

The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 69

HOUSE EDUCATION COMMITTEE SUBSTITUTE

FOR HOUSE BILL 283, as amended

Introduced by



# Chapter 69

## AN ACT

1  
2 RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES  
3 FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR  
4 CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE  
5 ENTERING INTO A LEASE-PURCHASE AGREEMENT FOR SCHOOL FACILITIES  
6 OR BEFORE APPLYING FOR A GRANT FOR LEASE PAYMENTS; PROVIDING  
7 FOR A TIME LIMIT FOR RESPONSE TO A REQUEST FOR REVIEW FROM A  
8 CHARTER APPLICANT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
9 SECTIONS OF LAW IN LAWS 2003 AND LAWS 2009.  
10

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

12 SECTION 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989,  
13 Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,  
14 Section 3 and by Laws 2003, Chapter 349, Section 22) is  
15 amended to read:

16 "13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF  
17 FINANCE APPROVAL.--

18 A. Except as provided in Section 13-6-3 NMSA 1978,  
19 for state agencies, any sale, trade or lease for a period of  
20 more than five years of real property belonging to a state  
21 agency, local public body or school district or any sale,  
22 trade or lease of such real property for a consideration of  
23 more than twenty-five thousand dollars (\$25,000) shall not be  
24 valid unless it is approved prior to its effective date by the  
25 state board of finance.

1           B. The provisions of this section shall not be  
2 applicable to:

3                   (1) those institutions specifically  
4 enumerated in Article 12, Section 11 of the constitution of  
5 New Mexico;

6                   (2) the state land office;

7                   (3) the state transportation commission;

8                   (4) the economic development department when  
9 disposing of property acquired pursuant to the Statewide  
10 Economic Development Finance Act; or

11                   (5) a school district when leasing  
12 facilities to a locally chartered or state-chartered charter  
13 school."

14           **SECTION 2.** Section 22-8B-4.2 NMSA 1978 (being Laws  
15 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274,  
16 Section 2, as amended) is amended to read:

17           "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

18                   A. The facilities of a charter school that is  
19 approved on or after July 1, 2005 and before July 1, 2015  
20 shall meet educational occupancy standards required by  
21 applicable New Mexico construction codes.

22                   B. The facilities of a charter school whose  
23 charter has been renewed at least once shall be evaluated,  
24 prioritized and eligible for grants pursuant to the Public  
25 School Capital Outlay Act in the same manner as all other

1 public schools in the state; provided that for charter school  
2 facilities in leased facilities, grants may be used to provide  
3 additional lease payments for leasehold improvements made by  
4 the lessor.

5 C. On or after July 1, 2011, a new charter school  
6 shall not open and an existing charter school shall not  
7 relocate unless the facilities of the new or relocated charter  
8 school, as measured by the New Mexico condition index, receive  
9 a condition rating equal to or better than the average  
10 condition for all New Mexico public schools for that year or  
11 the charter school demonstrates, within eighteen months of  
12 occupancy or relocation of the charter, the way in which the  
13 facilities will achieve a rating equal to or better than the  
14 average New Mexico condition index.

15 D. On or after July 1, 2015, a new charter school  
16 shall not open and an existing charter shall not be renewed  
17 unless the charter school:

18 (1) is housed in a building that is:

19 (a) owned by the charter school, the  
20 school district, the state, an institution of the state,  
21 another political subdivision of the state, the federal  
22 government or one of its agencies or a tribal government; or

23 (b) subject to a lease-purchase  
24 arrangement that has been entered into and approved pursuant  
25 to the Public School Lease Purchase Act; or

1 (2) if it is not housed in a building  
2 described in Paragraph (1) of this subsection, demonstrates  
3 that:

4 (a) the facility in which the charter  
5 school is housed meets the statewide adequacy standards  
6 developed pursuant to the Public School Capital Outlay Act and  
7 the owner of the facility is contractually obligated to  
8 maintain those standards at no additional cost to the charter  
9 school or the state; and

10 (b) either: 1) public buildings are  
11 not available or adequate for the educational program of the  
12 charter school; or 2) the owner of the facility is a nonprofit  
13 entity specifically organized for the purpose of providing the  
14 facility for the charter school.

15 E. Without the approval of the public school  
16 facilities authority pursuant to Section 22-20-1 NMSA 1978, a  
17 charter school shall not enter into a lease-purchase  
18 agreement.

19 F. The public school capital outlay council:

20 (1) shall determine whether facilities of a  
21 charter school meet the educational occupancy standards  
22 pursuant to the requirements of Subsection A of this section  
23 or the requirements of Subsections B, C and D of this section,  
24 as applicable; and

25 (2) upon a determination that specific

1 requirements are not appropriate or reasonable for a charter  
2 school, may grant a variance from those requirements for that  
3 charter school."

