

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 460

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO PUBLIC SCHOOLS; CLARIFYING THAT THE PUBLIC  
EDUCATION DEPARTMENT, SCHOOL DISTRICTS AND CHARTER SCHOOLS  
SHALL NOT CONTRACT WITH PRIVATE ENTITIES TO MANAGE OR  
ADMINISTER A PUBLIC SCHOOL OR SCHOOL DISTRICT OR ITS  
EDUCATIONAL PROGRAM; CLARIFYING THAT APPLICANTS FOR CHARTERING  
AND MEMBERS OF GOVERNING BOARDS OF CHARTER SCHOOLS MUST BE NEW  
MEXICO RESIDENTS.

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

SECTION 1. A new section of the Public School Code is  
enacted to read:

"~~[NEW MATERIAL]~~ PUBLIC SCHOOLS--CERTAIN MANAGEMENT  
CONTRACTS NOT ALLOWED.--Public schools shall at all times  
remain under the educational and administrative control and  
management of a local school board, governing board of a

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underscored material = new  
[bracketed material] = delete

1 charter school or the department when it is acting in the stead  
2 of a suspended board. A school district, a charter school or  
3 the department shall not enter into any contract with a private  
4 entity to manage or administer a public school or school  
5 district or its educational program."

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

8 "22-8B-2. DEFINITIONS.--As used in the Charter Schools  
9 Act:

10 A. "charter school" means a conversion school or  
11 start-up school authorized by the chartering authority to  
12 operate as a public school;

13 B. "chartering authority" means either a local  
14 school board or the commission;

15 C. "commission" means the public education  
16 commission;

17 D. "conversion school" means an existing public  
18 school within a school district that was authorized by a local  
19 school board to become a charter school prior to July 1, 2007;

20 E. "division" means the charter schools division of  
21 the department;

22 F. "governing body" means the governing structure  
23 of a charter school as set forth in the school's charter; and

24 G. "start-up school" means a public school  
25 developed by one or more New Mexico residents who are parents,

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1 teachers or community members authorized by the chartering  
2 authority to become a charter school."

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

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

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

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

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1 member was elected or appointed.

2 C. A charter school shall be responsible for:

3 (1) its own operation, including preparation  
4 of 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 allowable third  
11 party for the use of a facility, its operation and maintenance  
12 and the provision of any service or activity that the charter  
13 school is required to perform in order to carry out the  
14 educational program described in its charter contract, but not  
15 for the management or administration of the charter school or  
16 its educational program. Facilities used by a charter school  
17 shall meet the standards required pursuant to Section 22-8B-4.2  
18 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 conversion,  
22 subject to the provisions of Subsection F of this section.

23 F. The school district in which a charter school is  
24 geographically located shall provide a charter school with  
25 available facilities for the school's operations unless the

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

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

24 H. Locally chartered charter school facilities are  
25 eligible for state and local capital outlay funds and shall be

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1 included in the school district's five-year facilities plan.

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

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

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

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

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

23 N. Within constitutional and statutory limits, a  
24 charter school may acquire and dispose of property; provided  
25 that, upon termination of the charter, all assets of the

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1 locally chartered charter school shall revert to the local  
2 school board and all assets of the state-chartered charter  
3 school shall revert to the state, except that, if all or any  
4 portion of a state-chartered charter school facility is  
5 financed with the proceeds of general obligation bonds issued  
6 by a local school board, the facility shall revert to the local  
7 school board.

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

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

18 Q. A charter school shall comply with all state and  
19 federal health and safety requirements applicable to public  
20 schools, including those health and safety codes relating to  
21 educational building occupancy.

22 R. A charter school [~~is a public school that~~] may  
23 contract with a school district or other party for provision of  
24 financial management, food services, transportation, facilities,  
25 education-related services or other services. The governing

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1 body shall not contract with a [~~for-profit~~] private entity for  
2 the management or administration of the charter school or its  
3 educational program.

4 S. To enable state-chartered charter schools to  
5 submit required data to the department, an accountability data  
6 system shall be maintained by the department.

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

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

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

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

4           B. No later than the second Tuesday of January of  
5 the year in which an application will be filed, the organizers  
6 of a proposed charter school shall provide written notification  
7 to the commission and the school district in which the charter  
8 school is proposed to be located of their intent to establish a  
9 charter school. Failure to notify may result in an application  
10 not being accepted.

11           C. A charter school applicant shall apply to either  
12 a local school board or the commission for a charter. If an  
13 application is submitted to a chartering authority, it must  
14 process the application. Applications for initial charters  
15 shall be submitted between June 1 and July 1 to be eligible for  
16 consideration for the following fiscal year; provided that the  
17 July 1 deadline may be waived upon agreement of the applicant  
18 and the chartering authority.

19           D. An application shall include the total number of  
20 grades the charter school proposes to provide, either  
21 immediately or phased. A charter school may decrease the  
22 number of grades it eventually offers, but it shall not  
23 increase the number of grades or the total number of students  
24 proposed to be served in each grade.

25           E. An application shall include a detailed

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1 description of the charter school's projected facility needs,  
2 including projected requests for capital outlay assistance that  
3 have been approved by the director of the public school  
4 facilities authority or the director's designee. The director  
5 shall respond to a written request for review from a charter  
6 applicant within forty-five days of the request.

7 F. An application may be made by one or more New  
8 Mexico residents who are teachers, parents or community members  
9 or by a New Mexico public post-secondary educational  
10 institution [~~or nonprofit organization~~]. Municipalities,  
11 counties, private post-secondary educational institutions and  
12 [~~for-profit~~] business entities are not eligible to apply for or  
13 receive a charter.

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

24 H. A state-chartered charter school shall not be  
25 approved for operation unless its governing body has qualified

1 to be a board of finance.

2 I. The chartering authority shall receive and  
3 review all applications for charter schools submitted to it.  
4 The chartering authority shall not charge application fees.

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

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

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1 documents submitted for the public hearing. If not ruled upon  
2 by that date, the charter application shall be automatically  
3 reviewed 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

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 5. 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 and waivers  
10 provided for in 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 [~~8 of this 2011 act~~] 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 an allowable third-party provider, the criteria and procedures  
13 for the chartering authority to review the provider's contract  
14 and the charter school's financial independence from the  
15 provider;

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

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

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

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

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

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