

HOUSE BILL 273

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING A SECTION OF THE AUDIT ACT TO INCLUDE CHARTER SCHOOLS IN THE DEFINITION OF "AGENCY"; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW A HIGH-PERFORMING CHARTER SCHOOL TO HAVE ITS CHARTER RENEWED THROUGH A STREAMLINED RENEWAL APPLICATION PROCESS, OPEN MULTIPLE SITES AND EXPAND ITS ENROLLMENT; TO REMOVE THE LIMITS ON THE NUMBER OF CHARTER SCHOOLS THAT MAY BE ESTABLISHED EACH YEAR; TO PROVIDE FOR THE AUTOMATIC CLOSURE OF A POORLY PERFORMING CHARTER SCHOOL; TO SPECIFY THE TIME PERIOD IN WHICH A CHARTER SCHOOL MUST PROVIDE INFORMATION ABOUT CAPITAL IMPROVEMENTS TO A SCHOOL DISTRICT FOR PROPERTY TAX IMPOSITION PURPOSES; TO REMOVE THE LOCAL MATCH REQUIREMENT FOR CHARTER SCHOOL CAPITAL OUTLAY GRANTS; TO CLARIFY REQUIREMENTS FOR CHARTER SCHOOL BUDGETS AND SIZE ADJUSTMENT, ENROLLMENT GROWTH AND AT-RISK FACTORS; TO ESTABLISH A FUNDING FORMULA COST DIFFERENTIAL FOR NEW CHARTER

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1 SCHOOLS; AND TO MAKE TECHNICAL CORRECTIONS TO SECTIONS OF THE
2 CHARTER SCHOOLS ACT; AMENDING, REPEALING AND ENACTING SECTIONS
3 OF THE NMSA 1978.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. Section 12-6-2 NMSA 1978 (being Laws 1969,
7 Chapter 68, Section 2, as amended) is amended to read:

8 "12-6-2. DEFINITIONS.--As used in the Audit Act:

9 A. "agency" means:

10 (1) any department, institution, board,
11 bureau, court, commission, district or committee of the
12 government of the state, including district courts, magistrate
13 or metropolitan courts, district attorneys and charitable
14 institutions for which appropriations are made by the
15 legislature;

16 (2) any political subdivision of the state,
17 created under either general or special act, that receives or
18 expends public money from whatever source derived, including
19 counties, county institutions, boards, bureaus or commissions;
20 municipalities; drainage, conservancy, irrigation or other
21 special districts; and school districts and charter schools;

22 (3) any entity or instrumentality of the state
23 specifically provided for by law, including the New Mexico
24 finance authority, the New Mexico mortgage finance authority
25 and the New Mexico lottery authority; and

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1 (4) every office or officer of any entity
2 listed in Paragraphs (1) through (3) of this subsection; and

3 B. "local public body" means a mutual domestic
4 water consumers association, a land grant, an incorporated
5 municipality or a special district."

6 SECTION 2. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
7 Chapter 227, Section 8, as amended) is repealed and a new
8 Section 22-8-6.1 NMSA 1978 is enacted to read:

9 "22-8-6.1. [NEW MATERIAL] CHARTER SCHOOL BUDGETS.--

10 A. Each charter school shall submit a school-based
11 budget to its authorizer for review or amendment in accordance
12 with the Public School Finance Act and the Charter Schools Act.
13 The approval or amending authority of the charter school's
14 authorizer as it relates to the charter school's budget shall
15 be limited to ensuring that sound fiscal practices are followed
16 in the development of the budget and the budget is within
17 available resources. The authorizer shall have no veto
18 authority over individual line items within the charter
19 school's proposed budget.

20 B. Upon final approval of the charter school budget
21 by its authorizer:

22 (1) the budget of each locally chartered
23 charter school shall be included separately in the school
24 district budget submission in accordance with the Public School
25 Finance Act and the Charter Schools Act; and

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1 (2) the budget of each state-chartered charter
2 school shall be submitted to the department in accordance with
3 the Public School Finance Act and the Charter Schools Act.

4 C. For the first year of its operation, the budget
5 of each charter school shall be based on the projected number
6 of program units generated by that charter school and its
7 students using the at-risk index and the instructional staff
8 training and experience index of the school district in which
9 the charter school is geographically located and shall be
10 adjusted using the qualified MEM on the first reporting date of
11 the current school year. For the second and subsequent school
12 years of operation, the budget of each charter school shall be
13 based upon the number of program units generated using the
14 average of the qualified MEM on the second and third reporting
15 dates of the prior year and its own at-risk index and
16 instructional staff training and experience index unless
17 otherwise provided in the Public School Finance Act."

18 SECTION 3. Section 22-8-23 NMSA 1978 (being Laws 1975,
19 Chapter 119, Section 1, as amended) is amended to read:

20 "22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

21 A. An approved public school with a MEM of less
22 than 400, including early childhood education full-time-
23 equivalent MEM but excluding membership in class C and class D
24 programs and excluding full-time-equivalent membership in
25 three- and four-year-old developmentally disabled programs, is

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1 eligible for additional program units. [~~Separate schools~~
2 ~~established to provide special programs, including but not~~
3 ~~limited to vocational and alternative education, shall not be~~
4 ~~classified as public schools for purposes of generating size~~
5 ~~adjustment program units.~~] Schools that are co-located in a
6 single facility or located on the same campus shall be
7 considered one school for the purpose of calculating size
8 adjustment program units; provided that if a charter school is
9 co-located in a single facility or located on the campus of
10 another school, each charter school or school district shall be
11 entitled to a share of the size adjustment program units in
12 proportion to the size adjustment units generated by all
13 schools that are included in the calculation as if the size
14 adjustment units have been calculated separately. The number
15 of additional program units to which a school district or
16 charter school is entitled under this subsection is the sum of
17 elementary-junior high units and senior high units computed in
18 the following manner; provided that any school located within
19 the boundaries of a school district with a MEM of 2,800 or more
20 on the first reporting date shall generate eighty percent of
21 the following calculations:

$$\begin{array}{r} \text{Elementary-Junior High Units} \\ 200 - \text{MEM} \\ \hline 200 \end{array} \times 1.0 \times \text{MEM} = \text{Units}$$

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1 where MEM is equal to the membership of an approved elementary
2 or junior high school, including early childhood education
3 full-time-equivalent membership but excluding membership in
4 class C and class D programs and excluding full-time-equivalent
5 membership in three- and four-year-old developmentally disabled
6 programs;

7 Senior High Units
8 200 - MEM
9 _____ x 2.0 x MEM = Units
10 200

11 ; or

12 Senior High Units
13 400 - MEM
14 _____ x 1.6 x MEM = Units
15 400

16 whichever calculation for senior high units is higher, where
17 MEM is equal to the membership of an approved senior high
18 school excluding membership in class C and class D programs.

19 B. A school district with total MEM of less than
20 4,000, including early childhood education full-time-equivalent
21 MEM, is eligible for additional program units. The number of
22 additional program units to which a school district is entitled
23 under this subsection is the number of district units computed
24 in the following manner:

25 District Units

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1 department certifies that the school district has implemented
2 practices to reduce scale inefficiencies, including shared
3 service agreements with regional education cooperatives or
4 other school districts for noninstructional functions and
5 distance education. The number of additional program units to
6 which a school district is entitled under this subsection is
7 the number of units computed in the following manner:

$$200 - \text{MEM} = \text{Units}$$

8
9 where MEM is equal to the total district MEM, including early
10 childhood education full-time-equivalent MEM."

