



The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER _____

SENATE BILL 333, as amended

POCKET VETOED

Introduced by

SENATOR SUE WILSON BEFFORT AND SENATOR JOHN ARTHUR SMITH

SENATOR CARROLL H. LEAVELL

SENATOR MARY KAY PAPER



1 AN ACT
2 RELATING TO PUBLIC SCHOOL DISTRICT AND CHARTER SCHOOL
3 FACILITIES; REQUIRING PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL
4 APPROVAL OF LEASE PAYMENTS; REQUIRING COUNCIL DEVELOPMENT AND
5 IMPLEMENTATION OF A STANDARDIZED LEASE FORMAT; REQUIRING
6 CHARTERING AUTHORITY OVERSIGHT OF CHARTER SCHOOL
7 CONFLICT-OF-INTEREST DOCUMENTATION.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. Section 22-8B-4 NMSA 1978 (being Laws 1999,
11 Chapter 281, Section 4, as amended) is amended to read:

12 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND
13 RESPONSIBILITIES--OPERATION.--

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

21 B. A charter school shall be governed by a
22 governing body in the manner set forth in the charter
23 contract; provided that a governing body shall have at least
24 five members; and provided further that no member of a
25 governing body for a charter school that is initially

1 approved on or after July 1, 2005 or whose charter is renewed
2 on or after July 1, 2005 shall serve on the governing body of
3 another charter school. No member of a local school board
4 shall be a member of a governing body for a charter school or
5 employed in any capacity by a locally chartered charter
6 school located within the local school board's school
7 district during the term of office for which the member was
8 elected or appointed.

9 C. A charter school shall be responsible for:

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

12 (2) contracting for services and personnel
13 matters.

14 D. A charter school may contract with a school
15 district, a university or college, the state, another
16 political subdivision of the state, the federal government or
17 one of its agencies, a tribal government or any other third
18 party for the use of a facility, its operation and
19 maintenance and the provision of any service or activity that
20 the charter school is required to perform in order to carry
21 out the educational program described in its charter
22 contract. Facilities used by a charter school shall meet the
23 standards required pursuant to Section 22-8B-4.2 NMSA 1978.

24 E. A conversion school chartered before
25 July 1, 2007 may choose to continue using the school district

1 facilities and equipment it had been using prior to
2 conversion, subject to the provisions of Subsection F of this
3 section.

4 F. The school district in which a charter school
5 is geographically located shall provide a charter school with
6 available facilities for the school's operations unless the
7 facilities are currently used for other educational purposes.
8 An agreement for the use of school district facilities by a
9 charter school may provide for reasonable lease payments
10 approved by the public school capital outlay council at the
11 local market rate; provided that the payments do not exceed
12 the sum of the lease reimbursement rate provided in
13 Subparagraph (b) of Paragraph (1) of Subsection J of Section
14 22-24-4 NMSA 1978 plus any reimbursement for actual direct
15 costs incurred by the school district in providing the
16 facilities; and provided further that any lease payments
17 received by a school district may be retained by the school
18 district and shall not be considered to be cash balances in
19 any calculation pursuant to Section 22-8-41 NMSA 1978. The
20 available facilities provided by a school district to a
21 charter school shall meet all occupancy standards as
22 specified by the public school capital outlay council. As
23 used in this subsection, "other educational purposes"
24 includes health clinics, daycare centers, teacher training
25 centers, school district administration functions and other

1 ancillary services related to a school district's functions
2 and operations.

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

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

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

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

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

23 L. With the approval of the chartering authority,
24 a single charter school may maintain separate facilities at
25 two or more locations within the same school district; but,

1 for purposes of calculating program units pursuant to the
2 Public School Finance Act, the separate facilities shall be
3 treated together as one school.

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

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

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

24 P. The governing body may contract and sue and be
25 sued. A local school board shall not be liable for any acts

1 or omissions of the charter school.

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

6 R. A charter school is a public school that may
7 contract with a school district or other party for provision of
8 financial management, food services, transportation, facilities,
9 education-related services or other services. The governing body
10 shall not contract with a for-profit entity for the management of
11 the charter school.

