school board or charter school
23 acting as a board of finance and charge the cost of the audit
24 to the school district or charter school;

25 C. act as a fiscal agent for the school district or

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1 charter school and take any action necessary to conform the
2 fiscal management of funds of the school district or charter
3 school to the requirements of law and good accounting
4 practices;

5 D. report any violations of the law to the proper
6 law enforcement officers;

7 E. act as fiscal agent for the school district or
8 charter school until [~~he~~] the department determines that the
9 local school board or charter school is capable of acting as a
10 board of finance or until [~~he~~] the department determines that
11 the county treasurer should act as fiscal agent for the school
12 district [~~and~~] or charter school;

13 F. inform the local school board or charter school
14 in writing of [~~his~~] the department's determination as to who is
15 to act as board of finance or fiscal agent for the school
16 district or charter school and also inform the county treasurer
17 in writing if [~~he~~] it determines that the county treasurer
18 should act as fiscal agent for the school district or charter
19 school; and

20 G. consider commencing proceedings to revoke or
21 suspend the charter of the charter school in the case of a
22 charter school that has engaged in serious or repeated
23 mismanagement, improper recording or improper reporting of
24 public school funds under its control."

25 Section 4. Section 22-8B-1 NMSA 1978 (being Laws 1999,
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1 Chapter 281, Section 1) is amended to read:

2 "22-8B-1. SHORT TITLE. -- ~~[Sections 1 through 15 of this~~
3 ~~act]~~ Chapter 22, Article 8B NMSA 1978 may be cited as the
4 "[1999] Charter Schools Act". "

5 Section 5. Section 22-8B-2 NMSA 1978 (being Laws 1999,
6 Chapter 281, Section 2) is amended to read:

7 "22-8B-2. DEFINITIONS. -- As used in the [1999] Charter
8 Schools Act:

9 A. "charter school" means a conversion school or
10 start-up school ~~[within a school district authorized by the~~
11 ~~local school board to operate as a charter school]~~ authorized
12 by the chartering authority to operate as a public school;

13 B. "chartering authority" means either a local
14 school board or the department that approves the establishment
15 of a charter school;

16 ~~[B.]~~ C. "conversion school" means ~~[an existing~~
17 ~~public school within a school district authorized by the local~~
18 ~~school board to become a charter school]~~ a charter school that
19 was derived from an existing public school of a school district
20 prior to July 1, 2005;

21 ~~[C.]~~ D. "governing body" means the governing
22 structure of a charter school as set forth in the school's
23 charter; and

24 ~~[D.]~~ E. "start-up school" means a public school
25 developed by one or more parents, teachers or community members

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1 authorized by the [~~local school board of the school district in~~
2 ~~which the school is located~~] chartering authority to become a
3 charter school. "

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

6 "22-8B-3. PURPOSE. -- The [1999] Charter Schools Act is
7 enacted to enable individual schools to restructure their
8 educational curriculum to encourage the use of different and
9 innovative teaching methods that are based on reliable research
10 and effective practices or have been replicated successfully in
11 schools with diverse characteristics; to allow the development
12 of different and innovative forms of measuring student learning
13 and achievement; to address the needs of all students,
14 including those determined to be at risk; to create new
15 professional opportunities for teachers, including the
16 opportunity to be responsible for the learning program at the
17 school site; to improve student achievement; to provide parents
18 and students with an educational alternative to create new,
19 innovative and more flexible ways of educating children within
20 the public school system; to encourage parental and community
21 involvement in the public school system; to develop and use
22 site-based budgeting; and to hold charter schools accountable
23 for meeting [~~state board minimum~~] the department's educational
24 standards and fiscal requirements. "

25 Section 7. Section 22-8B-4 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 4, as amended) is amended to read:

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

4 A. A charter school shall be subject to all federal
5 and state laws and constitutional provisions prohibiting
6 discrimination on the basis of disability, race, creed, color,
7 gender, national origin, religion, ancestry or need for special
8 education services.

9 B. A charter school shall be [~~administered and~~]
10 governed by a governing body in the manner set forth in the
11 charter; provided that no member of a governing body for a
12 charter school that is initially approved or renewed after July
13 1, 2005 shall serve on the governing body of another charter
14 school.

15 C. A charter school [~~shall~~] chartered after June
16 30, 2005, whether as new or renewal, shall meet the
17 qualifications for and be designated as a board of finance
18 except for capital outlay and transportation funding.

19 D. All charter schools shall be responsible for
20 [its]:

21 (1) their own operation, including preparation
22 of a budget, subject to periodic audits through the school
23 district or pursuant to the Audit Act; and

24 (2) contracting for services and personnel
25 matters.

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

10 ~~[E. In no event shall a charter school be required~~
11 ~~to pay rent for space that is deemed available, as negotiated~~
12 ~~by contract, in school district facilities; provided that the~~
13 ~~facilities can be made available at no cost to the district.~~
14 ~~All costs for the operation and maintenance of the facilities~~
15 ~~used by the charter school shall be subject to negotiation~~
16 ~~between the charter school and the district.]~~

17 F. A charter school shall negotiate with a school
18 district to provide transportation to students eligible for
19 transportation under the provisions of the Public School Code.
20 The school district, in conjunction with the charter school,
21 may establish a limit for student transportation to and from
22 the charter school site not to extend beyond the school
23 district boundary.

