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HOUSE BILL 392

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

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO EDUCATION; ESTABLISHING THE PUBLIC EDUCATION
COMMISSION AS AN INDEPENDENT ENTITY AND REMOVING ITS
ADMINISTRATIVE ATTACHMENT TO THE PUBLIC EDUCATION DEPARTMENT;
PROVIDING FOR PUBLIC EDUCATION COMMISSION RULEMAKING AUTHORITY
AND STAFF; REMOVING FROM THE PUBLIC EDUCATION DEPARTMENT AND
GRANTING TO THE PUBLIC EDUCATION COMMISSION THE AUTHORITY TO
REVIEW DECISIONS TO GRANT, RENEW, DENY OR REVOKE A CHARTER.

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

SECTION 1. Section 9-24-9 NMSA 1978 (being Laws 2004,
Chapter 27, Section 9) is amended to read:

"9-24-9. PUBLIC EDUCATION COMMISSION--CREATION--POWERS
AND DUTIES--LEGISLATIVE OVERSIGHT.--

A. The "public education commission" is created
pursuant to Article 12, Section 6 of the constitution of New

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1 Mexico. [~~The commission shall be administratively attached to~~
2 ~~the department, with administrative staff provided by the~~
3 ~~department. Additional requests for staff services shall be~~
4 ~~made through the secretary.] The commission shall advise the
5 department on policy matters and shall perform other functions
6 pursuant to the Charter Schools Act and as otherwise provided
7 by law.~~

8 B. The commission shall consist of ten members
9 elected from public education districts as provided in the
10 decennial educational redistricting act. Members shall be
11 entitled to receive per diem and mileage as provided in the Per
12 Diem and Mileage Act but shall receive no other perquisite,
13 compensation or allowance.

14 C. The commission shall annually elect a [~~chairman~~]
15 chair, vice [~~chairman~~] chair and secretary from among its
16 membership. A majority of the members constitutes a quorum for
17 the conduct of business. The commission shall keep a record of
18 all proceedings of the commission.

19 D. The commission shall meet at the call of the
20 [~~chairman~~] chair at least quarterly or at the request of a
21 majority of the members. Meetings of the commission shall be
22 held in Santa Fe and at other sites within the state at the
23 direction of the commission. [~~The chairman in consultation~~
24 ~~with the secretary shall call a meeting at the request of a~~
25 ~~majority of the members.~~] Commission members shall not vote by

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1 proxy.

2 E. No member of the commission shall be appointed
3 secretary or be employed by the department on either a full- or
4 part-time basis.

5 F. Subject to appropriation by the legislature, the
6 commission shall employ staff as needed to assist the
7 commission in the performance of its duties. Staff shall be
8 subject to the provisions of the Personnel Act.

9 G. The commission shall prepare an annual budget.

10 H. Each year, the commission shall report to the
11 legislature and governor:
12 (1) the commission's policies and rules; and
13 (2) any actions the commission takes to grant,
14 renew or deny an application for a charter or to review on
15 appeal a granted or denied application pursuant to the Charter
16 Schools Act."

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

19 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
20 PROCESS--AUTHORIZATION--STATE BOARD OF FINANCE DESIGNATION
21 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES--APPEALS---

22 A. A local school board has the authority to
23 approve or deny an application for the establishment of or the
24 renewal of a charter for a charter school within the school
25 district in which it is located. The commission has the

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1 authority to approve or deny an application for the
2 establishment of or the renewal of a charter for a state-
3 chartered charter school.

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~~
12 ~~either a local school board or the commission for a charter.~~
13 ~~If an application is submitted to a chartering authority, it~~
14 ~~must process the application. Applications for initial~~
15 ~~charters shall be submitted between June 1 and July 1 to be~~
16 ~~eligible for consideration for the following fiscal year;~~
17 ~~provided that the July 1 deadline may be waived upon agreement~~
18 ~~of the applicant and the chartering authority.] No fees shall~~
19 ~~be assessed by the chartering authority for consideration of~~
20 the application.

21 D. An application shall include the total number of
22 grades the charter school proposes to provide, either
23 immediately or phased. A charter school may decrease the
24 number of grades it eventually offers, but it shall not
25 increase the number of grades or the total number of students

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1 proposed to be served in each grade.

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

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

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

25 H. A state-chartered charter school shall not be

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1 approved for operation unless [~~its~~] the governing body of the
2 charter school has qualified to be a board of finance.

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

6 ~~J.]~~ I. The chartering authority shall hold at least
7 one public hearing in the school district in which the charter
8 school is proposed to be located to obtain information and
9 community input to assist it in its decision whether to grant a
10 charter school application. The chartering authority may
11 designate a subcommittee of no fewer than three members to hold
12 the public hearing, and, if so, the hearing shall be
13 transcribed for later review by other members of the chartering
14 authority. Any member of the chartering authority who was not
15 present at the public hearing shall receive the transcript of
16 the public hearing together with documents submitted for the
17 public hearing before a decision to accept or deny an
18 application is made. Community input may include written or
19 oral comments in favor of or in opposition to the application
20 from the applicant, the local community and, for state-
21 chartered charter schools, the local school board and school
22 district in whose geographical boundaries the charter school is
23 proposed to be located.