11 SECTION 4. A new section of the Public School Finance Act
12 is enacted to read:

13 "[NEW MATERIAL] NEW CHARTER SCHOOL PROGRAM UNITS.--

14 A. Notwithstanding the provisions of Section
15 22-8-23 NMSA 1978, a charter school in its first year of
16 operation shall not generate size adjustment program units but
17 shall generate new charter school program units equal to eighty
18 percent of the units the school would have generated in
19 accordance with the calculation in Section 22-8-23 NMSA 1978.

20 B. Notwithstanding the provisions of Section
21 22-8-23 or 22-8-23.1 NMSA 1978, a charter school that is in its
22 second or subsequent years of operation that phases in
23 additional grade levels on a year-by-year basis shall not be
24 able to generate size adjustment program units or enrollment
25 growth program units while it is phasing in grade levels but

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1 shall generate new charter school program units and is eligible
2 for additional program units equal to eighty percent of the
3 units the school would have generated in accordance with the
4 calculation in Section 22-8-23 NMSA 1978 and eighty percent of
5 the units that would have been generated in accordance with the
6 calculation in Section 22-8-23.1 NMSA 1978."

7 SECTION 5. Section 22-8-23.1 NMSA 1978 (being Laws 1990
8 (1st S.S.), Chapter 3, Section 7, as amended) is repealed and a
9 new Section 22-8-23.1 NMSA 1978 is enacted to read:

10 "22-8-23.1. [NEW MATERIAL] ENROLLMENT GROWTH PROGRAM
11 UNITS.--

12 A. A school district or charter school with a MEM
13 of less than 1,500 on the first reporting date of the current
14 year with an increase in MEM equal to or greater than one
15 percent, when compared with the immediately preceding year, is
16 eligible for additional program units. The number of
17 additional program units shall be calculated by adding the
18 results of the following calculations:

19 (1) ((Current Year MEM - Previous Year MEM) -
20 (Current Year MEM x .03)) x 1.5 = Units; and

21 (2) (Current Year MEM - Previous Year MEM) x
22 .50 = Units.

23 B. A school district or charter school with a MEM
24 of 1,500 or more on the first reporting date of the current
25 year with an increase in MEM equal to or greater than one

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1 percent, when compared with the immediately preceding year, is
2 eligible for additional program units. The number of
3 additional program units shall be calculated by adding the
4 results of the following calculations:

5 (1) ((Current Year MEM - Previous Year MEM) -
6 (Current Year MEM x .05)) x 1.5 = Units; and

7 (2) (Current Year MEM - Previous Year MEM) x
8 .50 = Units.

9 C. The increase in MEM shall be calculated as
10 follows:

11 (Current Year MEM - Previous Year MEM)
12 _____
13 Previous Year MEM x 100 = Percent Increase.

14 D. As used in this section:

15 (1) "current year MEM" means MEM on the first
16 reporting date of the current school year minus MEM reported on
17 the first reporting date of the current school year that is
18 included in the calculation of a school district's or charter
19 school's program cost;

20 (2) "MEM" means the total school district or
21 charter school membership, including early childhood education
22 full-time-equivalent membership and special education
23 membership, but excluding full-day kindergarten membership for
24 the first year that full-day kindergarten is implemented in a
25 school in accordance with Subsection D of Section 22-13-3.2

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1 NMSA 1978; and

2 (3) "previous year MEM" means MEM on the first
3 reporting date of the previous school year."

4 SECTION 6. Section 22-8-23.3 NMSA 1978 (being Laws 1997,
5 Chapter 40, Section 7, as amended) is amended to read:

6 "22-8-23.3. AT-RISK PROGRAM UNITS.--

7 A. A school district is eligible for additional
8 program units if it establishes within its department-approved
9 educational plan identified services to assist students to
10 reach their full academic potential. A school district
11 receiving additional at-risk program units shall include a
12 report of specified services implemented to improve the
13 academic success of at-risk students. The report shall
14 identify the ways in which the school district and individual
15 schools use funding generated through the at-risk index and the
16 intended outcomes. For purposes of this section, "at-risk
17 student" means a student who meets the criteria to be included
18 in the calculation of the three-year average total rate in
19 Subsection [B] C of this section. The number of additional
20 units to which a school district is entitled under this section
21 is computed in the following manner:

$$22 \quad \text{At-Risk Index} \times \text{MEM} = \text{Units}$$

23 where MEM is equal to the total district membership, including
24 early childhood education, full-time-equivalent membership and
25 special education membership and where the at-risk index is

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1 calculated in the following manner:

2 Three-Year Average Total Rate x 0.106 = At-Risk Index.

3 B. A charter school shall be eligible to generate
4 additional program units if the charter school establishes
5 within its department-approved budget identified services to
6 assist students to reach their full academic potential. Such a
7 charter school that is eligible for additional program units
8 shall include a report of specific services implemented to
9 impose the academic success of at-risk students. The report
10 shall identify the ways in which the charter school uses
11 funding generated through the at-risk index and the intended
12 outcomes. For purposes of this section, "at-risk student"
13 means a student who meets the criteria to be included in the
14 calculation of the three-year average total rate in Subsection
15 C of this section. The number of additional program units to
16 which a charter school is entitled to generate under this
17 subsection shall be computed in the following manner:

18 At-Risk Index x MEM = Units

19 where MEM is equal to the total charter school membership,
20 including early childhood education, full-time-equivalent
21 membership and special education membership, and where the at-
22 risk index is calculated in the following manner:

23 Three-Year Average Total Rate x 0.106 = At-Risk
24 Index.

25 [~~B.~~] C. To calculate the three-year average total

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1 rate, the department shall compute a three-year average of the
2 school district's or charter school's percentage of membership
3 used to determine its Title I allocation, a three-year average
4 of the percentage of membership classified as English language
5 learners using criteria established by the federal office of
6 civil rights and a three-year average of the percentage of
7 student mobility. The department shall then add the three-year
8 average rates. The number obtained from this calculation is
9 the three-year average total rate; provided that:

10 (1) for the first year of its operation, a
11 charter school's three-year average total rate shall be the
12 three-year average total rate of the school district in which
13 it is geographically located;

14 (2) for the second year of operation, a
15 charter school's three-year average total rate shall be based
16 on the prior year's data;

17 (3) for the third year of operation, a charter
18 school's three-year average total rate shall be based on the
19 average of the previous two years' data; and

20 (4) for the fourth and subsequent years of
21 operation, a charter school's three-year average total rate
22 shall be based on the average of the previous three years'
23 data.

24 [~~G.~~] D. The department shall recalculate the at-
25 risk index for each school district or charter school every

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1 year."

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

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

6 A. A charter school [~~shall be~~] is subject to all
7 federal and state laws and constitutional provisions
8 prohibiting discrimination on the basis of disability, physical
9 or mental handicap, serious medical condition, race, creed,
10 color, sex, gender identity, sexual orientation, spousal
11 affiliation, national origin, religion, ancestry or the need
12 for special education services.

13 B. A charter school shall be governed as set forth
14 in the school's charter contract by a governing body [~~in the~~
15 ~~manner set forth in the charter contract; provided that a~~
16 ~~governing body shall have~~] that has at least five members, [~~and~~
17 ~~provided further that~~] no member of [~~a governing body~~] which,
18 for a charter school that is initially approved on or after
19 July 1, 2005 or whose charter is renewed on or after July 1,
20 2005, [~~shall serve~~] serves on the governing body of another
21 charter school. [~~No~~] A member of a local school board shall
22 [~~be~~] not serve as a member of a governing body for a charter
23 school or be employed in any capacity by a locally chartered
24 charter school located within the local school board's school
25 district during the term of office for which the member was

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1 elected or appointed.

