

1 HOUSE BILL 454

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Dennis J. Roch

5
6
7
8
9
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; PROVIDING CONDITIONS FOR CHARTERING
12 AS A VIRTUAL CHARTER SCHOOL; CHANGING THE DEFINITION OF
13 "SCHOOL" TO RECOGNIZE VIRTUAL CHARTER SCHOOLS; ADDING
14 DEFINITIONS; DISALLOWING CERTAIN PROGRAM UNITS; REDUCING
15 PROGRAM UNITS; PROVIDING FOR AUTOMATIC CLOSURE FOR LACK OF
16 ACADEMIC GROWTH; LIMITING PUBLIC SCHOOL CAPITAL OUTLAY.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003,
20 Chapter 153, Section 3, as amended by Laws 2015, Chapter 58,
21 Section 2 and by Laws 2015, Chapter 108, Section 1) is amended
22 to read:

23 "22-1-2. DEFINITIONS.--As used in the Public School Code:

24 A. "academic proficiency" means mastery of the
25 subject-matter knowledge and skills specified in state academic

.205530.3

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 content and performance standards for a student's grade level;

2 B. "asynchronous instruction" means learning that
3 occurs when students complete assignments and learning on their
4 own time and schedule without live interaction with a teacher;

5 [~~B.~~] C. "charter school" means a school authorized
6 by a chartering authority to operate as a public school and
7 includes a virtual charter school unless excepted by law;

8 [~~G.~~] D. "commission" means the public education
9 commission;

10 [~~D.~~] E. "department" means the public education
11 department;

12 [~~E.~~] F. "home school" means the operation by the
13 parent of a school-age person of a home study program of
14 instruction that provides a basic academic educational program,
15 including reading, language arts, mathematics, social studies
16 and science;

17 [~~F.~~] G. "instructional support provider" means a
18 person who is employed to support the instructional program of
19 a school district, including educational assistant, school
20 counselor, social worker, school nurse, speech-language
21 pathologist, psychologist, physical therapist, occupational
22 therapist, recreational therapist, marriage and family
23 therapist, interpreter for the deaf and diagnostician;

24 H. "internet-based method" means the use of
25 hardware devices, including computers, laptops and tablets, for

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 students and teachers to communicate to complete course
2 requirements;

3 [G.] I. "licensed school employee" means teachers,
4 school administrators and instructional support providers;

5 [H.] J. "local school board" means the policy-
6 setting body of a school district;

7 [I.] K. "local superintendent" means the chief
8 executive officer of a school district;

9 L. "local virtual charter school" means a virtual
10 charter school that does not enroll students outside the
11 boundaries of the school district in which the local virtual
12 charter school is located;

13 [J.] M. "parent" includes a guardian or other
14 person having custody and control of a school-age person;

15 [K.] N. "private school" means a school, other than
16 a home school, that offers on-site programs of instruction and
17 that is not under the control, supervision or management of a
18 local school board;

19 [L.] O. "public school" means that part of a school
20 district that is a single attendance center in which
21 instruction is offered by one or more teachers and is
22 discernible as a building or group of buildings generally
23 recognized as either an elementary, middle, junior high or high
24 school or any combination of those and includes a charter
25 school;

.205530.3

underscored material = new
[bracketed material] = delete

1 ~~[M.]~~ P. "school" means a supervised program of
2 instruction designed to educate ~~[a student in a particular~~
3 ~~place, manner and subject area]~~ students;

4 ~~[N.]~~ Q. "school administrator" means a person
5 licensed to administer in a school district and includes school
6 principals, central district administrators and charter school
7 head administrators;

8 ~~[O.]~~ R. "school-age person" means a person who is
9 at least five years of age prior to 12:01 a.m. on September 1
10 of the school year and who has not received a high school
11 diploma or its equivalent. A maximum age of twenty-one shall
12 be used for a person who is classified as special education
13 membership as defined in Section 22-8-21 NMSA 1978 or as a
14 resident of a state institution;