24 ~~[K.]~~ J. Provided that the application was submitted
25 to the chartering authority by July 1, the chartering authority

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1 shall rule on the application for a charter school in a public
2 ~~[meeting]~~ hearing by the following September 1. ~~[of the year~~
3 ~~the application was received; provided, however, that prior to~~
4 ~~ruling on the application for which a designated subcommittee~~
5 ~~was used, any member of the chartering authority who was not~~
6 ~~present at the public hearing shall receive the transcript of~~
7 ~~the public hearing together with documents submitted for the~~
8 ~~public hearing. If not ruled upon by that date, the charter~~
9 ~~application shall be automatically reviewed by the secretary in~~
10 ~~accordance with the provisions of Section 22-8B-7 NMSA 1978.]~~
11 The absence of a ruling pursuant to the provisions of this
12 subsection shall constitute a final decision denying the
13 charter application from which an applicant may appeal pursuant
14 to the provisions of Subsection M of this section. The charter
15 school applicant and the chartering authority may ~~[however]~~
16 jointly waive the deadlines set forth in this section.

17 ~~[E.]~~ K. A chartering authority may approve, approve
18 with conditions or deny an application. A chartering authority
19 may deny an application if:

- 20 (1) the application is incomplete or
21 inadequate;
- 22 (2) the application does not propose to offer
23 an educational program consistent with the requirements and
24 purposes of the Charter Schools Act;
- 25 (3) the proposed head administrator or other

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

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

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

14 ~~[M.]~~ L. If the chartering authority denies a
15 charter school application or approves the application with
16 conditions, it shall state its reasons for the denial or
17 conditions in writing within fourteen days of the ~~[meeting]~~
18 hearing. If the chartering authority grants a charter, the
19 approved charter shall be provided to the applicant together
20 with any imposed conditions.

21 ~~[N.]~~ M. A ~~[charter school that has received a~~
22 ~~notice from the chartering authority denying approval of the~~
23 ~~charter shall have a right to a hearing by the secretary as~~
24 ~~provided in Section 22-8B-7 NMSA 1978]~~ denial of the charter
25 application by a local school board may be appealed by the

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1 charter school applicant or governing body to the commission
2 pursuant to the provisions of Section 22-8B-16 NMSA 1978. A
3 denial of the charter application that is a final decision of
4 the commission may be appealed by the charter school applicant
5 or governing body to the district court pursuant to the
6 provisions of Section 39-3-1.1 NMSA 1978."

7 SECTION 3. Section 22-8B-7 NMSA 1978 (being Laws 1999,
8 Chapter 281, Section 7, as amended) is amended to read:

9 "22-8B-7. [~~APPEAL OF DENIAL, NONRENEWAL, SUSPENSION OR~~
10 ~~REVOCAATION]~~ COMMISSION REVIEW OF GRANTED OR RENEWED CHARTERS--
11 PROCEDURES--APPEAL.--

12 ~~[A. The secretary, upon receipt of a notice of~~
13 ~~appeal or upon the secretary's own motion, shall review~~
14 ~~decisions of a chartering authority concerning charter schools~~
15 ~~in accordance with the provisions of this section.~~

16 ~~B. A charter applicant or governing body that~~
17 ~~wishes to appeal a decision of the chartering authority~~
18 ~~concerning the denial, nonrenewal, suspension or revocation of~~
19 ~~a charter school or the imposition of conditions that are~~
20 ~~unacceptable to the charter school or charter school applicant~~
21 ~~shall provide the secretary with a notice of appeal within~~
22 ~~thirty days after the chartering authority's decision. The~~
23 ~~charter school applicant or governing body bringing the appeal~~
24 ~~shall limit the grounds of the appeal to the grounds for~~
25 ~~denial, nonrenewal, suspension or revocation or the imposition~~

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1 of conditions that were specified by the chartering authority.
2 The notice shall include a brief statement of the reasons the
3 charter school applicant or governing body contends the
4 chartering authority's decision was in error. Except as
5 provided in Subsection E of this section, the appeal and review
6 process shall be as follows within sixty days after receipt of
7 the notice of appeal, the secretary, at a public hearing that
8 may be held in the school district in which the charter school
9 is located or in which the proposed charter school has applied
10 for a charter, shall review the decision of the chartering
11 authority and make findings. If the secretary finds that the
12 chartering authority acted arbitrarily or capriciously,
13 rendered a decision not supported by substantial evidence or
14 did not act in accordance with law, the secretary may reverse
15 the decision of the chartering authority and order the approval
16 of the charter with or without conditions. The decision of the
17 secretary shall be final.