4 SECTION 3. Section 22-8B-6 NMSA 1978 (being Laws 1999,  
5 Chapter 281, Section 6, as amended by Laws 2009, Chapter 6,  
6 Section 1 and by Laws 2009, Chapter 12, Section 1) is amended  
7 to read:

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

11 A. A local school board has the authority to  
12 approve the establishment of a charter school within the  
13 school district in which it is located.

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

21 C. A charter school applicant shall apply to  
22 either a local school board or the commission for a charter.  
23 If an application is submitted to a chartering authority, it  
24 must process the application. Applications for initial  
25 charters shall be submitted between June 1 and July 1 to be

1 eligible for consideration for the following fiscal year;  
2 provided that the July 1 deadline may be waived upon agreement  
3 of the applicant and the chartering authority.

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

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

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

23 G. An initial application for a charter school  
24 shall not be made after June 30, 2007 if the proposed charter  
25 school's proposed enrollment for all grades or the proposed

1 charter school's proposed enrollment for all grades in  
2 combination with any other charter school's enrollment for all  
3 grades would equal or exceed ten percent of the total MEM of  
4 the school district in which the charter school will be  
5 geographically located and that school district has a total  
6 enrollment of not more than one thousand three hundred  
7 students.

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

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

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



1 district in whose geographical boundaries the charter school  
2 is proposed to be located.

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

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

19 (1) the application is incomplete or  
20 inadequate;

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

24 (3) the proposed head administrator or other  
25 administrative or fiscal staff was involved with another

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

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

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

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

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

24 SECTION 4. Section 22-20-1 NMSA 1978 (being Laws 1967,  
25 Chapter 16, Section 270, as amended) is amended to read:

1 "22-20-1. SCHOOL CONSTRUCTION--LEASE-PURCHASE  
2 AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL OF THE  
3 PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE  
4 ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS  
5 APPLICABLE.--

6 A. Except as provided in Subsection F of this  
7 section, each local school board or governing body of a  
8 charter school shall secure the approval of the director of  
9 the public school facilities authority or the director's  
10 designee prior to:

11 (1) the construction or letting of contracts  
12 for construction of any school building or related school  
13 structure;

14 (2) entering into a lease-purchase agreement  
15 for a building to be used as a school building or a related  
16 school structure; or

17 (3) reopening an existing structure that was  
18 not used as a school building during the previous year.

19 B. A written application shall be submitted to the  
20 director requesting approval of the construction, lease-  
21 purchase agreement or reopening, and, upon receipt, the  
22 director shall forward a copy of the application to the  
23 secretary. The director shall prescribe the form of the  
24 application, which shall include the following:

25 (1) a statement of need;

1                   (2) the anticipated number of students  
2 affected;

3                   (3) the estimated cost;

4                   (4) for approval of construction, a  
5 description of the proposed construction project;

6                   (5) for approval of a lease-purchase  
7 agreement or a reopening of an existing structure, a  
8 description of the structure to be leased or reopened,  
9 including its location, square footage, interior layout and  
10 facilities, such as bathrooms, kitchens and handicap access, a  
11 description of the prior use of the structure and a  
12 description of how the facility and supplemental shared  
13 facilities and resources will fulfill the functions necessary  
14 to support the educational programs of the school district or  
15 charter school;

16                   (6) a map of the area showing existing  
17 school attendance centers within a five-mile radius and any  
18 obstructions to attending the attendance centers, such as  
19 railroad tracks, rivers and limited-access highways; and

20                   (7) other information as may be required by  
21 the director.

22                   C. With respect to an application for the approval  
23 of construction, the director or the director's designee shall  
24 give approval to an application if the director or designee  
25 reasonably determines that:

1 (1) the construction will not cause an  
2 unnecessary proliferation of school construction;

3 (2) the construction is needed in the school  
4 district or by the charter school;

5 (3) the construction is feasible;

6 (4) the cost of the construction is  
7 reasonable;

8 (5) the school district or charter school  
9 has submitted a five-year facilities plan that includes:

10 (a) enrollment projections;

11 (b) a current preventive maintenance  
12 plan;

13 (c) the capital needs of charter  
14 schools chartered by the school district, if applicable, or  
15 the capital needs of the charter school if it is state-  
16 chartered; and

17 (d) projections for the facilities  
18 needed in order to maintain a full-day kindergarten program;

19 (6) the construction project:

20 (a) is in compliance with the statewide  
21 adequacy standards adopted pursuant to the Public School  
22 Capital Outlay Act; and

23 (b) is appropriately integrated into  
24 the school district or charter school five-year facilities  
25 plan;

1 (7) the school district or charter school is  
2 financially able to pay for the construction; and

3 (8) the secretary has certified that the  
4 construction will support the educational program of the  
5 school district or charter school.