15 ~~[P.]~~ S. "school building" means a public school, an
16 administration building and related school structures or
17 facilities, including teacher housing, that is owned, acquired
18 or constructed by the school district as necessary to carry out
19 the functions of the school district;

20 ~~[Q.]~~ T. "school bus private owner" means a person,
21 other than a school district, the department, the state or any
22 other political subdivision of the state, that owns a school
23 bus;

24 ~~[R.]~~ U. "school district" means an area of land
25 established as a political subdivision of the state for the

.205530.3

underscored material = new
[bracketed material] = delete

1 administration of public schools and segregated geographically
2 for taxation and bonding purposes;

3 ~~[S.]~~ V. "school employee" includes licensed and
4 nonlicensed employees of a school district;

5 ~~[T.]~~ W. "school principal" means the chief
6 instructional leader and administrative head of a public
7 school;

8 ~~[U.]~~ X. "school year" means the total number of
9 contract days offered by public schools in a school district
10 during a period of twelve consecutive months;

11 ~~[V.]~~ Y. "secretary" means the secretary of public
12 education;

13 ~~[W.]~~ Z. "state agency" or "state institution" means
14 the New Mexico military institute, New Mexico school for the
15 blind and visually impaired, New Mexico school for the deaf,
16 New Mexico boys' school, girls' welfare home, New Mexico youth
17 diagnostic and development center, Sequoyah adolescent
18 treatment center, Carrie Tingley crippled children's hospital,
19 New Mexico behavioral health institute at Las Vegas and any
20 other state agency responsible for educating resident children;

21 ~~[X.]~~ AA. "state educational institution" means an
22 institution enumerated in Article 12, Section 11 of the
23 constitution of New Mexico;

24 BB. "statewide virtual charter school" means a
25 virtual charter school that enrolls students outside the

underscored material = new
[bracketed material] = delete

1 boundaries of the school district in which the statewide
2 virtual charter school is located;

3 ~~[Y.]~~ CC. "substitute teacher" means a person who
4 holds a certificate to substitute for a teacher in the
5 classroom;

6 DD. "synchronous instruction" means learning that
7 occurs with all students in a class with a teacher, receiving
8 instruction and completing work at the same time; provided that
9 students do not necessarily have to be in the same location;

10 ~~[Z.]~~ EE. "teacher" means a person who holds a level
11 one, two or three-A license and whose primary duty is classroom
12 instruction or the supervision, below the school principal
13 level, of an instructional program or whose duties include
14 curriculum development, peer intervention, peer coaching or
15 mentoring or serving as a resource teacher for other teachers;

16 FF. "virtual charter school" means a charter school
17 in which instruction and curriculum are delivered predominantly
18 via internet-based methods;

19 ~~[AA.]~~ GG. "certified school instructor" means a
20 teacher or instructional support provider; and

21 ~~[BB.]~~ HH. "certified school employee" or "certified
22 school personnel" means a licensed school employee."

23 **SECTION 2.** Section 22-8-23.5 NMSA 1978 (being Laws 2003,
24 Chapter 144, Section 3 and Laws 2003, Chapter 152, Section 8)
25 is amended to read:

.205530.3

underscored material = new
[bracketed material] = delete

1 "22-8-23.5. FINE ARTS EDUCATION PROGRAM UNITS.--The
2 number of fine arts education program units is determined by
3 multiplying the full-time-equivalent MEM in programs
4 implemented in accordance with the provisions of the Fine Arts
5 Education Act by the cost differential factor of 0.0166 for
6 fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for
7 fiscal year 2006 and succeeding fiscal years. Virtual charter
8 schools are not entitled to fine arts education program units."

9 SECTION 3. Section 22-8-23.7 NMSA 1978 (being Laws 2007,
10 Chapter 348, Section 1) is amended to read:

11 "22-8-23.7. ELEMENTARY PHYSICAL EDUCATION PROGRAM UNITS.--

12 A. The number of elementary physical education
13 program units is determined by multiplying the number of
14 students in elementary physical education by the cost
15 differential factor of six one-hundredths.

