

# CHAPTER 22

## Public Schools

### ARTICLE 1

#### General Provisions

##### 22-1-1. Public School Code.

Chapter 22 NMSA 1978 [except Article 5A] may be cited as the "Public School Code".

History: 1953 Comp., § 77-1-1, enacted by Laws 1967, ch. 16, § 1; 1977, ch. 246, § 59; 2003, ch. 153, § 1.

#### ANNOTATIONS

**Cross references.** — For constitutional provisions relating to education, see N.M. Const., art. XII, § 1 et seq.

As to legislative school study committee, see 2-10-1 NMSA 1978 et seq.

**The 2003 amendment**, effective April 4, 2003, substituted "22 NMSA 1978" for "77 NMSA 1953" following "Chapter" at the beginning of the section.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of this article of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 1 did not take effect, as prior to the July 1, 2004 effective date of the repeal of this article, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Public School Code.** — This section, as it appeared in 1953 Comp., provided that "Chapter 77 NMSA 1953 may be cited as the 'Public School Code.' " When the New Mexico Statutes Annotated were recompiled in 1978, sections in former Chapter 77 were renumbered as present Chapter 22 (excluding 22-4-16, 22-9-7 to 22-9-16 and Articles 13A and 18A NMSA 1978) and present 11-8-1 to 11-8-11 NMSA 1978.

The Laws 2003 ch. 153, § 1 amendment provides that Chapter 22 NMSA 1978 may be cited as the "Public School Code".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 1 to 294.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Public payment of tuition, scholarship, or the like, as respects sectarian school, 81 A.L.R.2d 1309.

Use of school property for other than public school or religious purposes. 94 A.L.R.2d 1274.

De facto segregation of races in public schools, 11 A.L.R.3d 780.

Liability of school or school personnel in connection with suicide of student, 17 A.L.R.5th 179.

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or court-supervised desegregation plans and the effects of such declarations, 94 A.L.R. Fed. 667.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 A.L.R. Fed. 211.

78 C.J.S. Schools and School Districts § 3 et seq.; 78A C.J.S. Schools and School Districts § 478 et seq.

### **22-1-1.1. Legislative findings and purpose.**

A. The legislature finds that, although New Mexico has been in the forefront of educational reforms in many areas, additional improvements are necessary to enhance and upgrade the delivery of quality education in New Mexico.

B. The legislature further finds that enhancement of the educational system in New Mexico requires a renewed emphasis on the primary grades, recognizing especially the importance of the first grade to a child's future educational career.

C. The legislature further finds that teachers and administrators play a key role in any reform efforts and acknowledges their importance in the educational process.

D. The legislature further finds that the smorgasbord curriculum offered in many schools fails to provide students with the basic educational background necessary to provide them with indispensable life skills.

E. The legislature further finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning.

F. It is the purpose of this reform legislation, among other things, to stress the importance of substantive academic subjects, provide for a greater emphasis on the

primary grades, upgrade curriculum and graduation requirements, systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools and recognize that teachers should be treated like other professionals.

History: Laws 1986, ch. 33, § 1.

## ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of these articles of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Articles 1, 2, 13, 13A and 15 of ch. 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of these articles, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-1-1.2. Legislative findings and purpose.**

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed, and the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

(1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;

(2) holds teachers, students, schools, school districts and the state accountable;

(3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;

(4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students; and

(5) elevates the importance of public education in the state by clarifying the governance structure at different levels.

C. The legislature finds further that the teacher shortage in this country has affected the ability of New Mexico to compete for the best teachers, and that unless the state and school districts find ways to mentor beginning teachers, intervene with teachers while they still show promise, improve the job satisfaction of quality teachers and

elevate the teaching profession by shifting to a professional educator licensing and salary system, public schools will be unable to recruit and retain the highest quality teachers in the teaching profession in New Mexico.

D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:

(1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;

(2) teachers who do not meet performance standards must improve their skills or they will not continue to be employed as teachers;

(3) public schools make adequate yearly progress toward educational excellence; and

(4) school districts and the state are prepared to actively intervene and improve failing public schools.

E. The legislature finds further that improving children's reading and writing abilities and literacy must remain a priority of the state.

F. The legislature finds further that the public school governance structure needs to change to provide accountability from the bottom up instead of from the top down. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.

G. It is the purpose of this 2003 public school reform legislation to provide the framework to implement the legislative findings to ensure student success in New Mexico.

History: 1978 Comp., § 22-1-2.1, enacted by Laws 1985, ch. 21, § 2; 1993, ch. 62, § 2; 1993, ch. 226, § 1; 2001, ch. 62, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Temporary provisions.** — Laws 2003, ch. 153, § 70, effective April 4, 2003, provides that the commission on higher education and the state department of public education

shall inventory the current distance learning capability of public post-secondary educational institutions and prepare a statewide plan for the delivery by public post-secondary educational institutions of distance education courses for teachers and other licensed school employees in reading instruction for kindergarten through third grade and multilingual instruction in elementary and secondary schools. The inventory plan, including funding recommendations, shall be submitted to the legislative education study committee by October 1, 2004.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 1 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 1 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of these articles, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-1-2. Definitions.**

As used in the Public School Code:

- A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement;
- B. "commission" means the public education commission;
- C. "department" means the public education department;
- D. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;
- E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;
- F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;
- G. "licensed school employee" means teachers, school administrators and instructional support providers;

- H. "local school board" means the policy-setting body of a school district;
- I. "local superintendent" means the chief executive officer of a school district;
- J. "parent" includes a guardian or other person having custody and control of a school-age person;
- K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;
- L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;
- M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;
- N. "school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;
- O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution;
- P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;
- Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;
- R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;
- S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public education;

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, Las Vegas medical center and any other state agency responsible for educating resident children;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

AA. "certified school instructor" means a teacher or instructional support provider; and

BB. "certified school employee" or "certified school personnel" means a licensed school employee.

History: 1978 Comp., § 22-1-2, enacted by Laws 2003, ch. 153, § 3; 2004, ch. 27, § 13; 2005, ch. 313, § 3 and Laws 2005, ch. 315, § 1.

## ANNOTATIONS

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to change state board to department; deleted the definition of "commercial advertiser" in Subsection B and substituted in its place a definition of "commission, amended Subsection C to change state department of public education to public education department, deleted "librarian" from the definition of "instructional support provider" in Subsection F, inserted new Subsection V for the definition of "secretary" and redesignated Subsections V to CC as Subsections W to BB.

**2005 amendments.** — **Laws 2005, ch. 315, § 1**, effective April 7, 2005, changes the statutory reference in Subsection O from Section 22-8-2 NMSA 1978 to Section 22-8-21 NMSA 1978; changes the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired in Subsection W; and provides in Subsection Z that a teacher is a persons whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers.

Pursuant to 12-1-8 NMSA 1978, this section is set out as amended by Laws 2005, ch. 315, § 1.

**Laws 2005, ch. 313, § 3**, effective June 17, 2005, also amends 22-1-2 NMSA 1978 to change the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired, change the name of the New Mexico girls' welfare home to the New Mexico girls' school and change the name of the Las Vegas medical center to the New Mexico behavioral health institute at Las Vegas in Subsection W. As amended by Laws 2005, Subsection W of Chapter 313, § 3 provides:

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, New Mexico girls' school, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

**Compiler's notes.** — The July 1, 2004 repeal of the section was repealed by Laws 2004, ch. 27, § 29 before the repeal could take effect.

### **22-1-2.1. Home school; requirements.**

Any person operating or intending to operate a home school shall:

A. within thirty days of its establishment, notify the state superintendent of the establishment of a home school within thirty days of its establishment and notify the state superintendent in writing on or before April 1 of each subsequent year of operation of the school district from which the home school is drawing students;

B. maintain records of student disease immunization or a waiver of that requirement; and

C. provide instruction by a person possessing at least a high school diploma or its equivalent.

History: 1978 Comp., § 22-1-2.1, enacted by Laws 1985, ch. 21, § 2; 1993, ch. 62, § 2; 1993, ch. 226, § 1; 2001, ch. 62, § 1.



## ANNOTATIONS

**1993 amendments.** — Laws 1993, ch. 62, § 2, effective June 18, 1993, which substituted "high school diploma or its equivalent; and" for "baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest" at the end of Subsection C, was approved March 19, 1993. However Laws 1993, ch. 226, § 1, effective July 1, 1993, also amending this section by rewriting Subsection C, which formerly read "provide instruction by a person possessing at least a baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest", and inserting "and" at the end of Subsection C, but not giving effect to the changes made by the first 1993 amendment was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 1. See 12-1-8 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, in Subsection A, inserted "within thirty days of its establishment" at the beginning of the section, inserted "state" preceding both instances of "superintendent", deleted "of schools of the school district in which the person is a resident" preceding "of the establishment of a home school", inserted "in writing" following the second instance of "superintendent", inserted "of the school district from which the home school is drawing students" at the end of the subsection; in Subsection B, deleted the requirement to maintain records of student attendance, deleted the requirement that records be given to the superintendent, and inserted "or a waiver of that requirement"; and deleted Subsection D, concerning achievement test requirements.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 1 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 1 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of these articles, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-1-3. Definitions; public schools; classifications.**

As used in the Public School Code [Chapter 22 NMSA 1978]:

A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades kindergarten through six;

B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades seven through twelve;

C. "junior high school" means a public school providing a junior high school program approved by the state board for grades seven through nine, or for grades seven and eight; and

D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

History: 1953 Comp., § 77-1-3, enacted by Laws 1967, ch. 16, § 3; 1977, ch. 2, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 1 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 1 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of these articles, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

#### **22-1-4. Free public schools; exceptions; withdrawing and enrolling; open enrollment.**

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. Any person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978], may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district and within the attendance area of a public school;

(b) second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action;

(c) third, students who previously attended the public school; and

(d) fourth, all other applicants;

(4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the third and fourth priorities of enrollment set forth in Subparagraphs (c) and (d) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

- (1) after-school child care for students;
- (2) child care for siblings of students attending the public school;
- (3) children of employees employed at the public school;
- (4) extreme hardship;
- (5) location of a student's previous school;
- (6) siblings of students already attending the public school; and
- (7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second through fourth priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll.

History: 1953 Comp., § 77-1-4, enacted by Laws 1975, ch. 338, § 1; 1978, ch. 211, § 7; 1979, ch. 16, § 1; 1997, ch. 127, § 2; 1998, ch. 62, § 1; 2000, ch. 15, § 1; 2000, ch. 82, § 1; 2001, ch. 239, § 1; 2001, ch. 244, § 1; 2003, ch. 153, § 4.

## ANNOTATIONS

**Cross references.** — For constitutional provision relating to uniform system of free public schools, see N.M. Const., art. XII, § 1.

As to compulsory school attendance, see N.M. Const., art. XII, § 5 and 22-12-1 NMSA 1978 et seq.

**The 1997 amendment** added the second sentence in Subsection D. Laws 1997, ch. 127 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**The 1998 amendment** added "open enrollment" to the end of the section heading; substituted "pursuant to provisions of" for "under" preceding "Subsection A" in Subsections B and C; in Subsection D, substituted "In adopting and promulgating regulations" for "Local school boards shall promulgate regulations concerning the enrollment and re-enrollment of all persons in adopting and promulgating discriminatory regulations"; and added Subsection E. Laws 1998, ch. 62, contains no effective date

provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature.

**2000 amendments.** — Laws 2000, ch. 15, § 1, effective March 6, 2000, substituting "rules" for "regulations" in Subsections D, E and F, adding "school" preceding "district" throughout Subsections E and F, and adding a Subsection E(5) relating to denial of enrollment at a public school, was approved March 6, 2000. However, Laws 2000, ch. 82, § 1, effective March 7, 2000, making the provisions of this act applicable to only non-charter, public schools and not giving effect to the changes by Laws 2000, ch. 15, was approved March 7, 2000. This section is set out as amended by Laws 2000, ch. 82, § 1. See 12-1-8 NMSA 1978.

**2001 amendments.** — Laws 2001, ch. 244, § 1, effective June 15, 2001, inserting "school" preceding "district" throughout the section; adding Paragraph E(5) and Subsection F, renumbering the remaining Subsections accordingly; in Subsection G, substituting "Subsections E and F" for "Subsection E" and inserting "public" preceding "school" in the second sentence, was approved April 4, 2001. However, this section was also amended by Laws 2001, ch. 239, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

"B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

"C. Any person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978], may withdraw from a public school at any time.

"D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide and school district testing programs as determined by the state superintendent or both.

"E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

"(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

"(2) for each public school, definition of the boundaries of areas outside the school district or private school boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as 'walk zones';

"(3) priorities for enrollment of students as follows:

"(a) first, persons residing within the school district and within the attendance area of a public school;

"(b) second, persons who previously attended the public school; and

"(c) third, all other applicants;

"(4) establishment of maximum allowable class size if smaller than that permitted by law; and

"(5) rules pertaining to grounds for denial of enrollment or re-enrollment at public schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

"(a) a student's expulsion from any school district in this state or any other state during the preceding twelve months; or

"(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school personnel.

"F. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsection E of this section. If the maximum would be exceeded by enrollment of an applicant in the second or third priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll."

Because Laws 2001, ch. 239 was approved earlier on April 4, 2001, this section is set out as amended by Laws 2001, ch. 244, § 1. See 12-1-8 NMSA 1978.

**The 2003 amendment**, effective April 4, 2003, substituted "assessment and accountability system" for "and local school district testing programs as determined by

the state superintendent or both" at the end of Subsection D; substituted "students" for "persons" following "first," near the beginning of Subsection E(3)(a); rewrote former Subsections E(3)(b) and E(3)(c) to create present Subsections E(3)(b), E(3)(c) and E(3)(d); in Subsection F deleted "second and" preceding "third" near the middle, inserted "and fourth" following "third" near the middle, deleted "(b) and" following "Subparagraphs" near the end and inserted "and (d)" following "(c)" near the end; and in Subsection G substituted "first- and second-priority" for "first-priority" near the beginning and substituted "through fourth" for "or third" following "in the second" near the middle.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 1 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 1 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of these articles, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-1-5. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1986, ch. 33, § 10 recompiles 22-1-5 NMSA 1978, relating to school employees, reporting drug and alcohol use, and release from liability, as 22-5-4.4 NMSA 1978, effective May 21, 1986.

## **22-1-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-1-6 NMSA 1978, as amended by Laws 2001, ch. 313, § 1, relating to requirements of annual school district accountability report, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-1-6.1. Repealed.**

History: Laws 2003, ch. 18, § 1; repealed Laws 2004, ch. 27, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-1-6.1 NMSA 1978, relating to high school graduation rates, effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section effective July 1, 2004, however, that section was repealed by Laws 2004, ch. 27, § 29 prior to Laws 2003, ch. 143, § 2 taking effect. For provisions of former section, see the 2003 Replacement Pamphlet.

## **22-1-7. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 54 recompiles and amends 22-1-7 NMSA 1978, relating to filing of reports concerning acts of violence upon school administrators, teachers or other employees or vandalism to public school property, as 22-10A-33 NMSA 1978, effective April 4, 2003.

## **22-1-8. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-1-8 NMSA 1978, as 22-21-2 NMSA 1978, effective April 4, 2003.

## **ARTICLE 2**

### **State Department and Commission**

#### **22-2-1. Secretary and department; general powers.**

A. The secretary is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The department may:

(1) adopt, promulgate and enforce rules to exercise its authority and the authority of the secretary;

(2) enter into contracts to carry out its duties;

(3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code or rules promulgated pursuant to the Public School Code; and

(4) waive provisions of the Public School Code as authorized by law.

History: 1978 Comp., § 22-2-1, enacted by Laws 1990 (1st S.S.), ch. 9, § 10; 1992, ch. 77, § 1; 1993, ch. 226, § 2; 2003, ch. 143, § 2; 2004, ch. 27, § 14.

### **ANNOTATIONS**

**Cross references.** — For constitutional provision relating to state board of education, see N.M. Const., art. XII, § 6.



**Repeals and reenactments.** — Laws 1990 (1st S.S.), ch. 9, § 10 repeals former 22-2-1 NMSA 1978, as amended by Laws 1990, ch. 52, § 1, and enacts the above section, effective June 18, 1990. For provisions of former section, see 1990 Session Laws.

**The 1992 amendment,** effective May 20, 1992, inserted "or the purchase of instructional materials" in the first sentence of Subsection D and near the middle of Subsection E; and made minor stylistic changes throughout the section.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection D, pertaining to approval by the state board of a local school board's request to waive provisions of the Public School Code relating to length of school day, staffing patterns, subject areas or the purchase of instructional materials; redesignated former Subsection E as Subsection D; and rewrote present Subsection D, which formerly authorized the state board to waive provisions of the Public School Code relating to staffing patterns, class and teaching leads, subject areas, curriculum, testing, instructional time or the purchase of instructional materials.

**The 2004 amendments,** effective May 19, 2004, amended Subsection A to change "state board" to "secretary", amended Subsection B to change "state board" to "department", added a new Subparagraph (2) providing for the power of the enter into contracts and redesignated former Subsection C and D as Paragraph (3) and (4) Subsection B.

**Legislative power as to duties of state board.** — The authority granted the state board for the "control, management and direction of all public schools" under N.M. Const., art. XII, § 6 must be specifically defined by the legislature. And, if the state board's constitutional authority is so limited, then it would necessarily follow that the legislature may also divest the state board of duties previously defined. As the courts have construed it, N.M. Const., art. XII, § 6 does not, in itself, vest the state board with any particular duties and the legislature is empowered to determine the scope of the board's authority. 1977 Op. Att'y Gen. No. 77-6.

**State board has powers implied from statute.** — The authority of the state board in the rule- or regulation-making context is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom. *Redman v. Board of Regents*, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

## **22-2-2. Department; general duties.**

The department shall:

- A. properly and uniformly enforce the provisions of the Public School Code;
- B. determine policy for the operation of all public schools and vocational education programs in the state, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;
- C. supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards, and, until such time as requirements of law, standards or rules have been met and compliance is ensured, the powers and duties of the local school board and local superintendent shall be suspended;
- D. prescribe courses of instruction to be taught in all public schools in the state, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than the New Mexico military institute;
- E. provide technical assistance to local school boards and school districts;
- F. assess and evaluate public schools for accreditation purposes to determine the adequacy of student gain in standards-required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;
- G. assess and evaluate all state institutions and those private schools that desire state accreditation;
- H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the department may order that a student attend a public school or a private school;
- I. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;
- J. determine the qualifications for and issue licenses to teachers, instructional support providers and school administrators according to law and according to a system of classification adopted and promulgated by rules of the department;
- K. deny, suspend or revoke a license according to law for incompetency, moral turpitude or any other good and just cause;

L. approve or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with any rule promulgated by the department. The department shall require an association or organization attempting to regulate a public school activity to comply with the provisions of the Open Meetings Act and be subject to the inspection provisions of the Public Records Act. The department may require performance and financial audits of an association or organization attempting to regulate a public school activity. The department shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;

M. review decisions made by the governing board or officials of an organization or association regulating a public school activity, and any decision of the department shall be final in respect thereto;

N. require a public school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and for facilitating regulation and evaluation of school programs;

P. approve education curricula and programs offered in all two-year public post-secondary educational institutions, except those in Chapter 21, Article 12 NMSA 1978, that lead to alternative licenses for degreed persons pursuant to Section 22-10A-8 NMSA 1978 or licensure for educational assistants;

Q. withhold program approval from a college of education or teacher preparation program that fails to offer a course on teaching reading that:

(1) is based upon current scientifically based reading research;

(2) aligns with department-adopted reading standards;

(3) includes strategies and assessment measures to ensure that beginning teachers are proficient in teaching reading; and

(4) was designed after seeking input from experts in the education field;

R. annually, prior to December 1, prepare and publish a report on public and private education in the state and distribute the report to the governor and the legislature;

S. solicit input from local school boards and school districts in the formulation and implementation of department rules; and

T. report to the legislature or any of its committees as requested and report findings of any educational research study made with public money to the legislature through its appropriate interim or standing committees.

History: 1953 Comp., § 77-2-2, enacted by Laws 1967, ch. 16, § 5; 1969, ch. 180, § 2; 1971, ch. 263, § 2; 1975, ch. 332, § 2; 1978, ch. 211, § 8; 1979, ch. 51, § 1; 1984, ch. 39, § 1; 1985, ch. 21, § 3; 1987, ch. 77, § 1; 1993, ch. 226, § 3; 1996, ch. 65, § 1; 1997, ch. 19, § 1; 1999, ch. 279, § 1; 2000, ch. 74, § 1; 2001, ch. 286, § 1; 2001, ch. 299, § 5; 2003, ch. 143, § 2; 2003, ch. 153, § 5; 2003, ch. 394, § 2; 2004, ch. 27, § 15.

### ANNOTATIONS

**Cross references.** — As to power to create and consolidate school districts, see 22-4-2 and 22-4-3 NMSA 1978.

As to duties with respect to federal aid, see 22-9-1 NMSA 1978 et seq.

As to duty to administer federal grants in aid of education, see 22-9-7 to 22-9-16 NMSA 1978.

As to power to prescribe subjects taught in public schools generally, see 22-13-1 NMSA 1978.

As to duty to regulate establishment of part-time schools, see 22-13-9 NMSA 1978.

As to duties with respect to Instructional Material Law, see 22-15-1 NMSA 1978 et seq.

As to approval of buildings erected near highways, see 22-20-2 NMSA 1978.

As to duties pertaining to Variable School Calendar Act, see 22-22-1 NMSA 1978 et seq.

As to duties pertaining to education and testing with respect to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, added the language beginning "and adopt regulations" at the end of Subsection D; inserted "all state institutions and" in Subsection F; deleted "under the authority of the secretary of health and environment" at the end of Subsection J; inserted "or disapprove" near the beginning and inserted the present second sentence of Subsection R; deleted "public" following "department of" in Subsection V; and made minor stylistic changes throughout the section.

**The 1996 amendment**, added "other than New Mexico military institute" at the end of Subsection J. Laws 1996, ch. 65 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

**The 1997 amendment**, substituted "adopt and promulgate regulations" for "promulgate and publish regulations" in Subsection M and added the second sentence in Subsection R. Laws 1997, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**The 1999 amendment**, effective June 18, 1999, substituted references to "rule" or "rules" for "regulation" or "regulations" throughout the section, and added Subsection AA.

**The 2000 amendment**, effective July 1, 2000, added "including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department" at the end of Subsection B.

**2001 amendments.** — Laws 2001, ch. 299, § 5, effective June 15, 2001, adding Subsections BB and CC, was approved April 5, 2001. However, this section was also amended by Laws 2001, ch. 286, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

"A. properly and uniformly enforce the provisions of the Public School Code;

"B. determine policy for the operation of all public schools and vocational education programs in the state, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;

"C. appoint a state superintendent;

"D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt rules relating to the use and operation of instructional material depositories in the instructional material distribution process;

"E. designate courses of instruction to be taught in all public schools in the state;

"F. assess and evaluate all state institutions and those private schools that desire state accreditation;

"G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;

"H. suspend or revoke a certificate held by a certified school instructor or certified school administrator according to law for incompetency, immorality or any other good and just cause;

"I. make full and complete reports on consolidation of school districts to the legislature;

"J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than the New Mexico military institute;

"K. adopt rules for the administration of all public schools and bylaws for its own administration;

"L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

"M. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate rules governing all such adult educational programs;

"N. require any school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

"O. require all accrediting agencies for public schools in the state to act with its approval;

"P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

"Q. require prior approval for an educational program in a public school that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

"R. approve or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with a rule promulgated by the state board. The state board shall require an association or organization attempting to regulate a public school activity to comply with the provisions of the Open Meetings Act and be subject to the inspection of the Public Records Act.

The state board may require performance and financial audits of an association or organization attempting to regulate a public school activity. The state board shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;

"S. review decisions made by the governing board or officials of an organization or association regulating a public school activity, and a decision of the state board shall be final in respect thereto;

"T. accept or reject a charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the state;

"U. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and to facilitate regulation and evaluation of school programs;

"V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of student gain in standard required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

"W. provide for management and other necessary personnel to operate a public school or school district that has failed to meet requirements of law, state board standards or state board rules; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local school board. Until such time as requirements of law, standards or rules have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

"X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods; provided, however, that no plan shall require mandatory attendance by any member of a local school board;

"Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan;

"Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board has authority to order that a student attend a public school or a private school;

"AA. develop a systemic framework for professional development that provides training to ensure quality teachers and principals and that improves and enhances student achievement. The state board shall work with public school educators, the commission

on higher education and institutions of higher education to establish the framework. The framework shall include:

"(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department of education in approving local school district professional development plans; and

"(2) guidelines for developing extensive professional development activities for school districts, including teaching strategies, curriculum materials, distance learning networks and web sites to ensure that the state board's rules pertaining to content standards and benchmarks are used by New Mexico teachers;

"BB. withhold program approval from a college of education or teacher preparation program that fails to offer a teaching of reading course that is based on the most current research, is aligned to the state board's reading standards and includes the necessary strategies and assessment measures to ensure that all beginning teachers are proficient in the teaching of reading; and

"CC. withhold program approval from a college of education or teacher preparation program that fails to seek input in designing teaching of reading courses from experts in the field."

Because Laws 2001, ch. 286 was approved earlier on April 5, 2001, this section is set out as amended by Laws 2001, ch. 299, § 5. See 12-1-8 NMSA 1978.

**2003 amendments.** — Laws 2003, ch. 394, § 2 and Laws 2003, ch. 153, § 5 enact identical amendments to Section 22-2-2 amending:

Subsection G to delete "a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools" and insert the language set forth in Subsection G in its place;

Subsection H to add "deny", delete "certificate held by a certified school instructor or certified school administrator" and insert "licenses to teachers, instructional support providers and school administrators" and to change "immorality" to "moral turpitude";

Delete Subsection M and redesignate the succeeding subsections accordingly;

Split former Subsection X into two subsections and delete "provided, however, that no plan shall require mandatory attendance by any member of a local school board";

Amend former Subsection AA (present Subsection Z) to delete "public school educators" and insert "school employees" in its place; to delete from paragraph (2) "including an evaluation component that will be used by the department of education in



approving local school district professional development plans; and" and insert in lieu thereof new subparagraphs (a) through (e);

Amend former Subsection CC, present BB, to add "scientifically based reading"; and

Make other minor grammar changes throughout the section.

This section is amended as set out in Chapter 394, Section 2. See Section 12-1-8 NMSA 1978.

**2004 repeal and reenactment.** — This section was repealed and reenacted effective May 19, 2004. Pursuant to Section 12-2A-14 NMSA 1978, it has been considered as an amendment rather than as a repeal. The 2004 amendments changed "state board" to "department" in the introductory language, added a new Subsection C, deleted former Subsection D, revised substantially former Subsection E and redesignated it as Subsection D, added a new Subsection E. Subsection F is former Subsection U, Subsection G is former Subsection F, Subsection H is former Subsection Y, Subsection I is former Subsection L, Subsection J is former Subsection C, Subsection K is former Subsection H, Subsection L is a new subsection, Subsection M is former Subsection R, Subsection N is former Subsection M, Subsection Q is former Subsection BB, Subsections R, S and T are new Subsections.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Section 22-2-2 NMSA 1978 effective July 1, 2004. The repeal of Section 22-2-2 was contingent upon the adoption an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the July 1, 2004 repeal of Section 22-2-2 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**And decision will be upheld unless unreasonable.** — Deciding whether or not an administrator is fit to perform his duties is a question of policy, and the appellate court will not alter the state board's decision unless the court is convinced it is unreasonable, not supported by substantial evidence or not in accordance with law. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statute or other regulations as to the use, or teaching, of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Extent of legislative power with respect to curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Validity of state regulation of curriculum and instruction in private and parochial schools, 18 A.L.R.4th 649.

Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities, 85 A.L.R.4th 344.

78 C.J.S. Schools and School Districts § 81 et seq.

### **22-2-2.1. Additional department duties; waiver of certain requirements.**

A. The department shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the department:

(1) accreditation review requirements as provided in Section 22-2-2 NMSA 1978;

(2) the length of the school day requirement as provided in Section 22-2-8.1 NMSA 1978;

(3) the individual class load requirement as provided in Section 22-10A-20 NMSA 1978;

(4) the subject area requirement as provided in Section 22-13-1 NMSA 1978; and

(5) purchase of instructional material from the department-approved multiple list requirement as provided in Section 22-15-8 NMSA 1978.

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the department may waive:

- (1) the graduation requirement as provided in Section 22-13-1.1 NMSA 1978;
- (2) evaluation standards for school personnel; and
- (3) other requirements of the Public School Code that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

C. Waivers granted pursuant to this section shall begin in the school year following that in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

D. The department shall only waive requirements that do not conflict with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act.

History: Laws 2003, ch. 104, § 1; 2003, ch. 143, § 2; 2004, ch. 27, § 16.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 104 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**The 2004 amendments,** effective May 19, 2004, amended Subsection A to change "state board" to "department", amended Paragraphs (3) and (4) of Subsection A to change statutory references, amendment Paragraph (5) of Subsection A to change state board approved to department approved, amended Paragraph (1) of Subsection B to change the statutory reference and amended Subsection D to change state board to department.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The federal No Child Left Behind Act of 2001,** P.L. 107-110, is codified throughout Title 20 of the United States Code.

Section 22-2-8.2 NMSA 1978 referred to in Paragraph A(3) was recompiled by Laws 2003, ch. 153, § 51 as 22-10A-20 NMSA 1978, effective April 4, 2003.

Section 22-2-8.3 NMSA 1978 referred to in Paragraph A(4) was repealed by Laws 2003, ch. 153, § 73, effective April 4, 2003. For present comparable provisions, see 22-13-1 NMSA 1978.

Section 22-2-8.4 NMSA 1978 referred to in Paragraph B(1) was recompiled by Laws 2003, ch. 153, § 58 as 22-13-1.1 NMSA 1978, effective April 4, 2003.

### **22-2-2.2. Commission; duties.**

A. The commission shall work with the department to develop the five-year strategic plan for public elementary and secondary education in the state. The strategic plan shall be updated at least biennially. The commission shall solicit the input of persons who have an interest in public school policy, including local school boards, school districts and school employees; home schooling associations; parent-teacher associations; educational organizations; the commission on higher education; colleges, universities and vocational schools; state agencies responsible for educating resident children; juvenile justice agencies; work force development providers; and business organizations.

B. In addition to the duty provided in Subsection A of this section, the commission shall:

(1) solicit input from local school boards, school districts and the public on policy and governance issues and report its findings and recommendations to the secretary and the legislature; and

(2) recommend to the secretary conduct and process guidelines and training curricula for local school boards.

History: Laws 2004, ch. 27, § 17.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **22-2-3. Repealed.**

History: 1953 Comp., § 77-2-3, enacted by Laws 1967, ch. 16, § 6; repealed Laws 2004, ch. 27, § 29.

### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-2-3 NMSA 1978, relating to compensation, effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section effective July 1, 2004; however, that section was repealed by Laws 2004, ch. 27, § 29 prior to Laws 2003, ch. 143, § 2 taking effect. For provisions of former section, see the 2003 Replacement Pamphlet.

#### **22-2-4. Repealed.**

History: 1953 Comp., § 77-2-4, enacted by Laws 1967, ch. 16, § 7; 1969, ch. 4, § 1; repealed Laws 2004, ch. 27, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-2-4 NMSA 1978, relating to officers and meetings, effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section effective July 1, 2004; however, that section was repealed by Laws 2004, ch. 27, § 29 prior to Laws 2003, ch. 143, § 2 taking effect. For provisions of former section, see the 2003 Replacement Pamphlet.