2 C. A charter school shall ~~[be responsible]~~ assume
3 responsibility for:

4 (1) its own operation, including preparation
5 of a budget, subject to audits ~~[pursuant to]~~ as required by the
6 Audit Act; ~~[and]~~

7 (2) contracting for services; and

8 (3) managing its own personnel ~~[matters]~~.

9 D. A charter school may contract with a school
10 district, a university or college, the state, another political
11 subdivision of the state, the federal government or one of its
12 agencies, a tribal government or any other third party for the
13 use of a facility, its operation and maintenance and the
14 provision of any service or activity that the charter school is
15 required to perform ~~[in order]~~ to carry out the educational
16 program described in its charter contract. Facilities used by
17 a charter school shall meet the standards required ~~[pursuant~~
18 ~~to]~~ by Section 22-8B-4.2 NMSA 1978.

19 E. A conversion school chartered before July 1,
20 2007 may choose to continue using the school district
21 facilities and equipment it had been using ~~[prior to]~~ before
22 conversion, subject to ~~[the provisions of]~~ Subsection F of this
23 section.

24 F. The school district in which a charter school is
25 geographically located shall provide ~~[a]~~ the charter school

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

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

25 H. Locally chartered charter school facilities are

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

3 I. A locally chartered charter school shall
4 negotiate with a school district to provide transportation to
5 students eligible for transportation under ~~[the provisions of]~~
6 the Public School Code. The school district, in conjunction
7 with the charter school, may establish a limit for student
8 transportation to and from the charter school site not to
9 extend beyond the school district boundary.

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

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

15 L. With the approval of the chartering authority, a
16 single charter school may maintain separate facilities at ~~[two~~
17 ~~or more locations within the same school district]~~ more than
18 one site within the jurisdiction of the school's chartering
19 authority, but, for purposes of calculating program units
20 ~~[pursuant to]~~ as provided in the Public School Finance Act, the
21 separate facilities shall be treated together as one school.

22 M. A charter school ~~[shall be]~~ is subject to ~~[the~~
23 ~~provisions of]~~ Section 22-2-8 NMSA 1978 and the Assessment and
24 Accountability Act.

25 N. Within constitutional and statutory limits, a

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1 charter school may acquire and dispose of property [~~provided~~
2 ~~that~~]. Upon the termination of [~~the~~] a charter, all assets of
3 the locally chartered charter school shall revert to the local
4 school board and all assets of the state-chartered charter
5 school shall revert to the state, except that, if all or any
6 portion of a state-chartered charter school facility is
7 financed with the proceeds of general obligation bonds issued
8 by a local school board, the facility shall revert to the local
9 school board.

10 O. The governing body of a charter school may
11 [~~accept or~~] reject any charitable gift, grant, devise or
12 bequest [~~provided that no such~~] or accept a charitable gift,
13 grant, devise or bequest [~~shall be accepted~~] if it is not
14 subject to [~~any~~] a condition contrary to law or to the terms of
15 the school's charter. [~~The particular~~] Any accepted charitable
16 gift, grant, devise or bequest shall be considered an asset of
17 the charter school to which it is given.

18 P. The governing body of a charter school may
19 contract and sue and be sued. A local school board [~~shall not~~
20 ~~be~~] is not liable for any acts or omissions of the charter
21 school.

22 Q. A charter school shall comply with all state and
23 federal health and safety requirements applicable to public
24 schools, including those health and safety codes relating to
25 educational building occupancy.

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1 R. A charter school is a public school that may
2 contract with a school district or other party for the provision
3 of financial management, food services, transportation,
4 facilities, education-related services or other services. The
5 governing body of a charter school shall not contract with a
6 for-profit entity for the management of the charter school.

7 S. To enable state-chartered charter schools to
8 submit [~~required~~] data [~~to~~] required by the department, the
9 department shall maintain an accountability data system [~~shall~~
10 ~~be maintained by the department~~].

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

25 U. The governing body of a charter school, without

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1 approval of the chartering authority, may open an additional
2 site of the school within the jurisdiction of the school's
3 chartering authority if, for each of the three prior years, the
4 department assigned the school a letter grade of A or B under
5 the A-B-C-D-F Schools Rating Act."

6 SECTION 8. Section 22-8B-5.3 NMSA 1978 (being Laws 2011,
7 Chapter 14, Section 8) is amended to read:

8 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--
9 LIABILITY.--A chartering authority shall:

- 10 A. evaluate charter applications;
- 11 B. actively pursue the utilization of charter
12 schools to satisfy identified education needs and promote [a]
13 diversity [of] in educational choices;
- 14 C. approve charter applications that meet the
15 requirements of the Charter Schools Act;
- 16 D. decline to approve charter applications that
17 fail to meet the requirements of the Charter Schools Act or are
18 otherwise inadequate;
- 19 E. negotiate and execute, in good faith, charter
20 contracts that meet the requirements of the Charter Schools Act
21 with each approved charter school;
- 22 F. monitor, in accordance with the requirements of
23 the Charter Schools Act and the terms of the charter contract,
24 the performance and legal compliance of charter schools under
25 their authority;

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1 G. determine whether a charter school merits
2 suspension, revocation or nonrenewal; and

3 H. develop and maintain chartering policies and
4 practices consistent with nationally recognized principles and
5 standards for quality charter authorizing in all major areas of
6 authorizing, including:

- 7 (1) organizational capacity and
8 infrastructure;
- 9 (2) evaluating charter applications;
- 10 (3) performance contracting;
- 11 (4) charter school oversight and evaluation;
- 12 and
- 13 (5) charter school suspension, revocation and
14 renewal processes."

15 SECTION 9. Section 22-8B-6 NMSA 1978 (being Laws 1999,
16 Chapter 281, Section 6, as amended) is amended to read:

17 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
18 PROCESS--AUTHORIZATION--STATE BOARD OF FINANCE DESIGNATION
19 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES.--

20 A. A local school board [~~has the authority to~~] may
21 approve the establishment of a locally chartered charter school
22 within that local school board's district.

23 B. No later than the second Tuesday [~~of~~] in January
24 of the year in which an application to establish a charter
25 school will be filed, the organizers of a proposed charter

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1 school shall provide written notification to the commission and
2 the school district in which the charter school is proposed to
3 be located of their intent to establish a charter school.
4 Failure to notify may result in an application not being
5 accepted.

6 C. A charter school applicant shall apply to either
7 a local school board or the commission for a charter. [~~If an~~
8 ~~application is submitted to a chartering authority, it must~~
9 ~~process the application.~~] Applications for initial charters
10 shall be submitted by June 1 to be eligible for consideration
11 for the following fiscal year [~~provided that the June 1~~] unless
12 that deadline [~~may be~~] is waived [~~upon agreement of~~] by the
13 applicant and the chartering authority.

14 D. An application shall include the total number of
15 grades the charter school proposes to [~~provide~~] offer, either
16 immediately or [~~phased~~] in phases. A charter school may
17 decrease the number of grades it eventually offers, but it
18 shall not increase the number of grades [~~or the total number of~~
19 ~~students proposed to be served in each grade~~]. Except for
20 ensuring compliance with Subsection G of this section, a
21 chartering authority shall not limit the total number of
22 students served in a charter school.

23 E. An application shall include a detailed
24 description of the charter school's projected facility needs,
25 including projected requests for capital outlay assistance that

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1 have been approved by the director of the public school
2 facilities authority or the director's designee. The director
3 shall respond to a written request for review from a charter
4 applicant within forty-five days of the request.

5 F. An application may be made by one or more
6 teachers, parents or community members or by a public post-
7 secondary educational institution or nonprofit organization.
8 Municipalities, counties, private post-secondary educational
9 institutions and for-profit business entities are not eligible
10 to apply for or receive a charter.

