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SENATE BILL 192

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING THAT START-UP SCHOOLS
AND RENEWING CHARTER SCHOOLS MUST ENTER INTO CHARTER CONTRACTS
WITH THEIR CHARTERING AUTHORITIES WITHIN CERTAIN TIME FRAMES.

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

SECTION 1. That version of Section 22-8B-8 NMSA 1978
(being Laws 1999, Chapter 281, Section 8, as amended) that is
to become effective July 1, 2012 is amended to read:

"22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
school application for a start-up school or renewal of an
existing charter school shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance
outcomes to be achieved by the charter school;
- C. a description of the charter school's

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1 educational program, student performance standards and
2 curriculum that must meet or exceed the department's
3 educational standards and must be designed to enable each
4 student to achieve those standards;

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

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

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

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

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

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1 I. a description of the governing body and
2 operation of the charter school, including:

3 (1) how the governing body will be selected;

4 (2) qualification and terms of members, how
5 vacancies on the governing body will be filled and procedures
6 for changing governing body membership; and

7 (3) the nature and extent of parental,
8 professional educator and community involvement in the
9 governance and operation of the school;

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

15 K. the employment and student discipline policies
16 of the proposed charter school;

17 L. an agreement between the charter school and the
18 chartering authority regarding their respective legal liability
19 and applicable insurance coverage;

20 M. a description of how the charter school plans to
21 meet the transportation and food service needs of its students;

22 N. a description of both the discretionary waivers
23 and the waivers provided for in Section 22-8B-5 NMSA 1978 that
24 the charter school is requesting or that will be provided from
25 the local school board or the department and the charter

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1 school's plan for addressing and using these waiver requests;
2 and

3 O. a description of the facilities the charter
4 school plans to use."

5 SECTION 2. That version of Section 22-8B-9 NMSA 1978
6 (being Laws 1999, Chapter 281, Section 9, as amended) that is
7 to become effective July 1, 2012 is amended to read:

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

9 ~~[A. The chartering authority shall enter into a~~
10 ~~contract with the governing body of the applicant charter~~
11 ~~school within thirty days of approval of the charter~~
12 ~~application. The charter contract shall be the final~~
13 ~~authorization for the charter school and shall be part of the~~
14 ~~charter. If the chartering authority and the applicant charter~~
15 ~~school fail to agree upon the terms of or enter into a contract~~
16 ~~within thirty days of the approval of the charter application,~~
17 ~~either party may appeal to the secretary to finalize the terms~~
18 ~~of the contract; provided that such appeal must be provided in~~
19 ~~writing to the secretary within forty-five days of the approval~~
20 ~~of the charter application. Failure to enter into a charter~~
21 ~~contract or appeal to the secretary pursuant to this section~~
22 ~~precludes the chartering authority from chartering the school.]~~

23 A. An applicant charter school and its chartering
24 authority shall enter into a contract that shall be the final
25 authorization for the charter school and shall be part of the

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1 charter, as follows:

2 (1) for a start-up school whose application is
3 approved between July 1, 2011 and June 30, 2012, the school
4 shall enter into a contract with the chartering authority by no
5 later than February 15, 2013;

6 (2) for a start-up school whose application is
7 approved on or after July 1, 2012, the school shall enter into
8 a contract with the chartering authority by no later than
9 thirty days after approval of the charter application; and

10 (3) for an existing school whose renewal
11 application is due on or after July 1, 2012, the school shall
12 enter into a contract with the chartering authority by no later
13 than thirty days after approval of the charter renewal
14 application.

15 B. The charter contract shall include:

16 (1) all agreements regarding the release of
17 the charter school from department and local school board rules
18 and policies, including discretionary waivers and waivers
19 provided for in Section 22-8B-5 NMSA 1978;

20 (2) any material term of the charter
21 application as determined by the parties to the contract;

22 (3) the mission statement of the charter
23 school and how the charter school will report on implementation
24 of its mission;

25 (4) a description of the chartering

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1 authority's duties to the charter school and liabilities of the
2 chartering authority as provided in Section [~~8 of this 2011~~
3 ~~act~~] 22-8B-5.3 NMSA 1978;

4 (5) a statement of admission policies and
5 procedures;

6 (6) signed assurances from the charter
7 school's governing body members regarding compliance with all
8 federal and state laws governing organizational, programmatic
9 and financial requirements applicable to charter schools;

10 (7) a description of the criteria, processes
11 and procedures that the chartering authority will use for
12 ongoing oversight of operational, financial and academic
13 performance of the charter school;

14 (8) a detailed description of how the
15 chartering authority will use the withheld two percent of the
16 school-generated program cost as provided in Section 22-8B-13
17 NMSA 1978;

18 (9) the types and amounts of liability
19 insurance [~~liability~~] coverage to be obtained by the charter
20 school;

21 (10) the term of the contract;

22 (11) the process and criteria that the
23 chartering authority intends to use to annually monitor and
24 evaluate the fiscal, overall governance and student performance
25 of the charter school, including the method that the chartering

