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SENATE BILL 418

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING FOR THE ELECTION OF MEMBERS OF GOVERNING BODIES; PROVIDING FOR INITIAL APPOINTMENT OF MEMBERS; PROVIDING FOR TERMS AND QUALIFICATIONS AND THE FILLING OF VACANCIES; PROVIDING THAT ALL CHARTER SCHOOL GOVERNING BODIES SHALL BE ELECTED BY THE REGULAR SCHOOL DISTRICT ELECTION IN 2017.

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

**SECTION 1.** 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

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1 handicap, serious medical condition, race, creed, color, sex,  
2 gender identity, sexual orientation, spousal affiliation,  
3 national origin, religion, ancestry or need for special  
4 education services.

5 B. A charter school shall be governed by a  
6 governing body [~~in the manner~~] appointed or elected pursuant to  
7 the Charter Schools Act and as set forth in the charter  
8 contract [~~provided that~~]. A governing body shall have at least  
9 five members, and [~~provided further that~~] no member of a  
10 governing body for a charter school that is initially approved  
11 on or after July 1, 2005 or whose charter is renewed on or  
12 after July 1, 2005 shall serve on the governing body of another  
13 charter school. No member of a local school board shall be a  
14 member of a governing body for a charter school or employed in  
15 any capacity by a locally chartered charter school located  
16 within the local school board's school district during the term  
17 of office for which the member was elected or appointed.

18 C. A charter school shall be responsible for:  
19 (1) its own operation, including preparation  
20 of a budget, subject to audits pursuant to the Audit Act; and  
21 (2) contracting for services and personnel  
22 matters.

23 D. A charter school may contract with a school  
24 district, a university or college, the state, another political  
25 subdivision of the state, the federal government or one of its

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1 agencies, a tribal government or any other third party for the  
2 use of a facility, its operation and maintenance and the  
3 provision of any service or activity that the charter school is  
4 required to perform in order to carry out the educational  
5 program described in its charter contract. Facilities used by  
6 a charter school shall meet the standards required pursuant to  
7 Section 22-8B-4.2 NMSA 1978.

8 E. A conversion school chartered before July 1,  
9 2007 may choose to continue using the school district  
10 facilities and equipment it had been using prior to conversion,  
11 subject to the provisions of Subsection F of this section.

12 F. The school district in which a charter school is  
13 geographically located shall provide a charter school with  
14 available facilities for the school's operations unless the  
15 facilities are currently used for other educational purposes.  
16 An agreement for the use of school district facilities by a  
17 charter school may provide for reasonable lease payments;  
18 provided that the payments do not exceed the sum of the lease  
19 reimbursement rate provided in Subparagraph (b) of Paragraph  
20 (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any  
21 reimbursement for actual direct costs incurred by the school  
22 district in providing the facilities; and provided further that  
23 any lease payments received by a school district may be  
24 retained by the school district and shall not be considered to  
25 be cash balances in any calculation pursuant to Section 22-8-41

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1 NMSA 1978. The available facilities provided by a school  
2 district to a charter school shall meet all occupancy standards  
3 as specified by the public school capital outlay council. As  
4 used in this subsection, "other educational purposes" includes  
5 health clinics, daycare centers, teacher training centers,  
6 school district administration functions and other ancillary  
7 services related to a school district's functions and  
8 operations.

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

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

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

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

25 K. Except as otherwise provided in the Public

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1 School Code, a charter school shall not charge tuition or have  
2 admission requirements.

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

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

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

22 O. The governing body of a charter school may  
23 accept or reject any charitable gift, grant, devise or bequest;  
24 provided that no such gift, grant, devise or bequest shall be  
25 accepted if subject to any condition contrary to law or to the

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1 terms of the charter. The particular gift, grant, devise or  
2 bequest shall be considered an asset of the charter school to  
3 which it is given.

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

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

11 R. A charter school is a public school that may  
12 contract with a school district or other party for provision of  
13 financial management, food services, transportation, facilities,  
14 education-related services or other services. The governing  
15 body shall not contract with a for-profit entity for the  
16 management of the charter school.

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

20 T. A charter school shall comply with all  
21 applicable state and federal laws and rules related to  
22 providing special education services. Charter school students  
23 with disabilities and their parents retain all rights under the  
24 federal Individuals with Disabilities Education Act and its  
25 implementing state and federal rules. Each charter school is

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1 responsible for identifying, evaluating and offering a free  
2 appropriate public education to all eligible children who are  
3 accepted for enrollment in that charter school. The state-  
4 chartered charter school, as a local educational agency, shall  
5 assume responsibility for determining students' needs for  
6 special education and related services. The division may  
7 promulgate rules to implement the requirements of this  
8 subsection."