16 B. As used in this section, "elementary physical
17 education" means eligible physical education programs that serve
18 students in kindergarten through grade six in a public school
19 classified by the department as an elementary school.

20 C. Virtual charter schools are not entitled to
21 elementary physical education program units."

22 SECTION 4. Section 22-8-26 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 76, as amended) is amended to read:

24 "22-8-26. TRANSPORTATION DISTRIBUTION.--

25 A. Except as otherwise provided in this section,

underscored material = new
[bracketed material] = delete

1 money in the transportation distribution of the public school
2 fund shall be used only for the purpose of making payments to
3 each school district or state-chartered charter school,
4 excluding a virtual charter school, for the to-and-from school
5 transportation costs of students in grades kindergarten through
6 twelve attending public school within the school district or
7 state-chartered charter school and of three- and four-year-old
8 children who meet the department-approved criteria and
9 definition of developmentally disabled and for transportation of
10 students to and from their regular attendance centers and the
11 place where vocational education programs are being offered.

12 B. In the event a school district's or state-
13 chartered charter school's transportation allocation exceeds the
14 amount required to meet obligations to provide to-and-from
15 transportation, three- and four-year-old developmentally
16 disabled transportation and vocational education transportation,
17 fifty percent of the remaining balance shall be deposited in the
18 transportation emergency fund.

19 C. Of the excess amount retained by the school
20 district or state-chartered charter school, at least
21 twenty-five percent shall be used for to-and-from
22 transportation-related services, excluding salaries and
23 benefits, and up to twenty-five percent may be used for other
24 transportation-related services, excluding salaries and benefits
25 as defined by rule of the department.

.205530.3

underscored material = new
[bracketed material] = delete

1 D. In the event the sum of the proposed
2 transportation allocations to each school district or state-
3 chartered charter school exceeds the amounts in the
4 transportation distribution, the allocation to each school
5 district or state-chartered charter school shall be reduced in
6 the proportion that the school district or state-chartered
7 charter school allocation bears to the total statewide
8 transportation distribution.

9 E. A local school board or governing body of a
10 state-chartered charter school, with the approval of the state
11 transportation director, may provide additional transportation
12 services pursuant to Section 22-16-4 NMSA 1978 to meet
13 established program needs.

14 F. Nothing in this section prohibits the use of
15 school buses to transport the general public pursuant to the
16 Emergency Transportation Act.

17 G. This section does not apply to virtual charter
18 schools."

19 **SECTION 5.** A new section of the Public School Finance Act
20 is enacted to read:

21 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOLS--PROGRAM UNIT
22 REDUCTIONS.--For a virtual charter school, each category of
23 program unit listed in Section 22-8-18 NMSA 1978 that applies to
24 the virtual charter school shall be reduced by twenty-five
25 percent before the program cost is calculated and the state

.205530.3

underscoring material = new
~~[bracketed material]~~ = delete

1 equalization guarantee distribution for the virtual charter
2 school is determined and distributed pursuant to Section 22-8-25
3 NMSA 1978."

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

6 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
7 OPERATION.--

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

15 B. A charter school shall be governed by a governing
16 body in the manner set forth in the charter contract; provided
17 that a governing body shall have at least five members; and
18 provided further that no member of a governing body for a
19 charter school that is initially approved on or after July 1,
20 2005 or whose charter is renewed on or after July 1, 2005 shall
21 serve on the governing body of another charter school. No
22 member of a local school board shall be a member of a governing
23 body for a charter school or employed in any capacity by a
24 locally chartered charter school located within the local school
25 board's school district during the term of office for which the

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 member was elected or appointed.

2 C. A charter school shall be responsible for:

3 (1) its own operation, including preparation of
4 a budget, subject to audits pursuant to the Audit Act; and

5 (2) contracting for services and personnel
6 matters.