#### **22-2-5. Repealed.**

History: 1953 Comp., § 77-2-5, enacted by Laws 1967, ch. 16, § 8; repealed Laws 2004, ch. 27, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-2-5 NMSA 1978, relating to delegation of administrative functions, effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section effective July 1, 2004; however, that section was repealed by Laws 2004, ch. 27, § 29 prior to Laws 2003, ch. 143, § 2 taking effect. For provisions of former section, see the 2003 Replacement Pamphlet.

#### **22-2-6. Repealed.**

History: 1953 Comp., § 77-2-6, enacted by Laws 1967, ch. 16, § 9; 1978, ch. 211, § 9; 2003, ch. 153, § 6; repealed Laws 2004, ch. 27, § 29.

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-2-6 NMSA 1978, relating to department duties, effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section effective July 1, 2004; however, that section was repealed by Laws 2004, ch. 27, § 29 prior to Laws 2003, ch. 143, § 2 taking effect. For provisions of former section, see the 2003 Replacement Pamphlet.

### **22-2-6.1. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.1 NMSA 1978 as 22-29-1 NMSA 1978, effective April 4, 2003.

### **22-2-6.2. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.2 NMSA 1978 as 22-29-2 NMSA 1978, effective April 4, 2003.

### **22-2-6.3. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.3 NMSA 1978 as 22-29-3 NMSA 1978, effective April 4, 2003.

### **22-2-6.4. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.4 NMSA 1978 as 22-29-4 NMSA 1978, effective April 4, 2003.

### **22-2-6.5. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.5 NMSA 1978 as 22-29-5 NMSA 1978, effective April 4, 2003.

### **22-2-6.6. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.6 NMSA 1978 as 22-29-6 NMSA 1978, effective April 4, 2003.

### **22-2-6.7. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-2-6.7 NMSA 1978, as 22-29-7 NMSA 1978, effective April 4, 2003.

### **22-2-6.8. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.8 NMSA 1978 as 22-29-8 NMSA 1978, effective April 4, 2003.

### **22-2-6.9. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.9 NMSA 1978 as 22-29-9 NMSA 1978, effective April 4, 2003.

### **22-2-6.10. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.10 NMSA 1978 as 22-29-10 NMSA 1978, effective April 4, 2003.

### **22-2-6.11. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 60 recompiles and amends 22-2-6.11 NMSA 1978, relating to the design and implementation of a statewide reading initiative, as 22-13-1.3 NMSA 1978, effective April 4, 2003.

### **22-2-6.12. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 30 recompiles and amends 22-8-6.12 NMSA 1978, relating to the creation of the public school reading proficiency fund, as 22-8-43 NMSA 1978, effective April 4, 2003.

### **22-2-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-2-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 10, relating to surety bonds for state superintendent and designated employees of the department of education, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-2-8. School standards.**

The state board shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

- A. curriculum, including academic content and performance standards;
- B. organization and administration of education;
- C. the keeping of records, including financial records prescribed by the department;
- D. membership accounting;
- E. teacher preparation;
- F. the physical condition of public school buildings and grounds; and
- G. educational facilities of public schools, including laboratories and libraries.

History: 1953 Comp., § 77-2-8, enacted by Laws 1967, ch. 16, § 11; 2003, ch. 143, § 2; 2003, ch. 153, § 7.

### **ANNOTATIONS**

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**The 2003 amendment**, effective April 4, 2003, substituted "School" for "Educational" at the beginning of the section heading; inserted "local superintendent and school principal" following "local school board" near the middle of the first paragraph; added "including academic content and performance standards" at the end of Subsection A; and in Subsection C substituted "including" for "other than" near the middle and substituted "department" for "chief" at the end.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the



constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**School board may allocate attendance within district.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

### **22-2-8.1. Length of school day; minimum.**

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The state superintendent may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board.

History: 1978 Comp., § 22-2-8.1, enacted by Laws 1986, ch. 33, § 2; 1993, ch. 226, § 4; 2000, ch. 107, § 1; 2003, ch. 72, § 1.

### **ANNOTATIONS**

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

As to full-time kindergarten, see 22-13-3.2 NMSA 1978.

As to student achievement, see 22-2C-1 NMSA et seq.

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection D, which read "The provisions of this section shall be effective with the 1987-88 school year" and made minor stylistic changes in Subsection A.

**The 2000 amendment**, effective May 17, 2000, rewrote Subsection A(1) which read "Kindergarten, two and one-half hours per day or four hundred and fifty hours per year."

**The 2003 amendment**, effective June 20, 2003 added "Except as otherwise provided in this section," at the beginning of Subsection A; and added present Subsection B and redesignated the subsequent paragraphs accordingly.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-2-8.2. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 51 recompiles and amends 22-2-8.2 NMSA 1978, relating to staffing patterns, class and teaching loads, as 22-10A-20 NMSA 1978, effective April 4, 2003.

## **22-2-8.3. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-2-8.3 NMSA 1978, as amended by Laws 1997, ch. 234, § 1, relating to subject and minimum instructional areas requirements and accreditation, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet. For present comparable provisions, see 22-13-1 NMSA 1978.

## **22-2-8.4. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 58 recompiles and amends 22-2-8.4 NMSA 1978, relating to graduation requirements, as 22-13-1.1 NMSA 1978, effective April 4, 2003.

## **22-2-8.5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-2-8.5 NMSA 1978, as amended by Laws 2001, ch. 331, § 1, relating to additional statewide testing by adding reading assessments and writing production tests, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-2-8.6. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 15 recompiles and amends 22-2-8.6 NMSA 1978, relating to educational content standards remediation programs, promotion policies and restrictions, as 22-2C-6 NMSA 1978, effective April 4, 2003.

## **22-2-8.7. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 37 recompiles and amends 22-2-8.7 NMSA 1978, relating to certification requirements for elementary and secondary education, as 22-10A-6 NMSA 1978, effective April 4, 2003.

## **22-2-8.8. General educational development certificates**

The department of education shall issue a general educational development certificate to any candidate who is at least sixteen years of age and who has successfully completed the general educational development tests.

History: Laws 1999, ch. 193, § 1.

### **ANNOTATIONS**

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-2-8.9, 22-2-8.10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-2-8.9 NMSA 1978, as enacted by Laws 2001, ch. 165, § 1, relating to reading enhancement for public school students not reading at grade level, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-2-8.10 NMSA 1978, as enacted by Laws 2002, ch. 287, § 1, relating to the statewide mentorship program for certain beginning teachers, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-2-8.11. High school curricula and end-of-course tests; alignment.**

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

History: Laws 2003, ch. 37, § 1.

### **ANNOTATIONS**

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**Duplicate laws.** Laws 2003 ch. 37, § 1, and Laws 2003, ch. 71, § 1 enact identical new sections of the law, effective on June 20, 2003. Both have been compiled as 22-2-8.11 NMSA 1978.

## **22-2-8.12. Repealed.**

History: 2003, ch. 159, § 1; repealed Laws 2004, ch. 29, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 159, § 2 makes the act effective on July 1, 2003.

**Repeals.** — Laws 2004, ch. 27, § 29 repeals Section 22-2-8.12 NMSA 1978, being Laws 2003, ch. 159, § 1 effective July 1, 2004.

## **22-2-9. United States [and New Mexico] flag[s]; display regulations.**

The flag of the United States and the flag of the State of New Mexico shall be displayed in each classroom and on or within all public school buildings of this state according to the regulations adopted by the state board.

History: 1953 Comp., § 77-2-9, enacted by Laws 1967, ch. 16, § 12; 1979, ch. 18, § 1; 1989, ch. 37, § 1.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, inserted "and the flag of the State of New Mexico" and substituted "in each classroom and on or within all" for "on or within".

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Law reviews.** — For comment, "Official Symbols: Use and Abuse," see 1 N.M. L. Rev. 352 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Patriotic ritual, such as oath of allegiance or salute the flag, power to require performance of, by pupils, 110 A.L.R. 383, 120 A.L.R. 655, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.

## **22-2-10. Educational research reports.**

The findings of any educational research study made with public money shall be reported to the legislature or any of its committees upon request of the legislature or any of its committees. The legislature or any of its committees may require quarterly or more frequent progress reports concerning any such research.

History: 1953 Comp., § 77-2-10, enacted by Laws 1967, ch. 16, § 13.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1,

2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-2-11 to 22-2-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 151, § 9 repeals 22-2-11 to 22-2-13 NMSA 1978, relating to creation of Indian education division, appointment of division head, and duties and responsibilities. For provisions of former sections, see 2001 Replacement Pamphlet.

## **22-2-14. Local school boards; public schools; suspension; procedures.**

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The department shall disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the department to meet requirements and remove the cause for disapproval.

C. The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The department shall act in lieu of the suspended local school board, local superintendent or school principal until the department removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the secretary shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the department, at which the local school board, local superintendent or school principal may appear and

show cause why the suspension should not be put into effect. Within five days after the hearing, the secretary shall make permanent, modify or withdraw the alternative order.

E. The secretary may suspend a local school board, local superintendent or school principal when the local school board, local superintendent or school principal has been notified of disapproval and when the department has sufficient reason to believe that the educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

F. The department, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the secretary, after consultation with the commission, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules.

H. The commission shall consult with the secretary and may recommend alternative actions for the secretary's consideration.

I. A local school board, local superintendent or school principal aggrieved by a decision of the secretary may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 77-6-10, enacted by Laws 1967, ch. 16, § 64; 1969, ch. 180, § 7; 1972, ch. 89, § 1; reenacted by 1978, ch. 129, § 1; 1979, ch. 52, § 1; 1988, ch. 64, § 12; 2003, ch. 153, § 8; 2004, ch. 27, § 18.

## ANNOTATIONS

**Cross references.** — As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

**The 1988 amendment**, effective May 18, 1988, deleted former Subsection C which read "A copy of all disapproval notices shall be sent to the director" and redesignated succeeding subsections accordingly; deleted "and director" following "state superintendent" in the second sentence in present Subsection C and in Subsection F; inserted "school" preceding "district" in present Subsection E; substituted "local school board" for "local board of education" in present Subsection F; and made minor stylistic changes throughout the section.

**The 2003 amendment**, effective April 4, 2003, substituted "Local school boards; public schools; suspension" for "Education requirements; enforcement" at the beginning of the catchline; in Subsection A substituted "rules" for "regulations" following "standards and"

near the beginning and inserted "local superintendent and school principal, as applicable" following "local school board" near the middle; inserted "local superintendent and school principal, as applicable" following "local school board" near the end of Subsection B; in Subsection C inserted "local superintendent or school principal" following "local school board" near the middle and inserted "local superintendent or school principal" following "local school board," near the end; in Subsection D inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle, and substituted "the suspension should not be put into effect" for "it should not be suspended" following "show cause why" near the end; in Subsection E inserted "local superintendent or school principal" following "local school board" once near the beginning and once near the middle, and inserted "or public school" following "school district" near the middle; in Subsection F inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle and at the end, and substituted "the local school" for "that" following "responsibilities of" near the end; and in Subsection G inserted "or public school" following "school district" near the middle and substituted "rules" for "regulations" at the end.

**The 2004 amendments**, effective May 19, 2004, amended Subsections B, C, D, E and F to change "state superintendent" and "state board" to "department" and added a new Subsection H.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, §3.

## **22-2-15. Repealed.**

History: 1953 Comp., § 77-6-10.1, enacted by Laws 1969, ch. 180, § 8; reenacted by 1978, ch. 129, § 2; 1999, ch. 265, § 32; 2003, ch. 153, § 9; repealed Laws 2004, ch. 27, § 29.

### **ANNOTATIONS**

**Repeals.** — Repealed by Laws 2004, ch. 29, § 29 effective May 19, 2004. Laws 2003, ch. 143, § 2 would have repealed this section, relating to suspension hearings, effective July 1, 2004; however, Laws 2003, ch. 143 was repealed prior to taking effect by Laws 2004, ch. 27, § 29.

## **22-2-16. Reports.**



The state superintendent shall report all actions taken under provisions of Sections 22-2-14 and 22-2-15 NMSA 1978 to the legislative school study committee. The state superintendent and director shall report all actions taken under provisions of Section 22-8-30 NMSA 1978 to the legislative school study committee.

History: 1953 Comp., § 77-6-10.2, enacted by Laws 1969, ch. 180, § 9; reenacted by 1978, ch. 129, § 3.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

#### **22-2-17, 22-2-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-2-17 NMSA 1978, as enacted by Laws 1993, ch. 168, § 1, relating to legislative findings that a high percentage of students continue to drop out of school prior to earning a high school diploma, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-2-18 NMSA 1978, as enacted by Laws 1993, ch. 168, § 2, relating to development of a program to provide alternative opportunities to at-risk students, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

#### **22-2-19. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-2-19 NMSA 1978, as 22-13-3.2 NMSA 1978, effective April 4, 2003.

#### **22-2-20. Kindergarten plus; pilot project; eligibility; application; reporting and evacuation [evaluation]; creating a fund.**

A. The "kindergarten plus" pilot project is created as a three-year study that extends the kindergarten year by four months for participating students and measures the effect of additional time on literacy, numeracy and social skills development. The purpose of

kindergarten plus is to demonstrate that increased time in kindergarten narrows the achievement gap between disadvantaged students and other students and increases cognitive skills and leads to higher test scores for all participants.

B. The pilot project shall be administered by the department of education and shall provide the funding for approved full-day kindergarten programs to be extended by forty instructional days, beginning approximately two months earlier and ending approximately two months later than other classes. For the first year, the pilot project shall begin July 1 and run two hundred twenty instructional days; in the second and third years, kindergarten plus may begin or end at any time that provides for the same number of instructional days.

C. Kindergarten plus shall be conducted in the Albuquerque, Gallup-McKinley, Gadsden and Las Cruces school districts. Full-day kindergarten programs in high-poverty public schools in those school districts are eligible to apply for kindergarten plus. For the purposes of kindergarten plus, "high-poverty school" means a public school in which eighty-five percent or more of the students are eligible for free or reduced lunch. If enough eligible high-poverty schools in those school districts do not qualify for the pilot project for the amount of funding available, the department of education may extend eligibility to high-poverty schools in other school districts.

D. The department of education shall determine application requirements and procedures and criteria for evaluating applications. An applicant must demonstrate that its kindergarten plus program will meet all state board standards and employ only qualified teachers and other staff. The department shall provide additional professional development for kindergarten plus teachers in how young children learn to read. Teachers shall be paid at the same rate and under the same terms for kindergarten plus as teachers are paid for regular full-day kindergarten programs.

E. Students participating in kindergarten plus shall be evaluated at the beginning of kindergarten plus and their progress in literacy, numeracy and cognitive and social skills shall be measured through standardized assessments in kindergarten and in first grade. The department of education shall provide additional professional development for kindergarten plus teachers in how young children learn to read.

F. The department of education shall establish reporting and evaluation requirements for participating schools, including student and program assessments. The department shall provide interim and final reports annually to the legislature and the governor on the efficacy of the pilot project.

G. In addition to legislative appropriations for the pilot project, the department of education shall seek public and private grants and donations. Grants and donations shall be deposited in the "kindergarten plus fund" created in the state treasury. Income from investment of the fund shall be deposited in the fund. The department shall administer the fund and money in the fund is appropriated to the department to carry out the purposes of the pilot project. Money shall be expended in accordance with the terms

of the grants and donations. Unless otherwise specified by the terms of a grant or donation, money in the fund at the end of the pilot project shall revert to the general fund. Expenditures from the fund shall be by warrants of the secretary of finance and administration drawn pursuant to vouchers signed by the state superintendent or his authorized representative.

History: Laws 2003, ch. 130, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 130, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Bracketed material.** — The bracketed material in the section heading was inserted by the compiler for clarity. It was not enacted by the legislature and it is not part of the law.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 2 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 2 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 2 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 2, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## ARTICLE 2A Tutor-Scholars Program

(Repealed by Laws 1991, ch. 126, § 9.)

### 22-2A-1 to 22-2A-8. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, see 1993 Replacement Pamphlet.

## ARTICLE 2B Regional Cooperative Education

### 22-2B-1. Short title.

Chapter 22, Article 2B NMSA 1978 may be cited as the "Regional Cooperative Education Act".

**History:** Laws 1993, ch. 232, § 1; 2001, ch. 293, § 3.

#### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, substituted "Chapter 22, Article 2B NMSA 1978" for "Sections 1 through 6 of this act".

### **22-2B-2. Definitions.**

As used in the Regional Cooperative Education Act [Chapter 22, Article 2B NMSA 1978]:

- A. "council" means a regional education coordinating council; and
- B. "cooperative" means a regional education cooperative.

**History:** Laws 1993, ch. 232, § 2; 2001, ch. 293, § 4.

#### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, deleted Subsection C which formerly read "'fund' means an educational cooperative fund".

### **22-2B-3. Regional education cooperatives authorized.**

A. The state board may authorize the existence and operation of "regional education cooperatives". Upon authorization by the state board, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department of education; provided that:

(1) pursuant to the rules of the state board, cooperatives may own, and have control and management over, buildings and land independent of the director of the property control division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department of education. The state board shall, by rule, determine the provisions of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the state board, the state superintendent may, after considering the factors specified in Section 22-8-38 NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the state superintendent, the money appropriated or to be distributed to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The state board shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The state board shall also establish procedures for oversight of cooperatives to ensure compliance with state board rule. Cooperatives shall be exempt from the provisions of the Personnel Act [10-9-1 NMSA 1978].

C. The state board, with full participation by the cooperatives, shall develop a statewide long-range plan for educational and technical assistance activities in public and charter schools served by the cooperatives. The state board and cooperatives shall report on the initial planning activities to the legislative finance committee, the legislative education study committee and the office of the governor by November 15, 2001 and shall provide annual reports thereafter.

**History:** Laws 1993, ch. 232, § 3; 2001, ch. 293, § 5.

#### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, in Subsection A, deleted "to qualified school-age residents of participating educational entities" from the end of the second sentence, added "provided that" at the end of the third sentence, and added Paragraphs (1) through (3); substituted "rule" for "regulation" twice in Subsection B; and added Subsection C.

#### **22-2B-4. Regional education coordinating councils created; membership.**

A. Subject to regulations adopted by the state board, each cooperative shall be governed by a regional education coordinating council.

B. Councils shall be composed of the superintendents or chief administrative officers of each local school district or state-supported educational institution participating in the cooperative.

C. Members of each council shall elect a chairman from its members. Meetings shall be held at the call of the chairman. A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business.

**History:** Laws 1993, ch. 232, § 4.

## **22-2B-5. Regional education coordinating councils; duties.**

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to all entities participating in the cooperative;
- (2) technical assistance and staff development opportunities to all entities participating in the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to all entities participating in the cooperative; or
- (4) such additional services to participating entities as may be determined by the council to be appropriate.

B. Pursuant to regulation of the state board, each council shall:

- (1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and
- (2) hire an executive director and necessary additional staff.

**History:** Laws 1993, ch. 232, § 5.

## **22-2B-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 293, § 7 repeals 22-2B-6 NMSA 1978, as enacted by Laws 1993, ch. 232, § 6, relating to the creation of educational cooperative funds, effective June 15, 2001. For provisions of former section, see 1998 Replacement Pamphlet.

## **ARTICLE 2C**

### **Assessment and Accountability**

#### **22-2C-1. Short title.**

Chapter 22, Article 2A [2C] NMSA 1978 may be cited as the "Assessment and Accountability Act".

**History:** 1978 Comp., § 22-2A-1, enacted by Laws 2003, ch. 153, § 10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler. It was not enacted by the legislature, and is not part of the law. Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

## **22-2C-2. Purposes.**

The purposes of the Assessment and Accountability Act [22-2C-1 NMSA 1978] are to comply with federal accountability requirements; to provide the means whereby parents, students, public schools and the public can assess the progress of students in learning and schools in teaching required academic content; and to institute a system in which public schools, school districts and the department are held accountable for ensuring student success.

**History:** 1978 Comp., § 22-2A-2, enacted by Laws 2003, ch. 153, § 11.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

## **22-2C-3. Academic content and performance standards; state board powers and duties.**

A. The state board shall adopt academic content and performance standards for grades one through twelve in the following areas:

- (1) mathematics;
- (2) reading and language arts;
- (3) science; and
- (4) social studies.

B. The state board may adopt content and performance standards in other subject areas.

C. Academic content and performance standards shall be sufficiently academically challenging to meet or exceed federal requirements.

D. The department shall measure the performance of every public school in New Mexico. Public schools achieving the greatest improvement in adequate yearly progress shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools that do not achieve adequate yearly progress.

**History:** 1978 Comp., § 22-2A-3, enacted by Laws 2003, ch. 153, § 12.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

### **22-2C-4. Statewide assessment and accountability system; indicators; required tests; alternative tests; limits on alternatives to English language reading test.**

A. The department shall establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards and that measures adequate yearly progress for each student, public school and school district. Adequate yearly progress shall be determined primarily by student academic achievement, as demonstrated by statewide standards-based academic performance tests; however, the department may include other indicators of adequate yearly progress, including graduation rates for high schools and attendance for elementary and middle schools.

B. The academic assessment program for adequate yearly progress shall test student achievement as follows by the school year indicated:

(1) for grades three through nine and for grade eleven, standards-based academic performance tests in mathematics, reading and language arts and social studies by the 2005-2006 school year; provided that testing in ninth grade and testing in social studies shall not occur until the legislature has provided funding for test development and implementation;

(2) for grades three through nine, standards-based academic performance writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced tests by the 2005-2006 school year; and

(3) for one of grades three through five and six through nine and for grade eleven, standards-based academic performance tests in science by the 2007-2008 school year.



C. The department shall involve appropriate licensed school employees in the development of the standards-based academic performance tests.

D. All students shall participate in the academic assessment program. The department shall adopt standards for reasonable accommodations in academic testing for students with disabilities and limited English proficiency, including when and how accommodations may be applied. The legislative education study committee shall review the standards prior to adoption by the department.

E. Students who have been determined to be limited English proficient may be allowed to take the standards-based academic performance test in their primary language. A student who has attended school for three consecutive years in the United States shall participate in the English language reading test unless granted a waiver by the department based on criteria established by the department. An English language reading test waiver may be granted only for a maximum of two additional years and only on a case-by-case basis.

History: 1978 Comp., § 22-2A-4, enacted by Laws 2003, ch. 153, § 13; 2004, ch. 31, § 1; 2005, ch. 315, § 2.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**The 2004 amendments**, effective May 19, 2004, revised Paragraph (3) of Subsection B to change the grades from "four, six, eight and eleven" to grades "three to nine" and to add after "writing" and before "tests", "assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced".

**The 2005 amendment**, effective April 7, 2005, deletes former Subsection B(1) which provided that the assessment program shall test achievement for grades kindergarten through two by diagnostic and standards based tests on reading that include phonemic awareness, phonics and comprehension by the 2003-2004 school year.

### **22-2C-5. Student achievement ratings; calculation of adequate yearly progress.**

The state board shall adopt the process and methodology for calculating adequate yearly progress. The statewide standards-based academic performance tests used to assess adequate yearly progress shall be valid and reliable and shall conform with

nationally recognized professional and technical standards. Academic performance shall be measured by school and by the following subgroups:

- A. ethnicity;
- B. race;
- C. limited English proficiency;
- D. students with disabilities; and
- E. poverty.

**History:** 1978 Comp., § 22-2A-5, enacted by Laws 2003, ch. 153, § 14.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

### **22-2C-6. Remediation programs; promotion policies; restrictions.**

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program.

B. Local school boards shall approve school district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who fail to attain adequate yearly progress. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the state board, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that his child is failing to make adequate yearly progress, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in attaining adequate yearly progress. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written plan developed containing timelines, academic expectations and the measurements to be used to verify that a student has overcome his academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based models for student improvement.

F. At the end of grades one through seven, three options are available, dependent on a student's adequate yearly progress:

(1) the student has made adequate yearly progress and shall enter the next higher grade;

(2) the student has not made adequate yearly progress and shall participate in the required level of remediation. Upon certification by the school district that the student has made adequate yearly progress, he shall enter the next higher grade; or

(3) the student has not made adequate yearly progress upon completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

(a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to meet adequate yearly progress, at which time the student shall enter the next higher grade; or

(b) promoted to the next grade if the parent refuses to allow his child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign a waiver indicating his desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining timelines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to make adequate yearly progress at the end of that year shall then be retained in the same grade for no more than one year in order to have additional time to master the required content standards.

G. At the end of the eighth grade, a student who fails to make adequate yearly progress shall be retained in the eighth grade for no more than one school year to make adequate yearly progress or if the student assistance team determines that retention of the student in the eighth grade will not assist the student make adequate yearly progress, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a

specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who fails to make adequate yearly progress for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "alternative school-district-determined assessment results" means the results obtained from student assessments developed by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the school district that addresses methods to improve a student's learning and success in school and that identifies specific measures of a student's progress; and

(4) "student assistance team" means a group consisting of a student's:

(a) teacher;

(b) school counselor;

(c) school administrator; and

(d) parent.

**History:** 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3; 1993, ch. 226, § 9; 2000, ch. 20, § 1; recompiled and amended as 1978 Comp., § 22-2C-6 by Laws 2003, ch. 153, § 15.

## ANNOTATIONS

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**The 1993 amendment**, effective July 1, 1993, deleted "of education" following "state board" in Subsection C; deleted former Subsection H, which read "The provisions of Subsection A of this section shall take effect in the 1987-88 school year"; and deleted former Subsection I, which read "The provisions of Subsections B through G of this section shall take effect beginning in the 1989-90 school year."

**The 2000 amendment**, effective May 17, 2000, in the section heading, substituted "Educational content" for "Essential competencies" and "restrictions" for "exception"; rewrote Subsections A through D; added Subsection E; redesignated former Subsection E as F and rewrote that section; added Subsection G; redesignated former Subsection G as H and rewrote that section; and added Subsections I and J.

**The 2003 amendment**, recompiled former 22-2-8.6 NMSA 1978 as 22-2A-6 NMSA 1978 (relocated to 22-2C-6), effective April 4, 2003, and deleted "Educational content standards" at the beginning of the section heading; rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B substituted "adequate yearly progress" for "a level of proficiency established by the content standards" near the middle and deleted "of education" at the end.

**Constitutionality.** — Subsection C does not offend the "free school guaranty" of N.M. Const., art. XII, § 1, as that provision is construed by the New Mexico Supreme Court. 1990 Op. Att'y Gen. No. 90-06.

**Compiler's notes.** — This section was compiled as Section 22-2-8.6 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

## **22-2C-7. Adequate yearly progress; school improvement plans; corrective action.**

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be ranked as a school that needs improvement.

B. Within ninety days of being notified that a public school within the school district has been ranked as a public school that needs improvement, the school district shall submit an improvement plan for that public school to the department. In developing the improvement plan, the local superintendent, the president of the local school board and the school principal of the public school that needs improvement shall hold a public meeting to inform parents and the public of the public school's rank. The meeting shall be used to elicit suggestions from parents and the public on how to improve the public school. After the public meeting, the school district shall develop the public school's improvement plan, and the local school board shall approve the improvement plan before it is submitted to the department. The improvement plan shall be approved by the department within thirty days of its submission.

C. The improvement plan shall include:

- (1) documentation of performance measures in which the public school failed to make adequate yearly progress;
- (2) measurable objectives to indicate the action that will be taken to address failed measures;
- (3) benchmarks to be used to indicate progress in meeting academic content and performance standards;
- (4) an estimate of the time and the resources needed to achieve each objective in the improvement plan;
- (5) the support services that shall be provided to students and applications for federal and state funds; and
- (6) any other information the public school that needs improvement, the local superintendent, the local school board or the department deems necessary.

D. A public school that needs improvement may apply to the department for financial or other assistance in accordance with the improvement plan. The public school shall make application for assistance substantially in the form required by the department. The department shall evaluate applications for assistance and may recommend changes to an application or to an improvement plan if warranted by the final application. The department shall consider innovative methods to assist the public school in meeting its improvement plan, including department or other school employees to serve as a mobile assistance team to provide administrative, classroom, human resource and other assistance to the public school that needs improvement as needed and as provided in applications approved by the department.

E. If a public school fails to make adequate yearly progress for two or more consecutive school years, it shall provide transportation or pay the cost of transportation, within available funds, for students who choose to enroll in a higher ranked public school.

F. If a public school fails to make adequate yearly progress for three or more consecutive school years, it shall provide supplemental services, including after-school programs, tutoring and summer services, within available funds.

G. The state board shall adopt rules that govern the priority for students for whom supplemental services shall be provided and for students for whom transportation costs are paid.

H. If a public school fails to make adequate yearly progress for four consecutive school years, it shall be ranked as a public school subject to corrective action and the

school district, in conjunction with the department, shall take one or more of the following actions in addition to earlier improvements:

- (1) replace staff as allowed by law;
- (2) implement a new curriculum;
- (3) decrease management authority of the public school;
- (4) appoint an outside expert to advise the public school;
- (5) extend the school day or year; or
- (6) change the public school's internal organizational structure.

I. If a public school fails to make adequate yearly progress for five consecutive school years, the school district, in conjunction with the department, shall take one or more of the following actions in addition to other improvements:

- (1) reopen the public school as a charter school;
- (2) replace all or most of the staff as allowed by law;
- (3) turn over the management of the public school to the department; or
- (4) make other governance changes.

J. A school district that fails to make adequate yearly progress for two consecutive school years may be subject to the same requirements as a public school that needs improvement or the same requirements as a public school subject to corrective action, as determined by the state board. A school district that fails to make adequate yearly progress for four consecutive school years shall be subject to corrective action.

K. The state or a school district shall not enter into management contracts with private entities for the management of a public school or a school district subject to corrective action.

**History:** 1978 Comp., § 22-2A-7, enacted by Laws 2003, ch. 153, § 16.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

## **22-2C-8. Adequate yearly progress; supplemental incentive funding; state program for other achievement.**

A. The state board shall institute an "adequate yearly progress program" that measures public schools' improvements in adequate yearly progress. The public schools that show the greatest improvement in adequate yearly progress shall be eligible for supplemental funding from the incentives for school improvement fund, including allowable federal funds.

B. The state board may institute a "state improving schools program" that measures public school improvement by adequate yearly progress and other indicators, including school safety; dropout rate; parent and community involvement; and, if not used to determine adequate yearly progress, graduation and attendance rates. Those indicators may be weighed against socioeconomic variables such as the percentage of student mobility rates, the percentage of limited English proficient students using criteria established by the federal office of civil rights and the percentage of students eligible for free or reduced-fee lunches and other factors determined by the state board. Public schools that show the greatest improvement through the use of additional indicators may be eligible for supplemental funding from the incentives for school improvement fund. Funding for the state improving schools program shall include federal funds only if allowed by federal law or rule.

**History:** 1978 Comp., § 22-2A-8, enacted by Laws 2003, ch. 153, § 17.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

## **22-2C-9. Incentives for school improvement fund; created; distributions.**

A. The "incentives for school improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide supplemental incentive funding for the adequate yearly progress program and the state improving schools program. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative.



B. The state board shall adopt a formula for distributing incentive funding from the fund. Distributions for the adequate yearly progress program shall account for at least sixty percent of the fund, including federal funds if those funds are restricted to adequate yearly progress improvements. Up to forty percent of the fund, not including restricted federal funds, may be used for the state improving schools program. The total number of public schools that receive supplemental funding shall not constitute more than fifteen percent of the student membership in the state. Distributions shall be made proportionately to public schools that qualify.

C. Each public school's school council shall determine how the supplemental funding shall be used. The money received by a public school shall not be used for salaries, salary increases or bonuses, but may be used to pay substitute teachers when teachers attend professional development activities.

**History:** 1978 Comp., § 22-2A-9, enacted by Laws 2003, ch. 153, § 18.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

### **22-2C-10. Schools in need of improvement fund; created.**

A. The "schools in need of improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide assistance to public schools in need of improvement and public schools subject to corrective action. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative.