11 G. An initial application for a charter school
12 shall not be made [~~after June 30, 2007~~] if the proposed charter
13 school's proposed enrollment for all grades or the proposed
14 charter school's proposed enrollment for all grades in
15 combination with any other charter school's enrollment for all
16 grades would equal or exceed ten percent of the total MEM of
17 the school district in which the charter school will be
18 geographically located and that school district has a total
19 enrollment of not more than one thousand [~~three~~] five hundred
20 students.

21 H. A state-chartered charter school shall not be
22 approved for operation unless its governing body has qualified
23 to be a board of finance.

24 I. [~~The~~] A chartering authority shall receive and
25 review all completed applications for charter schools submitted

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1 to it. The chartering authority shall not charge application
2 fees.

3 J. The chartering authority shall hold at least one
4 public hearing in the school district in which the charter
5 school is proposed to be located to obtain information and
6 community input to assist it in its decision whether to grant a
7 charter [~~school application~~]. The chartering authority may
8 designate a subcommittee of [~~no fewer than~~] at least three
9 members to hold the public hearing, and, if [~~so~~] the
10 subcommittee holds the hearing, the hearing shall be
11 transcribed for later review by other members of the chartering
12 authority. Community input may include written or oral
13 comments in favor of or in opposition to the application from
14 the applicant, the local community and, for state-chartered
15 charter schools, the local school board and school district in
16 whose geographical boundaries the charter school is proposed to
17 be located.

18 K. The chartering authority shall rule on the
19 application for a charter school in a public meeting by
20 September 1 of the year the application was received.
21 [~~provided, however, that prior to~~] Before ruling on the
22 application for which a designated subcommittee was used, any
23 member of the chartering authority who was [~~not present~~] absent
24 at the public hearing shall receive the transcript of the
25 public hearing together with documents submitted for the public

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1 hearing. If not ruled upon by that date, the secretary shall
2 review the charter application [~~shall be automatically reviewed~~
3 ~~by the secretary~~] in accordance with [~~the provisions of~~]
4 Section 22-8B-7 NMSA 1978. The charter school applicant and
5 the chartering authority may, however, jointly waive the
6 deadlines set forth in this section.

7 L. A chartering authority may approve, approve with
8 conditions or deny an application. A chartering authority may
9 deny an application if:

10 (1) the application is incomplete or
11 inadequate;

12 (2) the application does not propose to offer
13 an educational program consistent with the requirements and
14 purposes of the Charter Schools Act;

15 (3) the proposed head administrator or other
16 administrative or fiscal staff was involved with another
17 charter school whose charter was denied or revoked for fiscal
18 mismanagement or the proposed head administrator or other
19 administrative or fiscal staff was discharged from a public
20 school for fiscal mismanagement;

21 (4) for a proposed state-chartered charter
22 school, it does not request to have the governing body of the
23 charter school designated as a board of finance or the
24 governing body does not qualify as a board of finance; or

25 (5) the application is otherwise contrary to

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1 the best interests of the charter school's projected students,
2 the local community or the school district in whose geographic
3 boundaries the charter school applies to operate.

4 M. If the chartering authority denies a charter
5 school application or approves the application with conditions,
6 it shall state its reasons for the denial or conditions in
7 writing within fourteen days of the meeting. If the chartering
8 authority grants a charter, the approved charter shall be
9 provided to the applicant together with any imposed conditions.

10 N. A charter school that has received a notice from
11 the chartering authority denying approval of the charter shall
12 have a right to a hearing by the secretary as provided in
13 Section 22-8B-7 NMSA 1978."

14 SECTION 10. Section 22-8B-9 NMSA 1978 (being Laws 1999,
15 Chapter 281, Section 9, as amended) is amended to read:

16 "22-8B-9. CHARTER SCHOOL CONTRACT--CONTENTS--RULES.--

17 A. The chartering authority shall enter into a
18 contract with the governing body of the applicant charter
19 school within thirty days of approval of the charter
20 application. The charter contract shall be the final
21 authorization for the charter school and shall be part of the
22 charter. If the chartering authority and the applicant charter
23 school fail to agree upon the terms of or enter into a contract
24 within thirty days of the approval of the charter application,
25 either party may appeal to the secretary to finalize the terms

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1 of the contract; provided that such appeal must be provided in
2 writing to the secretary within forty-five days of the approval
3 of the charter application. Failure to enter into a charter
4 contract or appeal to the secretary pursuant to this section
5 precludes the chartering authority from chartering the school.

6 B. The charter contract shall include:

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

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

13 (3) the mission statement of the charter
14 school and how the charter school will report on implementation
15 of its mission;

16 (4) the chartering authority's duties to the
17 charter school and liabilities of the chartering authority as
18 provided in Section 22-8B-5.3 NMSA 1978;

19 (5) a statement of admission policies and
20 procedures;

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

25 (7) the criteria, processes and procedures

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1 that the chartering authority will use for ongoing oversight of
2 operational, financial and academic performance of the charter
3 school;

4 (8) a detailed description of how the
5 chartering authority will use the withheld two percent of the
6 school-generated program cost as provided in Section 22-8B-13
7 NMSA 1978;

8 (9) the types and amounts of insurance
9 liability coverage to be obtained by the charter school;

10 (10) the term of the contract;

11 (11) the process and criteria that the
12 chartering authority intends to use to annually monitor and
13 evaluate the fiscal, overall governance and student performance
14 of the charter school, including the method that the chartering
15 authority intends to use to conduct the evaluation as required
16 by Section 22-8B-12 NMSA 1978;

17 (12) the dispute resolution processes agreed
18 upon by the chartering authority and the charter school;
19 provided that the processes shall, at a minimum, include:

20 (a) written notice of the intent to
21 invoke the dispute resolution process, which notice shall
22 include a description of the matter in dispute;

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

25 (c) a procedure for selection of a

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1 neutral third party to assist in resolving the dispute;

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

4 (e) a process for final resolution of
5 the issue reviewed under the dispute resolution process;

6 (13) the criteria, procedures and time lines,
7 agreed upon by the charter school and the chartering authority,
8 addressing charter revocation and deficiencies found in the
9 annual status report pursuant to the provisions of Section
10 22-8B-12 NMSA 1978;

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

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

25 (16) an agreement that the charter school will

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1 participate in the public school insurance authority;

2 (17) if the charter school is a state-
3 chartered charter school, a process for qualification of and
4 review of the school as a qualified board of finance and
5 provisions for assurance that the school has satisfied any
6 conditions imposed by the commission; and

7 (18) a listing of the charter school's
8 nondiscretionary waivers [~~and~~

9 ~~(19) any other information reasonably required~~
10 ~~by either party to the contract].~~

11 C. The process for revision or amendment to the
12 terms of the charter contract shall be made only with the
13 approval of the chartering authority and the governing body of
14 the charter school. If they cannot agree, either party may
15 appeal to the secretary as provided in Subsection A of this
16 section."

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

19 "22-8B-12. CHARTER SCHOOLS--~~TERM--RENEWAL OF CHARTER--~~
20 ~~OVERSIGHT AND CORRECTIVE ACTIONS--SITE VISITS--~~[RENEWAL OF
21 ~~CHARTER]~~ GROUNDS FOR NONRENEWAL OR REVOCATION.--

22 A. A charter school may be approved for an initial
23 term of six years, [~~provided that~~] the first year of which
24 shall be used exclusively for planning and not for completing
25 the application. [~~A charter may be renewed for successive~~

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1 ~~periods of five years each. Approvals of less than five years~~
2 ~~may be agreed to between the charter school and the chartering~~
3 ~~authority.]~~

4 B. A chartering authority may renew a charter
5 school's charter for successive periods, each of which spans:

6 (1) five years; or

7 (2) less than five years, if the period is
8 agreed to by the authority and the school.