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

15 T. A charter school shall comply with all
16 applicable state and federal laws and rules related to
17 providing special education services. Charter school
18 students with disabilities and their parents retain all
19 rights under the federal Individuals with Disabilities
20 Education Act and its implementing state and federal rules.
21 Each charter school is responsible for identifying,
22 evaluating and offering a free appropriate public education
23 to all eligible children who are accepted for enrollment in
24 that charter school. The state-chartered charter school, as
25 a local educational agency, shall assume responsibility for

1 determining students' needs for special education and related
2 services. The division may promulgate rules to implement the
3 requirements of this subsection."

4 SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws
5 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274,
6 Section 2, as amended) is amended to read:

7 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

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

12 B. The facilities of a charter school whose
13 charter has been renewed at least once shall be evaluated,
14 prioritized and eligible for grants pursuant to the Public
15 School Capital Outlay Act in the same manner as all other
16 public schools in the state; provided that for charter school
17 facilities in leased facilities, grants may be used to
18 provide additional lease payments for leasehold improvements
19 made by the lessor.

20 C. On or after July 1, 2011, a new charter school
21 shall not open and an existing charter school shall not
22 relocate unless the facilities of the new or relocated
23 charter school, as measured by the New Mexico condition
24 index, receive a condition rating equal to or better than the
25 average condition for all New Mexico public schools for that

1 year or the charter school attains, within eighteen months of
2 occupancy or relocation of the charter, a rating equal to or
3 better than the average New Mexico condition index.

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

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

8 (a) owned by the charter school, the
9 school district, the state, an institution of the state,
10 another political subdivision of the state, the federal
11 government or one of its agencies or a tribal government; or

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

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

18 (a) the facility in which the charter
19 school is housed meets the statewide adequacy standards
20 developed pursuant to the Public School Capital Outlay Act
21 and the owner of the facility is contractually obligated to
22 maintain those standards at no additional cost to the charter
23 school or the state; and

24 (b) either: 1) public buildings are
25 not available or adequate for the educational program of the

1 charter school; or 2) the owner of the facility is a
2 nonprofit entity specifically organized for the purpose of
3 providing the facility for the charter school.

4 E. Without the approval of the public school
5 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
6 charter school shall not enter into a lease-purchase
7 agreement.

8 F. The public school capital outlay council:

9 (1) shall determine whether facilities of a
10 charter school meet the educational occupancy standards
11 pursuant to the requirements of Subsection A of this section
12 or the requirements of Subsections B, C and D of this
13 section, as applicable; and

14 (2) upon a determination that specific
15 requirements are not appropriate or reasonable for a charter
16 school, may grant a variance from those requirements for that
17 charter school."

18 SECTION 3. Section 22-8B-5.2 NMSA 1978 (being Laws
19 2011, Chapter 14, Section 7) is amended to read:

20 "22-8B-5.2. GOVERNING BODY CONFLICTS OF INTEREST.--

21 A. A person shall not serve as a member of a
22 governing body or as an employee of a charter school if the
23 person or an immediate family member of the person is an
24 owner, agent of, contractor with or otherwise has a financial
25 interest in a for-profit or nonprofit entity with which the

1 charter school contracts directly, for professional services,
2 goods or facilities. A violation of this subsection renders
3 the contract between the person or the person's immediate
4 family member and the charter school void. A person who
5 knowingly violates this subsection may be individually liable
6 to the charter school for any financial damage caused by the
7 violation.

8 B. No member of a governing body or employee,
9 officer or agent of a charter school shall participate in
10 selecting, awarding or administering a contract with the
11 charter school if a conflict of interest exists. A conflict
12 of interest exists when the member, employee, officer or
13 agent or an immediate family member of the member, employee,
14 officer or agent has a financial interest in the entity with
15 which the charter school is contracting. A violation of this
16 subsection renders the contract void.

17 C. Any employee, agent or board member of the
18 chartering authority who participates in the initial review,
19 approval, ongoing oversight, evaluation or charter renewal
20 process of a charter school is ineligible to serve on the
21 governing body of the charter school chartered by the
22 chartering authority.

