

HOUSE BILL 417

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

INTRODUCED BY

Monica Youngblood

AN ACT

RELATING TO PUBLIC SCHOOLS; REMOVING PUBLIC EDUCATION COMMISSION DUTIES;
MAKING THE CHARTER SCHOOLS DIVISION OF THE PUBLIC EDUCATION DEPARTMENT THE
CHARTERING AUTHORITY FOR STATE-CHARTERED CHARTER SCHOOLS; MAKING THE
PUBLIC EDUCATION DEPARTMENT RESPONSIBLE FOR VOCATIONAL EDUCATION.

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

SECTION 1. Section 22-8-6.1 NMSA 1978 (being Laws 1993, Chapter 227,
Section 8, as amended) is amended to read:

"22-8-6.1. CHARTER SCHOOL BUDGETS.--

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based budget. For the first year of operation, the budget of every state-chartered charter school shall be based on the projected number of program units generated by that charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of state-chartered charter schools shall

be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the state-chartered charter school is geographically located. The budget shall be submitted to the division for approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act. ~~[Thereafter, the budget shall be submitted to the public education commission for review.]~~

B. Each locally chartered charter school shall submit to the local school board a school-based budget. For the first year of operation, the budget of every locally chartered charter school shall be based on the projected number of program units generated by the charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of locally chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the locally chartered charter school is geographically located. The budget shall be submitted to the local school board for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local

budget by the local school board, the individual charter school budget shall be included separately in the budget submission to the department required pursuant to the Public School Finance Act and the Charter Schools Act.

C. For the first year of operation after a locally chartered charter school converts to a state-chartered charter school or a state-chartered charter school converts to a locally chartered charter school, the charter school's budget shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and the instructional staff training and experience index and the at-risk index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the charter school shall follow the provisions of Subsection A or B of this section, as applicable."

SECTION 2. Section 22-8-38 NMSA 1978 (being Laws 1967, Chapter 16, Section 96, as amended) is amended to read:

"22-8-38. BOARDS OF FINANCE--DESIGNATION.--

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

(1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the ~~[commission]~~ charter schools division of the department shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The ~~[commission]~~ charter schools division shall designate the governing body of a state-chartered charter school as a board of finance if:

(1) the governing body shows to the satisfaction of the ~~[commission]~~ charter schools division that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the governing body agrees to consult with the charter schools division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter."

SECTION 3. Section 22-8-39 NMSA 1978 (being Laws 1967, Chapter 16, Section 97, as amended) is amended to read:

"22-8-39. BOARDS OF FINANCE--SUSPENSION.--The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;

C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;

F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and

G. consider commencing proceedings [~~before the commission~~] to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control."

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

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

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

B. "chartering authority" means either a local school board or the ~~[commission]~~ division;

~~[C. "commission" means the public education commission;~~

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

~~[E.]~~ D. "division" means the charter schools division of the department;

~~[F.]~~ E. "enrollment preference" means filling a charter school's openings with students, or siblings of students, who have already been admitted to the school through an appropriate admission process or are continuing through subsequent grades;

~~[G.]~~ F. "governing body" means the governing structure of a charter school as set forth in the school's charter;

~~[H.]~~ G. "governing body training" means the training required pursuant to Section 22-8B-5.1 NMSA 1978 to educate governing body members and ensure compliance with all applicable laws, which training may be obtained from any source, individual or entity that has been approved by the department;

~~[I.]~~ H. "management" means authority over the hiring, termination and day-to-day direction of a school's employees or contractors, whether they are licensed or not;

~~[J.]~~ I. "material violation" means the act of failing to accomplish a requirement of a law, rule or contract or a charter school's bylaws that substantially affects the charter school's employees' or students' rights or privileges;

~~[K.]~~ J. "nondiscretionary waiver" means a waiver of requirements or rules and the provisions of the Public School Code that the department shall grant pursuant to Section 22-8B-5 NMSA 1978 and for which a charter school shall not require separate approval by the department;

~~[H.]~~ K. "performance indicator" means a measurement tool that enables selected issues or conditions to be monitored over time for the purposes of evaluating progress toward or away from a desired direction;

~~[M.]~~ L. "performance target" means the specific rating to which the data from a school's performance indicators shall be compared to determine whether the school exceeds, meets, does not meet or falls far below that rating;

~~[N.]~~ M. "siblings" means:

(1) students living in the same residence at least fifty percent of the time in a permanent or semipermanent situation, such as long-term foster care placements; or

(2) students related to each other by blood, marriage or cohabitation; and

~~[O.]~~ N. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school."