B. Distributions from the fund shall be by application approved by the department based on a public school's approved improvement plan as provided in Section 22-2A-7 NMSA 1978 [22-2C-7 NMSA 1978].

**History:** 1978 Comp., § 22-2A-10, enacted by Laws 2003, ch. 153, § 19.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — The reference to 22-2A-7 NMSA 1978 is not correct due to the renumbering by the compiler. The correct reference is 22-2C-7 NMSA 1978.

Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

## **22-2C-11. Assessment and accountability system reporting; parent survey; data system; fiscal information.**

A. The department shall:

(1) issue a state identification number for each public school student for use in the accountability data system;

(2) adopt the format for reporting individual student assessments to parents. The student assessments shall report each student's progress and academic needs as measured against state standards; and

(3) adopt the format for reporting annual yearly progress of public schools, school districts and the department. If the department has adopted a state improving schools program, the annual accountability report shall include the results of that program for each public school. The annual accountability report format shall be clear, concise and understandable to parents and the general public. All annual accountability reports shall ensure that the privacy of individual students is protected.

B. Local school boards may establish additional indicators through which to measure the school district's performance in areas other than adequate yearly progress.

C. The school district's annual accountability report shall include a report of graduation rates for each public high school in the school district. As part of the graduation rate data, the school district shall indicate contributing factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known.

D. The school district's annual accountability report shall include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey

shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

- (1) parent-teacher-school relationship and communication;
- (2) quality of educational and extracurricular programs;
- (3) instructional practices and techniques;
- (4) resources;
- (5) school employees, including the school principal; and
- (6) parents' views of teaching staff expectations for the students.

E. The department shall develop no more than ten of the survey questions, which shall be reviewed by the legislative education study committee prior to implementation. No more than five survey questions shall be developed by the local school board, and no more than five survey questions shall be developed by the staffs of each public school; provided that at least one-half of those questions shall be developed by teachers rather than school administrators, in order to gather information that is specific to the particular community surveyed. The questionnaires shall indicate the public school site and shall be tabulated by the department within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

F. The school district's annual accountability report shall be adopted by the local school board, may be published no later than November 15 of each year and may be published at least once each school year in a newspaper of general circulation in the county where the school district is located. In publication, the report shall be titled "The School District Report Card" and disseminated in accordance with guidelines established by the department to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

G. The annual accountability report shall include the names of those local school board members who failed to attend annual mandatory training.

H. The annual accountability report shall include data on expenditures for central office administration and expenditures for the public schools of the school district.

I. The department shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department shall provide the resources to train school district personnel in the use of the accountability data system.

J. The department shall verify data submitted by the school districts.

K. At the end of fiscal year 2005, after the budget approval cycle, the department shall produce a report to the legislature that shows for all school districts using performance-based program budgeting the relationship between that portion of a school district's program cost generated by each public school in the school district and the budgeted expenditures for each public school in the school district as reported in the district's performance-based program budget. At the end of fiscal year 2006 and subsequent fiscal years, after the budget approval cycle, the department shall report on this relationship in all public schools in all school districts in the state.

L. When all public schools are participating in performance-based budgeting, the department shall recommend annually to the legislature for inclusion in the general appropriation act the maximum percentage of appropriations that may be expended in each school district for central office administration.

M. The department shall disseminate its statewide accountability report to school districts; the governor, legislators and other policymakers; and business and economic development organizations.

History: 1978 Comp., § 22-2A-11, enacted by Laws 2003, ch. 153, § 20; 2004, ch. 27, § 19.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, § 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was recompiled as 22-2C-11 NMSA 1978 due to the existing Article 2A.

**The 2004 amendments**, effective May 19, 2004, combined Subsections A and B and inserted as a new Paragraph (1) of Subsection A, the requirement that the department "issue a state identification number for each public school student for use in the accountability data system", redesignated Subsection B as Paragraph (3) of Subsection A, redesignated Subsection C as Subsection B, added a new Subsection C, and changed "state board" to "department" in Subsections E and F.

## **ARTICLE 2D**

### **Family and Youth Resources**

#### **22-2D-1. Short title.**

Sections 64 through 68 [22-2D-1 to 22-2D-5 NMSA 1978] of this act may be cited as the "Family and Youth Resource Act".

**History:** Laws 2003, ch. 153, § 64.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

## **22-2D-2. Advisory committee; members; meetings; duties.**

A. The "family and youth resource advisory committee" is created. Members of the committee are:

- (1) the state superintendent or his designee;
- (2) the secretary of health or his designee;
- (3) the secretary of human services or his designee;
- (4) the secretary of children, youth and families or his designee; and
- (5) the following members appointed by the state board:

(a) one representative each from four different local community-based organizations, including faith-based providers, involved with the provision of health or social services to families; and

(b) one local superintendent or his designee from a school district in which there are more than two schools eligible to participate in the family and youth resources program.

B. The members of the committee shall appoint the chairman and such other officers as they deem necessary.

C. The committee shall meet as frequently as it deems appropriate or necessary, but at least once a year. The chairman may call special meetings as he deems necessary and shall convene special meetings at the request of a majority of the members.

D. A majority of the committee constitutes a quorum.

E. Members who are not state officers may be reimbursed for per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

F. The department shall staff the committee.

G. The committee shall:

(1) recommend to the department guidelines for the creation, implementation and operation of programs;

(2) recommend to the department standards and criteria for awarding grants and the form and content of grant applications; and

(3) review applications for grants and make recommendations to the department within ninety days of receipt of the grant applications.

**History:** Laws 2003, ch. 153, § 65.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-2D-3. Programs; purpose; functions.**

A. A "family and youth resources program" may be created in any public school in the state. The department shall accept applications for grants from public schools in which eighty percent of the students are eligible for the free or reduced-fee lunch program to fund their program.

B. The purpose of the program is to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

C. A program shall include the employment of a resource liaison, who shall:

(1) assess student and family needs and match those needs with appropriate public or private providers, including civic and corporate sponsors;

(2) make referrals to health care and social service providers;

(3) collaborate and coordinate with health and social service agencies and organizations through school-based and off-site delivery systems;

(4) recruit service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or his family;

(5) establish partnerships between the school and community organizations such as civic, business and professional groups and organizations; and recreational, social and after-school programs such as boys' and girls' clubs and boy and girl scouts;

(6) identify and coordinate age-appropriate resources for students in need of:

- (a) counseling, training and placement for employment;
  - (b) drug and alcohol abuse counseling;
  - (c) family crisis counseling; and
  - (d) mental health counseling;
- (7) promote family support and parent education programs; and
- (8) seek out other services or goods a student or his family needs to assist the student to stay in school and succeed.

**History:** Laws 2003, ch. 153, § 66.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

#### **22-2D-4. Family and youth resource programs; grants; department duties.**

A. Subject to the availability of funding, grants are available to a public school or group of public schools that meets department eligibility requirements.

B. Applications for grants shall be in the form prescribed by the department and shall include the following information:

- (1) a statement of need, including demographic and socioeconomic information about the area to be served by the program;
- (2) goals and expected outcomes of the program;
- (3) services and activities to be provided by the program;
- (4) written agreements for the provision of services by public and private agencies, community groups and other parties;
- (5) a work plan and budget for the program, including staffing requirements and the expected availability of staff;
- (6) hours of operation;
- (7) strategies for dissemination of information about the program to potential users;

- (8) training and professional development plans;
- (9) plans to ensure that program participants are not stigmatized for their use of the program;
- (10) a physical description of the place in the school or adjacent to the school in which the program will be located;
- (11) letters of endorsement and commitment from community agencies and organizations and local governments; and
- (12) any other information the department requires.

C. Grants shall not be awarded for applications submitted that supplant funding and other resources that have been used for purposes similar to the program.

**History:** Laws 2003, ch. 153, § 67.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-2D-5. Family and youth resource fund.**

The "family and youth resource fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and earnings from investment of the fund. The fund shall not be transferred to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Family and Youth Resource Act [22-2D-1 NMSA 1978]. Money in the fund shall be disbursed on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the state superintendent or his authorized representative.

**History:** Laws 2003, ch. 153, § 68.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

## **ARTICLE 3**

### **Educational Apportionment**

**22-3-1 to 22-3-16. Repealed.**



## ANNOTATIONS

**Repeals.** — Laws 1983, ch. 65, § 16, repeals 22-3-1 to 22-3-16 NMSA 1978, as enacted by Laws 1972, ch. 24, §§ 1 to 16, relating to educational apportionment, effective June 17, 1983. For provisions of former sections, see 1981 replacement pamphlet. For present provisions, see 22-3-54.1 NMSA 1978.

### **22-3-17 to 22-3-30. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repeals 22-3-17 to 22-3-30 and 22-3-32 to 22-3-36 NMSA 1978, as enacted by Laws 1983, ch. 65, §§ 3 and 5 to 14 and Laws 1987, ch. 99, §§ 2 and 4 to 8, and as amended by Laws 1987, ch 99, §§ 1 and 3, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former sections, see 1993 Replacement Pamphlet.

### **22-3-31. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 99, § 9 repeals 22-3-31 NMSA 1978, as enacted by Laws 1983, ch. 65, § 15, effective April 7, 1987, relating to election and terms of board members. For provisions of former section, see 1986 replacement pamphlet.

### **22-3-32 to 22-3-36. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repeals 22-3-17 to 22-3-30 and 22-3-32 to 22-3-36 NMSA 1978, as enacted by Laws 1983, ch. 65, §§ 3 and 5 to 14 and Laws 1987, ch. 99, §§ 2 and 4 to 8, and as amended by Laws 1987, ch 99, §§ 1 and 3, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former sections, see 1993 Replacement Pamphlet.

### **22-3-37 to 22-3-54. [1991 Educational Redistricting Act.]**

[Unconstitutional.]

## ANNOTATIONS

**Compiler's notes.** — Sections 22-3-37 through 22-3-54 NMSA 1978, as enacted by Laws 1991 (1st S.S.), Chapter 4, were declared malapportioned and, therefore, unconstitutional in *Sanchez v. Vigil-Giron*, D-0101-CV-2001-02250 (1st Dist. Ct., filed

February 6, 2002). For provisions of former sections, see 2001 Replacement Pamphlet. For present comparable provisions, see 22-3-54.1 NMSA 1978.

## **22-3-54.1. [2001 Educational Redistricting Order.]**

Section 1. SHORT TITLE.--This act may be cited as the "2001 Educational Redistricting Act".

Section 2. PRECINCTS.--

A. Precinct designations and boundaries used in the 2001 Educational Redistricting Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act and revised and approved pursuant to that act by the secretary of state as of August 31, 2001.

B. A board of county commissioners shall not create any precinct that lies in more than one state board of education district and shall not divide any precinct so that the divided parts of the precinct are situated in two or more state board of education districts. Votes cast in a statewide election from precincts created or divided in violation of this subsection are invalid and shall not be counted or canvassed.

Section 3. STATE BOARD OF EDUCATION--MEMBERSHIP.--The state board of education is composed of ten elected members and five appointed members, one member elected from each elective board of education district and one member appointed from each of five appointive districts.

Section 4. BOARD OF EDUCATION DISTRICT ONE.--Board of education district one is composed of Bernalillo county precincts 1 through 3, 20 through 30, 32 through 55, 61 through 67, 71 through 77, 80 through 85, 87 through 92, 94 through 99, 106, 111 through 114, 120 through 125, 131 through 133, 135, 154 and 162 through 166; and Sandoval county precincts 11 through 13, 53 and 54.

Section 5. BOARD OF EDUCATION DISTRICT TWO.--Board of education district two is composed of Bernalillo county precincts 289, 290, 293 through 308, 330 through 333, 400 through 409, 411 through 417, 419 through 421, 426 through 430, 439, 440, 447, 449 through 454, 461 through 466, 471 through 474, 480 through 484, 487 through 500, 502 through 509, 511 through 541, 544 through 569, 571, 573 and 602.

Section 6. BOARD OF EDUCATION DISTRICT THREE.--Board of education district three is composed of Bernalillo county precincts 4 through 18, 86, 101 through 105, 107, 150 through 153, 161, 180 through 187, 191 through 197, 211, 212, 214 through 217, 221, 223 through 226, 241 through 246, 251 through 258, 271 through 275, 278, 281 through 287, 291, 292, 311 through 318, 321 through 323, 326 through 329, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 410, 418, 422 through 425, 431 through 438, 441 through 446, 475 through 478, 485, 486, 510, 542, 543 and 601.

Section 7. BOARD OF EDUCATION DISTRICT FOUR.--Board of education district four is composed of Sandoval county precincts 1 through 10, 20, 28 through 50, 55, 56, 58 through 64 and 67; and Santa Fe county precincts 7 through 14, 20 through 22, 24 through 39, 41 through 57, 62 through 72, 74 through 78, 80 through 83 and 86.

Section 8. BOARD OF EDUCATION DISTRICT FIVE.--Board of education district five is composed of McKinley county; San Juan county precincts 1 through 16, 18 through 31, 40 through 46, 49, 51 through 59, 70, 71, 73 through 75, 79 and 81 through 86; and Sandoval county precincts 21 through 27.

Section 9. BOARD OF EDUCATION DISTRICT SIX.--Board of education district six is composed of Bernalillo county precincts 31 and 93; Catron county; Cibola county; Grant county; Hidalgo county; Luna county; Socorro county; and Valencia county.

Section 10. BOARD OF EDUCATION DISTRICT SEVEN.--Board of education district seven is composed of Dona Ana county; and Otero county precinct 1.

Section 11. BOARD OF EDUCATION DISTRICT EIGHT.--Board of education district eight is composed of Chaves county precincts 1 through 7, 9 through 16, 21 through 25, 31 through 36, 41 through 43, 51, 52, 61 through 63, 71 through 73, 81 through 85, 90 through 93 and 101 through 103; De Baca county; Guadalupe county precinct 4; Lincoln county; Otero county precincts 2 through 40; Santa Fe county precincts 15 through 19, 73, 84 and 85; Sierra county; and Torrance county.

Section 12. BOARD OF EDUCATION DISTRICT NINE.--Board of education district nine is composed of Chaves county precinct 104; Curry county; Eddy county; Lea county; Quay county; and Roosevelt county.

Section 13. BOARD OF EDUCATION DISTRICT TEN.--Board of education district ten is composed of Colfax county; Guadalupe county precincts 1 through 3 and 5; Harding county; Los Alamos county; Mora county; Rio Arriba county; San Juan county precincts 47, 60 through 69, 72 and 76; San Miguel county; Sandoval county precincts 14 through 19 and 51; Santa Fe county precincts 1 through 6, 23, 40, 58 through 61 and 79; Taos county; and Union county.

Section 14. APPOINTIVE BOARD OF EDUCATION DISTRICTS.--For the purposes of appointing members of the state board of education, five districts are created as follows:

- A. appointive district A consists of state board of education districts two and four;
- B. appointive district B consists of state board of education districts one and three;

C. appointive district C consists of state board of education districts five and ten;

D. appointive district D consists of state board of education districts six and seven; and

E. appointive district E consists of state board of education districts eight and nine.

Section 15. RESIDENCE.--A candidate for the office of state board of education member shall reside in the district for which he files a declaration of candidacy at the time of such filing. If an elected or appointed board member permanently removes his residence from or maintains no residence in the district from which he was elected or appointed, he shall be deemed to have resigned and his successor shall be selected as provided in Sections 16 and 17 of the 2001 Educational Redistricting Act.

Section 16. ELECTED MEMBERS--STAGGERED TERMS.--

A. Elected members of the state board of education shall be elected for staggered terms of four years.

B. Board members shall be elected at the general election for terms commencing on January 1 next succeeding their election.

C. Board members from districts one, four, eight, nine and ten shall be elected at the general election in 2004 for terms that expire in 2008.

D. Board members from districts two, three, five, six and seven shall be elected at the general election in 2002 for terms that expire in 2006.

E. The governor shall by appointment fill a vacancy in the office of an elected member of the state board of education. An appointee filling such a vacancy shall serve until a successor is elected at the next general election. The successor shall be elected to fill the unexpired term for the district from which the person creating the vacancy in the office was elected.

Section 17. APPOINTED MEMBERS--STAGGERED TERMS.--

A. One member of the state board of education shall be appointed from each of the five state board of education appointive districts by the governor by and with the consent of the senate.

B. Appointed members shall be appointed for staggered terms of four years.

C. Terms of appointed members shall expire on December 31.

D. If a vacancy occurs in the office of an appointed member of the state board of education, it shall be filled by appointment of the governor by and with the consent of the senate for the remainder of the term of the member creating the vacancy.

Section 18. CONTINUING TERMS.--A member of the state board of education who was appointed or elected pursuant to the provisions of Laws 1991 (1st S.S.), Chapter 4, Sections 1 through 17 and who is serving on the board as of the effective date of this section shall serve the remainder of the term for which he was elected or appointed.

### ANNOTATIONS

**Compiler's notes.** — This section was copied from House Voters and Elections Substitute for House Bill 10, 45th Legislature, 1st Special Session which was adopted by reference in the final judgment and order in *Sanchez v. Vigil-Giron*, D-0101-CV-2001-02250 (1st Dist. Ct., filed February 6, 2002), which declared 22-3-37 to 22-3-54 NMSA 1978 unconstitutional. The section number was assigned by the compiler.

## ARTICLE 4 Creation, Consolidation and Annexation of School Districts

### 22-4-1. School districts.

A. Every public school in the state shall be located within the geographical boundaries of a school district.

B. A school district shall be created, exist or be consolidated only pursuant to the provisions of law.

C. The geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law.

**History:** 1953 Comp., § 77-3-1, enacted by Laws 1967, ch. 16, § 14.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute which leaves to determination of private individuals the boundaries of territory to be erected into school district, 70 A.L.R. 1062.

Separate independent political unit within rule permitting separate computation of constitutional debt limit notwithstanding overlapping or identical boundaries, school district as, 171 A.L.R. 732.

## **22-4-2. New school districts; creation.**

A. The state board may order the creation of a new school district:

(1) upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district;

(2) after review by the local school board and upon receipt of a petition bearing signatures verified by the county clerk of the affected area of sixty percent of the registered voters residing within the geographic area desiring creation of a new school district; or

(3) upon recommendation of the state superintendent and upon a determination by the state board that creation of a new district would meet the standards set forth in Subsection B of this section.

B. Within ninety days of receipt of the local school board resolution, receipt of the voters' petition or receipt of a recommendation by the state superintendent, the state board shall conduct a public hearing to determine whether:

(1) the existing school district and the new school district to be created will each have a minimum membership of five hundred;

(2) a high school program is to be taught in the existing school district and in the new school district to be created unless an exception is granted to this requirement by the state board; and

(3) creating the new school district is in the best interest of public education in the existing school district and in the new school district to be created and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-2, enacted by Laws 1967, ch. 16, § 15; 1981, ch. 26, § 1; 1993, ch. 235, § 1.

### **ANNOTATIONS**

**Cross references.** — As to contents and publication of order creating new school district, see 22-4-10 and 22-4-11 NMSA 1978.

As to interim school board of newly created district, see 22-4-12 NMSA 1978.

As to election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added the subsection designation "A" at the beginning of the section; deleted "within an existing school district" at the end of

the introductory paragraph of Subsection A; inserted the paragraph designations (1) and (2) and added Paragraph (3) in Subsection A; deleted "after a hearing to be held within ninety (90) days after filing of petition by the state board to determine that" at the end of Paragraph (2) of Subsection A; added the introductory paragraph of current Subsection B; redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection B; and made minor stylistic changes in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute for formation of school districts as affected by objection that it confers nondelegable powers or imposes nonjudicial functions upon courts, 69 A.L.R. 288.

### **22-4-3. Consolidation; request; districts without junior or senior high schools; standards.**

A. The state board may order consolidation of school districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation only if it determines that such consolidation:

(1) will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;

(2) will make the most advantageous and economical use of public school facilities;

(3) takes into consideration the convenience and welfare of the public school students in each school district affected by the consolidation; and

(4) is in the best interest of public education in each school district affected by the consolidation and in the best interest of the public education in the state.

B. The state board may also order consolidation of a school district which has not maintained either a junior or senior high school program for two consecutive years prior to consolidation with an adjacent district which has maintained such programs for the students of both districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation.

C. The state board may bring an action in the district court for an order of consolidation of two or more school districts when:

(1) all attempts to obtain an agreement between the local school boards to consolidate such school districts under Subsection A of this section have failed;

(2) one or more schools within the school districts proposed to be consolidated have received a disapproval accreditation status from the state department of education; and

(3) after public hearing on such proposed consolidation, the state board makes findings of fact:

(a) that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; and

(b) that one or more schools within a school district proposed to be consolidated are deficient in their ability to provide the necessary educational opportunities for public school students in that district.

D. Notice of public hearing shall be given by the state board at least thirty days prior to the hearing date by two consecutive publications one week apart in a newspaper of general circulation in the deficient school district proposed to be consolidated. The notice shall state:

(1) the subject of the hearing;

(2) the time and place of the hearing; and

(3) the manner in which interested persons may present their views.

E. The public hearing shall be held in a suitable and convenient location within the deficient school district proposed to be consolidated. At the hearing, the state board shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. Within ten days from the date the hearing is concluded the state board shall make its determination in writing and if such determination includes an intention to bring an action for consolidation in the district court, such intention shall be included in the written determination. A copy of the written determination of the state board shall be sent to each of the school boards concerned.

G. Within sixty days from the date of the issuance of its written determination, the state board may bring an action for a court order of consolidation in the district court of any judicial district in which the deficient school district is located. A copy of the petition for such action shall be served upon each of the local school boards affected by the consolidation. Such local school boards shall be parties to the action. The director shall authorize the necessary transfers and expenditures in the budgets of the concerned school districts to cover all necessary costs incurred by them in such action. Upon request of any of the parties to the action, a jury trial shall be allowed. The state board shall have the burden of establishing the existence of conditions required under Subsection C of this section and of proving that such consolidation will meet the criteria



specified in Paragraphs (1) through (4) of Subsection A of this section. The court may deny the order for consolidation if it is found that:

(1) the conditions prescribed in Paragraphs (1) and (2) of Subsection C of this section do not exist;

(2) such proposed consolidation will not meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; or

(3) that the alleged deficiency in the school district's ability to provide the necessary educational opportunities for public school students in such district does not exist.

H. In the event the court denies the order for consolidation, the state board shall not again initiate such action for consolidation affecting the same or substantially the same school districts for one year after the date of the denial of such order.

I. In the event the court orders the consolidation, such consolidation shall not become effective until the end of the current school term.

J. Any final order of the district court is reviewable by the court of appeals in the same manner as provided under the rules of civil procedure.

**History:** 1953 Comp., § 77-3-3, enacted by Laws 1967, ch. 16, § 16; 1970, ch. 4, § 1; 1973, ch. 106, § 1; 1977, ch. 246, § 61.

## ANNOTATIONS

**Cross references.** — As to alternate method of consolidation, see 22-4-5 to 22-4-9 NMSA 1978.

As to contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

As to interim school board of newly consolidated district, see 22-4-12 NMSA 1978.

As to election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

**Constitutionality of Subsection B.** — See State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

**Where school consolidation was ordered pursuant to Subsection B, the provisions of 22-4-4 NMSA 1978 were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978

were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

#### **22-4-4. [Consolidation of district without junior or senior high schools; governing board.]**

Where consolidation is ordered under Subsection B hereof [22-4-3B NMSA 1978], the governing board of the district maintaining the junior and senior high school programs shall become the governing board of the consolidated district, the board of the district consolidated shall be dissolved, and the provisions of Sections 22-4-10 through 22-4-14 NMSA 1978 relating to appointment of an interim board and the holding of special elections shall not be applicable.

**History:** 1953 Comp., § 77-3-3.1, enacted by Laws 1970, ch. 4, § 2.

#### **ANNOTATIONS**

**Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of this section were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

#### **22-4-5. Alternate method of consolidation.**

Sections 22-4-6 through 22-4-9 NMSA 1978 shall be an alternative method of consolidation to that provided in Section 22-4-3 NMSA 1978.

**History:** 1953 Comp., § 77-3-4, enacted by Laws 1967, ch. 16, § 17.

#### **22-4-6. Alternate method; survey; report; submission to the state board.**

A. Upon receipt of a request from a local school board, the state board shall cause a school district survey to be made to study the feasibility of a consolidation.

B. A school district survey shall be made by a school district survey committee. The school district survey committee shall submit a written report on a school district survey, along with any recommendations made by the committee, to each local school board of each school district affected by the survey. The report shall be accompanied by all maps, records and material supporting the recommendations.

C. Any local school board of a school district affected by the survey may suggest alterations to the report and the recommendations. If these alterations are approved by each local school board of each school district affected by the survey and the school

district survey committee, the alterations shall become part of the final report and recommendations of the school district survey committee. If local school boards of all school districts affected by the survey approve the final report and recommendations of the school district survey committee, the final report and recommendations shall be submitted to the state board.

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

#### **22-4-7. Alternate method; survey committee.**

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

#### **22-4-8. Alternate method; survey committee; compensation.**

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of committee duties out of funds of the department of education.

**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

#### **22-4-9. Alternate method; standards for consolidation.**

The state board may order consolidation according to the recommendations contained in a final report and recommendations of the school district survey committee approved by each local school board of each school district affected by the survey only if it determines that such consolidation:

A. will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;

B. will make the most advantageous and economical use of public school facilities;

C. takes into consideration the convenience and welfare of the public school students in each school district affected by the survey; and

D. is in the best interest of public education in each school district affected by the consolidation and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-8, enacted by Laws 1967, ch. 16, § 21.

## **ANNOTATIONS**

**Cross references.** — As to standards for consolidation generally, see 22-4-3 NMSA 1978.

As to contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

**Applicability of section to consolidation under Subsection B of 22-4-3 NMSA 1978.** — Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of this section and 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

### **22-4-10. Order of state board.**

A. Any order of the state board for creation of a new school district or for consolidation shall contain the following:

(1) an accurate description of the geographical boundaries of all school districts affected by the order;

(2) the disposition of all property affected by the order;

(3) the dissolution of the elected local school board of each school district affected by the order of consolidation; and

(4) the appointment of three qualified electors of the state who are residents of the new school district created by the order or the consolidated school district to be members of an interim local school board to govern the new or consolidated school district.

B. A certified copy of the order of the state board shall be kept on permanent file with the department of education.

C. One certified copy of the order of the state board shall be furnished to each local school board affected by the order, to each county assessor of a county having a school

district within it affected by the order, to the chief [director of public school finance], to the state tax commission [property tax division of the taxation and revenue department], to the oil and gas accounting commission [audit and compliance division of the taxation and revenue department] and to each member appointed to the interim local school board.

D. Any creation of a new school district or consolidation ordered by the state board shall take effect upon the issuance of the order. However, for taxation purposes, creation of a new school district or consolidation shall be effective on January 1 following the date of the issuance of the order by the state board.

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

### ANNOTATIONS

**Bracketed material.** — The bracketed material in Subsection C was inserted by the compiler. The provisions relating to the state tax commission, referred to in this section, were repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, created the property appraisal department. The provisions of Laws 1970, ch. 31, relating to the property appraisal department, were repealed by Laws 1973, ch. 258, § 156. Laws 1973, ch. 258, created the property tax department. The property tax department and the oil and gas accounting commission were abolished by Laws 1977, ch. 249, § 5. Laws 1977, ch. 249, § 4, established the taxation and revenue department, which now consists of, inter alia, the revenue division, the property tax division and the audit and compliance division.

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

### **22-4-11. [Publication of order; actions attacking order.]**

After adoption of an order of the state board for creation of a new school district or for consolidation of school districts, the state superintendent of public instruction shall forthwith cause a copy of such order to be published in a newspaper of general circulation in each county within which any part of the new or consolidated school district may be located.

Actions to attack the validity of any such order shall be filed within thirty days from the date of such publication, but not afterwards. Such actions shall be filed in Santa Fe county district court and the state board of education shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

## **22-4-12. Interim local school board; special election.**

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board appointing members to the interim local school board. If the date for a regular school district election occurs during this period, the interim local school board shall give notice of the regular school district election for the purpose of electing five members to the local school board of the newly created or consolidated school district instead of calling a special school district election.

C. The interim local school board shall appoint a superintendent of schools to perform the administrative and supervisory functions of the interim local school board and to also conduct the school district election. The term of office of the superintendent of schools appointed by the interim local school board shall coincide with the term of office of the interim local school board.

**History:** 1953 Comp., § 77-3-10, enacted by Laws 1967, ch. 16, § 23.

## **22-4-13. Special school district election; term of office.**

The term of office of members of a local school board elected at a special school district election for a newly created or consolidated school district shall be as follows:

A. three members shall be elected for terms expiring at the next regular school district election; and

B. two members shall be elected for terms expiring two years after the next regular school district election.

**History:** 1953 Comp., § 77-3-11, enacted by Laws 1967, ch. 16, § 24; 1985, ch. 142, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

## **22-4-14. Regular school district election; term of office.**

If the interim local school board calls for the election of members to the local school board of a newly created or consolidated school district at a regular school district election, the terms of office of the members elected shall be as follows:

- A. three members shall be elected for terms of two years; and
- B. two members shall be elected for terms of four years.

**History:** 1953 Comp., § 77-3-12, enacted by Laws 1967, ch. 16, § 25; 1985, ch. 142, § 2.

## **22-4-15. Consolidated school districts; outstanding contracts; indebtedness.**

A. All contracts entered into by a local school board of a school district prior to consolidation shall be honored by the consolidated school district. The acquiring of tenure rights and tenure rights that have been obtained shall not be affected by consolidation.

B. Any outstanding school district bonds or other indebtedness of a school district shall not be affected by consolidation. Whenever a school district included within a consolidation has outstanding school district bonds or certificates of indebtedness, the school district shall retain its identity for the purpose of paying any debt service until the bonds or certificates are paid in full. No school district included within a consolidation shall become responsible for the debt service of any other school district included within the consolidation.

**History:** 1953 Comp., § 77-3-13, enacted by Laws 1967, ch. 16, § 26.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Indebtedness and property of individual districts as affected by unionization, centralization, or consolidation of school districts, 121 A.L.R. 826.

## **22-4-16. [Existing school districts validated.]**

That the organization, existence or consolidation of all school districts heretofore ordered by the state board of education of the state of New Mexico are hereby validated and their existence as ordered by the state board of education is hereby validated and confirmed, provided that the passage of this act [22-4-16 NMSA 1978] shall not affect any consolidations upon which an action is pending contesting such consolidation at the time this act becomes effective.

**History:** 1953 Comp., § 73-15-9, enacted by Laws 1955, ch. 76, § 1.

## **22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.**

A. Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, whether or not that school district is within the same county as the school district of residence, the local school boards of the school districts may provide for annexation of the appropriate area by resolution of each of the local school boards concerned. The resolutions shall be submitted to the state board of education for its approval.

B. Prior to adopting such resolution, the local school board proposing to annex the area within another school district shall furnish an accurate legal description of the area to be annexed and the net taxable value of the property within the area to the chief, public school finance division [director of public school finance]. The chief shall furnish to each local school board concerned a statement of the financial implication of the annexation.

C. After resolutions are adopted by each of the local school boards concerned and approved by the state board of education, copies of the resolutions shall be filed with:

(1) the county commission of the county where the principal office of each local school board is located and the county commissions of those other counties in which area is affected;

(2) the county assessor of the county where the principal office of each local school board is located and the county assessors of those other counties in which area is affected;

(3) state board of education; and

(4) department of finance and administration.

**History:** 1953 Comp., § 77-3-2.1, enacted by Laws 1977, ch. 213, § 1.

### **ANNOTATIONS**

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.