23 D. As used in this section, "immediate family
24 member" means spouse, father, father-in-law, mother,
25 mother-in-law, son, son-in-law, daughter, daughter-in-law,

1 brother, brother-in-law, sister, sister-in-law or any other
2 relative who is financially supported."

3 SECTION 4. Section 22-8B-5.3 NMSA 1978 (being Laws
4 2011, Chapter 14, Section 8) is amended to read:

5 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--
6 LIABILITY.--A chartering authority shall:

7 A. evaluate charter applications;

8 B. actively pursue the utilization of charter
9 schools to satisfy identified education needs and promote a
10 diversity of educational choices;

11 C. approve charter applications that meet the
12 requirements of the Charter Schools Act;

13 D. decline to approve charter applications that
14 fail to meet the requirements of the Charter Schools Act or
15 are otherwise inadequate;

16 E. negotiate and execute, in good faith, charter
17 contracts that meet the requirements of the Charter Schools
18 Act with each approved charter school;

19 F. monitor, in accordance with the requirements of
20 the Charter Schools Act and the terms of the charter
21 contract, the performance and legal compliance of charter
22 schools under their authority;

23 G. determine whether a charter school merits
24 suspension, revocation or nonrenewal;

25 H. develop and maintain chartering policies and

1 practices consistent with nationally recognized principles
2 and standards for quality charter authorizing in all major
3 areas of authorizing, including:

- 4 (1) organizational capacity and
5 infrastructure;
- 6 (2) evaluating charter applications;
- 7 (3) performance contracting;
- 8 (4) charter school oversight and evaluation;
- 9 and
- 10 (5) charter school suspension, revocation
11 and renewal processes; and

12 I. annually review and approve all charter school
13 conflict-of-interest disclosure statements."

14 SECTION 5. Section 22-24-4 NMSA 1978 (being Laws 1975,
15 Chapter 235, Section 4, as amended) is amended to read:

16 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
17 USE.--

18 A. The "public school capital outlay fund" is
19 created. Balances remaining in the fund at the end of each
20 fiscal year shall not revert.

21 B. Except as provided in Subsections G and J
22 through M of this section, money in the fund may be used only
23 for capital expenditures deemed necessary by the council for
24 an adequate educational program.

25 C. The council may authorize the purchase by the

1 public school facilities authority of portable classrooms to
2 be loaned to school districts to meet a temporary
3 requirement. Payment for these purchases shall be made from
4 the fund. Title to and custody of the portable classrooms
5 shall rest in the public school facilities authority. The
6 council shall authorize the lending of the portable
7 classrooms to school districts upon request and upon finding
8 that sufficient need exists. Application for use or return
9 of state-owned portable classroom buildings shall be
10 submitted by school districts to the council. Expenses of
11 maintenance of the portable classrooms while in the custody
12 of the public school facilities authority shall be paid from
13 the fund; expenses of maintenance and insurance of the
14 portable classrooms while in the custody of a school district
15 shall be the responsibility of the school district. The
16 council may authorize the permanent disposition of the
17 portable classrooms by the public school facilities authority
18 with prior approval of the state board of finance.

19 D. Applications for assistance from the fund shall
20 be made by school districts to the council in accordance with
21 requirements of the council. Except as provided in
22 Subsection L of this section, the council shall require as a
23 condition of application that a school district have a
24 current five-year facilities plan, which shall include a
25 current preventive maintenance plan to which the school

1 adheres for each public school in the school district.

2 E. The council shall review all requests for
3 assistance from the fund and shall allocate funds only for
4 those capital outlay projects that meet the criteria of the
5 Public School Capital Outlay Act.