24 ~~[G. A charter school may negotiate with a school~~
25 ~~district for capital expenditures.~~

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1 ~~H.]~~ G. A charter school shall be a nonsectarian,
2 nonreligious and non-home-based public school. [~~that operates~~
3 ~~within a school district.~~

4 ~~I.]~~ H. Except as otherwise provided in the Public
5 School Code, a charter school shall not charge tuition or have
6 admission requirements.

7 I. With the approval of the chartering authority, a
8 single charter school may maintain separate facilities at two
9 or more locations within the same school district; however, for
10 purposes of calculating program units pursuant to the Public
11 School Finance Act, the separate facilities shall be treated
12 together as one school.

13 J. A charter school shall be subject to the
14 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
15 Accountability Act.

16 K. A charter school may acquire and dispose of
17 property; provided that, upon termination of the charter, all
18 assets of the charter school shall revert to the local school
19 board [~~that authorized the charter~~].

20 L. A charter school may accept or reject any
21 charitable gift, grant, devise or bequest; provided that no
22 such gift, grant, devise or bequest shall be accepted if
23 subject to any condition contrary to law or to the terms of the
24 charter. The particular gift, grant, devise or bequest shall
25 be considered an asset of the charter school to which it is

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1 given.

2 M A charter school may contract and sue and be
3 sued. A [~~local school board~~] chartering authority that
4 approves a charter school shall not be liable for any acts or
5 omissions of the charter school.

6 N. A charter school shall comply with all state and
7 federal health and safety requirements applicable to public
8 schools, including health and safety codes related to
9 educational building occupancy.

10 O. Charter school facilities are eligible for state
11 capital outlay funds and shall be included in the five-year
12 facilities plan developed by the school district within whose
13 geographical boundaries the charter school is located.

14 P. A charter school is a public school that may
15 contract with a school district or other party for provision of
16 financial management, food services, transportation,
17 facilities, education-related services or other services. The
18 governing body of a charter school shall not contract with a
19 for-profit or nonprofit entity for the management of the
20 charter school.

21 Q. To enable charter schools that are chartered by
22 the department to submit required data to the department, an
23 accountability data system shall be maintained by either one
24 charter school designated by the department or by the
25 department itself.

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1 R. A charter school shall comply with all
2 applicable state and federal laws and rules related to
3 providing special education services. Charter school students
4 with disabilities and their parents retain all rights under the
5 federal Individuals with Disabilities Education Act and its
6 implementing state and federal rules. Each charter school is
7 responsible for identifying, evaluating and offering a free
8 appropriate public education to all eligible children who are
9 accepted for enrollment in that charter school. If a properly
10 constituted individualized education program team determines
11 that the educational needs of a student with disabilities
12 exceed the charter school's capacity to provide a free
13 appropriate public education for that student within the
14 charter school's available resources, or if the charter school
15 ceases to operate for any reason, unless the student's parent
16 decides to enroll the student elsewhere, the local school
17 district in whose geographical boundaries the charter school is
18 located shall be responsible for determining that student's
19 needs for special education and related services. The school
20 district, as the local educational agency, shall assume
21 responsibility for determining the student's needs for special
22 education and related services just as though the student were
23 enrolled in that school district, which responsibility shall
24 include supplementing the charter school's resources through
25 direct services or other arrangements at school district

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1 expense to the extent the school district deems necessary to
2 ensure that the student receives free appropriate public
3 education. Provided, however, that a school district shall
4 only be required to provide those special education services if
5 the charter school has expended its state and federal funds and
6 its emergency account. The department may promulgate rules to
7 implement the requirements of this section."

8 Section 8. Section 22-8B-4.1 NMSA 1978 (being Laws 2000,
9 Chapter 82, Section 3) is amended to read:

10 "22-8B-4.1. CHARTER SCHOOLS' ENROLLMENT PROCEDURES. --

11 A. Start-up schools and conversion schools are
12 subject to the following enrollment procedures:

13 (1) a start-up school [~~may either~~] shall
14 enroll students [~~on a first-come, first-served basis or~~]
15 through a lottery selection process [~~if the total number of~~
16 ~~applicants exceeds the number of spaces available at the start-~~
17 ~~up school~~]; and

18 (2) a conversion school shall give enrollment
19 preference to students who are enrolled in the public school at
20 the time it is converted into a charter school and to siblings
21 of students admitted to or attending the charter school. The
22 conversion school may either enroll all other students on a
23 first-come, first-served basis or through a lottery selection
24 process if the total number of applicants exceeds the number of
25 spaces available at the conversion school.

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1 B. In subsequent years of its operation, a charter
2 school shall give enrollment preference to:

3 (1) students who have been admitted to the
4 charter school through an appropriate admission process and
5 remain in attendance through subsequent grades; and

6 (2) siblings of students already admitted to
7 or attending the same charter school."