## **22-4-18. Validation of previous annexation.**

Every member of a local school board of a local school district which has been a party to an annexation similar to that authorized in Section 1 [22-4-17 NMSA 1978] of this act but occurring prior to the effective date of this act is determined to have been a legally authorized governing authority and such annexation is validated as of the date of the resolution adopting such action.

**History:** 1953 Comp., § 77-3-2.2, enacted by Laws 1977, ch. 213, § 2.

## **ARTICLE 4A**

### **Advisory Referenda**

#### **22-4A-1. Short title.**

This act [22-4A-1 to 22-4A-3 NMSA 1978] may be cited as the "Advisory Referendum Act".

**History:** Laws 1987, ch. 191, § 1.

#### **22-4A-2. Purpose.**

The purpose of the Advisory Referendum Act [22-4A-1 to 22-4A-3 NMSA 1978] is to enable registered voters of an affected area, who may ultimately be called upon to vote on bond issues for capital projects for a new district, to express the extent of their support for the formation of that new public school district.

**History:** Laws 1987, ch. 191, § 2.

#### **22-4A-3. Advisory referendum authorized; effect of referendum.**

A. The governing body of any school district having a student membership in excess of seventy-six thousand and the governing body of any school district any part of which is proposed to be incorporated in a new school district shall conduct an advisory referendum in any municipality or in any precinct of a school district which is proposed to be included in a new school district.

B. An "advisory referendum" as used in the Advisory Referendum Act [22-4A-1 to 22-4A-3 NMSA 1978] means an election at which the proposal of creating a new school district that includes the territory in which the municipality is located is submitted to the voters of the municipality as a question of supporting the proposal or opposing the proposal. The result of the vote shall be advisory only as a statement of public opinion on the proposed creation of a new school district and shall not constitute any election required by law pertaining to the creation of a district. The results of the referendum

may be used by the voters of the existing and proposed district encompassed within the boundaries of the municipality or of another school district to better determine desirability and feasibility of forming the new public school district.

C. The election for the advisory referendum shall be conducted and canvassed substantially in the same manner as special school district elections are conducted and canvassed.

**History:** Laws 1987, ch. 191, § 3.

## **ARTICLE 5**

### **Local School Boards**

#### **22-5-1. Local school boards; members.**

A local school board shall be composed of five qualified electors of the state residing within the school district.

**History:** 1953 Comp., § 77-4-1, enacted by Laws 1967, ch. 16, § 27.

#### **ANNOTATIONS**

**Cross references.** — As to recall of local school board members, see 22-7-1 NMSA 1978 et seq.

For constitutional provision as to residence of public officers, see N.M. Const., art. V, § 13.

As to school district elections, see 1-22-1 NMSA 1978 et seq.

#### **22-5-1.1. Local school board members; elected from districts.**

Members of local school boards in districts having a population in excess of sixteen thousand shall reside in and be elected from single-member districts. Once, following every federal decennial census, the local school board shall divide the school district into a number of election districts equal in number to the number of members on the school board. Such election districts shall be contiguous and compact and as equal in population as is practicable; provided that the local school board of any district having a population of sixteen thousand or less may provide for single-member districts as provided in this section.

**History:** 1978 Comp., § 22-5-1.1, enacted by Laws 1985, ch. 202, § 1; 1993, ch. 226, § 10.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, deleted "Notwithstanding any other provision of the Public School Code" at the beginning of the first sentence.

## **22-5-2. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-5-2 NMSA 1978, as enacted by Laws 1969, ch. 103, § 1, containing the purpose of the act, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **22-5-3. School board membership; optional form.**

A. The local school board of any school district in this state may by resolution provide for the local board of that district to be composed of seven qualified electors of the state who reside within the district. The resolution shall provide that the board consist of seven separate positions, and each such position shall be designated by number. Qualified electors seeking election to the school board shall file and run for only one of the numbered positions.

B. If the resolution provided for in this section is adopted, it shall go into effect within thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to twenty percent of all the voters in the district voting at the last regular school board election is presented to the local board within such thirty days asking that an election be held on the question of increasing the membership of the local board to seven members.

C. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of increasing the membership of the local school board in that district to seven members.

D. If the voters of the school district approve the increase in the local school board's membership to seven members, the resolution shall be in effect.

E. A resolution adopted pursuant to Subsection A of this section shall conform to the requirements of Section 1-22-5 NMSA 1978 and shall provide for the election of two additional school board members at a special school district election. One new member shall be elected to serve until the second regular school board election following the special school district election. The second new member shall be elected to serve until the third regular school board election following such special school district election. Thereafter, persons elected to fill the additional new positions on the board shall be elected for terms as provided by law.

**History:** 1953 Comp., § 77-4-1.3, enacted by Laws 1969, ch. 103, § 2; 1981, ch. 316, § 1; 1993, ch. 226, § 11.

## ANNOTATIONS

**Cross references.** — As to school district elections generally, see 1-22-1 NMSA 1978 et seq.

**The 1993 amendment**, effective July 1, 1993, substituted "Section 1-22-5" for "Section 22-6-3" in the first sentence of Subsection E.

**Provisions of former Subsection B (now Subsection E) are constitutional and valid.** 1971 Op. Att'y Gen. No. 71-29.

### **22-5-3.1. Local school boards; reversion to five members.**

A. Any seven-member local school board of a school district in the state may by resolution provide for the local board of that district to be composed of five qualified electors of the state who reside within the district.

B. If the resolution specified in Subsection A of this section is adopted, the existing local school board at the first election at which the terms of three members expire shall by lot:

(1) eliminate two positions if the next succeeding election is one at which the terms of two members expire;

(2) eliminate two positions if the next succeeding election is one at which the term of one member expires, and at the next election at which the terms of three members expire designate one position for a two-year term; provided that thereafter all terms shall be six-year terms; or

(3) eliminate two positions if the next succeeding election is one at which the terms of three members expire and at the succeeding election designate one position for a two-year term, provided that thereafter all terms shall be six-year terms.

C. Any resolution adopted pursuant to the provisions of this section shall be effective thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to at least twenty percent of all voters in the district voting at the last regular school board election is presented to the local school board on or before the thirtieth day asking that an election be held on the question of decreasing the membership of the local board to five members.

D. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of decreasing the membership of the local school board in that district to five members.

E. If the voters of the school district approve the decrease in the local school board's membership to five members, the resolution shall be in effect and the

elimination of two members at subsequent elections as provided in Subsection B of this section shall be valid.

**History:** 1978 Comp., § 22-5-3.1, enacted by Laws 1981, ch. 302, § 1.

#### **22-5-4. Local school boards; powers; duties.**

A local school board shall have the following powers or duties:

- A. subject to the rules of the department, develop educational policies for the school district;
- B. employ a local superintendent for the school district and fix the superintendent's salary;
- C. review and approve the annual school district budget;
- D. acquire, lease and dispose of property;
- E. have the capacity to sue and be sued;
- F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code;
- G. issue general obligation bonds of the school district;
- H. provide for the repair of and maintain all property belonging to the school district;
- I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;
- J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;
- K. adopt rules pertaining to the administration of all powers or duties of the local school board;
- L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;
- M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement

or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and

N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

History: 1953 Comp., § 77-4-2, enacted by Laws 1967, ch. 16, § 28; 1973, ch. 3, § 1; 1979, ch. 335, § 3; 1981, ch. 116, § 1; 1981, ch. 125, § 48; 1990, ch. 52, § 2; 1992, ch. 77, § 2; 1993, ch. 226, § 12; 2003, ch. 153, § 21; 2004, ch. 27, § 20; 2005, ch. 315, § 3.

## ANNOTATIONS

**Cross references.** — As to requirement of reports as to membership in schools, see 22-8-13 NMSA 1978.

As to reemployment or termination of certified school instructors, see 22-10A-22 NMSA 1978 et seq.

As to request for operation under variable school calendar, see 22-22-4 NMSA 1978.

As to preparation and review of bilingual instruction programs, see 22-23-5 NMSA 1978.

As to lease of state lands, see 19-7-55 NMSA 1978.

**The 1990 amendment**, effective May 16, 1990, added present Subsection E, redesignated former Subsections E to P as present Subsections F to Q, substituted "Procurement Code" for "Public Purchasers Act" at the end of present Subsection N, and, in present Subsection Q, deleted "local" preceding "school district property" at the end of the first sentence and "of the public school finance division" at the end of the second sentence.

**The 1992 amendment**, effective May 20, 1992, inserted "or the purchase of instructional materials" in Subsection E; substituted "department of education" for "director" in the second sentence of Subsection Q; and made minor stylistic changes throughout the section.

**The 1993 amendment**, effective July 1, 1993, added the proviso at the end of the first sentence of Subsection D.

**The 2003 amendment**, effective April 4, 2003, rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B, inserted "local" following "employ a" near the beginning and deleted "of schools" following "superintendent" near the beginning; deleted former Subsections C, D, E, F, and G; inserted present Subsection C and redesignated the subsequent paragraphs accordingly; inserted "provide for the" at the beginning of present Subsection H; substituted "rules" for "regulations" near the

beginning of present Subsection K; and in present Subsection M substituted "rules" for "regulations that shall be" following "in accordance with" near the end and substituted "state board" for "department of education" at the end.

**The 2004 amendment**, effective May 19, 2004, changed "state board" to "department" in Subsections A and M and added Subsection N.

**The 2005 amendment**, effective April 7, 2005, provides in Subsection C that the local school board shall review and approve the annual school district budget.

**Teaching positions.** — A local school board may add or abolish teaching positions in performing its fiscal responsibilities. *Aguilera v. Hatch Valley Public Schools Board of Education*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Section makes local board's supervision and control of public school in district "subject to the regulations of state board."** *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**No Eleventh Amendment immunity.** — School districts and their governing boards in New Mexico are not arms of the state entitled to Eleventh Amendment immunity. *Duke v. Grady Mun. Schs.*, \_\_\_F.3d\_\_\_ (10th Cir. 1997).

**Legislative intent.** — The New Mexico legislature intended school districts or boards to be political subdivisions or local public bodies, not arms of the state. *Duke v. Grady Mun. Schs.*, \_\_\_F.3d\_\_\_ (10th Cir. 1997).

State of New Mexico is not legally liable for judgment against a school district. *Duke v. Grady Mun. Schs.*, \_\_\_F.3d\_\_\_ (10th Cir. 1997).

**Authority of local board over personnel.** — A local board is the only entity with power to terminate employees; the purpose of former Subsection D is to require input of a superintendent before a personnel decision is made, and not to render a board powerless to act except in accordance with the recommendation of its superintendent. *Daddow v. Carlsbad Mun. Sch. Dist.*, 120 N.M. 97, 898 P.2d 1235 (1995).

**School board attendance allocation proper.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**Conditions under which private group may use facilities.** — A local board of education may permit a particular religious denomination or private group to use public school buildings or facilities after school hours where such use, in the opinion of the school board, will not interfere with normal school activities, but the board may not in

any respect sanction or give endorsement to such religious denominational programs. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**Include equal treatment of all groups.** — A local school board must, in exercising its discretion as to whether a particular religious denomination may use public school facilities after school hours, either make the use of school facilities available to all religious groups on an equal basis and without preference as to any particular group or not permit such use at all. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**And reimbursement of school's actual expenses.** — Since a school district may not in any manner lend its financial or other support to any private religious denominations, it is incumbent upon school authorities to obtain reimbursement for any actual expenses occasioned from a religious group's private use of public school facilities. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**Procurement Code exemptions applicable to school boards.** — The provision of Subsection N requires school boards to contract according to all but two sections of the entire Procurement Code; this means that all bidding requirements of the Code, including the exemptions in 13-1-98 NMSA 1978, apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 120 N.M. 307, 901 P.2d 725 (1995).

**Payment for time spent away from district by district employee.** — A local school district employee who serves on the state board of education may draw salary from the district and per diem and expenses from the state department of education; however, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay. 1987 Op. Att'y Gen. No. 87-45.

**Character of private use determines whether state approval required.** — Where a local school board desires to enter into a lease of real property to any private party or religious group and proposes to give exclusive right of possession and occupancy to school lands or buildings, the state board of finance must give its approval pursuant to 13-6-2 NMSA 1978. Where, however, the use permitted is temporary or brief and limited to hours when the property is not needed for school purposes, the approval of the state board of finance is not necessary, and the local board of education may or may not authorize such usage according to its discretion. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**School boards have authority to enact reasonable regulations** relating to the suspension or expulsion of students. 1959-60 Op. Att'y Gen. No. 59-214.

A rule or regulation prohibiting married students from participating in band, glee club, dramatic events, school newspapers, school clubs, school sponsored trips and school athletics is arbitrary and unreasonable and therefore void. 1967 Op. Att'y Gen. No. 67-117.



A rule which would require the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper clearly violates the compulsory attendance law; therefore if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

**School boards have authority to ban smoking.** — Because local school boards have authority to supervise and control all public schools within their district, they can use that authority to ban smoking by both adults and minors on all public school campuses within their district. 1994 Op. Att'y Gen. No. 94-03.

**Ultra vires acts by school boards.** — Any attempt by a local school board to enter into a contract or formulate a policy that violates the specific statutory provisions governing school boards is ultra vires and void. Thus, any attempt by a school board to enter into a contract or promulgate a termination policy through manuals which give an employee rights in conflict with the School Personnel Act is ultra vires and void. *Swinney v. Deming Bd. of Educ.*, 117 N.M. 492, 873 P.2d 238 (1994).

**Health club memberships for employees.** — A school district may spend public funds to provide its full time employees with membership in a private health club if the membership is provided in return for services rendered to the district. 1989 Op. Att'y Gen. No. 89-20.

**School board's supervision and discharge of superintendent.** — Inherent in the power given to the school board to employ a superintendent is the ability for the board to supervise and discharge a superintendent. *Stanley v. Raton Bd. of Educ.*, 117 N.M. 717, 876 P.2d 232 (1994).

**Employment of administrators.** — The school board effectively terminated the plaintiffs' employment as school administrators by declaring the jobs vacant, and therefore met the obligations under this section. The plaintiffs could reasonably infer from the board's actions that they were not reemployed for the next year. *Naranjo v. Board of Educ.*, 119 N.M. 401, 891 P.2d 542 (1995).

**School board president's authority.** — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

School districts and their governing boards in New Mexico are not arms of the state, and they are accordingly not shielded by the Eleventh Amendment from liability for a Section 1983 action in federal court. *Duke v. Grady Mun. Schs.*, \_\_\_ F.3d \_\_\_ (10th Cir. 1997).

**Liability of local board under federal civil rights law.** — In an action brought by a school employee against a school district local school board under 42 U.S.C. § 1983,

the board was a "person" for purposes of the suit, and the action under such law was not barred by any statutory governmental immunity. *Daddow v. Carlsbad Mun. Sch. Dist.*, 120 N.M. 97, 898 P.2d 1235 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 15 et seq.

Power to require construction or repair of school buildings, 1 A.L.R. 1559.

Comfort and convenience of teachers and pupils, extent of power of school district to provide for, 7 A.L.R. 791, 52 A.L.R. 249.

Regulations as to use of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Necessity, sufficiency and effect of minutes or record of meeting of school board, 12 A.L.R. 235.

Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 A.L.R. 922.

Interruption of school session as affecting contract other than with teacher, 15 A.L.R. 725.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

"Schoolhouse" as a public building, 19 A.L.R. 545.

Regulations forbidding leaving school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

Suspension or expulsion of pupil for smoking, 33 A.L.R. 1180.

Negligence or incompetency, 49 A.L.R. 482.

Eating place, operation of, by school authorities, 63 A.L.R. 100.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

Discretion of administrative officers as to changing boundaries of school district, 65 A.L.R. 1523, 135 A.L.R. 1096.

Gymnasium or athletic field and equipment for same, power of school authorities to provide, 69 A.L.R. 871.

Hiring or leasing schoolhouse to private person for occasional use, 86 A.L.R. 1175.

Right of school district as to challenging acts or proceedings by which its boundaries are affected, 86 A.L.R. 1376.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

Right of legislature or school authorities to prescribe and enforce oath of allegiance, "salute to flag" or other ritual of a patriotic character, 110 A.L.R. 383, 120 A.L.R. 655, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.

Lease of school property, power of school or local authorities as to grant of, 111 A.L.R. 1051.

Right of school district to enforce against other party contract which was in excess of former's powers or which did not comply with the conditions of its power in that regard, 122 A.L.R. 1370.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Absence of member of board or commission from hearing on removal or discharge as affecting validity thereof, 171 A.L.R. 175.

Releasing public school pupils from attendance for purpose of attending religious education classes, 2 A.L.R.2d 1371.

Trust for school children as charitable, or merely benevolent, 25 A.L.R.2d 1114.

Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 A.L.R.2d 944.

Rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Validity, as a charity, of trust to lend money to students, 33 A.L.R.2d 1183.

Hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to school district or authorities, 65 A.L.R.2d 1278.

Malicious prosecution, civil liability of school officials for, 66 A.L.R.2d 749.

Tax: rescission of vote authorizing school district expenditure or tax, 68 A.L.R.2d 1041.

Power of school district to employ counsel, 75 A.L.R.2d 1339.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority, 78 A.L.R.2d 1021.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Use of school property for other than public school or religious purposes, 94 A.L.R.2d 1274.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Regulations as to fraternities and similar associations connected with educational institution, 10 A.L.R.3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 A.L.R.3d 996.

Validity of regulation by school authorities as to clothes or personal appearance of pupils, 14 A.L.R.3d 1201.

Local improvements: exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

Public schools: modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 A.L.R.3d 703.

Tax exemption: garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Tort liability of public schools and institutions of higher learning from accidents due to condition of buildings or equipment, 34 A.L.R.3d 1166.

Athletic events: tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 A.L.R.3d 725.

Vocational training: liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Fellow students: tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 A.L.R.3d 330.

Physical education: tort liability of public schools and institutions of higher learning for accidents occurring during physical education classes, 36 A.L.R.3d 361.

Nonschool purposes: tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 A.L.R.3d 712.

Playground: tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds, 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 A.L.R.3d 830.

Fees: validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

Loitering or trespass: validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school buildings or premises, 50 A.L.R.3d 340.

Tax exemption: charitable or educational organization from sales or use taxes, 53 A.L.R.3d 748.

Discipline of pupil for conduct away from school grounds, 53 A.L.R.3d 1124.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

What constitutes "school," "educational use," or the like within zoning ordinance, 64 A.L.R.3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education, 64 A.L.R.3d 1138.

Zoning regulations as applied to private and parochial schools below the college level, 74 A.L.R.3d 14.

Zoning regulations as applied to public elementary and high schools, 74 A.L.R.3d 136.

Sex education: validity of sex education programs in public schools, 82 A.L.R.3d 579.

Student's right to compel school officials to issue degree diploma, or the like, 11 A.L.R.4th 1182.

Personal liability of public school teacher in negligence action for personal injury or death of student, 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student, 35 A.L.R.4th 328.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

Search conducted by school official or teacher as violation of fourth amendment or equivalent state constitutional provision, 31 A.L.R.5th 229.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 66 A.L.R.5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip, 68 A.L.R.5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events, 68 A.L.R.5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school, 72 A.L.R.5th 469.

Lunches and nutrition: construction and application of National School Lunch Act (42 U.S.C.S. §§ 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C.S. §§ 1771 et seq.), 14 A.L.R. Fed. 634.

Freedom of press: validity, under federal Constitution, of public school or state college regulation of student newspapers, magazines, or other publications - federal cases, 16 A.L.R. Fed. 182.

Attorneys' fees: construction and application of § 718 of Education Amendments Act of 1972 (20 U.S.C.S. § 1617) authorizing court to allow prevailing party, other than United States, reasonable attorneys' fee as part of costs in school desegregation case, 22 A.L.R. Fed. 688.

Tax exemption: construction and application of so-called "charitable and educational exemption" of Copyright Act (17 U.S.C.S. § 104), 23 A.L.R. Fed. 974.

78 C.J.S. Schools and School Districts § 100 et seq.

## **22-5-4.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-5-4.1 NMSA 1978, as enacted by Laws 1981, ch. 296, § 1, allowing local school boards to authorize a period of silence at the beginning of the school day, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **22-5-4.2. Child abuse; report coordination; confirmation.**

A. A local school board may adopt policies providing for the coordination and internal tracking of reports made by school district personnel pursuant to Section 32-1-15 NMSA 1978. Such policies, however, shall not require any notification to school district personnel before the report is made to one of the offices listed in Subsection A of that section. No policy shall purport to relieve any person having a duty to report under that section from that duty.

B. After a report is made to a county social services office of the human services department pursuant to Section 32-1-15 NMSA 1978, by any school district personnel, that office shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

**History:** Laws 1985, ch. 94, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Section 32-1-15 NMSA 1978 was repealed in 1993. For present comparable provisions, see 32A-4-3 NMSA 1978.

### **22-5-4.3. School discipline policies; students may self-administer certain medications.**

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include corporal punishment, in-school suspension, school service, suspension or expulsion.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

E. All public school and school district discipline policies shall allow students to carry and self-administer asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

(1) the health care provider has instructed the student in the correct and responsible use of the medication;

(2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and



(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

F. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

G. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication.

History: 1978 Comp., § 22-5-4.3, enacted by Laws 1986, ch. 33, § 9; 1993, ch. 226, § 13; 2005, ch. 60, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection E, pertaining to the effective date of policies adopted pursuant to this section and the time for review of existing school discipline policies, and made a minor stylistic change in Subsection A.

**The 2005 amendment**, effective June 17, 2005, permits students to carry and self-administer asthma medication and emergency anaphylaxis medication prescribed by a license health care provider.

#### **22-5-4.4. School employees; reporting drug and alcohol use; release from liability.**

A. A school employee who knows or in good faith suspects any student of using or abusing alcohol or drugs shall report such use or abuse pursuant to procedures established by the local school board.

B. No school employee who in good faith reports any known or suspected instances of alcohol or drug use or abuse shall be held liable for any civil damages as a result of such report or his efforts to enforce any school policies or regulations regarding drug or alcohol use or abuse.

**History:** 1978 Comp., § 22-1-5, enacted by Laws 1985, ch. 180, § 1; recompiled as 1978 Comp., § 22-5-4.4 by Laws 1986, ch. 33, § 10.

#### **22-5-4.5. Pledge of allegiance.**

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board.

**History:** 1978 Comp., § 22-5-4.5, enacted by Laws 1986, ch. 33, § 11.

### **22-5-4.6. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 26 recompiles and amends 22-5-4.6 NMSA 1978, relating to collaborative school improvement programs, as 22-5-15 NMSA 1978, effective April 4, 2003.

### **22-5-4.7. Additional student discipline policies; weapon-free schools.**

A. In addition to other student discipline policies, each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis.

B. Student discipline policies shall also provide for placement in an alternative educational setting, for not more than forty-five days, of any student with a disability who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. If a parent or guardian of the student requests a due process hearing, then the student shall remain in the alternative educational setting during the pendency of any proceeding, unless the parent or guardian and the school district agree otherwise.

C. For the purposes of this section, "weapon" means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

**History:** 1978 Comp., § 22-5-4.7, enacted by Laws 1995, ch. 47, § 1.

#### **ANNOTATIONS**

**Cross references.** — For unlawful carrying of deadly weapon on school premises, see 30-7-2.1 NMSA 1978.

**Suspension constitutional.** — A school’s decision to suspend a student who “should have known” he was bringing a weapon onto school property does not violate the student’s substantive due process right to a public education, if any such right exists. *Butler v. Rio Rancho Pub. Sch. Bd. of Educ.*, 341 F.3d 1197 (10th Cir. 2003).

#### **22-5-4.8. Area vocational high schools.**

A. A local school board, alone or in cooperation with other boards, may develop a plan for the establishment of an area vocational high school on the campus of a post-secondary educational institution to facilitate sharing of facilities. The plan shall be submitted to the state board of education and the commission on higher education for their approval.

B. The state board of education and the commission on higher education may approve a plan for an area vocational high school if the plan adequately provides for:

(1) sufficient financing for the operation of the school, which may include an election for a special levy not to exceed one dollar (\$1.00) for each one thousand dollars (\$1,000) of net taxable value and that may be in addition to levies authorized by the College District Tax Act [21-2A-1 to 21-2A-10 NMSA 1978];

(2) a broad vocational and technical education program serving a sufficient number of students to achieve economic viability; and

(3) compliance with the state plan for vocational education.

**History:** Laws 1999, ch. 219, § 19.

#### **22-5-4.9. High school diplomas; World War II veterans.**

A. Notwithstanding any other provision of the Public School Code [Chapter 22 NMSA 1978], a local school board may issue a high school diploma to a World War II veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in World War II.

B. A local school board may issue a high school diploma to a qualifying World War II veteran regardless of whether the veteran holds a high school equivalency diploma or is deceased.

C. The state board shall adopt and promulgate rules to carry out the provisions of this section, including:

- (1) an application form to be submitted by the World War II veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and
- (2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2003, ch. 113, § 1.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 113 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-5-4.10. High school diplomas; Korean conflict veterans.**

A. Notwithstanding any other provision of the Public School Code [22-1-1 NMSA 1978] , a local school board may issue a high school diploma to a Korean conflict veteran who:

- (1) is an honorably discharged member of the armed forces of the United States;
- (2) was scheduled to graduate from high school after June 27, 1950 and before January 31, 1955;
- (3) was a resident of New Mexico and attended a high school in the locality of the current school district; and
- (4) left high school before graduation to serve in the Korean conflict.

B. A local school board may issue a high school diploma to a qualifying Korean conflict veteran regardless of whether the veteran holds a high school equivalency diploma or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted to the local school board by the Korean conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma.

History: Laws 2005, ch. 11, § 1.

#### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 11 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

#### **22-5-5. Compensation; prohibited employment.**

A. The members of a local school board shall serve without compensation.

B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.

**History:** 1953 Comp., § 77-4-3, enacted by Laws 1967, ch. 16, § 29.

#### ANNOTATIONS

**Member of local school board cannot resign from such office and thereafter be appointed superintendent** of schools or be otherwise employed by that school district, during the term for which he or she was elected or appointed. 1974 Op. Att'y Gen. No. 74-17.

#### **22-5-6. Nepotism prohibited.**

A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before March 1, 2003.

**History:** 1953 Comp., § 77-4-3.1, enacted by Laws 1971, ch. 199, § 1; 1981, ch. 86, § 1; 2003, ch. 153, § 22.

#### ANNOTATIONS

**The 2003 amendment**, effective April 4, 2003, in Subsection A substituted "superintendent" for "school board" following "local" near the beginning and inserted "or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent." at the end; and substituted "2003" for "1981" at the end of Subsection B.

**Object of section is to prevent nepotism in initial hiring** of school employees. The hiring of a teacher closely related to a member of the school board justifiably arouses public suspicion that the teacher was hired on the basis of relationship rather than merit. Such suspicions, however, relate only to the initial hiring of the teacher. There is no reason to suspect nepotism in the continued employment of a tenured teacher whose competency has been established by years of service, merely because a family member is elected to the school board at some time during the teacher's career. *New Mexico State Bd. of Educ. v. Board of Educ.*, 95 N.M. 588, 624 P.2d 530 (1981)(decided prior to 1981 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service, 11 A.L.R.4th 826.

## **22-5-7. Officers; surety bonds.**

A. From among its members, a local school board shall elect a president, a vice-president and a secretary.

B. Before assuming the duties of office, the president and secretary of a local school board and the superintendent of schools of a school district shall each obtain an official bond payable to the school district and conditioned upon the faithful performance of their duties during their terms of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of each bond required shall be fixed by the local school board but shall not be less than five thousand dollars (\$5,000).

C. A local school board may elect to obtain a schedule or blanket corporate surety bond covering all local school board members and school district administrators and employees for any period not exceeding four years.

D. The cost of bonds obtained pursuant to this section shall be paid from the operational fund of the school district. The bonds shall be approved by the director of the public school finance division and filed with the secretary of finance and administration.

**History:** 1953 Comp., § 77-4-4, enacted by Laws 1967, ch. 16, § 30; 1977, ch. 247, § 202; 1980, ch. 151, § 45.

## **22-5-8. Term of office.**

A. The full term of office of a member of a local school board shall be four years from March 1 succeeding his election to office at a regular school district election.

B. Any member of a local school board whose term of office has expired shall continue in that office until his successor is elected and qualified.

**History:** 1953 Comp., § 77-4-5, enacted by Laws 1967, ch. 16, § 31; 1985, ch. 142, § 3; 1993, ch. 226, § 15.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, deleted former Subsections B to D, pertaining to the term of office for a member elected prior to March 1, 1985 and the procedure for avoiding coinciding terms for members, and redesignated former Subsection E as Subsection B.

**Defeated incumbent who is still a member of an existing five-man board may vote** on the resolution to increase the board membership to seven. While he is what is commonly referred to as a lame duck, he still exercises the full powers of his office for his term of office. 1971 Op. Att'y Gen. No. 71-17. See also 22-5-3 NMSA 1978.

### **22-5-8.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-5-8.1 NMSA 1978, as enacted by Laws 1983, ch. 237, § 1, concerning the term of office for board members of certain districts, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **22-5-9. Local school board vacancies.**

A. A vacancy occurring in the membership of a local school board shall be filled at an open meeting at which a quorum of the membership is present, by a majority vote of the remaining members appointing a qualified person to fill the vacancy.

B. A qualified person appointed to fill a vacancy occurring in the membership of a local school board shall hold that office until the next regular school district election when an election shall be held to fill the vacancy for the unexpired term.

C. If a qualified person is not appointed to fill the vacancy within forty-five days from the date the vacancy occurred, the state board shall appoint a qualified person to fill the vacancy until the next regular school district election.

D. In the event vacancies occur in a majority of the full membership of a local school board, the state board shall appoint qualified persons to fill the vacancies. Those

persons appointed shall hold office until the next regular or special school district election when an election shall be held to fill the vacancies for the unexpired terms.

**History:** 1953 Comp., § 77-4-6, enacted by Laws 1967, ch. 16, § 32; 1979, ch. 335, § 4.

### **22-5-9.1. Oath of office.**

All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the constitution of New Mexico.

**History:** Laws 1979, ch. 335, § 7.

### **22-5-10. Publications; advertisements.**

Except where otherwise specifically provided, whenever a local school board is required by law to make a publication or advertisement, the publication or advertisement shall be published in English in any newspaper published in the school district having general circulation within the school district. If there is no such newspaper, any newspaper published in the state having general circulation in the school district.

**History:** 1953 Comp., § 77-4-7, enacted by Laws 1967, ch. 16, § 33.

## **ANNOTATIONS**

**Cross references.** — As to publication of notice generally, see 14-11-1 NMSA 1978 et seq.

### **22-5-11. School district salary system.**

A. Prior to the beginning of each school year, each local superintendent shall file with the department the school district salary system, which salary system shall incorporate any salary increases or compensation measures specifically mandated by the legislature. Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

B. A local superintendent shall not reduce the school district salary system established pursuant to Subsection A of this section without the prior written approval of the state superintendent. The state superintendent shall give written notice to the legislative finance committee, the legislative education study committee and the department of finance and administration of approved reduction of any school district's salary system, including the reasons for the request for reduction and the grounds for approval.

**History:** 1978 Comp., § 22-5-11, enacted by Laws 1986, ch. 33, § 12; 1993, ch. 226, § 16; 2003, ch. 153, § 23.



## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, deleted the former first sentence, pertaining to filing 1985-86 and 1986-87 salary schedules; deleted "subsequent" preceding "school year" and substituted "department" for "office" in Subsection A; and substituted "state superintendent" for "director of the office of education" in two places in Subsection B.