6 F. Money in the fund shall be disbursed by warrant
7 of the department of finance and administration on vouchers
8 signed by the secretary of finance and administration
9 following certification by the council that an application
10 has been approved or an expenditure has been ordered by a
11 court pursuant to Section 22-24-5.4 NMSA 1978. At the
12 discretion of the council, money for a project shall be
13 distributed as follows:

14 (1) up to ten percent of the portion of the
15 project cost funded with distributions from the fund or five
16 percent of the total project cost, whichever is greater, may
17 be paid to the school district before work commences with the
18 balance of the grant award made on a cost-reimbursement
19 basis; or

20 (2) the council may authorize payments
21 directly to the contractor.

22 G. Balances in the fund may be annually
23 appropriated for the core administrative functions of the
24 public school facilities authority pursuant to the Public
25 School Capital Outlay Act, and, in addition, balances in the

1 fund may be expended by the public school facilities
2 authority, upon approval of the council, for project
3 management expenses; provided that:

4 (1) the total annual expenditures from the
5 fund for the core administrative functions pursuant to this
6 subsection shall not exceed five percent of the average
7 annual grant assistance authorized from the fund during the
8 three previous fiscal years; and

9 (2) any unexpended or unencumbered balance
10 remaining at the end of a fiscal year from the expenditures
11 authorized in this subsection shall revert to the fund.

12 H. Up to ten million dollars (\$10,000,000) of the
13 fund may be allocated annually by the council for expenditure
14 in fiscal years 2010 through 2015 for a roof repair and
15 replacement initiative with projects to be identified by the
16 council pursuant to Section 22-24-4.3 NMSA 1978; provided
17 that money allocated pursuant to this subsection shall be
18 expended within two years of the allocation.

19 I. The council shall develop a standardized
20 facility lease for use by all charter schools for all new
21 leases, amendments and renewals entered into after
22 July 1, 2014.

23 J. The fund may be expended annually by the
24 council for grants to school districts for the purpose of
25 making lease payments for classroom facilities, including

1 facilities leased by charter schools. For leases, amendments
2 and renewals entered into after July 1, 2014, these payments
3 may reimburse leases developed prior to execution in
4 consultation with the council using the standardized lease
5 format approved by the council. The grants shall be made
6 upon application by the school districts and pursuant to
7 rules adopted by the council; provided that an application on
8 behalf of a charter school shall be made by the school
9 district, but, if the school district fails to make an
10 application on behalf of a charter school, the charter school
11 may submit its own application. The following criteria shall
12 apply to the grants:

13 (1) the amount of a grant to a school
14 district shall not exceed:

15 (a) the actual annual lease payments
16 owed for leasing classroom space for schools, including
17 charter schools, in the district; or

18 (b) seven hundred dollars (\$700)
19 multiplied by the number of MEM using the leased classroom
20 facilities; provided that in fiscal year 2009 and in each
21 subsequent fiscal year, this amount shall be adjusted by the
22 percentage change between the penultimate calendar year and
23 the immediately preceding calendar year of the consumer price
24 index for the United States, all items, as published by the
25 United States department of labor;

1 (2) a grant received for the lease payments
2 of a charter school may be used by that charter school as a
3 state match necessary to obtain federal grants pursuant to
4 the federal No Child Left Behind Act of 2001;

5 (3) at the end of each fiscal year, any
6 unexpended or unencumbered balance of the appropriation shall
7 revert to the fund;

8 (4) no grant shall be made for lease
9 payments due pursuant to a financing agreement under which
10 the facilities may be purchased for a price that is reduced
11 according to the lease payments made unless:

12 (a) the agreement has been approved
13 pursuant to the provisions of the Public School Lease
14 Purchase Act; and

15 (b) the facilities are leased by a
16 charter school;

17 (5) if the lease payments are made pursuant
18 to a financing agreement under which the facilities may be
19 purchased for a price that is reduced according to the lease
20 payments made, neither a grant nor any provision of the
21 Public School Capital Outlay Act creates a legal obligation
22 for the school district or charter school to continue the
23 lease from year to year or to purchase the facilities nor
24 does it create a legal obligation for the state to make
25 subsequent grants pursuant to the provisions of this

1 subsection; and

2 (6) as used in this subsection:

3 (a) "MEM" means: 1) the average
4 full-time-equivalent enrollment using leased classroom
5 facilities on the eightieth and one hundred twentieth days of
6 the prior school year; or 2) in the case of an approved
7 charter school that has not commenced classroom instruction,
8 the estimated full-time-equivalent enrollment that will use
9 leased classroom facilities in the first year of instruction,
10 as shown in the approved charter school application; provided
11 that, after the eightieth day of the school year, the MEM
12 shall be adjusted to reflect the full-time-equivalent
13 enrollment on that date; and

14 (b) "classroom facilities" or
15 "classroom space" includes the space needed, as determined by
16 the minimum required under the statewide adequacy standards,
17 for the direct administration of school activities.