9 SECTION 2. A new section of the Charter Schools Act is  
10 enacted to read:

11 "[NEW MATERIAL] GOVERNING BODY--INITIAL APPOINTMENT--  
12 ELECTIONS--REMOVAL OR RECALL.--

13 A. The charter of a proposed charter school shall  
14 set forth the number of members of the governing body as well  
15 as provisions for:

16 (1) the manner of selection and appointment of  
17 the initial governing body, who shall serve until the election  
18 and qualification of members of the governing body at the next  
19 regular school district election;

20 (2) the terms of elected members, which shall  
21 be four years, except that members initially elected shall  
22 determine by lot lesser terms to establish staggered terms if  
23 the charter provides for those; and

24 (3) the manner of selection and appointment of  
25 members to fill vacancies for unexpired terms.

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1           B. Charter school governing body elections shall be  
2 at-large within the boundaries of the school district in which  
3 it is located. If a state-chartered charter school draws or  
4 intends to draw at least twenty-five percent of its student  
5 body from a school district other than the one in which the  
6 charter school is located, the governing body shall provide for  
7 member districts. The division shall assist the governing body  
8 in determining districts that meet state and federal laws.

9           C. Elections shall be called, conducted and  
10 canvassed as provided in the School Election Law.

11           D. New charter schools, including proposed charter  
12 schools that are still in the planning or application phase of  
13 chartering, and charter schools that are renewing their charter  
14 or changing their chartering authority on or after July 1, 2015  
15 shall comply with the provisions of this section prior to being  
16 chartered or granted a new chartering authority. All other  
17 charter schools shall comply with the provisions of this  
18 section before the date for declarations of candidacy for the  
19 regular school district election in 2017. The charter school  
20 and the chartering authority shall cooperate in amending the  
21 charter school's charter in a timely manner to comply with the  
22 provisions of this section.

23           E. Members of the governing body may be removed  
24 from office as provided in Chapter 10, Article 4 NMSA 1978 or  
25 recalled as provided in Chapter 22, Article 7 NMSA 1978."

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

3           "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter  
4 school application shall include:

5                   A. the mission statement of the charter school;

6                   B. the goals, objectives and student performance  
7 outcomes to be achieved by the charter school;

8                   C. a description of the charter school's  
9 educational program, student performance standards and  
10 curriculum that must meet or exceed the department's  
11 educational standards and must be designed to enable each  
12 student to achieve those standards;

13                   D. a description of the way a charter school's  
14 educational program will meet the individual needs of the  
15 students, including those students determined to be at risk;

16                   E. a description of the charter school's plan for  
17 evaluating student performance, the types of assessments that  
18 will be used to measure student progress toward achievement of  
19 the state's standards and the school's student performance  
20 outcomes, the time line for achievement of the outcomes and the  
21 procedures for taking corrective action in the event that  
22 student performance falls below the standards;

23                   F. evidence that the plan for the charter school is  
24 economically sound, including a proposed budget for the term of  
25 the charter and a description of the manner in which the annual

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1 audit of the financial and administrative operations of the  
2 charter school is to be conducted;

3 G. evidence that the fiscal management of the  
4 charter school complies with all applicable federal and state  
5 laws and rules relative to fiscal procedures;

6 H. evidence of a plan for the displacement of  
7 students, teachers and other employees who will not attend or  
8 be employed in the conversion school;

9 I. a description of the governing body and  
10 operation of the charter school, including:

11 ~~(1) [how the governing body will be selected;~~  
12 ~~(2) qualification and terms of members, how~~  
13 ~~vacancies on the governing body will be filled and procedures~~  
14 ~~for changing governing body membership] matters pertaining to~~  
15 ~~the selection of members of the governing body provided in~~  
16 ~~Section 2 of this 2015 act; and~~

17 [~~(3)~~] (2) the nature and extent of parental,  
18 professional educator and community involvement in the  
19 governance and operation of the school;

20 J. an explanation of the relationship that will  
21 exist between the proposed charter school and its employees,  
22 including evidence that the terms and conditions of employment  
23 will be addressed with affected employees and their recognized  
24 representatives, if any;

25 K. the employment and student discipline policies

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1 of the proposed charter school;

2 L. an agreement between the charter school and the  
3 chartering authority regarding their respective legal liability  
4 and applicable insurance coverage;

5 M. a description of how the charter school plans to  
6 meet the transportation and food service needs of its students;

7 N. a description of both the discretionary waivers  
8 and the waivers provided for in Section 22-8B-5 NMSA 1978 that  
9 the charter school is requesting or that will be provided from  
10 the local school board or the department and the charter  
11 school's plan for addressing and using these waiver requests;  
12 and

13 O. a description of the facilities the charter  
14 school plans to use."