**The 2003 amendment**, effective April 4, 2003, substituted "School district salary system" for "Local school boards salary schedule" in the section heading; substituted "superintendent" for "school board" throughout the section; in Subsection A substituted "the school" for "of education a" following "the department" near the middle, substituted "system" for "schedule" following "salary" twice near the middle and inserted "Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act." at the end; in Subsection B substituted "system" for "schedule" following "salary" once near the beginning and once near the end and inserted "the legislative education study committee" following "legislative finance committee" near the middle.

**Compiler's notes.** — Laws 1979, ch. 54, § 1, repealed former 22-5-11 NMSA 1978, relating to annual reports by local school boards to the department of education. For provisions of former section, see 1978 original pamphlet.

### **22-5-12. Local school boards; vacant or vacated offices.**

A. A local school board shall hold at least one regular meeting each month of the calendar year.

B. The office of any member of a local school board, if the member misses four consecutive regular meetings, may be declared vacant by a majority vote of the remaining members of the local school board.

C. The office of any member of a local school board, if the member misses six consecutive regular meetings, shall be vacant.

D. Any vacancy of an office on a local school board created pursuant to this section shall be filled in the same manner as other vacancies on a local school board are filled. Any member of a local school board who has his office declared vacant or vacated pursuant to this section shall not be eligible for appointment to the local school board until the term for which he was originally elected or appointed has expired.

E. As used in this section "regular meeting" means a meeting of the members of a local school board at which at least a quorum is present, about which notice has been published and at which normal school district business is transacted.

**History:** 1953 Comp., § 5-3-1.1, enacted by Laws 1967, ch. 131, § 1; 1979, ch. 335, § 2; 1978 Comp., § 10-3-2, recompiled as 1978 Comp., § 22-5-12 by Laws 1993, ch. 226, § 53.

## ANNOTATIONS

**Denial to citizen of right to address board.** — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 67 C.J.S. Officers and Public Employees §§ 74 to 76.

### **22-5-13. Local school board training.**

The department shall develop a mandatory training course for local school board members that explains state board rules, department policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify local school board members of the dates of the training course, the last of which shall not be later than three months after a local school board election.

**History:** 1978 Comp., § 22-5-13, enacted by Laws 2003, ch. 153, § 24.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-5-14. Local superintendent; powers and duties.**

- A. The local superintendent is the chief executive officer of the school district.
- B. The local superintendent shall:
  - (1) carry out the educational policies and rules of the state board and local school board;
  - (2) administer and supervise the school district;
  - (3) employ, fix the salaries of, assign, terminate or discharge all employees of the school district;
  - (4) prepare the school district budget based on public schools' recommendations for review and approval by the local school board and the

department. The local superintendent shall tell each school principal the approximate amount of money that may be available for his school and provide a school budget template to use in making school budget recommendations; and

(5) perform other duties as required by law, the department or the local school board.

C. The local superintendent may apply to the state board for a waiver of certain provisions of the Public School Code relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual public school.

**History:** 1978 Comp., § 22-5-14, enacted by Laws 2003, ch. 153, § 25.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-5-15. Collaborative school improvement programs.**

A. A local superintendent may approve an individual public school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the public school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school employees and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.

C. If necessary for the implementation of a collaborative school improvement program, the local superintendent may apply to the state board for a waiver of Public School Code [Chapter 22 NMSA 1978] provisions relating to length of school day, staffing patterns, subject areas or purchase of instructional material. The state board may approve a request for a waiver upon a finding that the local superintendent has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local superintendent shall provide the state board with a program budget that shows the type and number of students served, the type and number of school employees involved and all expenditures of the waiver.

D. A teacher participating in the development and implementation of a collaborative school improvement program may contact the state board to comment on the local superintendent's waiver request if the teacher communicated his opinion in writing to the local superintendent at the time the local superintendent approved implementation of the program.

**History:** 1978 Comp., § 22-5-4.6, enacted by Laws 1990, ch. 52, § 3; 1993, ch. 226, § 14; recompiled and amended as 1978 Comp., § 22-5-15 by Laws 2003, ch. 153, § 26.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, in Subsection C, substituted "subject areas or purchase of instructional material" for "or subject areas" at the end of the first sentence and added the second and third sentences.

**The 2003 amendment,** recompiled former 22-5-4.6 NMSA 1978 as present 22-5-15 NMSA 1978, effective April 4, 2003, and substituted "superintendent" for "school board" throughout the section; inserted "public" preceding "school" twice in Subsection A; substituted "employees" for "personnel" following "students, school" near the beginning of Subsection B; and substituted "school employees" for "personnel" following "number of" near the end of Subsection C.

### **22-5-16. Advisory school councils; creation; duties.**

A. Each public school shall create an advisory "school council" to assist the school principal with school-based decision-making and to involve parents in their children's education.

B. A school council shall be created and its membership elected in accordance with local school board rule. School council membership shall reflect an equitable balance between school employees and parents and community members. At least one community member shall represent the business community, if such person is available. The school principal may serve as chairman. The school principal shall be an active member of the school council.

C. The school council shall:

(1) work with the school principal and give advice, consistent with state and school district rules and policies, on policies relating to instructional issues and curricula and on the public school's proposed and actual budgets;

(2) develop creative ways to involve parents in the schools;

(3) where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities; and

(4) serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.

**History:** 1978 Comp., § 22-5-16, enacted by Laws 2003, ch. 153, § 27.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

# ARTICLE 5A

## School Alcohol-Free Zone Act

### 22-5A-1. Short title.

This act may be cited as the "School Alcohol-Free Zone Act".

History: Laws 2005, ch. 249, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 249 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Compiler's note.** — This section is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

### 22-5A-2. Definitions.

As used in the School Alcohol-Free Zone Act:

A. "alcoholic beverage" means a beverage with no less than one-half percent alcohol and includes wine, beer, fermented, distilled, rectified and fortified beverages; and

B. "school grounds" means public elementary and secondary schools, including charter schools and facilities owned or leased by the school district in or on which public school-related and sanctioned activities are performed, but does not include other commercial properties owned by a school district but not related to the functions of a public school. "School grounds" includes the buildings, playing fields, parking lots and other facilities located on a school's premises.

History: Laws 2005, ch. 249, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 249 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Compiler's note.** — This section is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

### **22-5A-3. Alcoholic beverages prohibited on public school grounds.**

It is unlawful to possess or consume alcoholic beverages on public school grounds.

History: Laws 2005, ch. 249, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 249 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Compiler's note.** — This section is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

**Cross references.** — See Section 22-5-4.4 NMSA 1978 for school employees reporting drug and alcohol abuse.

### **22-5A-4. Notices required.**

A school shall conspicuously post notices on school grounds stating that possession and consumption of alcoholic beverages is prohibited on school grounds.

History: Laws 2005, ch. 249, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 249 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Compiler's note.** — This section is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

**Cross references.** — See Section 22-5-4.4 NMSA 1978 for school employees reporting drug and alcohol abuse.

### **22-5A-5. Penalties.**

A. A person convicted of consumption or possession of an alcoholic beverage on school property for the first offense is guilty of a petty misdemeanor and subject to a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) and may be ordered to perform community service.

B. A person convicted of consumption or possession of an alcoholic beverage on school property for the second or a subsequent offense is guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months, or both.

History: Laws 2005, ch. 249, § 5.

#### ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 249 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

**Compiler's note.** — This section is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

**Cross references.** — See Section 22-5-4.4 NMSA 1978 for school employees reporting drug and alcohol abuse.

## ARTICLE 6 School District Elections

(Repealed by Laws 1985, ch. 168, § 22 and Laws 1993, ch. 226, § 54.)

### 22-6-1 to 22-6-4. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 1985, ch. 168, § 22 repeals 22-6-1 to 22-6-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 35 and amended by Laws 1971, ch. 314, §§ 1 to 3, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 1-22-3 to 1-22-6 NMSA 1978.

### 22-6-5. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-6-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 39, setting forth the qualifications for a candidate for membership on a local school board, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### 22-6-6 to 22-6-34. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1985, ch. 168, § 22 repeals 22-6-6 to 22-6-34 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable sections, see 1-22-7 to 1-22-19 NMSA 1978.

## ARTICLE 7

### Local School Board Member Recall

#### 22-7-1. Short title.

This act [22-7-1 to 22-7-16 NMSA 1978] may be cited as the "Local School Board Member Recall Act".

**History:** 1953 Comp., § 77-4A-1, enacted by Laws 1977, ch. 308, § 1.

## ANNOTATIONS

**Cross references.** — For constitutional provision authorizing recall of local school board members, see N.M. Const., art. XII, § 14.

**Compiler's notes.** — Laws 1993, ch. 152, § 1 provided for the repeal of 22-7-1 to 22-7-16 NMSA 1978 effective on the date that election results are canvassed and certified that a majority of people voting approved an amendment repealing N.M. Const., art. XII, § 14. That amendment, proposed by S.J.R. No. 15 (Laws 1993), was submitted to the people at the general election held on November 8, 1994, and was defeated by a vote of 115,411 for and 281,588 against. Thus, the repeal is not given effect.

#### 22-7-2. Purpose of act.

The purpose of the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] is to establish the methods and procedures by which a local school board member may be recalled as provided in Article 12, Section 14 of the constitution of New Mexico.

**History:** 1953 Comp., § 77-4A-2, enacted by Laws 1977, ch. 308, § 2.

#### 22-7-3. Definitions.

As used in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978]:



- A. "canvasser" means a registered voter who circulates a petition and collects signatures;
- B. "date of closure" means the date on which the county clerk receives signed petitions for the recall of one or more named members;
- C. "date of initiation" means the date on which the county clerk stamps the face sheet of the petition initiating the recall procedure;
- D. "face sheet" means the first page of a petition containing the information as provided in Subsections D and E of Section 22-7-6 NMSA 1978;
- E. "member" means any person elected to the local school board of a school district;
- F. "named member" means a local school board member named on a petition and subject to recall;
- G. "petition" means a document consisting of a completed face sheet or exact duplicate thereof and as many subsequent pages as are necessary for signatures;
- H. "petitioner" means a person, group or organization initiating the petition;
- I. "registered voter" means any qualified elector who is registered to vote as provided in the Election Code [Chapter 1 NMSA 1978];
- J. "signature" means the name of a person as written by himself;
- K. "subsequent page" means the pages in a petition after the face sheet arranged as provided in Subsection G of Section 22-7-6 NMSA 1978; and
- L. "county clerk" means the clerk of the county in which the school district is situate or, in the case of a multi-county school district, the clerk of the county in which the administrative office of the school district is situate.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1.

#### **22-7-4. Members subject to recall.**

Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

**History:** 1953 Comp., § 77-4A-4, enacted by Laws 1977, ch. 308, § 4.

## **22-7-5. Expenses.**

The local school board shall ensure the payment of the cost of a special recall election and any costs incurred by the county clerk in carrying out his duties as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

**History:** 1953 Comp., § 77-4A-5, enacted by Laws 1977, ch. 308, § 5; 1985, ch. 169, § 2.

## **22-7-6. Petition.**

A. A separate petition shall be initiated for each named member.

B. The petition shall be on eight and one-half inch by fourteen inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. Additional state funds will not be advanced to support recall.";

(3) a space for the name of the named member;

(4) a space for the name of the person, group or organization initiating the petition;

(5) a space in which to list the specific charges in support of the recall of the named member that constitute malfeasance in office, misfeasance in office or violation of oath of office; and

(6) a notice stating "Signatures are valid for a maximum of one hundred ten days from date of initiation.".

E. The remaining portion of the face sheet shall be substantially in the following form:

"I, the undersigned, a registered voter in the county of ....., New Mexico, and a resident of the ..... school district, hereby petition for the recall of the local

school board member named on the face sheet of this petition.

1.

.....  
.....

Usual signature	Name printed	Address
as City Date	As registered	Registered

2.

.....  
....."

Usual signature	Name printed	Address
as City Date	As registered	Registered

F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.

G. Each subsequent page of the petition shall have approximately twenty-five lines numbered one to twenty-five and shall be substantially in the form as provided in Subsection E of this section.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 6; 1993, ch. 226, § 17.

### ANNOTATIONS

**Cross references.** — As to signatures on petition, see 22-7-10 NMSA 1978.

As to challenges to petition, see 22-7-12 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "this section" for "section 6 of the Local School Board Member Recall Act" at the end of Subsection G and made stylistic changes.

**Voting Rights Act of 1965.** — The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

### 22-7-7. Affidavit with petition; penalty.

A. When submitted to the county clerk, each petition shall have a notarized affidavit attached. The affidavit shall state that the canvasser is a registered voter of the district and that the canvasser circulated that particular petition and witnessed each signer write his signature and any other information recorded on the petition.

B. According to the best information and belief of the canvasser, the canvasser shall insure the following:

- (1) each signature is the signature of the person whose name it purports to be;
- (2) each signer is a registered voter of the county and school district listed on the petition;
- (3) each signature was obtained on or after the date of initiation; and
- (4) each signer had an opportunity to read the information on the completed face sheet or an exact duplicate thereof.

C. Any knowingly false statement made in the affidavit constitutes a fourth degree felony.

**History:** 1953 Comp., § 77-4A-7, enacted by Laws 1977, ch. 308, § 7; 1985, ch. 169, § 3.

### **22-7-8. Responsibilities of petitioner.**

A. The petitioner may obtain a face sheet form and a subsequent page form from the county clerk, or the petitioner may assemble both as provided in Section 22-7-6 NMSA 1978.

B. The petitioner shall complete the following portions of the face sheet:

- (1) name of the named member; and
- (2) name of the person, group or organization initiating the petition.

C. The petitioner shall cite the specific charges in support of the recall of the named member on the face sheet in compliance with the federal Voting Rights Act of 1965, as amended. The charges shall constitute misfeasance in office, malfeasance in office or violation of oath of office.

D. The petitioner shall submit the completed face sheet to the county clerk for affixing of the initiation date.

E. The petitioner shall duplicate the completed face sheet with the initiation date affixed.

F. The petitioner shall file all petitions collected to recall the named member with the county clerk on the same day within one hundred ten calendar days from the initiation date.

**History:** 1953 Comp., § 77-4A-8, enacted by Laws 1977, ch. 308, § 8; 1985, ch. 169, § 4.

## ANNOTATIONS

**Voting Rights Act of 1965.** — The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

**Improper motive as component of misfeasance.** — When a public officer has a right to perform an act which is discretionary, the manner in which the discretion is exercised does not rise to the level of misfeasance unless the discretion is exercised with an improper or corrupt motive; therefore where the school board engaged in a site selection process spanning approximately two years, including consideration of 15 sites and a myriad of relevant factors, and nothing in the record indicated that any of the challenged board members acted out of an improper or corrupt motive, there was no misfeasance. *CAPS v. Board Members*, 113 N.M. 729, 832 P.2d 790 (1992).

### **22-7-9. Duties of county clerk.**

A. The county clerk shall perform the following duties:

(1) provide standard face sheet forms to include a place for the mailing address of the petitioner, standard subsequent page forms and standard affidavit forms to the general public upon request;

(2) affix the initiation date to the completed face sheet only after the district court has issued an order permitting the continuation of the recall process after a hearing pursuant to Section 22-7-9.1 NMSA 1978 on the sufficiency of facts supporting the charges of malfeasance or misfeasance in office or violation of oath of office;

(3) send one copy of the completed face sheet to the named member by registered mail, return receipt requested; and

(4) keep one copy of the completed face sheet on file.

B. Upon receipt of completed petitions, the county clerk shall stamp the petitions with the date of closure. All completed petitions for the recall of one or more named members shall be filed with the county clerk on the same day within one hundred ten calendar days from the date of initiation.

C. The county clerk shall verify the signatures on the completed petitions within ten working days.

D. Within five working days of the validation by the county clerk, the county clerk shall determine whether the verified signatures meet the minimum number required by Section 22-7-10 NMSA 1978.

E. If the county clerk determines that sufficient signatures have not been submitted, he shall notify the petitioner at the mailing address listed on the face sheet and the

named member by registered mail, return receipt requested, within three working days after the determination.

F. If the county clerk determines that sufficient signatures have been submitted, he shall do the following within three working days after the determination:

(1) notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested; and

(2) initiate procedures for a special recall election as provided in Section 22-7-13 NMSA 1978.

**History:** 1953 Comp., § 77-4A-9, enacted by Laws 1977, ch. 308, § 9; 1979, ch. 277, § 1; 1985, ch. 169, § 5; 1987, ch. 142, § 1.

### ANNOTATIONS

**Exclusion of names on list by superintendent.** — Superintendent may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed, as required by 22-7-6 NMSA 1978, was inconsistent with the purpose of 22-7-10D NMSA 1978 and was, therefore, improper. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Name withdrawal petitions valid before final action on petition.** — Where superintendent received name withdrawal petitions after receiving clerk's certification of signatures, but before taking final action on petition, superintendent properly refused to count names to those persons who submitted name withdrawal petitions. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

#### **22-7-9.1. Court hearing.**

A. Prior to affixing the date of initiation to the completed face sheet, the county clerk shall file an application with the district court within five days from the date the completed face sheet is presented to the county clerk, requesting a hearing for a determination by the court of whether sufficient facts exist to allow the petitioner to continue with the recall process.

B. Upon the filing of the application, the district court shall set a hearing date on the issue of sufficiency of the facts alleged, which hearing shall be held not more than ten days from the date the application is filed by the county clerk. The court shall notify the petitioner at the mailing address listed on the face sheet of the time and place of the hearing.

C. Upon review of the completed face sheet together with affidavits submitted by the petitioner setting forth specific facts in support of the charges specified on the face

sheet, the district court shall make a determination whether sufficient facts exist to allow petitioners to continue with the recall process.

D. Upon entry of an order by the court that sufficient facts exist to allow the petitioner to continue the recall process, the county clerk shall affix the date of initiation to the completed face sheet.

E. The district court's decision is appealable by the petitioner only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

**History:** 1978, Comp., § 22-7-9.1, enacted by Laws 1987, ch. 142, § 2.

### ANNOTATIONS

**When no appeal as of right, statute governs.** — Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is governed by the ten-day limit set forth in Subsection (B)(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** — Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** — One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

### 22-7-10. Signatures.

A. No signature may be signed on the petition prior to the initiation date.

B. Signatures are valid for a maximum of one hundred ten calendar days from the date of initiation.

C. Each signer of a recall petition shall sign but one petition unless more than one member is a named member, and in that case not more than the number of recall petitions equal to the number of named members shall be signed.

D. The signature shall not be counted unless the entire line is filled in full and is upon the form prescribed by the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

E. A signature shall be counted on a recall petition unless there is evidence presented that the person signing:

(1) is not a registered voter of the county and of the school district listed on the face sheet of the petition;

(2) has signed more than one recall petition for one named member or has signed one petition more than once; or

(3) is not the person whose name appears on the recall petition.

F. The minimum number of verified signatures needed to validate a petition is thirty-three and one-third percent of the number of registered voters who voted for the school board position of the named member at the last preceding school board election.

**History:** 1953 Comp., § 77-4A-10, enacted by Laws 1977, ch. 308, § 10; 1985, ch. 169, § 6.

## ANNOTATIONS

**Cross references.** — As to petition generally, see 22-7-6 NMSA 1978.

**Subsection B is not intended to prevent withdrawal of signatures** but is intended to determine when signatures expire as a matter of law. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Signer of petition has right to withdraw his name** before the superintendent has taken final action. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Effect of incomplete lines on petition.** — Superintendent may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed is inconsistent with the purpose of Subsection D and is, therefore, improper. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

## 22-7-11. Repealed.

## ANNOTATIONS



**Repeals.** — Laws 1979, ch. 277, § 4, repeals 22-7-11 NMSA 1978, relating to duties of the attorney general in relation to a petition for a recall of a local school board member. For provisions of former section, see 1978 Original Pamphlet.

## **22-7-12. Recall petition; limitation on appeals of validity of recall petition.**

A. Any person filing any court action challenging a recall petition provided for in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] shall do so within ten days after the determination of the county clerk as set forth in Section 22-7-9 NMSA 1978. Challenges to the recall petition shall be directed to:

- (1) the validity of the signatures on the petitions;
- (2) the determination of the county clerk as to the minimum number of signatures; or
- (3) the sufficiency of the charge.

Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purpose of an action challenging a recall petition, each petitioner filing a recall petition under the Local School Board Member Recall Act [22-7-1 NMSA 1978] appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, that officer shall, by certified mail, return receipt requested, mail the process to the person.

**History:** 1953 Comp., § 77-4A-12, enacted by Laws 1977, ch. 308, § 12; 1979, ch. 277, § 2; 1985, ch. 169, § 7.

### **ANNOTATIONS**

**When no appeal as of right, statute governs.** — Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is governed by the ten-day limit set forth in Subsection (B)(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** — Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** — One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

### **22-7-13. Special recall election.**

A. The date of the special recall election shall be set no later than ninety days after the date of the determination by the county clerk.

B. The question to be submitted to the voters at the special recall election shall be whether or not the named member shall be recalled.

C. A special recall election may be held in conjunction with a regular or a special school district election.

D. Whenever a special recall election is called, the county clerk shall give public notice of the special recall election by publishing information regarding the election once each week for four consecutive weeks. The first publication of the information shall be made between forty-five and sixty days before the date of the special recall election.

Information regarding the election shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall include the date when the special recall election will be held, the question to be submitted to the voters, a brief description of the boundaries of each precinct, the location of each polling place, the hours each polling place will be open and the date and time of the closing of the registration books by the county clerk as required by law.

E. The ballot shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall present the voter the choice of voting "for the removal of the named member" or "against the removal of the named member".

F. All special recall elections shall be held in compliance with the federal Voting Rights Act of 1965, as amended.

G. Except as otherwise provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], special recall elections in a school district shall be conducted as provided in the Election Code [Chapter 1 NMSA 1978].

**History:** 1953 Comp., § 77-4A-13, enacted by Laws 1977, ch. 308, § 13; 1979, ch. 277, § 3; 1985, ch. 169, § 8; 1993, ch. 226, § 18.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "the Election Code" for "Sections 22-6-1 through 22-6-34 NMSA 1978" at the end of Subsection G.

**Voting Rights Act of 1965.** — The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

### **22-7-14. Vacancy.**

A. The vacancy created by a recalled member shall be filled as provided in Section 22-5-9 NMSA 1978.

B. Under no circumstances may a recalled member be appointed to fill any vacancy for the remainder of the term of office for which he was elected.

**History:** 1953 Comp., § 77-4A-14, enacted by Laws 1977, ch. 308, § 14.

### **22-7-15. Mandamus.**

If the county clerk or local school board fails or refuses to do or perform any of the acts required in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], the petitioner may apply to any district court for writ of mandamus to compel the performance of the required act, and the court shall entertain that application.

**History:** 1953 Comp., § 77-4A-15, enacted by Laws 1977, ch. 308, § 15; 1985, ch. 169, § 9.

## **ANNOTATIONS**

**Cross references.** — As to failure, neglect or refusal of local public officer to perform duties of office as cause for removal, see 10-4-2 NMSA 1978.

### **22-7-16. Penalties.**

Any person violating Section 9 [22-7-9 NMSA 1978] of the Local School Board Member Recall Act is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-4A-16, enacted by Laws 1977, ch. 308, § 16.

## **ANNOTATIONS**

**Severability clauses.** — Laws 1977, ch. 308, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 8**

### **Public School Finance**

## **22-8-1. Short title.**

Chapter 22, Article 8 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55; 2003, ch. 153, § 28.

### **ANNOTATIONS**

**Cross references.** — As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlay, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2003 amendment,** effective April 4, 2003, substituted "Chapter 22, Article 8 NMSA 1978" for "Sections 22-8-1 through 22-8-42 NMSA 1978" at the beginning of the section.

**No contractual right to free public education.** — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**Education of nonresidents without taking state allotment unconstitutional donation.** — To the extent that a local school district would undertake the total burden of educating nonresident students without benefit of state allotment as dispensed on the basis of average daily membership, the school district would still be making a donation in aid of those students in violation of N.M. Const., art. IX, § 14. 1978 Op. Att'y Gen. No. 78-14.

## **22-8-2. Definitions.**

As used in the Public School Finance Act [22-8-1 NMSA 1978]:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include truants and habitual truants the school district is required to

intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time- equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan required to be submitted by a local school board;

I. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "public money" or "public funds" means all money from public or private sources received by a local school board or officer or employee of a local school board for public use;

M. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(4) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or

(5) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department; and

N. "state superintendent" means the secretary of public education or the secretary's designee.

History: 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; 1969, ch. 180, § 3; 1971, ch. 263, § 3; 1972, ch. 17, § 1; 1974, ch. 7, § 1; 1974, ch. 8, § 1; 1977, ch. 83, § 1; 1977, ch. 246, § 62; reenacted by Laws 1978, ch. 128, § 3; 1980, ch. 151, § 46; 1983, ch. 301, § 68; 1985, ch. 93, § 1; 1986, ch. 33, § 13; 1988, ch. 64, § 13; 1995, ch. 69, § 1; 1997, ch. 40, § 2; 2004, ch. 27, § 21; 2005, ch. 260, § 1.

## ANNOTATIONS

**Cross references.** — For definition of "state board," see 22-1-2 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted " 'ADM' means membership ('MEM')" for " 'ADM' means average daily membership" in Subsection A; in Subsection B, deleted "average daily" preceding "membership" in the first sentence, substituted "qualified students on the current roll of class or school on a specified day" for "students for each school day of the school year used, minus withdrawals of students, divided by the number of school days used", and added the next-to-last sentence; substituted present Subsection E for the provisions of the former subsection which defined "division"; added Subsection O and made related changes in Subsection N.

**The 1995 amendment**, effective June 16, 1995, inserted "or 'MEM'" and deleted "MEM" from the end in Subsection A; rewrote Subsection C; inserted "or 'division'" in Subsection E; inserted "or 'early childhood education MEM'" and substituted "MEM" for "ADM" in Subsection F; inserted "or 'full-time equivalent MEM'", deleted "average daily" preceding "membership" and substituted "MEM" for "ADM" in Subsection G; substituted "MEM" for "ADM" in two places in Subsection J; deleted "provided the provisions of this paragraph shall be effective with the 1987 - 1988 school year" at the end of Paragraph (3) of Subsection M; deleted former Subsection N which defined "special education ADM"; added Paragraphs (4) and (5) in Subsection M; redesignated former Subsection O as Subsection N; and made minor stylistic changes throughout the section.

**The 1997 amendment**, effective July 1, 1997, made a stylistic change in Subsection B.

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department".

**The 2005 amendment**, effective June 17, 2005, provides in Subsection B that withdrawals do not include truants and habitual truants that the school district is required to intervene with and keep in an educational setting pursuant to Section 22-12-9 NMSA 1978.

### **22-8-3. Office of education abolished; functions transferred.**

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties provided by law for the office of education are transferred to the state department of public education.

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.

#### **ANNOTATIONS**

**Cross references.** — As to creation of the state department of public education, see N.M. Const., Art. XII, § 6.

**Repeals and reenactments.** — Laws 1988, ch. 64, § 14 repeals former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacts the above section, effective May 18, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

**"Effective date of this act".** — The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, Chapter 64.

### **22-8-4. Department; duties.**

In addition to other duties provided by law, the department shall:

A. prescribe the forms for and supervise and control the preparation of all budgets of all public schools and school districts; and

B. compile accurate information concerning public school finance and administration.

**History:** 1953 Comp., § 77-6-4, enacted by Laws 1967, ch. 16, § 58; 1969, ch. 180, § 4; 1974, ch. 8, § 2; 1978, ch. 127, § 2; 1979, ch. 305, § 1; 1988, ch. 64, § 15.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "Department" for "Public school finance division" in the catchline; substituted "department" for "division" in the introductory paragraph; deleted Subsection C, regarding advising and consulting with the state superintendent in regard to financial matters, and made a related change.

**Discretionary substantive line item allocations.** — Supervision or control does not include grant of power to division or chief (now director) to make discretionary substantive line item allocations in estimated budgets. 1975 Op. Att'y Gen. No. 75-30.

## **22-8-5. Rules; procedures.**

A. The department, in consultation with the state auditor, shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective only upon approval by the state board and filing with the state records center and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the department shall timely furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section.

**History:** 1953 Comp., § 77-6-5, enacted by Laws 1967, ch. 16, § 59; 1976 (S.S.), ch. 28, § 3; 1988, ch. 64, § 16; 1999, ch. 291, § 1; 2003, ch. 273, § 23.

### **ANNOTATIONS**

**Cross references.** — As to filing with records center, see 14-4-4 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" throughout the section; in Subsection A, inserted "state board of education and the" in the second sentence, substituted "state records center" for "supreme court law librarian", and added the last sentence; and added Subsection C.

**The 1999 amendment**, effective April 8, 1999, substituted references to rules and procedures for a uniform system of accounting and budgeting of funds for references to



a manual of accounting and budgeting in the section heading and throughout the section, substituted "state board" for "state board of education" in Subsection A, deleted "but not limited to" after "grants-in-aid received, including" in Subsection B, and substituted "department" for "state department of public education" in Subsection C.

**The 2003 amendment**, effective July 1, 2003, in Subsection A, inserted "in consultation with the state auditor" near the beginning and deleted "and the legislative finance committee" following "the state board".

## **22-8-6. Budgets; submission; failure to submit.**

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. The operating budget required by this section shall include a proposed breakdown for charter schools in the school district, by individual charter school, of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or with rules and procedures of the department.

**History:** 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17; 1993, ch. 224, § 2; 1993, ch. 227, § 9; 1999, ch. 281, § 21; 1999, ch. 291, § 2.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

**1993 amendments.** — Laws 1993, ch. 224, § 2, effective June 18, 1993, adding a new Subsection C which read "In each local school district with a total membership of greater than thirty thousand, the estimated budget required by this section may include a school-district-wide breakdown, by individual school, of the membership projected for each individual school, the total program units generated at an individual school and anticipated disbursements and expenditures at each school." and redesignated former Subsection C as Subsection D, was approved April 6, 1993. However, Laws 1993, ch. 227, § 9, effective June 18, 1993, also amending this section by adding a new Subsection C and redesignating former Subsection C as Subsection D, but not giving effect to the changes made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 227, § 9.

**1999 amendments.** — Laws 1999, ch. 281, § 21, effective June 18, 1999, inserting "and any charter schools in the district" in the first sentence of Subsection A, and rewriting Subsection C, was approved on April 8, 1999. However, Laws 1999, ch. 291, § 2, effective April 8, 1999, substituting "operating budget" for "estimated budget" throughout the section, deleting "local" before "school district" in Subsection C, and substituting "with rules and procedures" for "the manual of accounting and budgeting" at the end of Subsection D, was approved later on April 8, 1999. The section is set out as amended by Laws 1999, ch 291, § 2. See 12-1-8 NMSA 1978.

**Legislative intent.** — The legislature obviously intended that a school board may purchase insurance policies not to exceed five years and, if prepayment of the entire premium in the initial policy year is necessary in order to obtain the insurance, then the school board may legally do so. 1975 Op. Att'y Gen. No. 75-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Insurance on school buildings, availability of proceeds of, for purpose other than restoring or replacing building damaged or destroyed, 65 A.L.R. 1124.

Right or duty to carry insurance on school property, 100 A.L.R. 600.

### **22-8-6.1. Certain school district budgets.**

Each charter school shall submit to the local school board a school-based budget. The budget shall be based upon the projected number of program units generated by that charter school and its students, using the at-risk index and the training and experience index of the district. The budget shall be submitted to the local school board for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local budget by the local school board, the individual charter school budget shall be included separately in the budget submission to the department of education required pursuant

to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] and the 1999 Charter Schools Act [22-8B-1 to 22-8B-15 NMSA 1978].

**History:** Laws 1993, ch. 227, § 8; 1999, ch. 281, § 22.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

#### **22-8-7. Budgets; form.**

All budgets submitted to the department by a school district shall be in a form specified by the department.