8 Section 9. A new section of the Charter Schools Act,
9 Section 22-8B-4.2 NMSA 1978, is enacted to read:

10 "22-8B-4.2. [NEW MATERIAL] CHARTER SCHOOL FACILITIES--
11 STANDARDS. --

12 A. The facilities of a charter school that is
13 approved on or after July 1, 2005 shall meet educational
14 occupancy standards required by applicable New Mexico
15 construction codes.

16 B. The facilities of a charter school that is in
17 existence, or has been approved prior to July 1, 2005, shall
18 meet the statewide adequacy standards promulgated by the public
19 school capital outlay council in the same manner as all other
20 public schools in the state and shall qualify for grants
21 pursuant to the Public School Capital Outlay Act as all other
22 public schools; provided that for charter school facilities in
23 leased facilities, grants may be used as additional lease
24 payments for leasehold improvements.

25 C. After January 1, 2010, a charter school shall

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1 not be renewed unless the charter school:

2 (1) is housed in a public building that is in
3 compliance with the statewide adequacy standards and is owned
4 by the charter school, the school district, the state, an
5 institution of the state, another political subdivision of the
6 state, the federal government or a tribal government; or

7 (2) demonstrates, if it is not housed in a
8 public building described in Paragraph (1) of this subsection,
9 that:

10 (a) public buildings are not available
11 or adequate for the educational program of the charter school;
12 and

13 (b) the facility in which the charter
14 school is housed meets the statewide adequacy standards.

15 D. The public school capital outlay council:

16 (1) shall determine whether facilities of a
17 charter school meet the educational occupancy standards
18 pursuant to the requirements of Subsection A of this section;

19 (2) shall determine whether facilities of a
20 charter school meet the statewide adequacy standards pursuant
21 to the requirements of Subsections B and C of this section; and

22 (3) upon a determination that specific
23 standards are not appropriate or reasonable for a charter
24 school, may grant a waiver from those standards for that
25 charter school."

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1 Section 10. Section 22-8B-5 NMSA 1978 (being Laws 1999,
2 Chapter 281, Section 5) is amended to read:

3 "22-8B-5. CHARTER SCHOOLS--STATUS--EXEMPTION FROM LOCAL
4 SCHOOL BOARD AUTHORITY [~~STATE BOARD AUTHORITY~~]. --

5 A. The local school board may waive [~~only~~] locally
6 imposed school district requirements for the charter schools it
7 charters. A charter school chartered by the department is
8 exempt from local requirements.

9 [~~B. The state board shall waive requirements~~
10 ~~relating to individual class load and teaching load, length of~~
11 ~~the school day, staffing patterns, subject areas and the~~
12 ~~purchase of instructional material. The state board]~~

13 B. A charter school is responsible for developing
14 its own written policies and procedures in accordance with this
15 section.

16 C. The department may waive [~~state board]~~
17 requirements or rules and provisions of the Public School Code
18 pertaining to individual class loads, graduation requirements,
19 [~~evaluation standards for school personnel~~] school principal
20 duties and driver education. Any waivers granted pursuant to
21 this section shall be for the term of the charter granted but
22 may be revoked earlier by the department.

23 [~~C. D.~~] D. A charter school shall be a public school,
24 accredited by the [~~state board~~] department and shall be
25 accountable to the [~~school district's local school board~~]

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1 chartering authority for purposes of ensuring compliance with
2 applicable laws, rules and charter provisions.

3 ~~[D.]~~ E. No local school board shall require any
4 employee of the school district to be employed in a charter
5 school.

6 ~~[E.]~~ F. No local school board shall require any
7 student residing within the geographic boundary of its district
8 to enroll in a charter school.

9 ~~[F.]~~ G. A student who is suspended or expelled from
10 a charter school shall be deemed to be suspended or expelled
11 from the school district in which the student resides. "

12 Section 11. Section 22-8B-12 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 12) is recompiled as Section 22-8B-5.1
14 NMSA 1978 and is amended to read:

15 "22-8B-5.1. CHARTER SCHOOLS--TERM-RENEWAL OF CHARTER
16 [~~GROUNDS FOR NONRENEWAL OR REVOCATION~~].--

17 A. A charter school may be approved for an initial
18 term of [~~five~~] six years; provided that the first year shall be
19 used exclusively for planning. A charter may be renewed for
20 successive periods of five years each. Approvals of less than
21 five years can be agreed to between the charter school and the
22 [~~local school board~~] chartering authority.

23 B. Prior to the end of the planning year, the
24 charter school must demonstrate that it has satisfied any
25 conditions imposed by the chartering authority before

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1 commencing full operation for the remainder of its charter
2 term. The chartering authority shall either issue or refuse to
3 issue the authorization to commence full operation within
4 twenty-one days of the request. If the chartering authority
5 refuses to issue the authorization, it shall provide its
6 reasons in writing to the charter school. A charter school has
7 the right to a hearing by the department on the refusal as
8 provided in Section 22-8B-6 NMSA 1978.