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

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

21 F. The school district in which a charter school is
22 geographically located shall provide a charter school with
23 available facilities for the school's operations unless the
24 facilities are currently used for other educational purposes.
25 An agreement for the use of school district facilities by a

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

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

17 G. A locally chartered charter school may pay the
18 costs of operation and maintenance of its facilities or may
19 contract with the school district to provide facility operation
20 and maintenance services.

21 H. Locally chartered charter school facilities are
22 eligible for state and local capital outlay funds and shall be
23 included in the school district's five-year facilities plan.

24 I. A locally chartered charter school shall
25 negotiate with a school district to provide transportation to

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 students eligible for transportation under the provisions of the
2 Public School Code. The school district, in conjunction with
3 the charter school, may establish a limit for student
4 transportation to and from the charter school site not to extend
5 beyond the school district boundary.

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

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

11 L. With the approval of the chartering authority, a
12 single charter school may maintain separate facilities at two or
13 more locations within the same school district; but, for
14 purposes of calculating program units pursuant to the Public
15 School Finance Act, the separate facilities shall be treated
16 together as one school.

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

20 N. Within constitutional and statutory limits, a
21 charter school may acquire and dispose of property; provided
22 that, upon termination of the charter, all assets of the locally
23 chartered charter school shall revert to the local school board
24 and all assets of the state-chartered charter school shall
25 revert to the state, except that, if all or any portion of a

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 state-chartered charter school facility is financed with the
2 proceeds of general obligation bonds issued by a local school
3 board, the facility shall revert to the local school board.

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

11 P. The governing body may contract and sue and be
12 sued. A local school board shall not be liable for any acts or
13 omissions of the charter school.

14 Q. A charter school shall comply with all state and
15 federal health and safety requirements applicable to public
16 schools, including those health and safety codes relating to
17 educational building occupancy.

18 R. A charter school is a public school that may
19 contract with a school district or other party for provision of
20 financial management, food services, transportation, facilities,
21 education-related services or other services. The governing
22 body shall not contract with a for-profit entity for the
23 management of the charter school.

24 S. To enable state-chartered charter schools to
25 submit required data to the department, an accountability data

.205530.3

underscored material = new
[bracketed material] = delete

1 system shall be maintained by the department.

2 T. A charter school shall comply with all applicable
3 state and federal laws and rules related to providing special
4 education services. Charter school students with disabilities
5 and their parents retain all rights under the federal
6 Individuals with Disabilities Education Act and its implementing
7 state and federal rules. Each charter school is responsible for
8 identifying, evaluating and offering a free appropriate public
9 education to all eligible children who are accepted for
10 enrollment in that charter school. The state-chartered charter
11 school, as a local educational agency, shall assume
12 responsibility for determining students' needs for special
13 education and related services. The division may promulgate
14 rules to implement the requirements of this subsection.

15 U. Students enrolled in a virtual charter school in
16 kindergarten through grade five shall receive only synchronous
17 instruction. Students enrolled in a virtual charter school in
18 grades six through twelve shall receive synchronous instruction
19 or a combination of synchronous and asynchronous instruction."

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

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

25 A. A local school board has the authority to approve

.205530.3

underscored material = new
[bracketed material] = delete

1 the establishment of a locally chartered charter school within
2 that [~~local~~] school board's district, including local virtual
3 charter schools.

4 B. A statewide virtual charter school shall not be
5 authorized as a locally chartered charter school. After July 1,
6 2017, any previously locally chartered virtual charter school
7 that is enrolling students outside the boundaries of the school
8 district in which the charter school is located shall apply for
9 renewal of its charter with the commission as a state-chartered
10 charter school when its current charter expires.