**History:** 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5; 1999, ch. 291, § 3.

### **ANNOTATIONS**

**The 1999 amendment**, effective April 8, 1999, substituted "department" for "division" and for "manual of accounting and budgeting of the division".

#### **22-8-7.1. Certain school district budgets.**

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978].

**History:** Laws 1993, ch. 224, § 1.

#### **22-8-8. Budgets; minimum student membership.**

Without prior approval of the state superintendent, no local school board shall maintain or provide a budget allowance for a public school having an average daily membership of less than eight.

**History:** 1953 Comp., § 77-6-8, enacted by Laws 1967, ch. 16, § 62; 1988, ch. 64, § 18.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief".

### 22-8-9. Budgets; minimum requirements.

A. A budget for a school district shall not be approved by the department that does not provide for:

(1) a school year consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-10A-20 NMSA 1978.

B. The state board shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof.

**History:** 1953 Comp., § 77-6-9, enacted by Laws 1967, ch. 16, § 63; 1969, ch. 180, § 6; 1979, ch. 32, § 1; 1982, ch. 40, § 1; 1986, ch. 33, § 14; 1988, ch. 64, § 19; 1993, ch. 223, § 1; 1993, ch. 226, § 19; 1994, ch. 68, § 1; 1996, ch. 62, § 1; 1997, ch. 136, § 1; 2001, ch. 285, § 1; 2003, ch. 153, § 29.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" near the beginning of Subsection A and "an ADM of 1,000 or fewer" for "an ADM of 500 or fewer" in Subsection D.

**1993 amendments.** — Laws 1993, ch. 223, § 1, effective July 1, 1995, deleting "effective with the 1987-88 school year" following "in-service training" in Paragraph (1), deleting the paragraph designation "(2)", redesignating former Paragraph (3) as Paragraph (2) and adding Paragraph (3) of Subsection A and substituting "Paragraph (1)" for "Paragraph (2)" and "a MEM" for "an ADM" in Subsection D was approved April 6, 1993. However, Laws 1993, ch. 226, § 19 effective July 1, 1993, also amending this section by deleting "effective with the 1987-88 school year" following "in-service training" in Paragraph (1) of Subsection A, substituting "a MEM" for "an ADM" in Subsection D and making a minor stylistic change, but not including all the changes

made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 19. See 12-1-8 NMSA 1978.

**The 1996 amendment**, added Paragraph A(4) and made a stylistic change in Subsection D. Laws 1996, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

**The 1997 amendment** deleted former Subsection A(4), which read: "effective July 1, 1997, a full-time, department-certified nurse for each fifty-five teachers employed by a school district or the equivalent part-time, department-certified nurse for less than fifty-five teachers" and in Subsection D, deleted "be construed to" following "shall" and deleted "only" following "apply". Laws 1997, ch. 136 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**The 2001 amendment**, effective June 15, 2001, inserted "of education" following "department" in Subsection A; substituted "school instructor" for "classroom instructor" in Subsection B; and deleted Subsection D, which read "The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall apply to school districts with a MEM of one thousand or fewer."

**The 2003 amendment**, effective April 4, 2003, deleted "of education" following "department" near the middle of Subsection A; substituted "22-10A-20" for "22-2-8.2" following "Section" near the end of Subsection A(3); in Subsection B substituted "rule" for "regulation" following "shall, by" near the beginning, substituted "an instructional" for "a teaching" following "requirements for" near the middle and substituted "teacher" for "certified school instructor" following "a full-time" near the end; and deleted Subsection C.

**Compiler's notes.** — Laws 1996, ch. 62, § 2 provides that the version of 22-8-9 NMSA 1978 as amended by Laws 1993, ch. 223, § 1 that is to become effective on July 1, 1995, is repealed.

Laws 1996, ch. 62, § 3 provides that the version of 22-8-9 NMSA 1978 as amended by Laws 1994, ch. 68, § 1, as that act is amended by Laws 1995, ch. 151, § 1 to become effective July 1, 1996, is repealed.

## **22-8-10. Budgets; fixing the operating budget.**

A. Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the operating budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district, the local school board shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing.

**History:** 1953 Comp., § 77-6-11, enacted by Laws 1967, ch. 16, § 65; 1988, ch. 64, § 20; 1989, ch. 225, § 1; 1993, ch. 41, § 1; 1999, ch. 291, § 4.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

**The 1989 amendment,** effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

**The 1993 amendment,** effective March 17, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

**The 1999 amendment,** effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section.

### **22-8-11. Budgets; approval of operating budget.**

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board an operating budget for use by the local school board; and

(2) make corrections, revisions and amendments to the operating budgets fixed by the local school boards and the state superintendent to conform the budgets to the requirements of law and to the department's rules and procedures.

B. No school board or officer or employee of a school district shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of funds pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district that fails to demonstrate that parental involvement in the budget process was solicited.

**History:** 1953 Comp., § 77-6-12, enacted by Laws 1967, ch. 16, § 66; 1978, ch. 128, § 4; 1988, ch. 64, § 21; 1993, ch. 41, § 2; 1999, ch. 291, § 5.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "director" throughout the section and made minor stylistic changes.

**The 1993 amendment**, effective March 17, 1993, added Subsection C.

**The 1999 amendment**, effective April 8, 1999, substituted "approval of operating budget" for "temporary; final" in the section heading; substituted "an operating budget" for "a temporary operating budget" in Subsections A(1) and C; deleted "pending approval by the department of a final budget" at the end of Subsection A(1); in Subsection A(2) substituted "operating budgets" for "estimated budgets" and "to the department's rules and procedures" for "to the manual of accounting and budgeting; and"; deleted Subsection A(3) which required that final budgets be approved and certified to local school boards and boards of county commissioners before the first Monday of September of each year; and in Subsection B, deleted "contractual" before "obligation is made" in the first sentence and substituted "pursuant to the department's rules and procedures" for "between line items within series of a budget" in the second sentence.

**Temporary provisions.** — Laws 2003, ch. 153, § 71, effective April 4, 2003, provides that prior to the approval of school district and charter school budgets for fiscal year 2004, the state superintendent shall verify that certain budget requirements are met.

## **22-8-12. Operating budgets; amendments.**

Operating budgets shall not be altered or amended after approval and certification by the department, except for the following purposes and according to the following procedure:

A. upon written request of any local school board, the state superintendent may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of any local school board, the state superintendent, in conformance with the rules of the department, may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The state superintendent shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of any local school board, the state superintendent may authorize an increase in a budget of not more than one thousand dollars (\$1,000);  
or

D. upon written request of any local school board, the state superintendent, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars (\$1,000). The notice of the hearing shall designate the school district which proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing.

**History:** 1953 Comp., § 77-6-13, enacted by Laws 1967, ch. 16, § 67; 1969, ch. 180, § 10; 1977, ch. 247, § 203; 1988, ch. 64, § 22; 1999, ch. 291, § 6.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in the introductory paragraph; substituted "state superintendent" for "chief" throughout the section; and deleted "of finance and administration and with the approval of its secretary" following "regulations of the department" in the first sentence in Subsection B.

**The 1999 amendment**, effective April 8, 1999, substituted the present section heading for "Final budgets; alterations or amendments", substituted "Operating budgets" for "Final budgets" at the beginning of the first paragraph, and substituted "rules of the department" for "regulations of the department" in Subsection B.

#### **22-8-12.1. Membership projections and budget requests.**

A. Each local school board shall submit annually, on or before October 15, to the department:

- (1) an estimate for the succeeding fiscal year of:
  - (a) the membership of qualified students to be enrolled in the basic program;
  - (b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and
  - (c) the membership of students to be enrolled in approved special education programs;
- (2) all other information necessary to calculate program costs; and
- (3) any other information related to the financial needs of the school district as may be requested by the department.



B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

(1) review the financial needs of each school district for the succeeding fiscal year; and

(2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the state board for:

(a) amendments to the public school finance formula;

(b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and

(c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials.

**History:** 1953 Comp., § 77-6-13.1, enacted by Laws 1978, ch. 128, § 5; 1980, ch. 151, § 48; 1988, ch. 64, § 23; 1993, ch. 226, § 20; 1999, ch. 291, § 7.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" throughout the section; substituted "department" for "director of the public school finance division" in Subsection D; and in Subsection D(2), substituted "November 30" for "November 15" and "state board" for "public school finance division".

**The 1993 amendment**, effective July 1, 1993, deleted "average daily" preceding "membership" in subparagraphs (a) to (c) of Paragraph (1) of Subsection A; deleted former Subsection B, pertaining to the budget request of the state board for pupil transportation and textbooks; redesignated former Subsections C and D as Subsections B and C; added Subparagraph (c) of Paragraph (2) of Subsection C; and made a minor stylistic change.

**The 1999 amendment**, effective April 8, 1999, added "Membership projections and" to the beginning of the section heading, and substituted "department's rules and procedures" for "manual of accounting and budgeting published by the department" at the end of Subsection B.

**Effect of actual costs exceeding program costs.** — A charter school has no right to additional funding if capital expenditures or any other expenditure becomes so great that its actual costs far exceed its "program costs." Taos Municipal Schools Charter

School v. Davis, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_\_.

## **22-8-12.2. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 291, § 8 repeals 22-8-12.2 NMSA 1978, as enacted by Laws 1978, ch. 149, § 1, relating to budgets, earnings from investments and operational funds for local school boards, effective April 8, 1999. For provisions of former section, see 1998 Replacement Pamphlet.

## **22-8-13. Reports.**

A. Each local school board shall require each public school in its school district to keep accurate records concerning membership in the public school. The superintendent of each school district shall maintain the following reports for each twenty-day reporting period:

- (1) the basic program MEM by grade in each public school;
- (2) the early childhood education MEM;
- (3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;
- (4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and
- (5) the full-time-equivalent MEM for bilingual multicultural education programs.

B. The superintendent of each school district shall furnish to the department reports of the information required in Paragraphs (1) through (5) of Subsection A of this section for the first forty days of the school year. The forty-day report and all other reports required by law or by the state board shall be furnished within five days of the close of the reporting period.

C. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district and shall be subject to inspection and audit at any reasonable time.

D. The department shall withhold allotments of funds to any school district where the superintendent has failed to comply until the superintendent complies with and agrees to continue complying with requirements of this section.

E. The provisions of this section may be modified or suspended by the department for any school district or school operating under the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school and shall calculate an equivalent MEM for use in projecting school district revenue.

**History:** Laws 1967, ch. 16, § 68; 1953 Comp., § 77-6-14; Laws 1969, ch. 180, § 11; 1971, ch. 263, § 4; 1972, ch. 16, § 7; reenacted by 1974, ch. 8, § 3; 1975, ch. 90, § 1; 1976 (S.S.), ch. 32, § 1; 1978, ch. 128, § 6; 1988, ch. 64, § 24; 1990, ch. 94, § 2.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in Subsections B, D, and E; substituted "22-8-21 NMSA 1978" for "77-6-18.4 NMSA 1953" in Subsection A(3); added "as defined in Section 22-8-21 NMSA 1978" in Subsection A(4); deleted the last sentence of Subsection B regarding forty-day and eighty-day reports; and substituted "department" for "director" in Subsections D and E.

**The 1990 amendment**, effective May 16, 1990, substituted "MEM" for "ADM" throughout the section and, in Subsection B, deleted "the first eighty days of the school year and for the entire school year" at the end of the first sentence, substituted "The forty-day report and all other reports required by law or by the state board" for "The reports for the first forty days and the first eighty days" at the beginning of the second sentence and deleted a third sentence which read "The report for the entire school year shall be furnished not later than fifteen days following the end of each school year".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of state or local government regulation requiring private school to report attendance and similar information to government - post-Yoder cases, 8 A.L.R.5th 875.

### 22-8-14. Public school fund.

- A. The "public school fund" is created.
- B. This fund shall be distributed to school districts in the following parts:
  - (1) state equalization guarantee distribution;
  - (2) transportation distribution; and
  - (3) supplemental distributions:
    - (a) out-of-state tuition;
    - (b) emergency; and

(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-6-15, enacted by Laws 1967, ch. 16, § 69; 1969, ch. 180, § 12; 1971, ch. 263, § 5; 1972, ch. 87, § 1; 1973, ch. 351, § 1; 1974, ch. 8, § 4; 1975, ch. 342, § 1; 1988, ch. 64, § 25.

### ANNOTATIONS

**Cross references.** — As to state equalization guarantee distributions, see 22-8-25 NMSA 1978.

As to transportation distributions, see 22-8-26 to 22-8-29 NMSA 1978.

As to supplemental distributions, see 22-8-30 NMSA 1978.

As to transfer of unencumbered balances in current school fund to public school fund, see 22-8-32 NMSA 1978.

As to transfer of federal mineral leasing funds to public school fund, see 22-8-34 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief" in the first sentence in Subsection C.

**Proper entity to receive funding.** — Local school district within which Los Lunas hospital and training school is located is appropriate entity to receive funding pursuant to the Public School Finance Act for special education of exceptional children. 1977 Op. Att'y Gen. No. 77-4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 99 et seq.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

79 C.J.S. Schools and School Districts §§ 410 to 413.

### **22-8-15. Allocation limitation.**

A. The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with authorized charter schools shall allocate the appropriate distributions of the public school fund to individual charter schools pursuant to each charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the charter school within five days after the school district's receipt of the state equalization guarantee for that month.

**History:** 1953 Comp., § 77-6-16, enacted by Laws 1967, ch. 16, § 70; 1974, ch. 8, § 5; 1988, ch. 64, § 26; 1993, ch. 224, § 3; 1993, ch. 227, § 10; 1999, ch. 281, § 23.

### **ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

**1993 amendments.** — Laws 1993, ch. 224, § 3, effective June 18, 1993, designating the existing provisions as Subsection A and adding Subsection B, was approved April 6, 1993. However, Laws 1993, ch. 227, § 10, effective June 18, 1993, also amending this section by designating the formerly undesignated provision as Subsection A and adding Subsections B and C, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 227, § 10. See 12-1-8 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, in Subsection B, deleted "local" preceding "school district" and deleted the last sentence, which read "The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school", and rewrote Subsection C, which read "The local school board in each local school district with authorized charter schools shall establish an individual charter school account to receive public school fund disbursement for each charter school."

### **22-8-16. Payment to school districts.**

The department shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the department. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

**History:** 1953 Comp., § 77-6-17, enacted by Laws 1967, ch. 16, § 71; 1974, ch. 8, § 6; 1988, ch. 64, § 27.

### **ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief" twice in the first sentence.

## **22-8-17. Program cost determination; required information.**

A. The program cost for each school district shall be determined by the department in accordance with the provisions of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978].

B. The department is authorized to require from each school district the information necessary to make an accurate determination of the district's program cost.

**History:** 1953 Comp., § 77-6-18, enacted by Laws 1969, ch. 180, § 13; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" once in each subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

## **22-8-18. Program cost calculation; local school board responsibility.**

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (5) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (6) through (10) in this subsection. The itemized program units are as follows:

- (1) early childhood education;
- (2) basic education;
- (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (4) bilingual multicultural education;
- (5) fine arts education;
- (6) size adjustment;

- (7) at-risk program;
- (8) enrollment growth or new district adjustment;
- (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers; and
- (10) national board for professional teaching standards certification.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act are discretionary to local school boards, provided that the special program needs as enumerated in this section are met.

**History:** 1953 Comp., § 77-6-18.1, enacted by Laws 1969, ch. 180, § 14; 1971, ch. 263, § 6; reenacted by 1974, ch. 8, § 8; 1976 (S.S.), ch. 32, § 2; 1977, ch. 244, § 1; 1986, ch. 33, § 15; 1990 (1st S.S.), ch. 3, § 4; 1993, ch. 237, § 1; 1997, ch. 40, § 3; 2003, ch. 144, § 1; 2003, ch. 152, § 7; 2005, ch. 206, § 1 .

## ANNOTATIONS

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, in Subsection A, substituted "Paragraphs (5) through (7)" for "Paragraphs (5) and (6)" in the first sentence, "special education MEM" for "special education ADM" in Paragraph (3), added present Paragraph (6), and redesignated former Paragraph (6) as present Paragraph (7), substituting therein "special education MEM" for "special education ADM".

**The 1993 amendment,** effective June 18, 1993, added "or new district adjustment" at the end of Paragraph (6) of Subsection A.

**The 1997 amendment,** effective July 1, 1997, in Subsection A, substituted "membership in class D special education programs" for "class D special education MEM" throughout the subsection, added Subparagraph (6) and redesignated the remaining subparagraphs accordingly, and made a stylistic change.

**2003 amendments.** — Laws 2003, ch. 152, § 7, effective June 20, 2003, in Subsection A, substituted "through (5) in this subsection by the instructional" for "through (4) in this subsection by the instruction" following "as Paragraphs (1)", substituted "Paragraphs (6) through (9)" for "Paragraphs (5) through (8)" following "units itemized as"; added Paragraph A(5) and redesignated former Paragraphs A(5) to (8) as present Paragraphs A(6) to (9); and added Paragraph A(10).

This section was also amended by Laws 2003, ch. 144, § 1, effective June 20, 2003 with almost identical amendments. The only substantial difference being that the itemized paragraph references in Subsection A as amended by Laws 2003, ch. 144 read, "Paragraphs (1) to (4)" and "Paragraphs (5) through (9)." Chapter 152, § 7 was compiled in the NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, adds national board certification in the program cost calculation in Subsection A.

## **22-8-19. Early childhood education program units.**

A. The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. Early childhood education students enrolled in half-day kindergarten programs shall be counted for 0.5 early childhood MEM. Early childhood education students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood education MEM.

B. For the purpose of calculating early childhood education program units, developmentally disabled three- and four-year-old students shall be counted in early childhood education membership. No developmentally disabled three- or four-year-old student shall be counted for more than 0.5 early childhood education MEM.

**History:** 1953 Comp., § 77-6-18.2, enacted by Laws 1969, ch. 180, § 15; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5; 1997, ch. 40, § 4; 2000, ch. 107, § 2.

### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, substituted "childhood education MEM" for "childhood education ADM" in both occurrences and "cost differential factor 1.44" for "cost differential factor 1.3".

**The 1997 amendment**, effective July 1, 1997, added the Subsection A designation and added Subsection B.

**The 2000 amendment**, effective May 17, 2000, changed how early childhood education students are counted for the early childhood education MEM from no more than 0.5 for all students to 0.5 for half-day kindergarten students and 1.0 for full-day students.

### **22-8-19.1. Preschool programs; selected districts.**

A. The children, youth and families department shall fund preschool programs for zero- to five-year-old children in selected school districts. The children, youth and families department, through the office of child development, shall distribute any appropriation for this purpose to local entities upon approval by the children, youth and families department of an application from an individual school district or community-



based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

- (1) a community-based early childhood education program;
- (2) a school-based early childhood education program; or
- (3) a home-based early childhood education program.

B. School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may be housed in a school accredited by the department of education. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

C. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the office of child development to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity, in coordination with other resources for families.

**History:** Laws 1992, ch. 83, § 1; 1993, ch. 47, § 1.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted "Temporary provision" at the beginning of the catchline; substituted "children, youth and families department" for "state department of public education" in the first sentence of Subsection A; inserted "children, youth and families" in two places in the second sentence of Subsection A; designated the former third, fourth, and fifth sentences of Subsection A as current Subsection B; added "of education" at the end of the second sentence in current Subsection B; redesignated former Subsection B as current Subsection C; and added "in coordination with other resources for families" at the end of the final sentence of Subsection C.

### **22-8-20. Basic program units.**

The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Differential Factor	Grades	Cost
12	1	1.2
	2 and 3	1.18
	4 through 6	1.045
	7 through	
		1.25.

**History:** 1978 Comp., § 22-8-20, enacted by Laws 1991, ch. 85, § 3; 1993, ch. 2, § 1; 1993, ch. 226, §§ 21, 22; 1993, ch. 228, §§ 2, 3.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1991, ch. 85, § 3 repeals former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacts the above section, effective July 1, 1992.

**1993 amendments.** — Laws 1993, ch. 2, § 1, effective June 18, 1993, substituting "1.26" for "1.42" as the Cost Differential Factor for Grade 1, was approved January 28, 1993. However, identical amendments to this section were enacted by Laws 1993, ch. 226, § 21, effective July 1, 1993, approved April 6, 1993, and Laws 1993, ch. 228, § 2, effective June 18, 1993, approved April 7, 1993, which, under the column "Cost Differential Factor" substituted "1.2" for "1.42" for grade 1 and "1.18" for "1.1" for grades 2 and 3. The section is set out above as amended by Laws 1993, ch. 228, § 2. See 12-1-8 NMSA 1978.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 22, approved April 6, 1993, and Laws 1993, ch. 228, § 3, approved April 7, 1993, both effective July 1, 1994, substituting "1.045" for "1.0" under the column "Cost Differential Factor" for grades 4 through 6. This section is set out as amended by Laws 1993, ch. 228, § 3. See 12-1-8 NMSA 1978.

### 22-8-21. Special education program units.

A. For the purpose of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], special education programs for exceptional children are those approved by the department and classified as follows:

(1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board;

(2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;

(2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;

(3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;

(4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and

(5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.

D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**History:** 1953 Comp., § 77-6-18.4, enacted by Laws 1969, ch. 180, § 17; 1971, ch. 263, § 7; 1972, ch. 87, § 2; 1973, ch. 351, § 2; reenacted by 1974, ch. 8, § 11; 1976 (S.S.), ch. 32, § 5; 1980, ch. 35, § 1; 1987, ch. 149, § 1; 1992, ch. 75, § 1; 1992, ch. 84, § 1; 1997, ch. 40, § 5.

### ANNOTATIONS

**1992 amendments.** — Identical amendments to this section were enacted by Laws 1992, ch. 75, § 1 and Laws 1992, ch. 84, § 1, both effective May 20, 1992, which deleted "of education" following "department" several times throughout the section; rewrote Subsections A(1) to A(4); deleted "to the division" following "certified" in Subsection C(1); and substituted "MEM" for "ADM" several times in Subsections C(2) to C(4). The section is set out as amended by Laws 1992, ch. 84, § 1. See 12-1-8 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, in Subsection C, rewrote Paragraph (1), substituted "MEM in approved class" for "special education in class" in Paragraphs (2) and (3), substituted "2.0" for "3.5; and" in Paragraph (3), in Paragraph (4), deleted "special education" preceding "MEM", deleted "Paragraph (5) of" preceding "Subsection A", substituted "2.0" for "3.5", and added "and" at the end of the paragraph and added Paragraph (5); and added Subsection D.

### **22-8-22. Bilingual multicultural education program units.**

The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978] by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; 0.45, effective July 1, 1993; and 0.5, effective July 1, 1994.

**History:** 1953 Comp., § 77-6-18.6, enacted by Laws 1974, ch. 8, § 13; 1976 (S.S.), ch. 32, § 6; 1990 (1st S.S.), ch. 3, § 6; 1992, ch. 75, § 2; 1993, ch. 238, § 1.

### ANNOTATIONS

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, substituted "full-time-equivalent MEM" for "full-time-equivalent ADM" and "differential factor 0.35" for

"differential factor 0.3" and added at the end the language beginning "effective July 1, 1990".

**The 1992 amendment**, effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

**The 1993 amendment**, effective June 18, 1993, inserted "0.45, effective July 1, 1993"; substituted "1994" for "1993" at the end of the section; and made minor stylistic changes.

### **22-8-23. Size adjustment program units.**

A. An approved public school with a MEM of less than 400, including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$$\frac{200 - \text{MEM}}{200} \times 1.0 \times \text{MEM} = \text{Units}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time-equivalent membership but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs;

Senior High Units

$$\frac{200 - \text{MEM}}{200} \times 2.0 \times \text{MEM} = \text{Units}$$

or,

Senior High Units

$$\frac{400 - \text{MEM}}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. A school district with total MEM of less than 4,000, including early childhood education full-time-equivalent MEM, is eligible for additional program units. The number of additional program units to which a district is entitled under this subsection is the number of district units computed in the following manner:

$$\frac{\text{District Units} \quad 4000 - \text{MEM}}{4000} \times 0.15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{4000 - \text{MEM}}{\text{Senior High Schools}} \times 0.50 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership, and where senior high schools are equal to the number of approved regular senior high schools in the district.

**History:** 1953 Comp., § 77-6-18.7, enacted by Laws 1974, ch. 8, § 14; reenacted by Laws 1975, ch. 119, § 1; 1976 (S.S.), ch. 32, § 7; 1977, ch. 82, § 1; 1979, ch. 276, § 1; 1981, ch. 87, § 1; 1989, ch. 221, § 1; 1991, ch. 85, § 4; 1993, ch. 87, § 1; 1997, ch. 40, § 6.

### ANNOTATIONS

**The 1989 amendment,** effective July 1, 1991, substituted "MEM" for "ADM" and deleted "average daily" preceding "membership" several times throughout the section, added Subsections D and E, and made minor stylistic changes throughout the section.

**The 1991 amendment,** effective July 1, 1991, in Subsection D, substituted "fifteen thousand" for "thirty-five thousand" near the beginning and ".15" for ".2" in the formula;

added Subsection E; designated former Subsection E as Subsection F; and substituted ".023" for ".008" in the formula in Subsection F.

**The 1993 amendment**, effective June 18, 1993, deleted "early childhood education" following "not limited to" in the first sentence of Subsection A and made a minor stylistic change.

**The 1997 amendment**, effective July 1, 1997, rewrote the computations throughout the section; substituted "membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs" for "special education class C and class D membership" throughout Subsection A; deleted "and special education membership" following "full-time-equivalent membership" throughout Subsection B; and deleted former Subsections D through F, relating to school districts with membership greater than ten thousand but less than fifteen thousand, school districts with membership greater than fifteen thousand but less than thirty-five thousand, and school districts with membership greater than thirty-five thousand, respectively.

**School is only entitled to size adjustment program units if it meets the statutory criteria.** Taos Municipal Schools Charter School v. Davis, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, \_\_\_ N.M. \_\_\_, \_\_\_ P.3d \_\_\_.

### **22-8-23.1. Enrollment growth program units.**

A. A school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase.}$$

The number of additional program units shall be calculated as follows:

$$(\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01) \times 1.5 = \text{Units.}$$

B. In addition to the units calculated in Subsection A of this section, a school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

$(\text{Current Year MEM} - \text{Previous Year MEM}) \times 100 = \text{Percent Increase.}$

Previous Year MEM

The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$(\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units.}$

C. As used in this section:

(1) "current year MEM" means MEM on the fortieth day of the current year;

(2) "MEM" means the total school district membership, including early childhood education full-time equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-2-19 NMSA 1978 [recompiled]; and

(3) "previous year MEM" means MEM on the fortieth day of the previous year.

**History:** 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8; 2003, ch. 156, § 1; 2003, ch. 386, § 1.

## ANNOTATIONS

**The 1990 (1st S.S.) amendment,** effective July 1, 1991, substituted ".50" for ".25" in the equation in the last paragraph.

**2003 amendments.** — Laws 2003, ch. 386, § 1, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

Identical amendments to this section were made by Laws 2003, ch. 156, § 1, effective June 20, 2003.

Laws 2003, ch. 386 was approved on April 8, 2003 and Laws 2003, ch. 156 was approved on April 4, 2003. This section is set out as amended by Laws 2003, ch. 386, § 1. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Section 22-2-19 NMSA 1978 referred to in Paragraph C(2) was recompiled by Laws 2003, ch. 153, § 72 as 22-13-3.2 NMSA 1978, effective April 4, 2003.

**22-8-23.2. New district adjustment; additional program units.**



A. A newly created school district is eligible for additional program units. The number of additional program units to which a newly created school district is entitled under this subsection is the number of units computed in the following manner:

$(\text{MEM for current year}) \times .147 = \text{Units}$   
where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of additional program units to which that district is entitled under this subsection is the number of units computed in the following manner:

$(\text{MEM for prior year} - \text{MEM for current year}) \times .17 = \text{Units}$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. As used in this section, "newly created school district" means a local school district not in existence during the immediately preceding school year.

**History:** 1978 Comp., § 22-8-23.2, enacted by Laws 1993, ch. 237, § 2.

### **22-8-23.3. At-risk program units.**

A. A school district is eligible for additional program units if it establishes within its state board approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services in its annual accountability report pursuant to Section 22-1-6 NMSA 1978. The number of additional units to which a school district is entitled under this section is computed in the following manner:

$\text{At-Risk Index} \times \text{MEM} = \text{Units}$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index is calculated in the following manner:

Three-Year Average Total Rate x 0.0915 = At-Risk Index.

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title I allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the federal office of civil rights and a three-year average of the percentage of student mobility. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year. For the 2002-2003, 2003-2004 and 2004-2005 school years, a school district shall not receive less than ninety percent of the at-risk funding generated in fiscal year 2001.

**History:** 1978 Comp., § 22-8-23.3, enacted by Laws 1997, ch. 40, § 7; 2002, ch. 68, § 1.

#### **ANNOTATIONS**

**The 2002 amendment**, effective May 15, 2002, substituted "Three-Year Average Total Rate x 0.0915" for "Refined At-Risk Cluster x 0.015" in the formula at the end of Subsection A; rewrote Subsection B by deleting provisions relating to refined at-risk clusters and inserting references to calculations based on three-year average rates; and, in Subsection C, substituted "year" for "two years" at the end of the present first sentence and added the second sentence.

#### **22-8-23.4. National board for professional teaching standards; certified teachers program units.**

The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers certified by the national board for professional teaching standards employed by the school district on or before the fortieth day of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district that these teachers are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district will receive these units.

**History:** 1978 Comp., § 22-8-23.4, enacted by Laws 2003, ch. 144, § 2 and 2003, ch. 152, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2003, ch. 144, § 2 and Laws 2003, ch. 152, § 9, both effective June 20, 2003 enact identical versions of this section. This section is set out as enacted by Laws 2003, ch. 152, § 9. See 12-1-8 NMSA 1978.

### **22-8-23.5. Fine arts education program units.**

The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Fine Arts Education Act [22-15D-1 to 22-15D-6 NMSA 1978] by the cost differential factor of 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years.

**History:** Laws 2003, ch. 144, § 3 and by Laws 2003, ch. 152, § 8.

## **ANNOTATIONS**

**Cross references.** — For Fine Arts Education Act, see 22-15D-1 NMSA 1978 et seq.

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Duplicate laws.** — Laws 2003, ch. 144, § 3 and Laws 2003, ch. 152, § 8, both effective June 20, 2003 enact identical versions of this section. This section is set out as enacted by Laws 2003, ch. 152, § 8. See 12-1-8 NMSA 1978.

### **22-8-24. Instructional staff training and experience index; definitions; factors; calculations.**

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

		Years of Experience			
Academic Classification		0 - 2	3 - 5	6 - 8	9 -
15	Over 15				
	Bachelor's degree				
	or				
less		.75	.90	1.00	1.05
05	Bachelor's degree plus				
	15 credit				
hours		.80	.95	1.00	1.10
	Master's degree or				
	bachelor's degree				
	plus 45 credit				
hours		.85	1.00	1.05	1.15
	Master's degree plus				
	15 credit				

hours	.90	1.05	1.15	1.30	1.35
Post-master's degree or master's degree plus 45 credit					
hours	1.00	1.15	1.30	1.40	1.50

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent. The following calculations shall be computed:

- (1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;
- (2) add the products calculated in Paragraph (1) of this subsection; and
- (3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0.

E. In the event that a new school district is created, the training and experience index for that district is 1.12.

**History:** 1953 Comp., § 77-6-18.8, enacted by Laws 1974, ch. 8, § 15; 1975, ch. 119, § 2; 1976 (S.S.), ch. 32, § 8; 1993, ch. 91, § 1; 1993, ch. 237, § 3.