9 C. For the final three years of a charter school's
10 charter term, the department shall establish a streamlined
11 renewal application process for a charter school earning a
12 letter grade of A or B for the previous three school years
13 under the provisions of the A-B-C-D-F Schools Rating Act.

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

22 [~~G-~~] E. Prior to the end of the planning year, the
23 charter school shall demonstrate that its facilities meet the
24 requirements of Section 22-8B-4.2 NMSA 1978.

25 [~~D-~~] F. A chartering authority shall monitor the

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1 fiscal, overall governance and student performance and legal
2 compliance of the charter schools that it oversees, including
3 reviewing the data provided by the charter school to support
4 ongoing evaluation according to the charter contract. ~~[Every]~~
5 A chartering authority may conduct or require oversight
6 activities that allow the chartering authority to fulfill its
7 responsibilities under the Charter Schools Act, including
8 conducting appropriate inquiries and investigations, ~~[provided~~
9 ~~that]~~ if, in so doing, the chartering authority complies with
10 ~~[the provisions of]~~ the Charter Schools Act and the terms of
11 the charter contract and does not unduly inhibit the autonomy
12 granted to the charter schools that it governs.

13 ~~[E.]~~ G. As part of its performance review of a
14 charter school, a chartering authority shall visit ~~[a]~~ each
15 charter school under its authority at least once annually to
16 provide technical assistance to the charter school and to
17 determine the status of the charter school and the progress of
18 the charter school toward the performance framework goals in
19 its charter contract.

20 ~~[F.]~~ H. If, based on the performance review
21 conducted by the chartering authority, ~~[pursuant to Subsection~~
22 ~~D of this section]~~ a charter school's fiscal, overall
23 governance or student performance or legal compliance appears
24 unsatisfactory, the chartering authority shall promptly notify
25 the governing body of the charter school of the unsatisfactory

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1 review and provide reasonable opportunity for the governing
2 body to remedy the problem [~~provided that~~]. If the
3 unsatisfactory review warrants revocation of the school's
4 charter, the revocation procedures set forth in this section
5 [~~shall~~] apply. A chartering authority may take appropriate
6 corrective actions or exercise sanctions, as long as such
7 sanctions do not constitute immediate revocation, in response
8 to the unsatisfactory review. Such actions or sanctions by the
9 chartering authority may include requiring a governing body to
10 develop and execute a corrective action plan with the
11 chartering authority that sets forth time frames for
12 compliance.

13 [~~G.~~] I. Every chartering authority shall submit an
14 annual report to the division, including a performance report
15 for each charter school that it oversees, in accordance with
16 the performance framework set forth in the charter contract.

17 [~~H.~~] J. The department shall review the annual
18 report received from the chartering authority to determine [~~if~~]
19 whether the department or local school board rules and policies
20 from which the charter school was released, [~~pursuant to the~~
21 ~~provisions of~~] as authorized by Section 22-8B-5 NMSA 1978,
22 assisted or impeded the charter school in meeting its stated
23 goals and objectives. The department shall use the annual
24 reports received from the chartering authorities as part of its
25 report to the governor, the legislative finance committee and

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1 the legislative education study committee as required by the
2 Charter Schools Act.

3 ~~[I. No later than]~~ K. At least two hundred seventy
4 days ~~[prior to the date in which the]~~ before its charter
5 expires, ~~[the]~~ a governing body may submit a renewal
6 application to the chartering authority. A ~~[charter school]~~
7 governing body may apply to a different chartering authority
8 for renewal. The chartering authority shall rule in a public
9 hearing on the renewal application ~~[no later than]~~ at least one
10 hundred eighty days ~~[prior to the expiration of]~~ before the
11 charter expires.

12 ~~[J.]~~ L. A charter school renewal application
13 submitted to the chartering authority shall contain:

14 (1) a report on the progress of meeting the
15 academic performance, financial compliance and governance
16 responsibilities of the charter school, including achieving the
17 goals, objectives, student performance outcomes, state
18 standards of excellence and other terms of the charter
19 contract, including the accountability requirements set forth
20 in the Assessment and Accountability Act;

21 (2) a financial statement that discloses the
22 costs of administration, instruction and other spending
23 categories for the charter school that is understandable to the
24 general public, that allows comparison of costs to other
25 schools or comparable organizations and that is in a format

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1 required by the department;

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

4 (4) a petition in support of the charter
5 school renewing its charter status signed by ~~[not less than]~~ at
6 least sixty-five percent of the employees ~~[in]~~ of the charter
7 school;

8 (5) a petition in support of the charter
9 school renewing its charter status signed by at least seventy-
10 five percent of the households whose children are enrolled in
11 the charter school; and

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

15 ~~[K.]~~ M. A charter may be suspended, revoked or not
16 renewed by the chartering authority if the chartering authority
17 determines that the charter school ~~[did any of the following]:~~

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

21 (2) failed to meet or make substantial
22 progress toward achievement of the department's standards of
23 excellence or student performance standards identified in the
24 charter contract;

25 (3) failed to meet generally accepted

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1 standards of fiscal management; or

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

4 ~~[H.]~~ N. The chartering authority shall develop
5 processes for suspension, revocation or nonrenewal of a charter
6 that:

7 (1) provide the charter school with timely
8 notification of the prospect of suspension, revocation or
9 nonrenewal of the charter and the reasons for such action;

10 (2) allow the charter school a reasonable
11 amount of time to prepare and submit a response to the
12 chartering authority's action; and

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

15 ~~[M.]~~ O. If a chartering authority suspends, revokes
16 or does not renew a charter, the chartering authority shall
17 state in writing its reasons for the suspension, revocation or
18 nonrenewal.

19 ~~[N.]~~ P. A decision to suspend, revoke or not ~~[to]~~
20 renew a charter may be appealed by the governing body ~~[pursuant~~
21 ~~to]~~ in accordance with Section 22-8B-7 NMSA 1978."

22 **SECTION 12.** Section 22-8B-12.1 NMSA 1978 (being Laws
23 2011, Chapter 14, Section 6) is amended to read:

24 "22-8B-12.1. CHARTER SCHOOL CLOSURE--AUTOMATIC FOR POOR
25 PERFORMANCE--CHARTERING AUTHORITY PROTOCOLS--CHARTERING

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1 AUTHORITY DUTIES--DISTRIBUTION OF ASSETS.--

2 A. A chartering authority shall order the closure
3 of any charter school under its authority, except for a
4 supplemental accountability models school, to which the
5 department assigned a letter grade of D or F under the A-B-C-D-
6 F Schools Rating Act for each of the three prior years. The
7 authority shall make the closure effective one year after the
8 most recent D or F rating. As used in this subsection, a
9 "supplemental accountability models school" means a school:

10 (1) whose primary mission is to address the
11 needs of students at risk of educational failure, as indicated
12 by poor grades, truancy, disruptive behavior, eligibility for
13 special education services or other factors associated with
14 temporary or permanent withdrawal from school; and

15 (2) that serves a student population in which:

16 (a) ten percent or more of the students
17 are nineteen years of age or older; or

18 (b) twenty percent or more of the
19 non-gifted students qualify for special educational services.

20 ~~[A.]~~ B. Prior to any charter school closure
21 decision, the chartering authority shall develop a charter
22 school closure protocol to ensure timely notification to
23 parents, orderly transition of students and student records to
24 new schools and proper disposition of school funds, property
25 and assets in accordance with ~~[the provisions of]~~ Subsection

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1 [E] D of this section. The protocol shall specify tasks, time
2 lines and responsible parties, including by delineating the
3 respective duties of the charter school, the governing body and
4 the chartering authority.