18 G.] A. The [secretary, on the secretary's]
19 commission, on its own motion, may review a [chartering
20 authority's] local school board's decision to grant or renew a
21 charter [Within sixty days after the making of a motion to
22 review by the secretary, the secretary, at a public hearing
23 that may be held in the school district in which the proposed
24 charter school that has applied for a charter will be located,
25 shall review the decision of the chartering authority] and

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1 determine whether the decision was arbitrary or capricious or
2 whether the establishment or operation of the proposed charter
3 school would:

- 4 (1) violate any federal or state laws
5 concerning civil rights;
6 (2) violate any court order; or
7 (3) threaten the health and safety of students
8 within the school district.

9 ~~[D.]~~ B. If the ~~[secretary]~~ commission determines
10 that the charter would violate the provisions set forth in
11 Subsection ~~[G]~~ A of this section, the ~~[secretary]~~ commission
12 shall ~~[deny]~~ revoke the charter ~~[application]~~. The ~~[secretary]~~
13 commission may extend the time lines established in this
14 section for good cause. The decision of the ~~[secretary]~~
15 commission shall be final.

16 ~~[E. If a chartering authority denies an application~~
17 ~~or refuses to renew a charter because the public school capital~~
18 ~~outlay council has determined that the facilities do not meet~~
19 ~~the standards required by Section 22-8B-4.2 NMSA 1978, the~~
20 ~~charter school applicant or charter school may appeal the~~
21 ~~decision to the secretary as otherwise provided in this~~
22 ~~section; provided that the secretary shall reverse the decision~~
23 ~~of the chartering authority only if the secretary determines~~
24 ~~that the decision was arbitrary, capricious, not supported by~~
25 ~~substantial evidence or otherwise not in accordance with the~~

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1 ~~law.~~

2 F.] C. A [~~person aggrieved by~~] charter school
3 applicant or governing body may appeal a final decision of the
4 [~~secretary may appeal the decision~~] commission in accordance
5 with this section to the district court pursuant to the
6 provisions of Section 39-3-1.1 NMSA 1978."

7 SECTION 4. Section 22-8B-16 NMSA 1978 (being Laws 2006,
8 Chapter 94, Section 29) is amended to read:

9 "22-8B-16. PUBLIC EDUCATION COMMISSION-- [~~POWERS AND~~
10 ~~DUTIES~~] APPEAL OF LOCAL SCHOOL BOARD RULINGS AGAINST THE
11 CHARTER SCHOOL APPLICANT OR GOVERNING BOARD.-- [~~The commission~~
12 ~~shall receive applications for initial chartering and renewals~~
13 ~~of charters for charter schools that want to be chartered by~~
14 ~~the state and approve or disapprove those charter applications.~~
15 ~~The commission may approve, deny, suspend or revoke the charter~~
16 ~~of a state-chartered charter school in accordance with the~~
17 ~~provisions of the Charter Schools Act. The chartering~~
18 ~~authority for a charter school existing on July 1, 2007 may be~~
19 ~~transferred to the commission; provided, however, that if a~~
20 ~~school chartered under a previous chartering authority chooses~~
21 ~~to transfer its chartering authority, it shall continue to~~
22 ~~operate under the provisions of that charter until its renewal~~
23 ~~date unless it is suspended or revoked by the commission. An~~
24 ~~application for a charter school filed with a local school~~
25 ~~board prior to July 1, 2007, but not approved, may be~~

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1 ~~transferred to the commission on July 1, 2007.]~~

2 A. The commission, upon receipt of a notice of
3 appeal from a charter school applicant or governing body, shall
4 review a denial, nonrenewal, suspension or revocation of a
5 charter by a local school board in accordance with the
6 provisions of this section.

7 B. A charter school applicant or governing body may
8 appeal a decision of the local school board to deny, not renew,
9 suspend or revoke a charter by providing the commission with a
10 notice of appeal within thirty days after the local school
11 board's decision. The charter school applicant or governing
12 body bringing the appeal shall limit the grounds of the appeal
13 to the grounds upon which the local school board based its
14 decision. The notice shall include a brief statement of the
15 reasons that the charter school applicant or governing body
16 contends that the denial, nonrenewal, suspension or revocation
17 of the charter by the local school board was erroneous. Within
18 sixty days after receipt of the notice of appeal, the
19 commission shall review the decision of the local school board.
20 If the commission finds that the local school board acted
21 arbitrarily or capriciously, rendered a decision not supported
22 by substantial evidence or did not act in accordance with law,
23 the commission may grant to the charter school or charter
24 school applicant a charter as a state-chartered charter school.
25 The decision of the commission shall be final.

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C. A charter school applicant or governing body may appeal a final decision of the commission in accordance with this section to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."