### ANNOTATIONS

**1993 amendments.** — Laws 1993, ch. 91, § 1, effective June 18, 1993, substituting "state superintendent" for "chief" in the first sentence of Subsection C and substituting "1.0" for ".95" in two places in Subsection D, was approved March 31, 1993. However, Laws 1993, ch. 237, § 3, effective June 18, 1993, also amending this section by substituting "1.0" for ".95" in two places in Subsection D and adding Subsection E was approved April 6, 1993. This section is set out as amended by Laws 1993, ch. 237, § 3. See 12-1-8 NMSA 1978.

**Superintendent's interpretation of section entitled to deference.** — Subsection B is ambiguous; however, the superintendent's interpretation that interim credit hours are lost once a higher degree is conferred would be accorded substantial weight and deference. Board of Educ. for the Carlsbad Mun. Schs. v. New Mexico State Dep't of Pub. Educ., 1999-NMCA-156, 128 N.M. 398, 993 P.2d 112, cert. denied, 128 N.M. 148, 990 P.2d 822 (1999).

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

## **22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid".

D. To determine the amount of the state equalization guarantee distribution, the department shall:

(1) calculate the number of program units to which each school district is entitled using an average of the MEM on the eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district with a MEM of two hundred or less is entitled by using an average of the MEM on the eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act, if that act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature.

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act, if that act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district to the state general fund.

**History:** 1953 Comp., § 77-6-19, enacted by Laws 1969, ch. 180, § 19; 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by Laws 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch. 268, § 2; 1979, ch. 278, § 1; reenacted by Laws 1981, ch. 176, §§ 3, 4, 5; 1986, ch. 32, § 20; 1986, ch. 33, § 16; 1988, ch. 63, § 1; 1988, ch. 64, § 29; 1989, ch. 258, § 1; 1990, ch. 94, § 3; 1993, ch. 226, § 23; 1993, ch. 231, § 14; 1997, ch. 40, § 8; 1999, ch. 275, § 1; 2002, ch. 63, § 1; 2005, ch. 176, § 12 and Laws 2005, ch. 291, § 1.

## ANNOTATIONS

**Cross references.** — As to state-support reserve fund, see 22-8-31 NMSA 1978.

For the Energy Efficiency and Renewal Energy Bonding Act, see 6-21D-1 NMSA 1978.

**1988 amendments.** — Laws 1988, ch. 63, § 1, effective July 1, 1988, inserting new language at the end of Subsection C(2) beginning with "but deducting from", was approved on March 8, 1988. However, Laws 1988, ch. 64, § 29, effective July 1, 1988, making the same change but also adding "and" at the end of Subsection C(1), adding the language beginning "but deducting from those grants" at the end of Subsection C(2); deleting Subsection C(3) regarding grants from the federal government to public secondary schools; and substituting "state superintendent" for "director of the office of education" in Subsection D, was approved later on March 8, 1988. The section is set out as amended by Laws 1988, Chapter 64, § 29. See 12-1-8 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, inserted "upon the assessed value of equipment in the school district as determined under" near the end of Subsection B; substituted "a MEM" for "an ADM" near the middle of Subsection D(1); added present Subsection D(2); redesignated former Subsections D(2) through D(4) as present Subsections D(3) through D(5); in present Subsection D(3) inserted "or (2)"; in present Subsection D(5) substituted "Paragraph (4)" for "Paragraph (3)" and "Paragraph (3)" for "Paragraph (2)"; and in Subsection G substituted "Paragraphs (1) or (2) and (3)" for "Paragraphs (1) and (2)" near the middle of the first paragraph and inserted "upon the assessed value of equipment in the school district as determined under" near the end of that paragraph.

**The 1990 amendment,** effective May 16, 1990, substituted "on December 1 of the school year" for "the fortieth or eightieth day of the school year whichever is greater" at the end of Paragraph (1) of Subsection D.

**1993 amendments.** — Laws 1993, ch. 226, § 23, effective July 1, 1993, substituting "variable" for "year-round" in Paragraph (2) of Subsection D, and making minor stylistic changes in Subsections A and C, was approved April 6, 1993. However, Laws 1993, ch. 231, § 14, effective June 18, 1993, which substituted "ensure" for "insure" in Subsection A; added Paragraph (6) in Subsection D and made accompanying stylistic changes; substituted "deductions made in Paragraphs (5) and (6)" for "deduction made in Paragraph (5)" in Subsection E; and inserted the language beginning ", and then reduced by the total" and ending "distribution is being computed," following "Oil and Gas



Production Equipment Ad Valorem Tax Act" in Subsection G, but not giving effect to the changes made in the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 231, § 14. See 12-1-8 NMSA 1978.

**The 1997 amendment**, effective July 1, 1997, in Subsection D, substituted "basic program membership of the fortieth day for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1" for "membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year" in Paragraph (1); inserted "basic program" in Paragraph (2); added Paragraph (3) and redesignated the remaining paragraphs accordingly; inserted "distribution is being computed" in Subsection G; and made stylistic changes throughout the section.

**The 1999 amendment**, effective June 18, 1999, rewrote the section, changing the percentage of local revenue credit calculated in the state equalization guarantee distribution from ninety-five percent to seventy-five percent, and requiring the use of prior year average enrollment counts on certain days for the calculation of program units for distribution of the state equalization funds.

**The 2002 amendment**, effective July 1, 2002, deleted "as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978" at the end of Subsections B, C(1), and C(2); in Subsection D, deleted provisions for calculating program units effective between July 1, 1999 and July 1, 2000 in Paragraph (1), substituted "an average of the MEM on appropriate dates" for "the basic program membership on an appropriate date" in Paragraph (2); and, in Paragraph (3), substituted "an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year" for "the basic program membership on the fortieth day of either the prior or the current year", and deleted a proviso relating to special education program units.

**2005 amendments.** — **Laws 2005, ch. 291, § 1**, effective July 1, 2005, deletes the former provision of Subsection B which provided that the school district shall budget and expend twenty percent of the total revenue receipts for capital outlay; deletes the former provision of Subsection C(1) which provided that the school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; deletes the former provision of Subsection C(2) that the school district shall budget and expend twenty percent of the grant receipts for capital outlay; deletes the former provision in Subsection D(3) that the number of program units be calculated using the average MEM on the fortieth day of the prior year; adds Subsection D(8) to provide that to determine the amount of the state equalization guarantee distribution, the department shall deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewal Energy Bonding Act, if the act becomes law pursuant to House Bill 32 of similar legislation of the first session of the forty-seventh

legislature; and adds Subsection E to provide that reduction of a district's state equalization guarantee distribution shall cease when the district's cumulative reductions equal its proportional share of cumulative debt service payments to service the bonds issued pursuant to the Efficiency and Renewal Energy Bonding Act, if the act becomes law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature; and changes "state superintendent" and "state board" to "department".

This section was also amended by Laws 2005, ch. 176, § 12. Pursuant to Section 12-1-8 NMSA 1978 this section is set out as amended by Laws 2005, ch. 291, § 1.

**Applicability.** — Laws 2005, ch. 291, § 2, adds a temporary provision which provides that the provisions of Paragraphs (1) and (3) of Subsection D of Section 1 of this act that change the procedure for calculating the number of program units are applicable to the 2006-2007 and subsequent school years.

**Compiler's notes.** — House Bill 32 referred to in Laws 2005, ch. 291, § 1 was enacted as Laws 2005, ch. 176, §§ 1 through 10, effective July 1, 2005, 6-21D-1 to 6-21D-10 NMSA 1978.

**Laws 2005, ch. 176, § 12**, effective July 1, 2005, amends Subsection D of Section 22-8-25 NMSA 1978 to provide that the secretary of public education shall consider the factors listed and amends paragraph (7) of Subsection D of Section 22-8-25 NMSA 1978 to provide that the secretary of public education determines the amount of guaranteed energy savings contract payments. Laws 2005, ch. 176, § 12 provides:

**22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [7-32-1 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act. The school district shall budget and expend twenty percent of the total revenue receipts for capital outlay.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state

equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978. The school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; and

(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid". The school district shall budget and expend twenty percent of the grant receipts for capital outlay.

D. To determine the amount of the state equalization guarantee distribution, the secretary of public education shall:

(1) calculate the number of program units to which each school district is entitled using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the state board; or

(3) calculate the number of program units to which a school district with a MEM of two hundred or less is entitled by using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the secretary of public education determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6), (7) and (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district to the state general fund.

**Teacher salary adjustment.** — Laws 1994, ch. 6, § 9, effective May 18, 1994, appropriates \$1,134,400 from the general fund to the state equalization guarantee distribution in the eighty-third fiscal year to bring the average cost-of-living salary increase for public schools teachers to six percent in the eighty-third fiscal year.

Laws 2001, ch. 344, § 1, Subsection K, effective June 15, 2001, appropriates \$4,300,000 from the general fund in fiscal 2002 to the state equalization guarantee distribution for full-day kindergarten programs.

**Nonseverability clauses.** — Laws 1981, ch. 176, § 8, provides that if any part or application of the act is held invalid, the remainder, or its application to other situations or persons, shall be likewise invalid. The provisions of this act are not severable.

**PL 874 funds.** — "PL 874 funds", mentioned in Paragraph C(2), refers to funds provided to states and localities by the federal government to assist in areas impacted by federal activities under P.L. 81-874, which was codified as 20 USCS § 236 et seq. 20 USCS § 236 et seq., were repealed in 1984. See 20 USCS § 7701 et seq., for present comparable provisions.

**Law reviews.** — For note, "Indirect Funding of Sectarian Schools: A Discussion of the Constitutionality of State School Voucher Programs Under Federal and New Mexico Law After *Zelman v. Simmons-Harris*," see 34 N.M.L. Rev. 194 (2004).

### **22-8-25.1. Additional per unit distribution from public school fund.**

The legislature shall maintain each year in the public school fund an amount equal to the amount of revenue produced by all school districts pursuant to Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 for which credit is required to be taken pursuant to Section 22-8-25 NMSA 1978. Each year the department shall distribute to

each school district an amount determined by the department on a per program unit basis which shall be included within the state equalization guarantee distribution made pursuant to the general appropriation act.

**History:** 1953 Comp., § 22-8-25.1, enacted by Laws 1985 (1st S.S.), ch. 15, § 17; 1988, ch. 64, § 30.

## ANNOTATIONS

**Cross references.** — As to the public school fund, see 22-8-14 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, in the second sentence, substituted "department" for "director of the office of education" at the first occurrence of that word, "department" for "director" at the second occurrence, and "included within" for "in addition to".

### **22-8-26. Transportation distribution.**

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to-and-from school transportation costs of students in grades kindergarten through twelve attending public school within the school district and of three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's transportation allocation exceeds the amount required to meet obligations to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation, fifty percent of the remaining balance shall be deposited in the transportation emergency fund.

C. Of the excess amount retained by the district, at least twenty-five percent shall be used for to-and-from transportation-related services, excluding salaries and benefits, and up to twenty-five percent may be used for other transportation-related services, excluding salaries and benefits as defined by rule of the department.

D. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, the allocation to each school district shall be reduced in the proportion that the local school district allocation bears to the total statewide transportation distribution.

E. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-4 NMSA 1978 to meet established program needs.

F. Nothing in this section prohibits the use of school buses to transport the general public pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978].

**History:** 1953 Comp., § 77-6-22, enacted by Laws 1967, ch. 16, § 76; 1969, ch. 180, § 21; 1974, ch. 73, § 1; 1975, ch. 342, § 2; 1976 (S.S.), ch. 20, § 1; 1978, ch. 127, § 3; 1979, ch. 67, § 1; 1979, ch. 289, § 1; 1979, ch. 305, § 2; 1987, ch. 149, § 2; 1988, ch. 64, § 31; 1995, ch. 208, § 1; 1999 (1st S.S.), ch. 11, § 1; 2001, ch. 48, § 1.

## ANNOTATIONS

**Cross references.** — As to transportation of students generally, see 22-16-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

**The 1995 amendment,** effective July 1, 1995, rewrote Subsections A and B, deleted former Subsection C relating to an objective allocation formula developed by the transportation director and superintendent, rewrote and redesignated former Subsection D as Subsection C, deleted former Subsection E relating to negotiation of school bus contracts, and redesignated former Subsection F as Subsection D.

**The 1999 amendment,** effective May 21, 1999, substituted "fifty percent of the remaining balance shall be deposited in the transportation emergency fund" for "the district shall revert remaining transportation funds to the transportation distributor in the department" in Subsection B; added Subsection C and redesignated the subsequent subsections accordingly; updated a section reference in Subsection E; and made a minor stylistic change.

**The 2001 amendment,** effective June 15, 2001, added Subsection F.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils, 41 A.L.R.3d 344.

Free transportation: nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 A.L.R.3d 1036.

### **22-8-27. Transportation equipment.**

A. The state superintendent shall establish a systematic program for the purchase of necessary school bus transportation equipment.

B. In establishing a system for the replacement of school-district-owned buses, the state superintendent shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the district

or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the utilization of contractor-owned buses by school districts, the state superintendent shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. As with school-district-owned operations, the state superintendent shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the district or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections. Effective with the 1995-96 school year, no school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated, the state superintendent shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The local school district shall deduct an amount equal to that value from any remaining amount due on the contract or if no balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated.

**History:** 1953 Comp., § 77-6-23, enacted by Laws 1967, ch. 16, § 77; 1988, ch. 64, § 32; 1993, ch. 226, § 24; 1995, ch. 208, § 2.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection C.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Transportation of students; additional budget allowance; purchase of equipment"; deleted former Subsections A and B, pertaining to authorization for an additional budget allowance for the cost of transporting students where special equipment is necessary or where special physical conditions exist; and deleted the subsection designation "C".

**The 1995 amendment**, effective July 1, 1995, deleted "Local school boards may, with the approval of the state transportation director and" from the beginning of the section, designated the existing provisions as Subsection A, inserted "shall" in Subsection A, deleted "from the annual budget allocation for school transportation within the school district" from the end of Subsection A, and added Subsections B and C.

**22-8-28. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1995, ch. 208, § 16 repeals 22-8-28 NMSA 1978, as amended by Laws 1979, ch. 305, § 3, relating to the submission of school bus cost reports, effective July 1, 1995. For provisions of former section, see 1993 Replacement Pamphlet.

### **22-8-29. Transportation distributions; reports; payments.**

A. Prior to November 15 of each year, each local school board of a school district shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the district's operation on the fortieth day of school:

- (1) the number and designation of school bus routes in operation in the school district;
- (2) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled;
- (3) the number of students transported on the fortieth day of school and adjusted for special education students on December 1;
- (4) the projected number of students to be transported in the next school year;
- (5) the seating capacity, age and mileage of each bus used in the district for student transportation; and
- (6) the number of total miles traveled for each school district's per capita feeder routes.

B. Each local school board of a school district maintaining a school bus route shall make further reports to the state transportation director at other times specified by the state transportation director.

C. The state transportation director shall certify to the state superintendent that the allocations from the transportation distributions to each school district are based upon the transportation distribution formula established in the Public School Code [Chapter 22 NMSA 1978]. The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district for the current fiscal year. Allocations to a school district for the remainder of the school year shall adjust the amount received by the school district so that it equals the amount the school district is entitled to receive for the entire school year based upon the November 15 report and subject to audit and verification.



D. The department shall make periodic installment payments to school districts during the school year from the transportation distributions, based upon the allocations certified by the state transportation director.

**History:** 1953 Comp., § 77-6-24, enacted by Laws 1967, ch. 16, § 78; 1974, ch. 73, § 2; 1978, ch. 127, § 5; 1979, ch. 305, § 4; 1988, ch. 64, § 33; 1995, ch. 208, § 3; 1999 (1st S.S.), ch. 11, § 2.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, deleted the last sentence of Subsection B regarding required periods for reporting; in Subsection C, substituted "state superintendent" for "director" near the beginning of the first sentence and "state superintendent" for "director of the public school finance division" at the end of the first sentence; and substituted "department" for "director" and deleted "to him" following "certified" in Subsection D.

**The 1995 amendment,** effective July 1, 1995, in Subsection A, in the introductory paragraph, deleted "maintaining a school bus route" following "school district" and substituted "the district's operation on the fortieth day of school" for "the school year to and including October 30", deleted "which have been approved by the state transportation director" from the end of Paragraph (1), deleted former Paragraph (2) relating to the number and capacity of the buses operating on the district, redesignated former Paragraphs (3) and (4) as Paragraphs (2) and (3), substituted "on the fortieth day of school" for "on each school bus route" in Paragraph (3), and added Paragraphs (4) to (6); deleted "concerning the information required by this section" following the first "director" in Subsection B, and rewrote Subsection C.

**The 1999 amendment,** effective May 21, 1999, in Subsection A added "and adjusted for special education students on December 1" at the end of Paragraph (3), deleted former Paragraph (5), which read "the percentage of unpaved or unimproved roads utilized by school buses in the school district; and" and redesignated the subsequent paragraph accordingly, substituted "used" for "utilized" in Paragraph (5), and added Paragraph (6).

**Compiler's notes.** — Laws 2001, ch. 350, § 2, repeals Laws 1999 (1st S.S.), ch. 11, § 7, effective June 15, 2001, which would have repealed 22-8-29 on July 1, 2001.

### **22-8-29.1. Calculation of transportation allocation.**

A. As used in this section:

(1) "annual variables" means the coefficients calculated by regressing the total operational expenditures from two years prior to the current school year for each school district using the number of students transported and the numerical value of site characteristics;

(2) "base amount" means the fixed amount that is the same for all school districts;

(3) "total operational expenditures" means the sum of all to-and-from school transportation expenditures, excluding expenditures incurred in accordance with the provisions of Section 22-8-27 NMSA 1978; and

(4) "variable amount" means the sum of the product of the annual variables multiplied by each school district's numerical value of the school district's site characteristics multiplied by the number of days of operation for each school district.

B. The department shall calculate the transportation allocation for each school district.

C. The base amount is designated as product A. Product A is the constant calculated by regressing the total operations expenditures from the two years prior to the current school year for school district operations using the numerical value of site characteristics approved by the state board. The legislative education study committee and the legislative finance committee may review the site characteristics developed by the state transportation director prior to approval by the state board.

D. The variable amount is designated as product B. Product B is the predicted additional expenditures for each school district based on the regression analysis using the site characteristics as predictor variables multiplied by the number of days.

E. The allocation to each school district shall be equal to product A plus product B.

F. For the 2001-2002, 2002-2003 and 2003-2004 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred five percent of the prior school year's transportation expenditure.

G. The adjustment factor shall be applied to the allocation amount determined pursuant to Subsections E and F of this section.

**History:** Laws 1995, ch. 208, § 10; 1999 (1st S.S.), ch. 11, § 3; 2001, ch. 350, § 1.

## ANNOTATIONS

**The 1999 amendment**, effective May 21, 1999, added present Subsections A, C through E, and G and redesignated subsequent subsections accordingly; in Subsection B deleted "in the following manner" from the end of the introductory language and deleted Paragraphs (1) through (7), which set out the manner for calculating the transportation allocation for each school district; deleted former Subsection C, relating to determination of the transportation allocation by districts transporting less than 75 students; and in Subsection F substituted "1999-2000, 2000-2001 and 2001-2002 school years" for "1997-98, 1998-99 and 1999-2000 school years", "one hundred

percent" for "ninety-five percent", "of the 1998-1999" for "of the 1996-97", and "expenditure" for "allocation".

**The 2001 amendment**, effective June 15, 2001, in Subsection F, deleted "1999-2000, 2000-2001 and", inserted "2002-2003 and 2003-2004" substituted "ninety-five percent" for "one hundred percent" and "one hundred five percent" for "one hundred fifteen percent", and substituted "prior" for "1998-1999".

## **22-8-29.2, 22-8-29.3. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repeals 22-8-29.2 and 22-8-29.3 NMSA 1978, as enacted by Laws 1995, ch. 208, §§ 11 and 12, relating to grouping of districts, calculation of average square miles served per student transported, and calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former sections, see 1998 Replacement Pamphlet.

## **22-8-29.4. Transportation distribution adjustment factor.**

A. The state superintendent shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each school district, previously designated as product A plus product B;

(2) the sum total of product A plus product B in all school districts added together equals product C; and

(3) subtract product C from the total operational transportation distribution for the current year and divide the result by product C and then add 1 in the following manner:  $[(\text{total operational transportation distribution} - C) \div C] + 1$ . The result is the transportation distribution adjustment factor.

B. As used in this section, "total operational transportation distribution" means the total legislative appropriation for the transportation distribution minus amounts included for capital outlay expenses.

**History:** Laws 1995, ch. 208, § 13; 1999 (1st S.S.), ch. 11, § 4.

### **ANNOTATIONS**

**The 1999 amendment**, effective May 21, 1999, in Subsection A, in Paragraphs (1) and (2), inserted "product A plus product" and "school", and in Paragraphs (2) and (3), inserted "product" preceding "C".

## **22-8-29.5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repeals 22-8-29.5 NMSA 1978, as enacted by Laws 1995, ch. 208, § 14, relating to calculation of a mileage supplement for each local school district, effective May 21, 1999. For provisions of former section, see 1998 Replacement Pamphlet.

## **22-8-29.6. Transportation emergency fund.**

A. The "transportation emergency fund" is created in the state treasury. Money in the fund shall not revert to the general fund at the end of any fiscal year. Money in the fund is appropriated to the department for the purpose of funding transportation emergencies. The state superintendent shall make distributions only to ensure the safety of students receiving to-and-from transportation services.

B. The state superintendent shall account for all transportation emergency distributions and shall make full reports to the governor, the legislative education study committee and the legislative finance committee of payments made.

**History:** Laws 1995, ch. 208, § 15; 1999 (1st S.S.), ch. 11, § 5.

### **ANNOTATIONS**

**The 1999 amendment**, effective May 21, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

## **22-8-30. Supplemental distributions.**

A. The state superintendent shall make supplemental distributions only for the following purposes:

(1) to pay the out-of-state tuition of students subject to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;

(2) to make emergency distributions to school districts in financial need, but no money shall be distributed to any school district having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;

(4) a special vocational education distribution to area vocational schools or state supported schools with state board approved vocational programs to reimburse those schools for the cost of vocational education programs for those students subject to the Compulsory School Attendance Law [chapter 22, Article 12 NMSA 1978] who are enrolled in such programs; and

(5) to make emergency capital outlay distributions to school districts that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The state superintendent shall account for all supplemental distributions and shall make full reports to the governor, legislative education study committee and legislative finance committee of payments made as authorized in Subsection A of this section.

C. The state superintendent may divert any unused or unneeded balances in any of the distributions made under the supplementary distribution authority to make any other distribution made pursuant to the same authority.

**History:** 1953 Comp., § 77-6-29, enacted by Laws 1967, ch. 16, § 83; 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" in Subsections A and C; deleted "with the approval of the state superintendent" at the beginning of Subsections A(3), (4) and (5); in Subsection B, deleted "and director" following "state superintendent" and substituted "legislative education study committee" for "legislative school study committee"; and deleted "directors" preceding "supplementary distribution authority" in Subsection C.

#### **22-8-30.1. Recompiled.**

History: Laws 1995, ch. 56, § 1; 2003, ch. 394, § 3; 2004, ch. 27, § 28.

#### **ANNOTATIONS**

**The 2003 amendment**, effective April 8, 2003, substituted "commission on higher education" for "department of education" following "appropriated to the", substituted "commission" for "department of education" following "distributed by the", substituted "commission" for "state board" following "established by the", deleted "and with the approval of the commission on higher education as provided by law" following "education administrative sites".

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled Section 22-8-30.1 NMSA 1978, relating to creation of adult basic education fund, effective May 19, 2004. It has been recompiled as 21-1-27.5 NMSA 1978.

## **22-8-30.2. Recompiled.**

History: Laws 1995, ch. 56, § 2; 2003, ch. 394, § 4; 2004, ch. 27, § 28.

### **ANNOTATIONS**

**The 2003 amendment**, effective April 8, 2003, in the section heading, substituted "commission on higher education" for "state board", deleted "commission on higher education approval"; in the section text, substituted "commission on higher education" for "state board" near the beginning, substituted "create" for "by regulation, establish" following "administrative sites shall", substituted "commission" for "state board" following "equitable formula", substituted "commission shall review the formula and any proposed changes with the adult basic education administrative sites" for "state board shall submit the proposed formula to the commission on higher education for approval" following "receiving services. The", and inserted "or amendment" at the end.

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled Section 22-8-30.2 NMSA 1978, relating to distribution of adult basic education fund, effective May 19, 2004. It has been recompiled as 21-1-27.6 NMSA 1978.

## **22-8-31. State-support reserve fund.**

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks, and in savings and loans [loan] associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association but the state treasurer, in any official capacity, shall not deposit money from said fund or any other fund in any one such federally insured savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief [director of public school finance] shall notify the state treasurer in writing of the amount that will be needed for distribution.

E. In the event that local or federal revenues as defined in Section 22-8-25 NMSA 1978 are received after May 31 of the fiscal year for which the state equalization guarantee distribution is being computed and it is therefore necessary to use money from the state support reserve fund to augment the appropriation for the state equalization guarantee distribution, the chief [director], upon receipt by the school district of the delayed local or federal revenues, shall deduct the appropriate amount from the current state equalization guarantee distribution to that school district and reimburse the state-support reserve fund in the amount of the deduction.

F. It is the intent of the legislature that the fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

G. Distribution from this fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution.

**History:** 1953 Comp., § 77-6-30, enacted by Laws 1967, ch. 16, § 84; 1968, ch. 18, § 10; 1969, ch. 180, § 23; 1974, ch. 8, § 18; 1975, ch. 157, § 8; 1976 (S.S.), ch. 32, § 9.

## ANNOTATIONS

**Cross references.** — As to state equalization guarantee distribution generally, see 22-8-25 NMSA 1978.

**Severability clauses.** — Laws 1976 (S.S), ch. 32, § 11, provides for the severability of the act if any part or application thereof is held invalid.

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

## 22-8-32. Current school fund; receipts; disposition.

A. As they are received, the state treasurer shall deposit into the current school fund revenue received from the following sources:

- (1) all fines and forfeitures collected under general laws;

- (2) the net proceeds of property that may come to the state by escheat; and
- (3) all other revenue which by law is to be credited to the current school fund.

B. At the end of each month, the state treasurer shall transfer the amount in the common school current fund, also known as the common school income fund, to the current school fund.

C. At the end of each month, after the transfer authorized in Subsection B of this section, the state treasurer shall transfer any unencumbered balance in the current school fund to the public school fund.

**History:** 1953 Comp., § 77-6-32, enacted by Laws 1967, ch. 16, § 86; 1972, ch. 90, § 2; 1976, ch. 7, § 1.

### ANNOTATIONS

**Cross references.** — As to public school fund generally, see 22-8-14 NMSA 1978.

### **22-8-33. Distribution of certain revenue.**

There shall be distributed to the credit of each school district in a county, according to the proportion that the forty-day average daily membership of the school district bears to the forty-day average daily membership of the entire county, all revenue received by the county for public school purposes from the forest reserve funds distributed pursuant to Section 6-11-3 NMSA 1978.

**History:** 1953 Comp., § 77-6-35, enacted by Laws 1967, ch. 16, § 89; 1969, ch. 180, § 24; 1972, ch. 90, § 3; 1985 (1st S.S.), ch. 15, § 18.

### **22-8-34. Federal mineral leasing funds.**

A. Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall be distributed as follows:

- (1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and



(2) the remainder shall be distributed to the common school permanent fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19; 1999, ch. 43, § 1; 1999, ch. 253, § 1; 2001, ch. 246, § 2.

## ANNOTATIONS

**Cross references.** — As to public school fund generally, see 22-8-14 NMSA 1978.

As to instructional material fund generally, see 22-15-5 NMSA 1978 et seq.

As to New Mexico institute of mining and technology generally, see 21-11-1 NMSA 1978 et seq.

**1999 amendments.** — Laws 1999, ch. 43, § 1, effective June 18, 1999, adding the Subsection A designation and substituting "instructional material" for "free textbook", inserting "and except as provided in Subsection B of this section" following "and technology", deleting the end of the first sentence, which read "act of congress approved February 25, 1920 entitled 'An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain' as amended and compiled in 30 United States Code, Sections 181 through 214, is appropriated for the use and benefit of the public schools of this state for instructional purposes", substituting "federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed" for "The state treasurer shall credit all money received under this federal act, less the appropriations to the free textbook fund and to the bureau of mines and mineral resources" in the last sentence, and adding Subsection B, was approved on March 16, 1999. However, Laws 1999, ch. 253, § 1, effective June 18, 1999, rewriting the former provisions which read: "Except for an annual appropriation to the free textbook fund and to the bureau of mines and mineral resources of the New Mexico institute of mining and technology, all other money received by the state pursuant to the provisions of the act of congress approved February 25, 1920 entitled 'An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain' as amended and compiled in 30 United States Code, Sections 181 through 214, is appropriated for the use and benefit of the public schools of this state for instructional purposes. The state treasurer shall credit all money received under this federal act, less the appropriations to the free textbook fund and to the bureau of mines and mineral resources, to the public school fund", designating those provisions as Subsection A, and adding Subsection B, was approved on April 7, 1999. The section is set out as amended by Laws 1999, ch. 293, § 1. See 12-1-8 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## **22-8-35. Tax anticipation certificates.**

A. For operating expenses, a local school board with the consent of the chief [director of public school finance] may anticipate the collection of taxes for which tax levies have been made by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The total unpaid certificates outstanding shall not exceed the budget allowance for operating expenses of the school district for a period of ninety days. The certificates shall be paid out of the money first credited thereafter to the operating fund of the school district.

B. For school building construction, repair or both, a local school board with consent of the chief [director] may anticipate the collection of taxes for which tax levies have been made for that purpose by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The certificates shall be paid out of the money first received under the tax levy.

**History:** 1953 Comp., § 77-6-39, enacted by Laws 1967, ch. 16, § 93.

### **ANNOTATIONS**

**Cross references.** — As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

## **22-8-36. Certification of allocations; fund accounts.**

The chief [director of public school finance] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [director] shall certify to the county treasurer the names and purposes of the separate funds the county treasurer shall establish and maintain for each school district.

**History:** 1953 Comp., § 77-6-40, enacted by Laws 1967, ch. 16, § 94.

### **ANNOTATIONS**

**Executive branch reorganization.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

### **22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act [Chapter 22, Article 8 NMSA 1978]. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** 1953 Comp., § 77-6-41, enacted by Laws 1967, ch. 16, § 95; 1968, ch. 18, § 11; 1975, ch. 157, § 9; 1978, ch. 128, § 7; 1987, ch. 79, § 22.

### **ANNOTATIONS**

**Disposition of school revenue.** — If local school board has not been designated a board of finance, the county treasurer is to keep all school revenue. 1967 Op. Att'y Gen. No. 67-144.

### **22-8-38. Boards of finance; designation.**

Upon written application to and approval of the state superintendent, any local school board may be designated a board of finance for public school funds of the school

district. Any local school board designated a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The state superintendent shall designate a local school board as a board of finance if:

A. the local school board shows to the satisfaction of the state superintendent that it has personnel properly trained to keep accurate and complete fiscal records;

B. the local school board agrees to consult with the state superintendent on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

C. the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

D. the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

**History:** 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

#### **22-8-39. Boards of finance; suspension.**

The state superintendent may at any time suspend a local school board from acting as a board of finance if he reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under its control. When a local school board is suspended from acting as a board of finance, the state superintendent shall:

A. immediately take control of all public school funds under the control of the local school board acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board acting as a board of finance and charge the cost of the audit to the school district;

C. act as a fiscal agent for the school district and take any action necessary to conform the fiscal management of funds of the school district to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district until he determines that the local school board is capable of acting as a board of finance, or until he determines that the county treasurer should act as fiscal agent for the school district; and

F. inform the local school board in writing of his determination as to who is to act as board of finance or fiscal agent for the school district, and also inform the county treasurer in writing if he determines that the county treasurer should act as fiscal agent for the school district.