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

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

18 **SECTION 13.** Section 22-24-5 NMSA 1978 (being Laws 1975,
19 Chapter 235, Section 5, as amended) is amended to read:

20 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
21 APPLICATION--GRANT ASSISTANCE.--

22 A. Applications for grant assistance, approval of
23 applications, prioritization of projects and grant awards shall
24 be conducted pursuant to the provisions of this section.

25 B. Except as provided in Sections 22-24-4.3,

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1 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
2 govern grant assistance from the fund for a public school
3 capital outlay project not wholly funded pursuant to Section
4 22-24-4.1 NMSA 1978:

5 (1) all school districts are eligible to apply
6 for funding from the fund, regardless of percentage of
7 indebtedness;

8 (2) priorities for funding shall be determined
9 by using the statewide adequacy standards developed pursuant to
10 Subsection C of this section; provided that:

11 (a) the council shall apply the
12 standards to charter schools to the same extent that they are
13 applied to other public schools;

14 (b) the council may award grants
15 annually to school districts for the purpose of repairing,
16 renovating or replacing public school building systems in
17 existing buildings as identified in Section [~~3 of this 2015~~
18 ~~act~~] 22-24-4.6 NMSA 1978;

19 (c) the council shall adopt and apply
20 adequacy standards appropriate to the unique needs of the
21 constitutional special schools; and

22 (d) in an emergency in which the health
23 or safety of students or school personnel is at immediate risk
24 or in which there is a threat of significant property damage,
25 the council may award grant assistance for a project using

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1 criteria other than the statewide adequacy standards;

2 (3) the council shall establish criteria to be
3 used in public school capital outlay projects that receive
4 grant assistance pursuant to the Public School Capital Outlay
5 Act. In establishing the criteria, the council shall consider:

6 (a) the feasibility of using design,
7 build and finance arrangements for public school capital outlay
8 projects;

9 (b) the potential use of more durable
10 construction materials that may reduce long-term operating
11 costs;

12 (c) concepts that promote efficient but
13 flexible utilization of space; and

14 (d) any other financing or construction
15 concept that may maximize the dollar effect of the state grant
16 assistance;

17 (4) no more than ten percent of the combined
18 total of grants in a funding cycle shall be used for
19 retrofitting existing facilities for technology infrastructure;

20 (5) except as provided in Paragraph (6), (8),
21 (9) or (10) of this subsection, the state share of a project
22 approved and ranked by the council shall be funded within
23 available resources pursuant to the provisions of this
24 paragraph. No later than May 1 of each calendar year, a value
25 shall be calculated for each school district in accordance with

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1 the following procedure:

2 (a) the final prior year net taxable
3 value for a school district divided by the MEM for that school
4 district is calculated for each school district;

5 (b) the final prior year net taxable
6 value for the whole state divided by the MEM for the state is
7 calculated;

8 (c) excluding any school district for
9 which the result calculated pursuant to Subparagraph (a) of
10 this paragraph is more than twice the result calculated
11 pursuant to Subparagraph (b) of this paragraph, the results
12 calculated pursuant to Subparagraph (a) of this paragraph are
13 listed from highest to lowest;

14 (d) the lowest value listed pursuant to
15 Subparagraph (c) of this paragraph is subtracted from the
16 highest value listed pursuant to that subparagraph;

17 (e) the value calculated pursuant to
18 Subparagraph (a) of this paragraph for the subject school
19 district is subtracted from the highest value listed in
20 Subparagraph (c) of this paragraph;

21 (f) the result calculated pursuant to
22 Subparagraph (e) of this paragraph is divided by the result
23 calculated pursuant to Subparagraph (d) of this paragraph;

24 (g) the sum of the property tax mill
25 levies for the prior tax year imposed by each school district

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1 on residential property pursuant to Chapter 22, Article 18 NMSA
2 1978, the Public School Capital Improvements Act, the Public
3 School Buildings Act, the Education Technology Equipment Act
4 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
5 is calculated for each school district;

6 (h) the lowest value calculated pursuant
7 to Subparagraph (g) of this paragraph is subtracted from the
8 highest value calculated pursuant to that subparagraph;

9 (i) the lowest value calculated pursuant
10 to Subparagraph (g) of this paragraph is subtracted from the
11 value calculated pursuant to that subparagraph for the subject
12 school district;

13 (j) the value calculated pursuant to
14 Subparagraph (i) of this paragraph is divided by the value
15 calculated pursuant to Subparagraph (h) of this paragraph;

16 (k) if the value calculated for a
17 subject school district pursuant to Subparagraph (j) of this
18 paragraph is less than five-tenths, then, except as provided in
19 Subparagraph (n) or (o) of this paragraph, the value for that
20 school district equals the value calculated pursuant to
21 Subparagraph (f) of this paragraph;

22 (l) if the value calculated for a
23 subject school district pursuant to Subparagraph (j) of this
24 paragraph is five-tenths or greater, then that value is
25 multiplied by five-hundredths;

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1 (m) if the value calculated for a
2 subject school district pursuant to Subparagraph (j) of this
3 paragraph is five-tenths or greater, then the value calculated
4 pursuant to Subparagraph (l) of this paragraph is added to the
5 value calculated pursuant to Subparagraph (f) of this
6 paragraph. Except as provided in Subparagraph (n) or (o) of
7 this paragraph, the sum equals the value for that school
8 district;

9 (n) in those instances in which the
10 calculation pursuant to Subparagraph (k) or (m) of this
11 paragraph yields a value less than one-tenth, one-tenth shall
12 be used as the value for the subject school district;

13 (o) in those instances in which the
14 calculation pursuant to Subparagraph (k) or (m) of this
15 paragraph yields a value greater than one, one shall be used as
16 the value for the subject school district;

17 (p) except as provided in Section
18 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
19 Paragraph (6), (8), (9) or (10) of this subsection, the amount
20 to be distributed from the fund for an approved project shall
21 equal the total project cost multiplied by: 1) for a charter
22 school, one; and 2) for a school district that is not a charter
23 school, a fraction the numerator of which is the value
24 calculated for the subject school district in the current year
25 plus the value calculated for that school district in each of

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1 the two preceding years and the denominator of which is three;
2 and

3 (q) as used in this paragraph: 1) "MEM"
4 means the average full-time-equivalent enrollment of students
5 attending public school in a school district on the eightieth
6 and one hundred twentieth days of the prior school year; and 2)
7 "total project cost" means the total amount necessary to
8 complete the public school capital outlay project less any
9 insurance reimbursement received by the school district for the
10 project; [~~and 3) in the case of a state-chartered charter~~
11 ~~school that has submitted an application for grant assistance~~
12 ~~pursuant to this section, the "value calculated for the subject~~
13 ~~school district" means the value calculated for the school~~
14 ~~district in which the state-chartered charter school is~~
15 ~~physically located]~~

16 (6) the amount calculated pursuant to
17 Subparagraph (p) of Paragraph (5) of this subsection shall be
18 reduced by the following procedure:

19 (a) the total of all legislative
20 appropriations made after January 1, 2003 for nonoperating
21 purposes either directly to the subject school district or to
22 another governmental entity for the purpose of passing the
23 money through directly to the subject school district, and not
24 rejected by the subject school district, is calculated;
25 provided that: 1) an appropriation made in a fiscal year shall