11 [~~B.~~] C. No later than the second Tuesday of January
12 of the year in which an application will be filed, the
13 organizers of a proposed charter school shall provide written
14 notification to the commission and the school district in which
15 the charter school is proposed to be located of their intent to
16 establish a charter school. The organizers of a statewide
17 virtual charter school shall notify all school districts in the
18 state of their intent to establish a statewide virtual charter
19 school. Failure to notify may result in an application not
20 being accepted.

21 [~~C.~~] D. Except for a statewide virtual charter
22 school, a charter school applicant [~~shall~~] may apply to either a
23 local school board or the commission for a charter. If an
24 application is submitted to a chartering authority, it must
25 process the application. Applications for initial charters

.205530.3

underscored material = new
[bracketed material] = delete

1 shall be submitted by June 1 to be eligible for consideration
2 for the following fiscal year; provided that the June 1 deadline
3 may be waived upon agreement of the applicant and the chartering
4 authority.

5 ~~[D-]~~ E. An application shall include the total
6 number of grades the charter school proposes to provide, either
7 immediately or phased. A charter school may decrease the number
8 of grades it eventually offers, but it shall not increase the
9 number of grades or the total number of students proposed to be
10 served in each grade.

11 ~~[E-]~~ F. An application shall include a detailed
12 description of the charter school's projected facility needs,
13 including projected requests for capital outlay assistance that
14 have been approved by the director of the public school
15 facilities authority or the director's designee. The director
16 shall respond to a written request for review from a charter
17 applicant within forty-five days of the request.

18 ~~[F-]~~ G. An application may be made by one or more
19 teachers, parents or community members or by a public post-
20 secondary educational institution or nonprofit organization.
21 Municipalities, counties, private post-secondary educational
22 institutions and for-profit business entities are not eligible
23 to apply for or receive a charter.

24 ~~[G-]~~ H. An initial application for a charter school
25 shall not be made after June 30, 2007 if the proposed charter

.205530.3

underscored material = new
[bracketed material] = delete

1 school's proposed enrollment for all grades or the proposed
2 charter school's proposed enrollment for all grades in
3 combination with any other charter school's enrollment for all
4 grades would equal or exceed ten percent of the total MEM of the
5 school district in which the charter school will be
6 geographically located and that school district has a total
7 enrollment of not more than one thousand three hundred students.

8 ~~[H.]~~ I. A state-chartered charter school shall not
9 be approved for operation unless its governing body has
10 qualified to be a board of finance.

11 ~~[I.]~~ J. The chartering authority shall receive and
12 review all applications for charter schools submitted to it.
13 The chartering authority shall not charge application fees.

14 ~~[J.]~~ K. Except as otherwise provided in this
15 subsection, the chartering authority shall hold at least one
16 public hearing in the school district in which the charter
17 school is proposed to be located to obtain information and
18 ~~[community]~~ public input to assist it in its decision whether to
19 grant a charter school application. The public hearing for a
20 statewide virtual charter school application shall be in held in
21 Santa Fe. Once a date for the public hearing required by this
22 section has been set for chartering of a proposed statewide
23 virtual charter school, the organizers shall notify every school
24 district in New Mexico of the date of the public hearing.

25 L. The chartering authority may designate a

.205530.3

underscored material = new
[bracketed material] = delete

1 subcommittee of no fewer than three members to hold the public
2 hearing, and, if so, the hearing shall be transcribed for later
3 review by other members of the chartering authority.

4 [~~Community~~] Public input may include written or oral comments in
5 favor of or in opposition to the application from the applicant;
6 [~~the local community; and~~] for state-chartered charter schools,
7 the local school board and school district in whose geographical
8 boundaries the charter school is proposed to be located; and,
9 for statewide virtual charter schools, any local school board,
10 school district or other public participants from around the
11 state.