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

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

A. A local school board has the authority to approve the establishment of a locally chartered charter school within that local school board's district.

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

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

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

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

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

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

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

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

J. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. ~~[The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority.]~~ Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools,

the local school board and school district in whose geographical boundaries the charter school is proposed to be located.

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

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

(1) the application is incomplete or inadequate;

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

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

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

(5) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

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

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

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

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

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

- (1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers provided for in Section 22-8B-5 NMSA 1978;
- (2) any material term of the charter application as determined by the parties to the contract;
- (3) the mission statement of the charter school and how the charter school will report on implementation of its mission;
- (4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section 22-8B-5.3 NMSA 1978;
- (5) a statement of admission policies and procedures;
- (6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;
- (7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;
- (8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;
- (9) the types and amounts of insurance liability coverage to be obtained by the charter school;
- (10) the term of the contract;
- (11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school,

including the method that the chartering authority intends to use to conduct the evaluation as required by Section 22-8B-12 NMSA 1978;

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

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

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

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

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

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

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

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

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the

local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

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

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the [~~commission~~] division;

(18) a listing of the charter school's nondiscretionary waivers; and

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

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

SECTION 7. Section 22-8B-11 NMSA 1978 (being Laws 1999, Chapter 281, Section 11, as amended) is amended to read:

"22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED.--

A. The [~~commission~~] division shall authorize the approval of start-up charter schools.

B. No more than fifteen start-up schools may be established per year statewide. The number of charter school slots remaining in that year

shall be transferred to succeeding years up to a maximum of seventy-five start-up schools in any five-year period."

SECTION 8. Section 22-8B-16 NMSA 1978 (being Laws 2006, Chapter 94, Section 29) is amended to read:

"22-8B-16. [~~PUBLIC EDUCATION COMMISSION~~] CHARTER SCHOOLS
DIVISION--POWERS AND DUTIES.--

A. The [~~commission~~] division shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The [~~commission~~] division may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. [~~The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.~~]

B. A state-chartered charter school that was chartered by or is in the process of being chartered by the public education commission on July 1, 2017 shall have the division as its chartering authority pursuant to the provisions of this 2017 act. Nothing in this 2017 act shall be deemed to change the substantive provisions of a state-chartered charter school's charter."

SECTION 9. Section 22-14-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 192, as amended) is amended to read:

"22-14-2. VOCATIONAL EDUCATION--STATE GOVERNING AUTHORITY.--

A. The [~~commission~~] department is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education unless otherwise provided by law.

B. The [~~commission~~] department is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or for any federal aid funds, except as may otherwise be provided by law.

~~[C. The commission may delegate to the department its administrative functions relating to vocational education.]"~~

SECTION 10. Section 22-14-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 193, as amended) is amended to read:

"22-14-3. STATE AGENCY FOR VOCATIONAL EDUCATION--AUTHORITY.--The [~~commission~~] department is the sole agency of the state for the supervision of the administration of federal aid funds relating to vocational education. The [~~commission~~] department may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to [~~the commission or~~] the department from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds;

G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds;

H. coordinate as required by the federal agency with the state workforce development board; and

I. as required by the federal agency, make available a list of all school dropout, post-secondary and adult programs assisted pursuant to the state plan."

SECTION 11. Section 22-14-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 198, as amended) is amended to read:

"22-14-9. CUSTODY OF FUNDS--BUDGETS--DISBURSEMENTS.--

A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.

B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the instructional support and vocational education division or the director's authorized representative.

C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of [~~the~~] vocational rehabilitation [~~division~~] or the director's authorized representative.

D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received."

SECTION 12. TEMPORARY PROVISION--FUNCTIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--

A. All functions, records or other tangible personal property of the public education commission pertaining to its duties as chartering authority or vocational education administrator are transferred to the public education department.

B. All contractual obligations of the public education commission pertaining to its duties as chartering authority are transferred to the charter schools division of the public education department. All contractual obligations of the commission pertaining to its duties as vocational education administrator are transferred to the public education department.

C. All statutory or rule references to the public education commission pertaining to its duties as chartering authority are transferred to the charter schools division of the public education department. All statutory or rule references to the public education commission pertaining to its duties as vocational education administrator are transferred to the public education department.