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1 be deemed to be accepted by a school district unless, prior to
2 June 1 of that fiscal year, the school district notifies the
3 department of finance and administration and the public
4 education department that the school district is rejecting the
5 appropriation; 2) the total shall exclude any education
6 technology appropriation made prior to January 1, 2005 unless
7 the appropriation was on or after January 1, 2003 and not
8 previously used to offset distributions pursuant to the
9 Technology for Education Act; 3) the total shall exclude any
10 appropriation previously made to the subject school district
11 that is reauthorized for expenditure by another recipient; 4)
12 the total shall exclude one-half of the amount of any
13 appropriation made or reauthorized after January 1, 2007 if the
14 purpose of the appropriation or reauthorization is to fund, in
15 whole or in part, a capital outlay project that, when
16 prioritized by the council pursuant to this section either in
17 the immediately preceding funding cycle or in the current
18 funding cycle, ranked in the top one hundred fifty projects
19 statewide; 5) the total shall exclude the proportionate share
20 of any appropriation made or reauthorized after January 1, 2008
21 for a capital project that will be jointly used by a
22 governmental entity other than the subject school district.
23 Pursuant to criteria adopted by rule of the council and based
24 upon the proposed use of the capital project, the council shall
25 determine the proportionate share to be used by the

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1 governmental entity and excluded from the total; and 6) unless
2 the grant award is made to the state-chartered charter school
3 or unless the appropriation was previously used to calculate a
4 reduction pursuant to this paragraph, the total shall exclude
5 appropriations made after January 1, 2007 for nonoperating
6 purposes of a specific state-chartered charter school,
7 regardless of whether the charter school is a state-chartered
8 charter school at the time of the appropriation or later opts
9 to become a state-chartered charter school;

10 (b) the applicable fraction used for the
11 subject school district and the current calendar year for the
12 calculation in Subparagraph (p) of Paragraph (5) of this
13 subsection is subtracted from one;

14 (c) the value calculated pursuant to
15 Subparagraph (a) of this paragraph for the subject school
16 district is multiplied by the amount calculated pursuant to
17 Subparagraph (b) of this paragraph for that school district;

18 (d) the total amount of reductions for
19 the subject school district previously made pursuant to
20 Subparagraph (e) of this paragraph for other approved public
21 school capital outlay projects is subtracted from the amount
22 calculated pursuant to Subparagraph (c) of this paragraph; and

23 (e) the amount calculated pursuant to
24 Subparagraph (p) of Paragraph (5) of this subsection shall be
25 reduced by the amount calculated pursuant to Subparagraph (d)

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1 of this paragraph;

2 (7) as used in this subsection:

3 (a) "governmental entity" includes an
4 Indian nation, tribe or pueblo; and

5 (b) "subject school district" means the
6 school district that has submitted the application for funding
7 and in which the approved public school capital outlay project
8 will be located;

9 (8) for a school district that is not a
10 charter school, the amount calculated pursuant to Subparagraph
11 (p) of Paragraph (5) of this subsection, after any reduction
12 pursuant to Paragraph (6) of this subsection, may be increased
13 by an additional five percent if the council finds that the
14 subject school district has been exemplary in implementing and
15 maintaining a preventive maintenance program. The council
16 shall adopt such rules as are necessary to implement the
17 provisions of this paragraph;

18 (9) the council may [~~adjust~~] reduce the amount
19 of local share otherwise required if it determines that a
20 school district has made a good-faith effort to use all of its
21 local resources. Before making any [~~adjustment~~] reduction to
22 the local share, the council shall consider whether:

23 (a) the school district has insufficient
24 bonding capacity over the next four years to provide the local
25 match necessary to complete the project and, for all

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1 educational purposes, has a residential property tax rate of at
2 least ten dollars (\$10.00) on each one thousand dollars
3 (\$1,000) of taxable value, as measured by the sum of all rates
4 imposed by resolution of the local school board plus rates set
5 to pay interest and principal on outstanding school district
6 general obligation bonds;

7 (b) the school district: 1) has fewer
8 than an average of eight hundred full-time-equivalent students
9 on the eightieth and one hundred twentieth days of the prior
10 school year; 2) has at least seventy percent of its students
11 eligible for free or reduced-fee lunch; 3) has a share of the
12 total project cost, as calculated pursuant to provisions of
13 this section, that would be greater than fifty percent; and 4)
14 for all educational purposes, has a residential property tax
15 rate of at least seven dollars (\$7.00) on each one thousand
16 dollars (\$1,000) of taxable value, as measured by the sum of
17 all rates imposed by resolution of the local school board plus
18 rates set to pay interest and principal on outstanding school
19 district general obligation bonds; or

20 (c) the school district: 1) has an
21 enrollment growth rate over the previous school year of at
22 least two and one-half percent; 2) pursuant to its five-year
23 facilities plan, will be building a new school within the next
24 two years; and 3) for all educational purposes, has a
25 residential property tax rate of at least ten dollars (\$10.00)

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1 on each one thousand dollars (\$1,000) of taxable value, as
2 measured by the sum of all rates imposed by resolution of the
3 local school board plus rates set to pay interest and principal
4 on outstanding school district general obligation bonds;

5 (10) the local match for the constitutional
6 special schools shall be set at fifty percent for projects that
7 qualify under the educational adequacy category and one hundred
8 percent for projects that qualify in the support spaces
9 category; provided that the council may adjust or waive the
10 amount of any direct appropriation offset to or local share
11 required for the constitutional special schools if an applicant
12 constitutional special school has insufficient or no local
13 resources available; and

14 (11) no application for grant assistance from
15 the fund shall be approved unless the council determines that:

16 (a) the public school capital outlay
17 project is needed and included in the school district's five-
18 year facilities plan among its top priorities;

19 (b) the school district has used its
20 capital resources in a prudent manner;

21 (c) the school district has provided
22 insurance for buildings of the school district in accordance
23 with the provisions of Section 13-5-3 NMSA 1978;

24 (d) the school district has submitted a
25 five-year facilities plan that includes: 1) enrollment

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1 projections; 2) a current preventive maintenance plan that has
2 been approved by the council pursuant to Section 22-24-5.3 NMSA
3 1978 and that is followed by each public school in the
4 district; 3) the capital needs of charter schools located in
5 the school district; and 4) projections for the facilities
6 needed in order to maintain a full-day kindergarten program;

7 (e) the school district is willing and
8 able to pay any portion of the total cost of the public school
9 capital outlay project that, according to Paragraph (5), (6),
10 (8) or (9) of this subsection, is not funded with grant
11 assistance from the fund; provided that school district funds
12 used for a project that was initiated after September 1, 2002
13 when the statewide adequacy standards were adopted, but before
14 September 1, 2004 when the standards were first used as the
15 basis for determining the state and school district share of a
16 project, may be applied to the school district portion required
17 for that project;

18 (f) the application includes the capital
19 needs of any charter school located in the school district or
20 the school district has shown that the facilities of the
21 charter school have a smaller deviation from the statewide
22 adequacy standards than other district facilities included in
23 the application; and

24 (g) the school district has agreed, in
25 writing, to comply with any reporting requirements or

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1 conditions imposed by the council pursuant to Section 22-24-5.1
2 NMSA 1978.

3 C. After consulting with the public school capital
4 outlay oversight task force and other experts, the council
5 shall regularly review and update statewide adequacy standards
6 applicable to all school districts. The standards shall
7 establish the acceptable level for the physical condition and
8 capacity of buildings, the educational suitability of
9 facilities and the need for education technology
10 infrastructure. Except as otherwise provided in the Public
11 School Capital Outlay Act, the amount of outstanding deviation
12 from the standards shall be used by the council in evaluating
13 and prioritizing public school capital outlay projects.