12 [~~K-~~] M. The chartering authority shall rule on the
13 application for a charter school in a public meeting by
14 September 1 of the year the application was received; provided,
15 however, that prior to ruling on the application for which a
16 designated subcommittee was used, any member of the chartering
17 authority who was not present at the public hearing shall
18 receive the transcript of the public hearing together with
19 documents submitted for the public hearing. If not ruled upon
20 by that date, the charter application shall be automatically
21 reviewed by the secretary in accordance with the provisions of
22 Section 22-8B-7 NMSA 1978. The charter school applicant and the
23 chartering authority may, however, jointly waive the deadlines
24 set forth in this section.

25 [~~L-~~] N. A chartering authority may approve, approve

.205530.3

underscored material = new
[bracketed material] = delete

1 with conditions or deny an application. A chartering authority
2 may deny an application if:

3 (1) the application is incomplete or
4 inadequate;

5 (2) the application does not propose to offer
6 an educational program consistent with the requirements and
7 purposes of the Charter Schools Act;

8 (3) the proposed head administrator or other
9 administrative or fiscal staff was involved with another charter
10 school whose charter was denied or revoked for fiscal
11 mismanagement or the proposed head administrator or other
12 administrative or fiscal staff was discharged from a public
13 school for fiscal mismanagement;

14 (4) for a proposed state-chartered charter
15 school, it does not request to have the governing body of the
16 charter school designated as a board of finance or the governing
17 body does not qualify as a board of finance; or

18 (5) the application is otherwise contrary to
19 the best interests of the charter school's projected students,
20 the local community or the school district in whose geographic
21 boundaries the charter school applies to operate or, in the case
22 of a statewide virtual charter school, any other public schools
23 in the state.

24 [M-] 0. If the chartering authority denies a charter
25 school application or approves the application with conditions,

.205530.3

underscored material = new
[bracketed material] = delete

1 it shall state its reasons for the denial or conditions in
2 writing within fourteen days of the meeting. If the chartering
3 authority grants a charter, the approved charter shall be
4 provided to the applicant together with any imposed conditions.

5 ~~[N.]~~ P. A charter school that has received a notice
6 from the chartering authority denying approval of the charter
7 shall have a right to a hearing by the secretary as provided in
8 Section 22-8B-7 NMSA 1978."

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

11 "22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND CORRECTIVE
12 ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS FOR NONRENEWAL
13 OR REVOCATION.--

14 A. A charter school may be approved for an initial
15 term of six years; provided that the first year shall be used
16 exclusively for planning and not for completing the application.
17 A charter may be renewed for successive periods of five years
18 each. Approvals of less than five years may be agreed to
19 between the charter school and the chartering authority.

20 B. During the planning year, the charter school
21 shall file a minimum of three status reports with the chartering
22 authority and the department for the purpose of demonstrating
23 that the charter school's implementation progress is consistent
24 with the conditions, standards and procedures of its approved
25 charter. The report content, format and schedule for submission

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 shall be agreed to by the chartering authority and the charter
2 school and become part of the charter contract.

3 C. Prior to the end of the planning year, ~~[the]~~ a
4 charter school shall demonstrate that its facilities meet the
5 requirements of Section 22-8B-4.2 NMSA 1978.

6 D. A chartering authority shall monitor the fiscal,
7 overall governance and student performance and legal compliance
8 of the charter schools that it oversees, including reviewing the
9 data provided by the charter school to support ongoing
10 evaluation according to the charter contract. ~~[Every]~~ A
11 chartering authority may conduct or require oversight activities
12 that allow the chartering authority to fulfill its
13 responsibilities under the Charter Schools Act, including
14 conducting appropriate inquiries and investigations; provided
15 that the chartering authority ~~[complies]~~ shall comply with the
16 provisions of the Charter Schools Act and the terms of the
17 charter contract and it does not unduly inhibit the autonomy
18 granted to the charter schools that it governs.

19 E. As part of its performance review of a charter
20 school, a chartering authority shall visit a charter school
21 under its authority at least once annually to provide technical
22 assistance to the charter school and to determine the status of
23 the charter school and the progress of the charter school toward
24 the performance framework goals in its charter contract.

