HOUSE BILL 460

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

INTRODUCED BY

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

SECTION 2. 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;

C. "commission" means the public education commission;

D. "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. "division" means the charter schools division of the department;

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

G. "start-up school" means a public school developed by one or more New Mexico residents who are parents,
teachers or community members authorized by the chartering
authority to become a charter school."

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

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

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

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

C. A charter school shall be responsible for:

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

(2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other allowable third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract, but not for the management or administration of the charter school or its educational program. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

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

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

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

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

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

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

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

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

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

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the
locally chartered charter school shall revert to the local
school board and all assets of the state-chartered charter
school shall revert to the state, except that, if all or any
portion of a state-chartered charter school facility is
financed with the proceeds of general obligation bonds issued
by a local school board, the facility shall revert to the local
school board.

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

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

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

R. A charter school is a public school that may
contract with a school district or other party for provision of
financial management, food services, transportation, facilities,
education-related services or other services. The governing
body shall not contract with a [for-profit] private entity for 
the management or administration of the charter school or its 
educational program.

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

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

SECTION 4. 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 charter school within the school district in which it is located.

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 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 for a charter. If an application is submitted to a chartering authority, it must process the application. Applications for initial charters shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year; provided that the July 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 New Mexico residents who are teachers, parents or community members or by a New Mexico 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 .192562.1
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 5. 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 and 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 [8 of this 2011 act] 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 an allowable 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; and

(18) 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 6. A new section of the Charter Schools Act is enacted to read:

"[NEW MATERIAL] GRANDFATHER CLAUSE--CURRENT CHARTER SCHOOL CONTRACTS--REFUSAL TO RENEW CHARTER.--A contract entered into between a charter school and a private entity to manage or administer a charter school or its educational program prior to the effective date of this 2013 act may continue in effect until the contract ends or is terminated as provided in the contract. The chartering authority shall assess the capability and capacity of the governing body and the head administrator.
and staff to manage or administer the charter school or its educational program. If it finds that the charter school lacks capability and capacity, it may refuse to renew the charter unless the charter school acquires the necessary school and educational management capability and capacity prior to renewal."