9 ~~[B.]~~ C. No later than ~~[January]~~ July 1 of the year
10 ~~[prior to the year]~~ in which the charter expires, the governing
11 body of a charter school may submit a renewal application to
12 the ~~[local school board]~~ chartering authority. The ~~[local~~
13 ~~school board]~~ chartering authority shall rule in a public
14 hearing on the renewal application no later than ~~[March]~~
15 September 1 of the year in which the charter expires, or on a
16 mutually ~~[agreed]~~ agreed-upon date.

17 ~~[C.]~~ D. A charter school renewal application
18 submitted to the ~~[local school board]~~ chartering authority
19 shall contain:

20 (1) a report on the progress of the charter
21 school in achieving the goals, objectives, student performance
22 standards, ~~[state board]~~ department minimum educational
23 standards and other terms of the initial approved charter
24 application, including the accountability requirements set
25 forth in ~~[Section 22-1-6 NMSA 1978]~~ the Assessment and

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1 Accountability Act;

2 (2) a financial statement that discloses the
3 costs of administration, instruction and other spending
4 categories for the charter school that is understandable to the
5 general public, that ~~[will allow]~~ allows comparison of costs to
6 other schools or comparable organizations and that is in a
7 format required by the ~~[state board]~~ chartering authority;

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

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

14 (5) a petition in support of the charter
15 school renewing its charter status signed by ~~[a majority]~~
16 seventy-five percent of the households whose children are
17 enrolled in the charter school.

18 ~~[D. A charter may be revoked or not renewed by the~~
19 ~~local school board if the board determines that the charter~~
20 ~~school did any of the following:~~

21 ~~(1) committed a material violation of any of~~
22 ~~the conditions, standards or procedures set forth in the~~
23 ~~charter;~~

24 ~~(2) failed to meet or make substantial~~
25 ~~progress toward achievement of the state board minimum~~

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1 ~~educational standards or student performance standards~~
2 ~~identified in the charter application;~~

3 ~~(3) failed to meet generally accepted~~
4 ~~standards of fiscal management; or~~

5 ~~(4) violated any provision of law from which~~
6 ~~the charter school was not specifically exempted.~~

7 ~~E. If a local school board revokes or does not~~
8 ~~renew a charter, the local school board shall state in writing~~
9 ~~its reasons for the revocation or nonrenewal.~~

10 ~~F. A decision to revoke or not to renew a charter~~
11 ~~may be appealed by the governing body of the charter school~~
12 ~~pursuant to Section 7 of the 1999 Charter Schools Act.]"~~

13 Section 12. Section 22-8B-6 NMSA 1978 (being Laws 1999,
14 Chapter 281, Section 6) is amended to read:

15 "22-8B-6. CHARTER SCHOOL REQUIREMENTS-- APPLICATION
16 PROCESS-- AUTHORIZATION. --

17 A. The local school board or the department shall
18 have the authority to approve the establishment of a charter
19 school [~~within the local school district in which it is~~
20 ~~located~~].

21 B. A charter school applicant shall apply to [~~a~~
22 ~~local school board~~] the chartering authority it chooses for a
23 charter. [~~An applicant shall only submit an application in the~~
24 ~~district in which the school is located.~~] Applications for
25 initial charters shall be submitted by [~~October~~] July 1 to be

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1 eligible for consideration for the following school year. The
2 [~~October~~] July 1 deadline may be waived [~~upon agreement of the~~
3 ~~applicant and the local school board~~] by the chartering
4 authority for good cause.

5 C. An application for a start-up school may be made
6 by one or more teachers, parents or community members or by a
7 public post-secondary educational institution.

8 [~~D. An application for a conversion school shall~~
9 ~~include a petition of support signed by not less than sixty-~~
10 ~~five percent of the employees in the school. Additionally, a~~
11 ~~petition in support of the charter school signed by a majority~~
12 ~~of the households whose children are enrolled in a proposed~~
13 ~~conversion school must accompany the application.~~]

14 Municipalities, counties, private post-secondary educational
15 institutions and for-profit business entities shall not be
16 eligible to apply for or receive a charter.

17 D. At the time of application for a charter or for
18 renewal of a charter after July 1, 2005, a charter school
19 applicant shall request approval to be designated a board of
20 finance and shall not be allowed a charter without such
21 approval. An application shall include a request for capital
22 outlay or transportation funding.

23 E. The [~~local school board~~] chartering authority
24 shall receive and review all applications for charter schools.
25 The [~~local school board~~] chartering authority shall not charge

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1 application fees. If the [board] chartering authority finds
2 [the] that a charter school application is incomplete, the
3 [board] chartering authority shall request the necessary
4 information from the charter applicant.

5 F. The [~~local school board~~] chartering authority
6 shall hold at least one public meeting to obtain information
7 and community input, including written or oral comments in
8 favor of or in opposition to the application from the
9 applicant, the local community and the local school board and
10 school district in whose geographical boundaries the charter
11 school is proposed to be located, to assist the [~~local school~~
12 ~~board~~] chartering authority in its decision whether to grant a
13 charter school application. The [~~local school board~~]
14 chartering authority shall rule on the application for a
15 charter school in a public meeting within sixty days after
16 receiving the application. [~~If not ruled upon within sixty~~
17 ~~days, the charter application will be automatically reviewed by~~
18 ~~the state board in accordance with the provisions of Section 7~~
19 ~~of the 1999 Charter Schools Act. The charter applicant and the~~
20 ~~local school board may, however, jointly waive the deadlines~~
21 ~~set forth in this section.~~

22 G. [~~If the local school board denies a charter~~
23 ~~school application or imposes conditions that are unacceptable~~
24 ~~to the charter applicant, the charter applicant may appeal the~~
25 ~~decision to the state board pursuant to Section 7 of the 1999~~

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1 ~~Charter Schools Act.~~ The chartering authority may approve,
2 approve with conditions or deny the application.