25 F. If, based on the performance review conducted by

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 the chartering authority pursuant to Subsection D of this
2 section, a charter school's fiscal, overall governance or
3 student performance or legal compliance appears unsatisfactory,
4 the chartering authority shall promptly notify the governing
5 body of the charter school of the unsatisfactory review and
6 provide reasonable opportunity for the governing body to remedy
7 the problem; provided that if the unsatisfactory review warrants
8 revocation, the revocation procedures set forth in this section
9 shall apply. A chartering authority may take appropriate
10 corrective actions or exercise sanctions, as long as such
11 sanctions do not constitute revocation, in response to the
12 unsatisfactory review. Such actions or sanctions by the
13 chartering authority may include requiring a governing body to
14 develop and execute a corrective action plan with the chartering
15 authority that sets forth time frames for compliance.

16 G. ~~[Every]~~ Each chartering authority shall submit an
17 annual report to the division, including a performance report
18 for each charter school that it oversees, in accordance with the
19 performance framework set forth in ~~[the]~~ each charter school's
20 charter contract.

21 H. The department shall review the annual report
22 received from the chartering authority to determine if the
23 department or local school board rules and policies from which
24 the charter school was released pursuant to the provisions of
25 Section 22-8B-5 NMSA 1978 assisted or impeded the charter school

.205530.3

underscored material = new
[bracketed material] = delete

1 in meeting its stated goals and objectives. The department
2 shall use the annual reports received from the chartering
3 authorities as part of its report to the governor, the
4 legislative finance committee and the legislative education
5 study committee as required by the Charter Schools Act.

6 I. No later than two hundred seventy days prior to
7 the date [~~in~~] on which the charter expires, the governing body
8 may submit a renewal application to the chartering authority. A
9 charter school that is not a virtual charter school may apply to
10 a different chartering authority for renewal. The chartering
11 authority shall rule in a public hearing on the renewal
12 application no later than one hundred eighty days prior to the
13 expiration of the charter.

14 J. A charter school renewal application submitted to
15 the chartering authority shall contain:

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

23 (2) a financial statement that discloses the
24 costs of administration, instruction and other spending
25 categories for the charter school that is understandable to the

.205530.3

1 general public, that allows comparison of costs to other schools
2 or comparable organizations and that is in a format required by
3 the department;

4 (3) a copy of the charter contract executed in
5 compliance with the provisions of Section 22-8B-9 NMSA 1978;

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

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

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

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

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

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

.205530.3

underscored material = new
[bracketed material] = delete

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

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

5 L. The chartering authority shall develop processes
6 for suspension, revocation or nonrenewal of a charter 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 the
14 chartering authority to be submitted to the department.

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

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

22 SECTION 9. A new section of the Charter Schools Act is
23 enacted to read:

24 "[NEW MATERIAL] VIRTUAL CHARTER SCHOOLS--FAILURE TO SHOW
25 STUDENT GROWTH--PROBATION, REVOCATION OR NONRENEWAL OF

.205530.3

underscored material = new
[bracketed material] = delete

1 CHARTER.--

2 A. If a virtual charter school fails to earn at
3 least thirty-five percent of the sum of total possible points in
4 student growth factors described in Subparagraphs (b) and (c) of
5 Paragraphs (1) and (2), respectively, of Subsection B of Section
6 22-2E-4 NMSA 1978 over three consecutive years immediately
7 preceding the current school year, the chartering authority
8 shall place the virtual charter school on probation. If the
9 virtual charter school does not earn at least thirty-five
10 percent of the sum of total points in the student growth factors
11 described in Subparagraphs (b) and (c) of Paragraph (1) and (2),
12 respectively, during the probationary year, the virtual charter
13 school shall be closed at the end of the probationary year and
14 its charter shall be revoked.

15 B. A virtual charter school that is put on probation
16 shall notify all school personnel and parents of students within
17 thirty days of being placed on probation about the probation and
18 the possibility that the virtual charter school may be closed at
19 the end of the school year.