14 D. The acquisition of a facility by a school
15 district or charter school pursuant to a financing agreement
16 that provides for lease payments with an option to purchase for
17 a price that is reduced according to lease payments made may be
18 considered a public school capital outlay project and eligible
19 for grant assistance under this section pursuant to the
20 following criteria:

21 (1) no grant shall be awarded unless the
22 council determines that, at the time of exercising the option
23 to purchase the facility by the school district or charter
24 school, the facility will equal or exceed the statewide
25 adequacy standards and the building standards for public school

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1 facilities;

2 (2) no grant shall be awarded unless the
3 school district and the need for the facility meet all of the
4 requirements for grant assistance pursuant to the Public School
5 Capital Outlay Act;

6 (3) the total project cost shall equal the
7 total payments that would be due under the agreement if the
8 school district or charter school would eventually acquire
9 title to the facility;

10 (4) the portion of the total project cost to
11 be paid from the fund may be awarded as one grant, but
12 disbursements from the fund shall be made from time to time as
13 lease payments become due;

14 (5) the portion of the total project cost to
15 be paid by the school district [~~or charter school~~] may be paid
16 from time to time as lease payments become due; and

17 (6) neither a grant award nor any provision of
18 the Public School Capital Outlay Act creates a legal obligation
19 for the school district or charter school to continue the lease
20 from year to year or to purchase the facility.

21 E. In order to encourage private capital investment
22 in the construction of public school facilities, the purchase
23 of a privately owned school facility that is, at the time of
24 application, in use by a school district may be considered a
25 public school capital outlay project and eligible for grant

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1 assistance pursuant to this section if the council finds that:

2 (1) at the time of the initial use by the
3 school district, the facility to be purchased equaled or
4 exceeded the statewide adequacy standards and the building
5 standards for public school facilities;

6 (2) at the time of application, attendance at
7 the facility to be purchased is at seventy-five percent or
8 greater of design capacity and the attendance at other schools
9 in the school district that the students at the facility would
10 otherwise attend is at eighty-five percent or greater of design
11 capacity; and

12 (3) the school district and the capital outlay
13 project meet all of the requirements for grant assistance
14 pursuant to the Public School Capital Outlay Act; provided
15 that, when determining the deviation from the statewide
16 adequacy standards for the purposes of evaluating and
17 prioritizing the project, the students using the facility shall
18 be deemed to be attending other schools in the school district.

19 F. It is the intent of the legislature that grant
20 assistance made pursuant to this section allows every school
21 district to meet the standards developed pursuant to Subsection
22 C of this section; provided, however, that nothing in the
23 Public School Capital Outlay Act or the development of
24 standards pursuant to that act prohibits a school district from
25 using other funds available to the district to exceed the

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1 statewide adequacy standards.

2 G. Upon request, the council shall work with, and
3 provide assistance and information to, the public school
4 capital outlay oversight task force.

5 H. The council may establish committees or task
6 forces, not necessarily consisting of council members, and may
7 use the committees or task forces, as well as existing agencies
8 or organizations, to conduct studies, conduct surveys, submit
9 recommendations or otherwise contribute expertise from the
10 public schools, programs, interest groups and segments of
11 society most concerned with a particular aspect of the
12 council's work.

13 I. Upon the recommendation of the public school
14 facilities authority, the council shall develop building
15 standards for public school facilities and shall promulgate
16 other such rules as are necessary to carry out the provisions
17 of the Public School Capital Outlay Act.

18 J. No later than December 15 of each year, the
19 council shall prepare a report summarizing its activities
20 during the previous fiscal year. The report shall describe in
21 detail all projects funded, the progress of projects previously
22 funded but not completed, the criteria used to prioritize and
23 fund projects and all other council actions. The report shall
24 be submitted to the public education commission, the governor,
25 the legislative finance committee, the legislative education

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1 study committee and the legislature."

2 SECTION 14. Section 22-24-6.1 NMSA 1978 (being Laws 2007,
3 Chapter 214, Section 1, as amended) is amended to read:

4 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
5 SCHOOL.--All of the provisions of the Public School Capital
6 Outlay Act apply to an application by a state-chartered charter
7 school for grant assistance for a capital project except:

8 A. the portion of the cost of the project to be
9 paid from the fund shall be calculated pursuant to Paragraph
10 (5) of Subsection B of Section 22-24-5 NMSA 1978 using data
11 from the school district in which the state-chartered charter
12 school is located; and

13 B. in calculating a reduction pursuant to Paragraph
14 (6) of Subsection B of Section 22-24-5 NMSA 1978:

15 (1) the amount to be used in Subparagraph (a)
16 of that paragraph shall equal the total of all legislative
17 appropriations made after January 1, 2007 for nonoperating
18 expenses either directly to the charter school or to another
19 governmental entity for the purpose of passing the money
20 through directly to the charter school, regardless of whether
21 the charter school was a state-chartered charter school at the
22 time of the appropriation or later opted to become a state-
23 chartered charter school, except that the total shall not
24 include any such appropriation if, before the charter school
25 became a state-chartered charter school, the appropriation was

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1 previously used to calculate a reduction pursuant to Paragraph
2 (6) of Subsection B of Section 22-24-5 NMSA 1978; and

3 (2) the amount to be used in Subparagraph (b)
4 of that paragraph shall equal the total of all federal money
5 received by the charter school for nonoperating purposes
6 pursuant to Title XIV of the American Recovery and Reinvestment
7 Act of 2009, regardless of whether the charter school was a
8 state-chartered charter school at the time of receiving the
9 federal money or later opted to become a state-chartered
10 charter school, except that the total shall not include any
11 such federal money if, before the charter school became a
12 state-chartered charter school, the money was previously used
13 to calculate a reduction pursuant to Paragraph (6) of
14 Subsection B of Section 22-24-5 NMSA 1978 [and

15 ~~G. if the council determines that the state-~~
16 ~~chartered charter school does not have the resources to pay all~~
17 ~~or a portion of the total cost of the capital outlay project~~
18 ~~that is not funded with grant assistance from the fund, to the~~
19 ~~extent that money is available in the charter school capital~~
20 ~~outlay fund, the council shall make an award from that fund for~~
21 ~~the remaining amount necessary to pay for the project. The~~
22 ~~council may establish, by rule, a procedure for determining the~~
23 ~~amount of resources available to the charter school and the~~
24 ~~amount needed from the charter school capital outlay fund]."~~

25 SECTION 15. Section 22-25-3 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

2 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
3 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

4 A. A local school board may adopt a resolution to
5 submit to the qualified electors of the school district the
6 question of whether a property tax should be imposed upon the
7 net taxable value of property allocated to the school district
8 under the Property Tax Code at a rate not to exceed that
9 specified in the resolution for the purpose of capital
10 improvements in the school district. The resolution shall:

11 (1) identify the capital improvements for
12 which the revenue proposed to be produced will be used;

13 (2) specify the rate of the proposed tax,
14 which shall not exceed two dollars (\$2.00) on each one thousand
15 dollars (\$1,000) of net taxable value of property allocated to
16 the school district under the Property Tax Code;

17 (3) specify the date an election will be held
18 to submit the question of imposition of the tax to the
19 qualified electors of the district; and

20 (4) limit the imposition of the proposed tax
21 to no more than six property tax years.

22 B. [~~On or after July 1, 2009~~] A resolution
23 submitted to the qualified electors [~~pursuant to~~] in accordance
24 with Subsection A of this section shall include capital
25 improvements funding for a locally chartered or state-chartered

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1 charter school located within the school district if the
2 charter school [~~timely~~], within at least ninety days before the
3 resolution, provides the necessary information to the school
4 district for inclusion in the resolution that identifies the
5 capital improvements of the charter school for which the
6 revenue proposed to be produced will be used."

7 SECTION 16. REPEAL.--Section 22-8B-11 NMSA 1978 (being
8 Laws 1999, Chapter 281, Section 11, as amended) is repealed.

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