3 ~~[H.]~~ G. If [a local school board] the chartering
4 authority denies a charter school application, it shall state
5 its reasons for the denial in writing within fourteen days of
6 the meeting. If [a local school board grants a charter, it
7 shall send a copy of the approved charter to the department of
8 education within fifteen days after granting the charter] the
9 chartering authority approves the charter, the approved charter
10 shall be provided to the applicant together with any imposed
11 conditions.

12 H. A charter school that has received a notice from
13 the chartering authority denying approval of the charter shall
14 have a right to a hearing by the department pursuant to rules
15 promulgated by the department. Any hearing shall be held
16 within sixty days of the request for a hearing after issuance
17 of the notice from the department and shall be presided over by
18 a hearing officer designated by the secretary of public
19 education. The hearing officer shall make a recommended
20 decision to the secretary, who shall make a final decision. If
21 the secretary finds for the charter school, the secretary shall
22 remand the matter to the local school board for reconsideration
23 and final decision of the local school board.

24 I. An applicant aggrieved by a decision of the
25 secretary or a final decision of the local school board may

1 appeal the decision to the district court pursuant to the
2 provisions of Section 39-3-1.1 NMSA 1978. "

3 Section 13. Section 22-8B-7 NMSA 1978 (being Laws 1999,
4 Chapter 281, Section 7) is amended to read:

5 "22-8B-7. CHARTER SCHOOL APPLICATION [~~APPEAL~~] - - DENIAL OR
6 REVOCATION- - PROCEDURES. - -

7 [~~A. The state board, upon receipt of a notice of~~
8 ~~appeal or upon its own motion, shall review decisions of any~~
9 ~~local school board concerning charter schools in accordance~~
10 ~~with the provisions of this section.~~

11 B. A charter applicant or governing body of a
12 charter school that wishes to appeal a decision of a local
13 school board concerning the denial, nonrenewal or revocation of
14 a charter school or the imposition of conditions that are
15 unacceptable to the charter school or charter school applicant
16 shall provide the state board with a notice of appeal within
17 thirty days after the local school board's decision. The
18 charter school applicant or governing body of the charter
19 school bringing the appeal shall limit the grounds of the
20 appeal to the grounds for denial, nonrenewal or revocation
21 specified by the local school board. The notice shall include
22 a brief statement of the reasons the charter school applicant
23 contends the local school board's decision was in error. The
24 appeal and review process shall be as follows:

25 (1) ~~within sixty days after receipt of the~~

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1 ~~notice of appeal, the state board, at a public hearing that may~~
2 ~~be held in the school district in which the proposed charter~~
3 ~~school has applied for a charter, shall review the decision of~~
4 ~~the local school board and make its findings. If the state~~
5 ~~board finds that the local school board's decision was contrary~~
6 ~~to the best interests of the students, school district or~~
7 ~~community, the state board shall remand the decision to the~~
8 ~~local school board with written instructions for approval of~~
9 ~~the charter. The instructions shall include specific~~
10 ~~recommendations concerning approval of the charter. The~~
11 ~~decision of the state board shall be final and not subject to~~
12 ~~appeal; and~~

13 ~~(2) within thirty days following the remand of~~
14 ~~a decision by the state board, the local school board, at a~~
15 ~~public hearing, shall approve the charter.~~

16 ~~C. The state board, on its own motion, may review a~~
17 ~~local school board's decision to grant a charter. Within sixty~~
18 ~~days after the making of a motion to review by the state board,~~
19 ~~the board, at a public hearing that may be held in the district~~
20 ~~in which the proposed charter school has applied for a charter,~~
21 ~~shall review the decision of the local school board and~~
22 ~~determine whether the decision was arbitrary and capricious or~~
23 ~~whether the]~~

24 ~~A. The chartering authority may deny an initial~~
25 ~~application if establishment or operation of the proposed~~

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1 charter school would:

2 (1) violate any federal or state laws
3 concerning civil rights;

4 (2) violate any court order;

5 (3) threaten the health and safety of students
6 within the school district; [or]

7 (4) violate the provisions of Section [11 of
8 the 1999 Charter Schools Act] 22-8B-11 NMSA 1978, prescribing
9 the permissible number of charter schools;

10 [~~D. If the state board determines that the charter
11 would violate the provisions set forth in Subsection C of this
12 section, the state board shall remand the decision to the local
13 school board with instructions to deny the charter application.
14 The state board may extend the time lines established in this
15 section for good cause. The decision of the state board shall
16 be final and not subject to appeal]~~

17 (5) violate the Public School Finance Act,
18 including that the charter school cannot qualify as a board of
19 finance;

20 (6) otherwise not be in the best interests of
21 the state because the applicants have not demonstrated
22 sufficient knowledge, experience, credentials or planning to
23 operate a charter school; or

24 (7) not be in the best interests of the
25 incoming students to the charter school, the school district or

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1 the community where the charter school is to be geographically
2 located.