20 C. The chartering authority of a virtual charter
21 school on probation shall delineate additional requirements for
22 the virtual charter school to support improved student outcomes.

23 D. The 2017-2018 school year shall be the first
24 probationary year based on student growth factors from the 2014-
25 2015 through 2016-2017 school years, and the first year of

.205530.3

underscored material = new
~~[bracketed material] = delete~~

1 virtual charter school closures pursuant to those subsections
2 shall be the 2018-2019 school year, except as provided in
3 Subsection H of this section.

4 E. Except as provided in Subsection D of this
5 section, the chartering authority shall develop processes for
6 probation, revocation or nonrenewal of a charter that:

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

10 (2) allow the virtual charter school a
11 reasonable amount of time to prepare and submit a response to
12 the chartering authority's action as provided in this section;
13 and

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

16 F. If a chartering authority revokes or does not
17 renew a charter for a reason other than that provided in
18 Subsection A of this section, the chartering authority shall
19 state in writing its reasons for the revocation or nonrenewal.

20 G. A decision to revoke or not to renew a charter
21 for a reason other than that provided in Subsection A of this
22 section may be appealed by the governing body pursuant to
23 Section 22-8B-7 NMSA 1978.

24 H. A virtual charter school shall not be closed by
25 its chartering authority before the end of the academic quarter,

.205530.3

underscoring material = new
~~[bracketed material] = delete~~

1 trimester or semester, unless the department determines an
2 earlier closure is necessary for the health or safety of
3 students and staff."

4 SECTION 10. Section 22-25-3 NMSA 1978 (being Laws 1975
5 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

6 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
7 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

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

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

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

21 (3) specify the date an election will be held
22 to submit the question of imposition of the tax to the qualified
23 electors of the district; and

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

.205530.3

underscored material = new
[bracketed material] = delete

1 B. On or after July 1, 2009, a resolution submitted
2 to the qualified electors pursuant to Subsection A of this
3 section shall include capital improvements funding for [~~a~~]
4 locally chartered or state-chartered charter [~~school~~] schools,
5 except virtual charter schools, located within the school
6 district if [~~the~~] a charter school timely provides the necessary
7 information to the school district for inclusion in the
8 resolution that identifies the capital improvements of the
9 charter school for which the revenue proposed to be produced
10 will be used."

11 **SECTION 11.** Section 22-26-3 NMSA 1978 (being Laws 1983,
12 Chapter 163, Section 3, as amended) is amended to read:

13 "22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
14 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

15 A. A local school board may adopt a resolution to
16 submit to the qualified electors of the school district the
17 question of whether a property tax at a rate not to exceed the
18 rate specified in the resolution should be imposed upon the net
19 taxable value of property allocated to the school district under
20 the Property Tax Code for the purpose of capital improvements to
21 public schools in the school district. The resolution shall:

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

24 (2) specify the rate of the proposed tax, which
25 shall not exceed ten dollars (\$10.00) on each one thousand

.205530.3

underscored material = new
[bracketed material] = delete

1 dollars (\$1,000) of net taxable value of property allocated to
2 the school district under the Property Tax Code;

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

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

8 B. After July 1, 2007, a resolution submitted to the
9 qualified electors pursuant to Subsection A of this section
10 shall include capital improvements funding for [~~a~~] locally
11 chartered or state-chartered charter [~~school~~] schools, except
12 virtual charter schools, located within the school district if:

13 (1) [~~the~~] a charter school timely provides the
14 necessary information to the school district for inclusion on
15 the resolution that identifies the capital improvements of the
16 charter school for which the revenue proposed to be produced
17 will be used; and

18 (2) the capital improvements are included in
19 the five-year facilities plan:

20 (a) of the school district, if the charter
21 school is a locally chartered charter school; or

22 (b) of the charter school, if the charter
23 school is a state-chartered charter school."

24 **SECTION 12. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2017.

.205530.3