6 D. With respect to an application for the approval  
7 of a lease-purchase agreement or for the reopening of an  
8 existing structure, the director or the director's designee  
9 shall give approval to an application if the director or  
10 designee reasonably determines that:

11 (1) the buildings to be reopened or leased  
12 for purchase meet the applicable statewide adequacy standards  
13 adopted pursuant to the Public School Capital Outlay Act or  
14 the buildings can be brought into compliance with those  
15 standards within a reasonable time and at a reasonable cost  
16 and that money or other resources will be available to the  
17 school district or charter school to bring the buildings up to  
18 those standards; and

19 (2) the buildings to be reopened or leased  
20 for purchase have, as measured by the New Mexico condition  
21 index, a condition rating equal to or better than the average  
22 condition for all New Mexico public schools for that year.

23 E. Within thirty days after the receipt of an  
24 application filed pursuant to this section, the director or  
25 the director's designee shall in writing notify the local

1 school board or governing body of a charter school making the  
2 application and the department of approval or disapproval of  
3 the application.

4 F. By rule, the public school capital outlay  
5 council may:

6 (1) exempt classes or types of construction  
7 from the application and approval requirements of this  
8 section; or

9 (2) exempt classes or types of construction  
10 from the requirement of approval but, if the council  
11 determines that information concerning the construction is  
12 necessary for the maintenance of the facilities assessment  
13 database, require a description of the proposed construction  
14 project and related information to be submitted to the public  
15 school facilities authority.

16 G. A charter school shall not apply for a lease  
17 payment grant pursuant to Subsection I of Section 22-24-4 NMSA  
18 1978 unless the lease-purchase agreement has been approved  
19 pursuant to this section.

20 H. A local school board or governing body of a  
21 charter school shall not enter into a contract for the  
22 construction of a public school facility, including contracts  
23 funded with insurance proceeds, unless the contract contains  
24 provisions requiring the construction to be in compliance with  
25 the statewide adequacy standards adopted pursuant to the

1 Public School Capital Outlay Act, provided that, for a  
2 contract funded in whole or in part with insurance proceeds:

3 (1) the cost of settlement of any insurance  
4 claim shall not be increased by inclusion of the insurance  
5 proceeds in the construction contract; and

6 (2) insurance claims settlements shall  
7 continue to be governed by insurance policies, memoranda of  
8 coverage and rules related to them.

9 I. Public school facilities shall be constructed  
10 pursuant to state standards or codes promulgated pursuant to  
11 the Construction Industries Licensing Act and rules adopted  
12 pursuant to Section 59A-52-15 NMSA 1978 for the prevention and  
13 control of fires in public occupancies. Building standards or  
14 codes adopted by a municipality or county do not apply to the  
15 construction of public school facilities, except those  
16 structures constructed as a part of an educational program of  
17 a school district or charter school.

18 J. The provisions of Subsection I of this section  
19 relating to fire protection shall not be effective until the  
20 public regulation commission has adopted the International  
21 Fire Code and all standards related to that code.

22 K. As used in this section, "construction" means  
23 any project for which the construction industries division of  
24 the regulation and licensing department requires permitting  
25 and for which the estimated total cost exceeds two hundred



1 thousand dollars (\$200,000)."

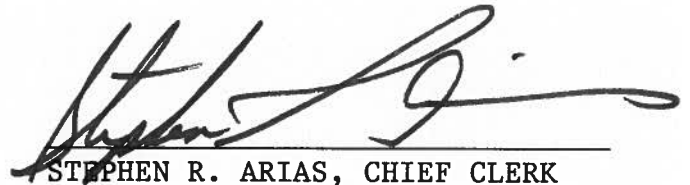
2 SECTION 5. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2011. \_\_\_\_\_

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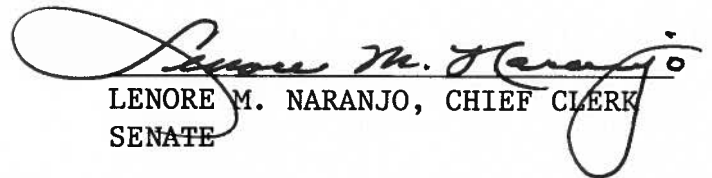
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



JOHN A. SANCHEZ, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 5<sup>th</sup> day of April, 2011



SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

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