3 B. The chartering authority may deny a renewal
4 application or may revoke a charter at any time if past or
5 continued operation of the charter school would:

6 (1) violate or actually has violated any
7 federal or state laws concerning civil rights;

8 (2) violate or actually has violated any court
9 order;

10 (3) threaten or actually has threatened the
11 health and safety of students within the school district;

12 (4) violate or actually has violated the
13 provisions of Section 22-8B-11 NMSA 1978 prescribing the
14 permissible number of charter schools;

15 (5) violate the Public School Finance Act;

16 (6) materially breach or has materially
17 breached its charter; or

18 (7) result or has resulted in the
19 mismanagement of public funds as established by findings of the
20 state auditor, the charter school's independent certified
21 public accountant or the chartering authority's auditor.

22 C. In addition to the grounds set forth in
23 Subsection B of this section, a charter renewal application may
24 be denied or a charter may be revoked, if the chartering
25 authority determines that the charter school did any of the

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1 following:

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

5 (2) failed to meet or make substantial
6 progress toward achievement of the department's minimum
7 educational standards or student performance standards
8 identified in the charter application or required by law;

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

11 (4) had its designation as a board of finance
12 suspended; or

13 (5) violated any provision of law from which
14 the charter school was not specifically exempted.

15 D. If the chartering authority revokes or does not
16 renew a charter, it shall state in writing its reasons for the
17 revocation or nonrenewal and provide notice of its decision to
18 the charter school.

19 E. A charter school that has received a notice from
20 the chartering authority denying renewal of the charter or
21 contemplating revocation of the charter or determining that the
22 facilities do not meet statewide adequacy standards shall have
23 a right to a hearing by the department pursuant to rules
24 established by the department. Any hearing shall be held
25 within sixty days of request for a hearing after issuance of

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1 the notice from the department and may be presided over by a
2 hearing officer designated by the secretary.

3 F. If the public school capital outlay council has
4 determined that the facilities do not meet the statewide
5 adequacy standards, the charter school applicant or charter
6 school may appeal the decision to the secretary as otherwise
7 provided in this section; provided that the secretary shall
8 reverse the decision of the public school capital outlay
9 council only if the secretary determines that the decision was
10 arbitrary, capricious, not supported by substantial evidence or
11 otherwise not in accordance with the law.

12 G. A charter school aggrieved by a decision of the
13 secretary after a hearing pursuant to this section may appeal
14 the decision to the district court pursuant to the provisions
15 of Section 39-3-1.1 NMSA 1978."

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

18 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
19 school application [~~whether~~] for a start-up school [~~or a~~
20 ~~conversion school~~] shall be a proposed agreement between the
21 [~~local school board~~] chartering authority and the charter
22 school and shall include:

- 23 A. the mission statement of the charter school;
24 B. the goals, objectives and student performance
25 standards to be achieved by the charter school;

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1 C. a description of the charter school's
2 educational program, student performance standards and
3 curriculum that must meet or exceed the [~~state board of~~
4 ~~education's~~] department's educational standards and must be
5 designed to enable each student to achieve those standards;

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

9 E. a description of the charter school's plan for
10 evaluating student performance, the types of assessments that
11 will be used to measure student progress toward achievement of
12 the state's standards and the school's student performance
13 standards, the time line for achievement of the standards and
14 the procedures for taking corrective action in the event that
15 student performance falls below the standards;

16 F. evidence that the plan for the charter school is
17 economically sound, including a proposed budget for the term of
18 the charter and a description of the manner in which the annual
19 audit of the financial and administrative operations of the
20 charter school is to be conducted;

21 G. evidence that the fiscal management of the
22 charter school complies with all applicable federal and state
23 laws and [~~regulations~~] rules relative to fiscal procedures;

24 [~~H. evidence of a plan for the displacement of~~
25 ~~students, teachers and other employees who will not attend or~~

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1 ~~be employed in the conversion school;~~

2 ~~I.]~~ H. a description of the governing body and
3 operation of the charter school, including how the governing
4 body will be selected and the nature and extent of parental,
5 professional educator and community involvement in the
6 governance and operation of the school; [~~and the relationship~~
7 ~~between the governing body and the local school board;~~

8 ~~J.]~~ I. an explanation of the relationship that will
9 exist between the proposed charter school and its employees,
10 including evidence that the terms and conditions of employment
11 will be addressed with affected employees and their recognized
12 representatives, if any;

13 ~~[K.]~~ J. the employment and student discipline
14 policies of the proposed charter school;

15 ~~[L. an agreement between the charter school and the~~
16 ~~local school board regarding their respective legal liability~~
17 ~~and applicable insurance coverage;~~

18 ~~M.]~~ K. a description of how the charter school
19 plans to meet the transportation and food service needs of its
20 students;

21 ~~[N.]~~ L. a description of the waivers that the
22 charter school is requesting from the local school board and
23 the [~~state board~~] department and the charter school's plan for
24 addressing these waiver requests;

25 ~~[O.]~~ M. a description of the facilities the charter

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1 school plans to use; and

2 [P-] N. any other information reasonably required
3 by the [~~local school board~~] chartering authority. "

4 Section 15. Section 22-8B-9 NMSA 1978 (being Laws 1999,
5 Chapter 281, Section 9) is amended to read:

6 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES. --

7 A. An approved charter application [~~shall be~~] is a
8 contract between the charter school and the [~~local school~~
9 ~~board~~] chartering authority.

