

AN ACT

RELATING TO EDUCATION; PROVIDING STANDARDS FOR CHARTER SCHOOL FACILITIES.

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

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

"22-8B-1. SHORT TITLE.--Chapter 22, Article 8B NMSA 1978 may be cited as the "1999 Charter Schools Act"."

Section 2. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

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

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

B. A charter school shall be governed by a governing body in the manner set forth in the charter; provided that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.

C. A charter school shall be responsible for its

own operation, including preparation of a budget, contracting for services and personnel matters.

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

E. A conversion school may choose to continue using the school district facilities and equipment it had been using prior to conversion.

F. A school district shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. As used in this subsection, "other educational purposes" includes health

clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

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

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a school district.

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

L. With the approval of the school district, a single charter school may maintain separate facilities at two

or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act, the separate facilities shall be treated together as one school.

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

N. A charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the charter school shall revert to the local school board.

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

P. A charter school may contract and sue and be sued. A local school board that approves a charter school shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes

relating to educational building occupancy."

Section 3. A new section of the 1999 Charter Schools Act, Section 22-8B-4.2 NMSA 1978, is enacted to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public

School Capital Outlay Act in the same manner as all other public schools in the state; or

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

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

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

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter

school, may grant a variance from those requirements for that charter school."

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

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

A. A local school board has the authority to approve the establishment of a charter school within the school district in which it is located.

B. A charter school applicant shall apply to a local school board for a charter. An applicant shall only submit an application in the district in which the school is located. Applications shall be submitted by July 1 to be eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the local school board.

C. An application shall include a request for capital outlay funding.

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

E. An application for a conversion school shall include a petition of support signed by no less than sixty-five percent of the employees in the school. Additionally, a petition in support of the charter school signed by a majority of the households whose children are enrolled in a proposed

conversion school shall accompany the application.

F. The local school board shall receive and review all applications for charter schools. The local school board shall not charge application fees. If the board finds the charter school application is incomplete, the board shall request the necessary information from the charter school applicant.

G. The local school board shall hold at least one meeting to obtain information and community input to assist the local school board in its decision whether to grant a charter school application. The local school board shall rule on the application for a charter school in a public meeting within sixty days after receiving the application. If not ruled upon within sixty days, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the local school board may, however, jointly waive the deadlines set forth in this section.

H. If the local school board denies a charter school application or imposes conditions that are unacceptable to the charter school applicant, the charter school applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978.

I. If a local school board denies a charter school application or approves the application with conditions, it



shall state its reasons for the denial or conditions. If a local school board grants a charter, it shall send a copy of the approved charter to the department within fifteen days after granting the charter."

Section 5. Section 22-8B-7 NMSA 1978 (being Laws 1999, Chapter 281, Section 7) is amended to read:

"22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--  
PROCEDURES.--

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a local school board concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of a local school board concerning the denial, nonrenewal or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the local school board's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal or revocation or the imposition of conditions that were specified by the local school board. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the local school board's decision was

in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows:

(1) within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the local school board and make findings. If the secretary finds that the local school board's decision was contrary to the best interests of the students, school district or community, the secretary shall remand the decision to the local school board with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter. The decision of the secretary shall be final and not subject to appeal; and

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

C. The secretary, on the secretary's own motion, may review a local school board's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and determine whether the decision was

arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order;
- (3) threaten the health and safety of students within the school district; or
- (4) violate the provisions of Section 22-8B-11 NMSA 1978, prescribing the permissible number of charter schools.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall remand the decision back to the local school board with instructions to deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final and not subject to appeal.

E. If a local school board denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the local school board only if the secretary

determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law."

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

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

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used for planning. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the local school board.

B. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

C. No later than January 1 of the year prior to the year in which the charter expires, the governing body may submit a renewal application to the local school board. The local school board shall rule in a public hearing on the renewal application no later than March 1 of the fiscal year in which the charter expires, or on a mutually agreed-upon date.

D. A charter school renewal application submitted to the local school board shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act;

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) contents of the charter application set forth in Section 22-8B-8 NMSA 1978;

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

(5) a petition in support of the charter school renewing its charter status signed by a majority of the households whose children are enrolled in the charter school;  
and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978.

E. A charter may be revoked or not renewed by the local school board if the board determines that the charter school did any of the following:

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

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

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

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

F. If a local school board revokes or does not renew a charter, the local school board shall state in writing its reasons for the revocation or nonrenewal.

G. A decision to revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005. \_\_\_\_\_