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1 authority intends to use to conduct the evaluation as required
2 by Section 22-8B-12 NMSA 1978;

3 (12) the dispute resolution processes agreed
4 upon by the chartering authority and the charter school,
5 provided that the processes shall, at a minimum, include:

6 (a) written notice of the intent to
7 invoke the dispute resolution process, which notice shall
8 include a description of the matter in dispute;

9 (b) a time limit for response to the
10 notice and cure of the matter in dispute;

11 (c) a procedure for selection of a
12 neutral third party to assist in resolving the dispute;

13 (d) a process for apportionment of all
14 costs related to the dispute resolution process; and

15 (e) a process for final resolution of
16 the issue reviewed under the dispute resolution process;

17 (13) the criteria, procedures and time lines,
18 agreed upon by the charter school and the chartering authority,
19 addressing charter revocation and deficiencies found in the
20 annual status report pursuant to the provisions of Section
21 22-8B-12 NMSA 1978;

22 (14) if the charter school contracts with a
23 third-party provider, the criteria and procedures for the
24 chartering authority to review the provider's contract and the
25 charter school's financial independence from the provider;

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1 (15) all requests for release of the charter
2 school from department rules or the Public School Code. Within
3 ten days after the contract is approved by the local school
4 board, any request for release from department rules or the
5 Public School Code shall be delivered by the local school board
6 to the department. If the department grants the request, it
7 shall notify the local school board and the charter school of
8 its decision. If the department denies the request, it shall
9 notify the local school board and the charter school that the
10 request is denied and specify the reasons for denial;

11 (16) an agreement that the charter school will
12 participate in the public school insurance authority;

13 (17) if the charter school is a state-
14 chartered charter school, a description of the process for
15 qualification of and review of the school as a qualified board
16 of finance and provisions for assurance that the school has
17 satisfied any conditions imposed by the commission; and

18 (18) any other information reasonably required
19 by either party to the contract.

20 C. If the applicant charter school and the
21 chartering authority fail to agree upon the terms of or enter
22 into a contract by the dates specified in Subsection A of this
23 section, either party may submit a written appeal to the
24 secretary to finalize the terms of the contract, as follows:

25 (1) for a start-up school whose application is

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1 approved between July 1, 2011 and June 30, 2012, the written
2 appeal shall be submitted to the secretary by March 8, 2013;

3 (2) for a start-up school whose application is
4 approved on or after July 1, 2012, the written appeal shall be
5 submitted to the secretary within forty-five days of approval
6 of the charter application; and

7 (3) for an existing school whose renewal
8 application is due on or after July 1, 2012, the written appeal
9 shall be submitted to the secretary within forty-five days of
10 approval of the charter renewal application.

11 D. Failure to enter into a contract or to appeal to
12 the secretary pursuant to the provisions of Subsection C of
13 this section precludes the chartering authority from chartering
14 a start-up school or renewing the charter of an existing
15 school.

16 [~~G.~~] E. The process for revision or amendment to
17 the terms of the charter contract shall be made only with the
18 approval of the chartering authority and the governing body of
19 the charter school. If they cannot agree, either party may
20 appeal to the secretary [~~as provided in Subsection A of this~~
21 ~~section~~]."

22 SECTION 3. That version of Section 22-8B-12 NMSA 1978
23 (being Laws 1999, Chapter 281, Section 12, as amended) that is
24 to become effective July 1, 2012 is amended to read:

25 "22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND

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1 CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS
2 FOR NONRENEWAL OR REVOCATION.--

3 A. A charter school may be approved for an initial
4 term of six years; provided that the first year shall be used
5 exclusively for planning and not for completing the
6 application. A charter may be renewed for successive periods
7 of five years each. Approvals of less than five years may be
8 agreed to between the charter school and the chartering
9 authority.

10 B. During the planning year, the charter school
11 shall file a minimum of three status reports with the
12 chartering authority and the department for the purpose of
13 demonstrating that the charter school's implementation progress
14 is consistent with the conditions, standards and procedures of
15 its approved charter. The report content, format and schedule
16 for submission shall be agreed to by the chartering authority
17 and the charter school and become part of the charter contract.

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

21 D. A chartering authority shall monitor the fiscal,
22 overall governance and student performance and legal compliance
23 of the charter schools that it oversees, including reviewing
24 the data provided by the charter school to support ongoing
25 evaluation according to the charter contract. Every chartering

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1 authority may conduct or require oversight activities that
2 allow the chartering authority to fulfill its responsibilities
3 under the Charter Schools Act, including conducting appropriate
4 inquiries and investigations; provided that the chartering
5 authority complies with the provisions of the Charter Schools
6 Act and the terms of the charter contract and does not unduly
7 inhibit the autonomy granted to the charter schools that it
8 governs.

9 E. As part of its performance review of a charter
10 school, a chartering authority shall visit a charter school
11 under its authority at least once annually to provide technical
12 assistance to the charter school and to determine the status of
13 the charter school and the progress of the charter school
14 toward the performance framework goals in its charter contract.