10 B. The [~~contract between the charter school and the~~
11 ~~local school board~~] charter shall reflect all agreements
12 regarding the release of the charter school from school
13 district and department rules and policies.

14 [~~C. The contract between the charter school and the~~
15 ~~local school board shall reflect all requests for release of~~
16 ~~the charter school from state board rules or the Public School~~
17 ~~Code. Within ten days after the contract is approved by the~~
18 ~~local school board, any request for release from state board~~
19 ~~rules or the Public School Code shall be delivered by the local~~
20 ~~school board to the state board. If the state board grants the~~
21 ~~request, it shall notify the local school board and the charter~~
22 ~~school of its decision. If the state board denies the request,~~
23 ~~it shall notify the local school board and the charter school~~
24 ~~that the request is denied and specify the reasons for denial.~~

25 ~~D.]~~ C. Upon approval of the charter [~~by the local~~

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1 ~~school board~~], the charter school shall be waived from the
2 Public School Code provisions relating to ~~[individual class~~
3 ~~load and]~~ teaching load requirements, length of school day,
4 staffing patterns, subject areas and purchase of instructional
5 materials.

6 ~~[E.]~~ D. The charter school shall participate in the
7 public school insurance authority.

8 ~~[F.]~~ E. Any revision or amendment to the terms of
9 the ~~[contract]~~ charter may be made only with the approval of
10 the ~~[local school board]~~ chartering authority and the governing
11 body of the charter school.

12 ~~[G.]~~ F. The charter shall include procedures
13 ~~[agreed upon by the charter school and the local school board]~~
14 for the resolution of disputes between the charter school and
15 the ~~[local school board]~~.

16 ~~H.~~ The charter shall include procedures that shall
17 be agreed upon by the charter school and the local school board
18 in the event that such board determines that the charter shall
19 be revoked pursuant to the provisions of Section 12 of the 1999
20 Charter Schools Act] chartering authority. Each party shall
21 designate a point of contact, who shall be solely responsible
22 for resolving disputes between the charter school and the
23 chartering authority. A designee may be changed by written
24 notice to the other party."

25 Section 16. Section 22-8B-10 NMSA 1978 (being Laws 1999,

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1 Chapter 281, Section 10) is amended to read:

2 "22-8B-10. CHARTER SCHOOLS- - [~~EMPLOYEE OPTIONS~~ ~~HIRING AND~~
3 ~~FIRING~~] EMPLOYEES. - -

4 A. [~~Notwithstanding the provisions of Section~~
5 ~~22-5-4 NMSA 1978~~] A charter school shall hire its own
6 employees. The provisions of the School Personnel Act shall
7 [~~otherwise~~] apply to such employees; provided, however, that a
8 charter school may elect by indicating in its charter that
9 either its governing body or head administrator shall make all
10 employment decisions. The governing body shall be deemed to be
11 responsible for making all employment decisions if the charter
12 does not specify the decision maker.

13 [~~B. An employee of a conversion school who was~~
14 ~~previously an employee of the school district in which the~~
15 ~~conversion school is located shall be considered to be on a~~
16 ~~one-year leave of absence from the school district. The leave~~
17 ~~of absence shall commence on the initial date of employment for~~
18 ~~the charter school. Upon request of the employee, the one-year~~
19 ~~leave of absence shall be renewed for up to two additional one-~~
20 ~~year periods, absent good cause.~~

21 C. ~~The time during which an employee is on a leave~~
22 ~~of absence shall be counted for longevity credit on the school~~
23 ~~district's salary schedule.~~

24 D. ~~During the period of time that an employee is on~~
25 ~~a leave of absence from the school district and is actively~~

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1 ~~employed by the charter school, the charter school shall~~
2 ~~continue the retirement or other benefits previously granted to~~
3 ~~the employee.~~

4 ~~E. A leave of absence shall not be considered a~~
5 ~~break in service with the school district with which an~~
6 ~~employee was previously employed.~~

7 ~~F. An employee who is on a leave of absence and~~
8 ~~actively teaching at a charter school and who submits a notice~~
9 ~~of intent to return to the school district in which the~~
10 ~~employee was employed immediately prior to employment in the~~
11 ~~charter school shall be given employment preference by the~~
12 ~~school district if:~~

13 ~~(1) the employee's notice of intent to return~~
14 ~~is submitted to the school district within three years after~~
15 ~~ceasing employment with the school district; and~~