18 K. In addition to other authorized expenditures
19 from the fund, up to one percent of the average grant
20 assistance authorized from the fund during the three previous
21 fiscal years may be expended in each fiscal year by the
22 public school facilities authority to pay the state fire
23 marshal, the construction industries division of the
24 regulation and licensing department and local jurisdictions
25 having authority from the state to permit and inspect

1 projects for expenditures made to permit and inspect projects
2 funded in whole or in part under the Public School Capital
3 Outlay Act. The authority may enter into contracts with the
4 state fire marshal, the construction industries division or
5 the appropriate local authorities to carry out the provisions
6 of this subsection. Such a contract may provide for initial
7 estimated payments from the fund prior to the expenditures if
8 the contract also provides for additional payments from the
9 fund if the actual expenditures exceed the initial payments
10 and for repayments back to the fund if the initial payments
11 exceed the actual expenditures. Money distributed from the
12 fund to the state fire marshal or the construction industries
13 division pursuant to this subsection shall be used to
14 supplement, rather than supplant, appropriations to those
15 entities.

16 L. Pursuant to guidelines established by the
17 council, allocations from the fund may be made to assist
18 school districts in developing and updating five-year
19 facilities plans required by the Public School Capital Outlay
20 Act; provided that:

21 (1) no allocation shall be made unless the
22 council determines that the school district is willing and
23 able to pay the portion of the total cost of developing or
24 updating the plan that is not funded with the allocation from
25 the fund. Except as provided in Paragraph (2) of this

1 subsection, the portion of the total cost to be paid with the
2 allocation from the fund shall be determined pursuant to the
3 methodology in Paragraph (5) of Subsection B of Section
4 22-24-5 NMSA 1978; or

5 (2) the allocation from the fund may be used
6 to pay the total cost of developing or updating the plan if:

7 (a) the school district has fewer than
8 an average of six hundred full-time-equivalent students on
9 the eightieth and one hundred twentieth days of the prior
10 school year; or

11 (b) the school district meets all of
12 the following requirements: 1) the school district has fewer
13 than an average of one thousand full-time-equivalent students
14 on the eightieth and one hundred twentieth days of the prior
15 school year; 2) the school district has at least seventy
16 percent of its students eligible for free or reduced-fee
17 lunch; 3) the state share of the total cost, if calculated
18 pursuant to the methodology in Paragraph (5) of Subsection B
19 of Section 22-24-5 NMSA 1978, would be less than fifty
20 percent; and 4) for all educational purposes, the school
21 district has a residential property tax rate of at least
22 seven dollars (\$7.00) on each one thousand dollars (\$1,000)
23 of taxable value, as measured by the sum of all rates imposed
24 by resolution of the local school board plus rates set to pay
25 interest and principal on outstanding school district general

1 obligation bonds.

2 M. Upon application by a school district,
3 allocations from the fund may be made by the council for the
4 purpose of demolishing abandoned school district facilities,
5 provided that:

6 (1) the costs of continuing to insure an
7 abandoned facility outweigh any potential benefit when and if
8 a new facility is needed by the school district;

9 (2) there is no practical use for the
10 abandoned facility without the expenditure of substantial
11 renovation costs; and

12 (3) the council may enter into an agreement
13 with the school district under which an amount equal to the
14 savings to the district in lower insurance premiums are used
15 to reimburse the fund fully or partially for the demolition
16 costs allocated to the district." _____

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s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

s/W. Ken Martinez
W. Ken Martinez, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 2013

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico

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