15 F. If, based on the performance review conducted by
16 the chartering authority pursuant to Subsection D of this
17 section, a charter school's fiscal, overall governance or
18 student performance or legal compliance appears unsatisfactory,
19 the chartering authority shall promptly notify the governing
20 body of the charter school of the unsatisfactory review and
21 provide reasonable opportunity for the governing body to remedy
22 the problem; provided that if the unsatisfactory review
23 warrants revocation, the revocation procedures set forth in
24 this section shall apply. A chartering authority may take
25 appropriate corrective actions or exercise sanctions, as long

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1 as such sanctions do not constitute revocation, in response to
2 the unsatisfactory review. Such actions or sanctions by the
3 chartering authority may include requiring a governing body to
4 develop and execute a corrective action plan with the
5 chartering authority that sets forth time frames for
6 compliance.

7 G. Every chartering authority shall submit an
8 annual report to the division, including a performance report
9 for each charter school that it oversees, in accordance with
10 the performance framework set forth in the charter contract.

11 H. The department shall review the annual report
12 received from the chartering authority to determine if the
13 department or local school board rules and policies from which
14 the charter school was released pursuant to the provisions of
15 Section 22-8B-5 NMSA 1978 assisted or impeded the charter
16 school in meeting its stated goals and objectives. The
17 department shall use the annual reports received from the
18 chartering authorities as part of its report to the governor,
19 the legislative finance committee and the legislative education
20 study committee as required by the Charter Schools Act.

21 I. No later than two hundred seventy days prior to
22 the date in which the charter expires, the governing body may
23 submit a renewal application to the chartering authority. A
24 charter school may apply to a different chartering authority
25 for renewal. The chartering authority shall rule in a public

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1 hearing on the renewal application no later than one hundred
2 eighty days prior to the expiration of the charter.

3 J. A charter school renewal application submitted
4 to the chartering authority shall contain:

5 (1) a report on the progress of meeting the
6 academic performance, financial compliance and governance
7 responsibilities of the charter school, including achieving the
8 goals, objectives, student performance outcomes, state minimum
9 educational standards and other terms of the charter contract,
10 including the accountability requirements set forth in the
11 Assessment and Accountability Act;

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

18 (3) a copy of the current executed charter or
19 charter contract [~~executed in compliance with the provisions of~~
20 ~~Section 22-8B-9 NMSA 1978~~];

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

24 (5) a petition in support of the charter
25 school renewing its charter status signed by at least seventy-

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1 five percent of the households whose children are enrolled in
2 the charter school; and

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

6 K. A charter may be suspended, revoked or not
7 renewed by the chartering authority if the chartering authority
8 determines that the charter school did any of the following:

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

12 (2) failed to meet or make substantial
13 progress toward achievement of the department's minimum
14 educational standards or student performance standards
15 identified in the charter contract;

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

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

20 L. The chartering authority shall develop processes
21 for suspension, revocation or nonrenewal of a charter that:

22 (1) provide the charter school with timely
23 notification of the prospect of suspension, revocation or
24 nonrenewal of the charter and the reasons for such action;

25 (2) allow the charter school a reasonable

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1 amount of time to prepare and submit a response to the
2 chartering authority's action; and

3 (3) require the final determination made by
4 the chartering authority to be submitted to the department.

5 M. If a chartering authority suspends, revokes or
6 does not renew a charter, the chartering authority shall state
7 in writing its reasons for the suspension, revocation or
8 nonrenewal.

9 N. A decision to suspend, revoke or not to renew a
10 charter may be appealed by the governing body pursuant to
11 Section 22-8B-7 NMSA 1978."

12 SECTION 4. That version of Section 22-8B-12.1 NMSA 1978
13 (being Laws 2011, Chapter 14, Section 6) that is to become
14 effective July 1, 2012 is amended to read:

15 "22-8B-12.1. CHARTER SCHOOL CLOSURE--CHARTERING AUTHORITY
16 PROTOCOLS--CHARTERING AUTHORITY DUTIES--DISTRIBUTION OF
17 ASSETS.--

18 A. Prior to any charter school closure decision,
19 the chartering authority shall develop a charter school closure
20 protocol to ensure timely notification to parents, orderly
21 transition of students and student records to new schools and
22 proper disposition of school funds, property and assets in
23 accordance with the provisions of Subsection C of this section.
24 The protocol shall specify tasks, time lines and responsible
25 parties, including delineating the respective duties of the

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1 charter school, the governing body and the chartering
2 authority.

3 B. If a charter school is ordered closed for any
4 reason, prior to closure, the chartering authority shall
5 oversee and work with the closing school to ensure a smooth and
6 orderly closure and transition for students and parents
7 according to the closure protocol.

8 C. When a charter school is closed, the assets of
9 the school shall be distributed first to satisfy outstanding
10 payroll obligations for employees of the school, then to
11 creditors of the school and then to the state treasury to the
12 credit of the current school fund. If the assets of the school
13 are insufficient to pay all parties to whom the [~~schools~~]
14 school owes compensation, the prioritization of the
15 distribution of assets may be determined by decree of a court
16 of law."

17 SECTION 5. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2012.