16 ~~(2) if the employee is a teacher, a position~~
17 ~~for which the teacher is certified or is qualified to become~~
18 ~~certified is available. If the employee is not a teacher, a~~
19 ~~position for which the employee is qualified is available.~~

20 ~~G. An employee who is on leave of absence and~~
21 ~~employed by a charter school and is discharged or terminated~~
22 ~~for just cause by the charter school shall be considered~~
23 ~~discharged or terminated by the school district.]~~

24 B. A charter school shall not initially employ or
25 approve the initial employment of a head administrator who is

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1 the spouse, father, father-in-law, mother, mother-in-law, son,
2 son-in-law, daughter or daughter-in-law of a member of the
3 governing body. A charter school shall not initially employ or
4 approve the initial employment of a licensed employee who is
5 the spouse, father, father-in-law, mother, mother-in-law, son,
6 son-in-law, daughter or daughter-in-law of the head
7 administrator. The governing body may waive the nepotism rule
8 for family members of a head administrator.

9 C. Nothing in this section shall prohibit the
10 continued employment of a person employed on or before July 1,
11 2005."

12 Section 17. Section 22-8B-11 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 11) is amended to read:

14 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED. --

15 ~~[A. Local school boards shall authorize the~~
16 ~~approval of both conversion and start-up charter schools within~~
17 ~~their school districts.]~~

18 ~~B.]~~ For the 2005-2006 and 2006-2007 school years, no
19 more than [fifteen] seven start-up schools [and five conversion
20 schools] may be established per year statewide. [The number of
21 charter school slots remaining in that year shall be
22 transferred to succeeding years up to a maximum of seventy-five
23 start-up schools and twenty-five conversion schools in any
24 five-year period. The state board shall promptly notify the
25 local school board of each school district when the limits set

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1 ~~forth in this section have been reached.]~~ Thereafter, up to ten
2 start-up schools may be established per year statewide. The
3 department shall track the number of charter school
4 applications per year."

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

7 "22-8B-13. CHARTER SCHOOL FINANCING. --

8 A. The amount of funding allocated to the charter
9 school shall be not less than ninety-eight percent of the
10 school-generated program cost for schools chartered by a local
11 school board and not less than ninety-seven percent of the
12 school-generated program cost for schools chartered by the
13 department. The department may withhold and use up to three
14 percent of the school-generated program cost for its
15 administrative support of the charter school.

16 ~~[B. That portion of money from state or federal~~
17 ~~programs generated by students enrolled in a charter school~~
18 ~~shall be allocated to charter schools serving students eligible~~
19 ~~for that aid. Any other public school program not offered by~~
20 ~~the charter school shall not be entitled to the share of money~~
21 ~~generated by a charter school program.]~~

22 B. When a charter school is designated as a board
23 of finance pursuant to Section 22-8-38 NMSA 1978, it shall
24 receive state and federal funds for which it is eligible.

25 C. All services centrally or otherwise provided by

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1 the local school district, including custodial, maintenance and
2 media services, libraries and warehousing shall be subject to
3 negotiation between the charter school and the ~~[local]~~ school
4 district. Any services for which a charter school contracts
5 with a school district shall be provided by the district at a
6 reasonable cost.

7 D. For purposes of computation of a charter
8 school's state equalization guarantee distribution by the
9 department pursuant to the Public School Finance Act, the
10 department shall use the at-risk and training and experience
11 index from the school district where each charter school is
12 geographically located. "

13 Section 19. Section 22-8B-14 NMSA 1978 (being Laws 1999,
14 Chapter 281, Section 14) is amended to read:

15 "22-8B-14. CHARTER SCHOOLS STIMULUS FUND CREATED. --

16 A. The "charter schools stimulus fund" is created
17 in the state treasury. Money in the fund is appropriated to
18 the department ~~[of education]~~ to provide financial support to
19 charter schools, whether start-up or conversion, for initial
20 planning and start-up costs and initial costs associated with
21 renovating or remodeling existing buildings and structures for
22 expenditure in fiscal year 2000 and subsequent fiscal years.
23 The fund shall consist of money appropriated by the legislature
24 and grants, gifts, devises and donations from any public or
25 private source. The department ~~[of education]~~ shall administer

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1 the fund in accordance with rules adopted by the [~~state board~~]
2 department. The department [~~of education~~] may use up to three
3 percent of the fund for administrative costs. Money in the
4 fund shall not revert to the general fund at the end of a
5 fiscal year.

6 B. If the charter school receives an initial grant
7 and fails to begin operating a charter school within the next
8 [~~eighteen~~] twenty-four months, the charter school shall
9 immediately reimburse the fund."

10 Section 20. Section 22-8B-15 NMSA 1978 (being Laws 1999,
11 Chapter 281, Section 15) is repealed and a new Section 22-8B-15
12 NMSA 1978 is enacted to read:

13 "22-8B-15. [NEW MATERIAL] CHARTER SCHOOLS--SAVING
14 CLAUSE.--A charter school approved by a local school board
15 prior to July 1, 2005 shall, during the term of its existing
16 charter, continue its chartering relationship with that local
17 school board. At the time of renewal of its charter, it may
18 choose its chartering authority."

19 Section 21. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2005.