**History:** 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.

#### **22-8-40. Deposit of public school funds; distribution; interest.**

A. All public money in the custody of local school boards which have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section.

B. Deposits of funds of the local school district may be made in noninterest-bearing checking accounts in one or more banks, savings and loan associations or credit unions as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

C. Deposits of funds of the local school district may be made in interest-bearing checking accounts, commonly known as "NOW" accounts, in one or more banks, savings and loan associations or credit unions as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

D. Public money placed in interest-bearing deposits, in banks and savings and loan associations, other than interest-bearing checking accounts as defined in Subsection C of this section, shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the local school district which have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each such bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or a manned branch office within the geographical boundaries of the school district. The net worth of the

main office of a savings and loan association and its manned branch offices within the geographical boundaries of a school district is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the school district are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned branch offices of a savings and loan association located outside the geographical boundaries of the school district in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or aggregate of branches located outside the geographical boundaries of the school district in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means assets less liabilities as reported by such banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

E. Notwithstanding the provisions of Subsection D of this section, public money may be placed in interest-bearing deposits, other than interest-bearing checking accounts as defined in Subsection C of this section, at the discretion of the board of finance, in credit unions having their main or manned branch offices within the geographical boundaries of the local school district to the extent such deposits are insured by an agency of the United States.

F. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the date of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section.

If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on the deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status under Section 103 of the United States Internal Revenue Code of 1954, as amended.

G. Public money in excess of that for which banks and savings and loan associations within the geographical boundaries of the local school district have qualified may be deposited in qualified depositories including credit unions in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the local school district.

H. The board of finance of the school district may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district. Such temporary investments shall be made only in securities which are issued by the state or by the United States government, or by their departments or agencies, and which are either direct obligations of the state or the United States or are backed by the full faith and credit of those governments.

I. The department of finance and administration may monitor the deposits of public money by local school boards to assure full compliance with the provisions of this section.

**History:** 1953 Comp., § 77-6-44, enacted by Laws 1967, ch. 16, § 98; 1968, ch. 18, § 12; 1975, ch. 157, § 10; 1975, ch. 304, § 3; reenacted by 1977, ch. 136, § 2; 1978, ch. 128, § 8; 1980, ch. 151, § 49; 1981, ch. 332, § 18; 1983, ch. 191, § 2; 1987, ch. 79, § 23.

## ANNOTATIONS

**Cross references.** — As to state board of finance generally, see 6-1-1 NMSA 1978 et seq.

**Internal Revenue Code.** — Section 103 of the Internal Revenue Code, referred to in the second paragraph of Subsection F, appears as 26 U.S.C. § 103.

### **22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.**

Notwithstanding the provisions of Subsection E of Section 22-8-40 NMSA 1978, the requirement for a rate of interest of not less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit shall not apply to interest-bearing checking accounts.

**History:** 1978 Comp., § 22-8-40.1, enacted by Laws 1981, ch. 341, § 1.

### **22-8-41. Restriction on operational funds; emergency accounts; cash balances.**

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of his approval of such proposed expenditures. For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay.

D. Notwithstanding the provisions of Subsection C of this section, beginning with fiscal year 2006, prior to approval of a school district's or charter school's budget, the secretary shall verify that the reductions from the state equalization guarantee distribution have been taken pursuant to this section.

E. The allowable limit for a school district's or charter school's ending operational cash balance is:

(1) if the current year program cost is less than five million dollars (\$5,000,000), nine percent of the budgeted expenditures;

(2) if the current year program cost is five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), seven and one-half percent of the budgeted expenditures;

(3) if the current year program cost is ten million dollars (\$10,000,000) but less than twenty-five million dollars (\$25,000,000), six percent of the budgeted expenditures;

(4) if the current year program cost is twenty-five million dollars (\$25,000,000) but less than two hundred million dollars (\$200,000,000), four and one-half percent of the budgeted expenditures; and

(5) if the current year program cost is two hundred million dollars (\$200,000,000) or more, for fiscal year 2004, two and one-half percent of the budgeted expenditures and, for subsequent fiscal years, three percent of the budgeted expenditures.

F. Except as otherwise provided in this section, for the 2006 and subsequent fiscal years, the secretary shall reduce the state equalization guarantee distribution,



calculated pursuant to Section 22-8-25 NMSA 1978, to each school district or charter school by an amount equal to the school district's or charter school's excess cash balance. As used in this section, "excess cash balance" means the difference between a school district's or a charter school's actual operational cash balance and the allowable limit calculated pursuant to Subsection E of this section. Provided, however, that:

(1) for a school district or charter school with a current year program cost that exceeds two hundred million dollars (\$200,000,000), if the excess cash balance is greater than twenty percent of the allowable unrestricted, unreserved operational cash balance and the emergency reserve, then the reduction pursuant to this subsection shall equal twenty percent of the allowable unrestricted, unreserved operational cash balance and the emergency reserve; and

(2) for other school districts and charter schools, if the excess cash balance is greater than eighteen percent of the allowable unrestricted, unreserved operational cash balance and the emergency reserve, then the reduction pursuant to this subsection shall equal eighteen percent of the allowable unrestricted, unreserved operational cash balance and the emergency reserve.

G. In developing budgets, school districts and charter schools shall not budget current year cash balances without the approval of the secretary.

H. A school district or charter school whose enrollment growth exceeds one percent from the prior year and whose facility master plan includes the addition of a new school within two years may request from the secretary a waiver of up to fifty percent of the reduction otherwise required by Subsection F of this section.

I. Notwithstanding the provisions of Subsection F of this section, for fiscal year 2004, the reduction from the state equalization guarantee distribution shall be the greater of the amount calculated pursuant to that subsection or ten dollars (\$10.00) per MEM.

J. For the purposes of this section, "operational cash balance" means the allowable, unrestricted, unreserved operational cash balance and the emergency reserve.

K. For the purposes of this section, "allowable, unrestricted, unreserved operational cash balance and the emergency reserve" means the proportional share not attributable to revenue derived from the school district property tax, forest reserve funds and impact aid for which the state takes credit in determining a school district's or charter school's state equalization guarantee distribution.

History: 1953 Comp., § 77-6-45, enacted by Laws 1967, ch. 16, § 99; 1983, ch. 56, § 1; 1985 (1st S.S.), ch. 15, § 19; 1988, ch. 64, § 37; 2003, ch. 155, § 1; 2004, ch. 60, § 1.

## ANNOTATIONS

**Cross references.** — As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

As to the legislative finance committee, see 2-5-1 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" throughout the section.

**The 2003 amendment**, effective April 4, 2003, substituted "A school" for "No school" at the beginning of Subsection A; inserted "or charter school" in the first sentence of Subsection B and C; added the last sentence in Subsection C; and added Subsections D to K.

**The 2004 amendment**, effective May 19, 2004, amended Subsections A, B, C, D, E, F, G and H to change "state superintendent" to "secretary" and amended Subsection F to delete in Paragraph (1) "limit calculated pursuant to Subsection E of this section" and insert in its place: "unrestricted, unreserved operational cash balance and the emergency reserve" and to insert "unrestricted, unreserved operational cash balance and the emergency reserve" in two places in Paragraphs (1) and (2).

### **22-8-42. Violation of act; penalties.**

A. Any person violating any provision of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] is guilty of a petty misdemeanor.

B. Any person diverting or expending any public school money contrary to the approved budget is, in addition to being subject to any other civil or criminal action, liable along with his sureties to the state for the amount diverted or expended.

C. Any person diverting any public school funds from the purpose for which the funds were raised or acquired, or embezzling public school funds, shall be removed from office by the court imposing the criminal penalty.

D. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment.

E. Legal proceedings for violation of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] shall be instituted by the state superintendent.

F. A certified school instructor or certified school administrator guilty of any of the violations provided by this section shall, upon conviction, have his certificate revoked by the state board.

G. Nothing in this section shall be interpreted to prevent the enforcement of any provision of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] by means of mandamus or injunction.

**History:** 1953 Comp., § 77-6-46, enacted by Laws 1967, ch. 16, § 100; 1977, ch. 247, § 204; 1988, ch. 64, § 38.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "secretary of finance and administration" in Subsection E, and, in Subsection F, inserted "certified school" and substituted "revoked" for "cancelled".

**One need not be found guilty of felony to forfeit and be disqualified from office** under the New Mexico constitution and Subsection D of this section. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

**Forfeiture of office required for approval of violative expenditures.** — Sale of gasoline to school district vehicles by school board member, purchase of airplane ticket for board member's wife and payment to board member and board member's wife for services not rendered are each a violation of this section and require the forfeiture of office of those members who approved the expenditures. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

### **22-8-43. Public school reading proficiency fund; created.**

The "public school reading proficiency fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to public schools that implement innovative, scientifically based reading programs. The department shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, scientifically based reading programs. Schools receiving funds shall show evidence that they are using quality, scientifically based reading research to improve reading proficiency and shall develop individualized reading plans for students who fail to meet grade level reading proficiency standards. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the state superintendent. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 2; 2001, ch. 289, § 2; 1978 Comp., § 22-2-6.12, amended and recompiled as 1978 Comp., § 22-8-43 by Laws 2003, ch. 153, § 30.

## ANNOTATIONS

**Cross references.** — For state department of education, see N.M. Const., art. XII, § 6, 22-2-5 and 22-2-6 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "department of education" for "state department of public education" in two places; added the fifth sentence; and substituted "state superintendent" for "superintendent of public instruction" in the sixth sentence.

**The 2003 amendment** recompiled former 22-2-6.12 NMSA 1978 as present 22-8-43 NMSA 1978, effective April 4, 2003, and deleted "of education" following "department" twice in this section; substituted "public" for "local" preceding "schools" near the middle of the section; substituted "scientifically based" for "research-based" three times in this section; and substituted "research" for "programs" following "reading" near the middle of the fifth sentence.

### **22-8-44. Educator licensure fund; distribution; appropriation.**

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the state board.

B. Money in the fund is appropriated to the department to fund the educator background check program. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1997, ch. 238, § 6; 1978 Comp., § 22-10-4.1, recompiled and amended as 1978 Comp., § 22-8-44 by Laws 2003, ch. 153, § 31.

## ANNOTATIONS

**The 2003 amendment**, recompiled former 22-10-4.1 NMSA 1978 as present 22-8-44 NMSA 1978, effective April 4, 2003, and substituted "licensure" for "certification" in the catchline; in Subsection A substituted "licensure" for "certification" three times, deleted "state" preceding "department" near the end of the first sentence, and deleted "of public education" at the end of the first sentence; in Subsection B deleted "state" preceding "department" near the beginning and substituted "to fund" for "of public education for the purpose of funding" near the middle.

### **22-8-45. Teacher professional development fund.**

A. The "teacher professional development fund" is created in the state treasury to provide funding for professional development programs and projects for public school teachers. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education and money in the fund is appropriated to the department to carry out the purposes of the fund.

B. The department of education shall evaluate the success of each professional development program or project funded and report its findings to the legislative education study committee each year.

**History:** Laws 2003, ch. 157, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 157 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-8-46. Funding formula study task force created; membership; duties. (Effective until December 15, 2006.)**

A. The "funding formula study task force" is created. The task force shall function from the date of its appointment until December 15, 2006.

B. The task force is composed of the following members:

(1) three members from the house of representatives and three members from the senate appointed by the New Mexico legislative council;

(2) three members appointed by the governor;

(3) four representatives of public school administrators, including one each from a small district, a growth district, an impact aid district and a mid-sized district. The members shall be appointed by the New Mexico legislative council from a list submitted by the New Mexico superintendents' association; and

(4) the president of the New Mexico school board association or the president's designee.

C. Vacancies on the task force shall be filled by appointment by the original appointing authority.

D. Members of the task force are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. Staff for the task force shall be provided by the legislative council service, the legislative education study committee, the legislative finance committee, the public education department and the office of education accountability of the department of finance and administration. Staff shall provide technical assistance to the contractor.

F. The task force shall:

- (1) develop a work plan and budget for approval by the New Mexico legislative council;
- (2) approve the request for proposals for a contractor to conduct the study of the public school funding formula and select the contractor; and
- (3) make recommendations to the legislature and the governor by December 15, 2006.

G. The request for proposals shall request a comprehensive study of the public school funding formula, including the expectations of the public and statutory requirements for New Mexico's public education system; the costs of those expectations and requirements; and a thorough analysis of all formula components and consideration of possible changes to the formula, including:

- (1) a revised training and experience index aligned to the three-tiered licensure system for teachers;
- (2) size factors associated with small schools and small school districts; and
- (3) any other factor with the potential to affect the equity and efficacy of the funding formula as a whole.

History: Laws 2005, ch. 49, §1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 49 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

### **22-8-47. New Mexico government education fund.**

A. The "New Mexico government education fund" is created in the state treasury.

B. The New Mexico government education fund shall consist of appropriations by the legislature, gifts, grants and donations.

C. The New Mexico government education fund shall be administered by the department. Money in the fund is appropriated to the department to contract for annual, week-long, high school civics courses focusing on New Mexico state government for boys and girls to be held at varying post-secondary educational institutions in New Mexico.

D. Disbursements from the New Mexico government education fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary.

E. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the New Mexico government education fund.

History: Laws 2005, ch. 207, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 207 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## **ARTICLE 8A Charter Schools**

(Repealed by Laws 1999, ch. 281, § 25.)

### **22-8A-1 to 22-8A-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repeals 22-8A-1 to 22-8A-7 NMSA 1978, as enacted by Laws 1993, ch. 227, §§ 1 to 7, relating to charter schools, effective June 18, 1999. For provisions of former sections, see 1998 Replacement Pamphlet. For present comparable provisions, see 22-8B-1 NMSA 1978 et seq.

## **ARTICLE 8B Charter Schools**

### **22-8B-1. Short title.**

Chapter 22, Article 8B NMSA 1978 may be cited as the "1999 Charter Schools Act".

**History:** Laws 1999, ch. 281, § 1; 2005, ch. 221, § 1.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, changes the statutory reference to the act.

### **22-8B-2. Definitions.**

As used in the 1999 Charter Schools Act [22-8B-1 to 22-8B-15 NMSA 1978]:

A. "charter school" means a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school;

B. "conversion school" means an existing public school within a school district authorized by the local school board to become a charter school;

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

D. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the local school board of the school district in which the school is located to become a charter school.

**History:** Laws 1999, ch. 281, § 2.

### **22-8B-3. Purpose.**

The 1999 Charter Schools Act [22-8B-1 to 22-8B-15 NMSA 1978] is enacted to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting state board minimum educational standards and fiscal requirements.

**History:** Laws 1999, ch. 281, § 3.

### **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, race, creed, color, gender, 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; provided 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.

C. A charter school shall be responsible for its own operation, including preparation of a budget, 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 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; provided that facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school may choose to continue using the school district facilities and equipment it had been using prior to conversion.

F. A school district shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. 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 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. 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 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 that operates within a school district.

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 school district, 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. A charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the charter school shall revert to the local school board.

O. 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. A charter school may contract and sue and be sued. A local school board that approves a charter school 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.

**History:** Laws 1999, ch. 281, § 4; 2000, ch. 82, § 2; 2001, ch. 348, § 1; 2003, ch. 153, § 32; 2005, ch. 221, § 2.

## ANNOTATIONS

**The 2000 amendment**, effective March 7, 2000, deleted former Subsection B, relating to enrollment procedures at start-up charter schools, and redesignated the remaining subsections accordingly.

**The 2001 amendment**, effective June 15, 2001, in Subsection F, substituted "shall" for "may" in the first sentence and added the second sentence.

**The 2003 amendment**, effective April 4, 2003, deleted "local" preceding "school district" throughout the section; and in Subsection J substituted "Section" for "Sections 22-1-6

and" preceding "22-2-8" near the middle and inserted "and the Assessment and Accountability Act" at the end.

**The 2005 amendment**, effective July 1, 2005, provides in Subsection B that no member of a governing body of a school that is initially approved or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school; provides in Subsection D that a charter school may contract with the state and its political subdivisions, the federal government or its agencies and a tribal government; provides in Subsection D that the facilities of a charter school must meet the standards of 22-8B-4.2 NMSA 1978; deletes the former provision in Subsection E which provided for the use by charter schools of school district facilities; provides in Subsection E that a conversion school may choose to continue using school district facilities and equipment; adds Subsection F to provide for the use by charter schools of school district facilities; authorizes a charter school in Subsection G to pay the costs of operation and maintenance of its facilities and to contract with a school district for facility operation and maintenance services; adds Subsection H to provide that 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; deletes the former provision of Subsection G which provided that a charter school may negotiate with a school district for capital expenditures; adds Subsection L to provide that a single charter school may maintain separate facilities at two or more locations, but that all locations shall be deemed to be a single location for purposes of calculating program units pursuant to the Public School Finance Act; and provides in Subsection Q that applicable health and safety requirements include health and safety codes relating to educational building occupancy.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

## **22-8B-4.1. Charter schools' enrollment procedures.**

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

(1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; and

(2) siblings of students already admitted to or attending the same charter school.

**History:** 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3.

### **22-8B-4.2. Charter school facilities; standards.**

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978] in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

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

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

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

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

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

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

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section;

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

History: Laws 2005, ch. 221, § 3 and Laws 2005, ch. 274, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

Laws 2005, ch. 221, § 7 makes the act effective July 1, 2005.

**Compiler's note.** — Laws 2005, ch. 221, § 3, effective July 1, 2005, and Laws 2005, ch. 274, § 2, effective April 6, which contain identical provisions, were both approved by the governor on April 6, 2005.

#### **22-8B-5. Charter schools; local school board authority; state board authority.**

A. The local school board may waive only locally imposed school district requirements.

B. The state board shall waive requirements relating to individual class load and teaching load, length of the school day, staffing patterns, subject areas and the purchase of instructional material. The state board may waive state board requirements or rules and provisions of the Public School Code [Chapter 22 NMSA 1978] pertaining to graduation requirements, evaluation standards for school personnel, school principal duties and driver education. Any waivers granted pursuant to this section shall be for the term of the charter granted.

C. A charter school shall be a public school, accredited by the state board and shall be accountable to the school district's local school board for purposes of ensuring compliance with applicable laws, rules and charter provisions.

D. No local school board shall require any employee of the school district to be employed in a charter school.

E. No local school board shall require any student residing within the geographic boundary of its district to enroll in a charter school.

F. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

**History:** Laws 1999, ch. 281, § 5.

### **22-8B-6. Charter school requirements; application process; authorization.**

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. A charter school applicant shall apply to a local school board for a charter. An applicant shall only submit an application in the district in which the school is located. Applications shall be submitted by 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 local school board.

C. An application shall include a request for capital outlay funding.

D. An application for a start-up school may be made by one or more teachers, parents or community members.

E. An application for a conversion school shall include a petition of support signed by no less than sixty-five percent of the employees in the school. Additionally, a petition in support of the charter school signed by a majority of the households whose children are enrolled in a proposed conversion school shall accompany the application.

F. The local school board shall receive and review all applications for charter schools. The local school board shall not charge application fees. If the board finds the charter school application is incomplete, the board shall request the necessary information from the charter school applicant.

G. The local school board shall hold at least one meeting to obtain information and community input to assist the local school board in its decision whether to grant a charter school application. The local school board shall rule on the application for a charter school in a public meeting within sixty days after receiving the application. If not ruled upon within sixty days, 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 local school board may, however, jointly waive the deadlines set forth in this section.

H. If the local school board denies a charter school application or imposes conditions that are unacceptable to the charter school applicant, the charter school applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978.

I. If a local school board denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions. If a local school board grants a charter, it shall send a copy of the approved charter to the department within fifteen days after granting the charter.

**History:** Laws 1999, ch. 281, § 6; 2005, ch. 221, § 4.

### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, changes the application deadline from October 1 to July 1 and changes "school year" to "fiscal year" in Subsection B; adds Subsection C to provide that an application shall include a request for capital outlay funding; and provides in Subsection I that if the local school board approves the application with conditions, it shall state the reasons for the conditions.

### **22-8B-7. Charter school application appeal; procedures.**

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a local school board concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of a local school board concerning the denial, nonrenewal or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the local school board's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal or revocation or the imposition of conditions that were specified by the local school board. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the local school board's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows:

(1) within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the local school board and make findings. If the secretary finds that the local school board's decision was contrary to the best interests of the students, school district or community, the secretary shall remand the decision to the local school board with written instructions for approval of the charter. The instructions shall include

specific recommendations concerning approval of the charter. The decision of the secretary shall be final and not subject to appeal; and

(2) within thirty days following the remand of a decision by the secretary, the local school board, at a public hearing, shall approve the charter.

C. The secretary, on the secretary's own motion, may review a local school board's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

(1) violate any federal or state laws concerning civil rights;

(2) violate any court order;

(3) threaten the health and safety of students within the school district; or

(4) violate the provisions of Section 22-8B-11 NMSA 1978, prescribing the permissible number of charter schools.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall remand the decision back to the local school board with instructions to deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final and not subject to appeal.

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

**History:** Laws 1999, ch. 281, § 7; 2005, ch. 221, § 5.

### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, changes "state board" to "secretary"; provides in Subsection B that the appellant shall limit the grounds of the appeal to grounds that include the imposition of conditions that were specified by the local school board, that the notice shall include a statement of the reasons the governing board contends the local school board's decision was in error, and that except as provided in



Subsection E, the appeal and review process shall consist of the procedure specified in Subsections B(1) and (2); provides in Subsection B(1) that the hearing shall be held in the school district in which the charter school is located; and adds Subsection E to provide for the appeal by a charter school of a decision to deny an application or to refuse to renew a charter because the public school capital outlay council has determine the facilities does not meet statutory standards and to prescribe a standard of review by the secretary.

## **22-8B-8. Charter application; contents.**

The charter school application, whether for a start-up school or a conversion school, shall be a proposed agreement between the local school board and the charter school and shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance standards to be achieved by the charter school;
- C. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the state board of education's educational standards and must be designed to enable each student to achieve those standards;
- D. a description of the way a charter school's educational program will meet the individual needs of the students, including those students determined to be at risk;
- E. a description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance standards, the time line for achievement of the standards and the procedures for taking corrective action in the event that student performance falls below the standards;
- F. evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;
- G. evidence that the fiscal management of the charter school complies with all applicable federal and state laws and regulations relative to fiscal procedures;
- H. evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school;
- I. a description of the governing body and operation of the charter school, including how the governing body will be selected, the nature and extent of parental,

professional educator and community involvement in the governance and operation of the school and the relationship between the governing body and the local school board;

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

K. the employment and student discipline policies of the proposed charter school;

L. an agreement between the charter school and the local school board regarding their respective legal liability and applicable insurance coverage;

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

N. a description of the waivers that the charter school is requesting from the local school board and the state board and the charter school's plan for addressing these waiver requests;

O. a description of the facilities the charter school plans to use; and

P. any other information reasonably required by the local school board.

**History:** Laws 1999, ch. 281, § 8.

## **22-8B-9. Charter school; contract contents; rules.**

A. An approved charter application shall be a contract between the charter school and the local school board.

B. The contract between the charter school and the local school board shall reflect all agreements regarding the release of the charter school from school district policies.

C. The contract between the charter school and the local school board shall reflect all requests for release of the charter school from state board rules or the Public School Code [Chapter 22 NMSA 1978]. Within ten days after the contract is approved by the local school board, any request for release from state board rules or the Public School Code shall be delivered by the local school board to the state board. If the state board grants the request, it shall notify the local school board and the charter school of its decision. If the state board 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.

D. Upon approval of the charter by the local school board, the charter school shall be waived from the Public School Code [Chapter 22 NMSA 1978] provisions relating to

individual class load and teaching load requirements, length of school day, staffing patterns, subject areas and purchase of instructional materials.

E. The charter school shall participate in the public school insurance authority.

F. Any revision or amendment to the terms of the contract may be made only with the approval of the local school board and the governing body of the charter school.

G. The charter shall include procedures agreed upon by the charter school and the local school board for the resolution of disputes between the charter school and the local school board.

H. The charter shall include procedures that shall be agreed upon by the charter school and the local school board in the event that such board determines that the charter shall be revoked pursuant to the provisions of Section 12 [22-8B-12 NMSA 1978] of the 1999 Charter Schools Act.

**History:** Laws 1999, ch. 281, § 9.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

### **22-8B-10. Charter schools; employee options; hiring and firing.**

A. Notwithstanding the provisions of Section 22-5-4 NMSA 1978, a charter school shall hire its own employees. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978] shall otherwise apply to such employees.

B. An employee of a conversion school who was previously an employee of the school district in which the conversion school is located shall be considered to be on a one-year leave of absence from the school district. The leave of absence shall commence on the initial date of employment for the charter school. Upon request of the employee, the one-year leave of absence shall be renewed for up to two additional one-year periods, absent good cause.

C. The time during which an employee is on a leave of absence shall be counted for longevity credit on the school district's salary schedule.

D. During the period of time that an employee is on a leave of absence from the school district and is actively employed by the charter school, the charter school shall continue the retirement or other benefits previously granted to the employee.

E. A leave of absence shall not be considered a break in service with the school district with which an employee was previously employed.

F. An employee who is on a leave of absence and actively teaching at a charter school and who submits a notice of intent to return to the school district in which the employee was employed immediately prior to employment in the charter school shall be given employment preference by the school district if:

(1) the employee's notice of intent to return is submitted to the school district within three years after ceasing employment with the school district; and

(2) if the employee is a teacher, a position for which the teacher is certified or is qualified to become certified is available. If the employee is not a teacher, a position for which the employee is qualified is available.

G. An employee who is on leave of absence and employed by a charter school and is discharged or terminated for just cause by the charter school shall be considered discharged or terminated by the school district.

**History:** Laws 1999, ch. 281, § 10.

### **22-8B-11. Charter schools; maximum number established.**

A. Local school boards shall authorize the approval of both conversion and start-up charter schools within their school districts.

B. No more than fifteen start-up schools and five conversion schools may be established per year statewide. The number of charter school slots remaining in that year shall be transferred to succeeding years up to a maximum of seventy-five start-up schools and twenty-five conversion schools in any five-year period. The state board shall promptly notify the local school board of each school district when the limits set forth in this section have been reached.

**History:** Laws 1999, ch. 281, § 11.

### **22-8B-12. Charter schools; term; renewal of charter; grounds for nonrenewal or revocation.**

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used for planning. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the local school board.

B. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

C. No later than January 1 of the year prior to the year in which the charter expires, the governing body may submit a renewal application to the local school board. The local school board shall rule in a public hearing on the renewal application no later than

March 1 of the fiscal year in which the charter expires, or on a mutually agreed-upon date.

D. A charter school renewal application submitted to the local school board shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act;

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) contents of the charter application set forth in Section 22-8B-8 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by a majority of the households whose children are enrolled in the charter school; and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978.

E. A charter may be revoked or not renewed by the local school board if the board determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter;

(2) failed to meet or make substantial progress toward achievement of the state board minimum educational standards or student performance standards identified in the charter application;

(3) failed to meet generally accepted standards of fiscal management; or

(4) violated any provision of law from which the charter school was not specifically exempted.

F. If a local school board revokes or does not renew a charter, the local school board shall state in writing its reasons for the revocation or nonrenewal.

G. A decision to revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978.

**History:** Laws 1999, ch. 281, § 12; 2005, ch. 221, § 6.

### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, changes the initial term from five to six years and provides that the first year shall be used for planning; adds Subsection B to provide that prior to the end of the planning year, the charter school shall demonstrate that its facilities meet statutory standards; provides in Subsection D(1) that an application for renewal shall contain a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act; and adds Subsection D(6) to provide that an application for renewal shall contain a description of the charter school facilities and assurances that the facilities comply with statutory standards.

### **22-8B-13. Charter school financing.**

A. The amount of funding allocated to the charter school shall be not less than ninety-eight percent of the school-generated program cost.

B. That portion of money from state or federal programs generated by students enrolled in a charter school shall be allocated to charter schools serving students eligible for that aid. Any other public school program not offered by the charter school shall not be entitled to the share of money generated by a charter school program.

C. All services centrally or otherwise provided by the local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the local school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

**History:** Laws 1999, ch. 281, § 13.

### **22-8B-14. Charter schools stimulus fund created.**

A. The "charter schools stimulus fund" is created in the state treasury. Money in the fund is appropriated to the department of education to provide financial support to charter schools, whether start-up or conversion, for initial start-up costs and initial costs associated with renovating or remodeling existing buildings and structures for expenditure in fiscal year 2000 and subsequent fiscal years. The fund shall consist of money appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education shall administer the fund in accordance with rules adopted by the state board. The department of education may

use up to three percent of the fund for administrative costs. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. If the charter school receives an initial grant and fails to begin operating a charter school within the next eighteen months, the charter school shall immediately reimburse the fund.

**History:** Laws 1999, ch. 281, § 14.

## **22-8B-15. Charter schools; savings clause.**

The state board may extend for a period of two years the charter of any school for which the state board has granted a charter prior to the effective date of this act. Any further extensions of the charter shall be governed by the provisions of the 1999 Charter Schools Act [22-8B-1 to 22-8B-15 NMSA 1978].

**History:** Laws 1999, ch. 281, § 15.

### **ANNOTATIONS**

**Compiler's notes.** — The phrase "effective date of this act", referred to in this section, means June 18, 1999, the effective date of Laws 1999, ch. 281.

## **ARTICLE 8C Charter School Districts**

### **22-8C-1. Repealed.**

History: Laws 1999, ch. 293, § 1; repealed Laws 2005, ch. 292, § 9.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-1 NMSA 1978, the short title for the Chart School District Act, effective July 1, 2005. For present law, see 22-8E-1 NMSA 1978.

### **22-8C-2. Repealed.**

History: Laws 1999, ch. 293, § 2; repealed Laws 2005, ch. 292, § 9.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-2 NMSA 1978, relating to definitions, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8C-3. Repealed.**

History: Laws 1999, ch. 293, § 3; repealed Laws 2005, ch. 292, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-3 NMSA 1978, relating to creation of chart school districts, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8C-4. Repealed.**

History: Laws 1999, ch. 293, § 4; repealed Laws 2005, ch. 292, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-4 NMSA 1978, relating to charter school district application requirements, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8C-5. Repealed.**

History: Laws 1999, ch. 293, § 5; repealed Laws 2005, ch. 292, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-5 NMSA 1978, relating to chart school district contracts, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8C-6. Repealed.**

History: Laws 1999, ch. 293, § 6; repealed Laws 2005, ch. 292, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-6 NMSA 1978, relating to charter renewals, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8C-7. Repealed.**

History: Laws 1999, ch. 293, § 7; repealed Laws 2005, ch. 292, § 9.

#### **ANNOTATIONS**



**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8C-7 NMSA 1978, relating to report to legislature, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

## **22-8C-8. Charter school student participation in public school extracurricular activities.**

A. The New Mexico activities association and the local school board in the school district in which a charter school is located shall allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by the New Mexico activities association if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities sanctioned by the New Mexico activities association or any other association.

B. A charter school student otherwise eligible to participate in an extracurricular activity shall participate in the public school in the attendance zone in which the student lives, provided, however, that the student may choose only one public school in which to participate.

History: Laws 2005, ch. 97, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 97 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## **ARTICLE 8D Special Urban School District**

### **22-8D-1. Repealed.**

History: Laws 2003, ch. 434, § 1; repealed Laws 2005, ch. 292, § 9.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-1 NMSA 1978, the short title for Special Urban School District Act, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8D-2. Repealed.**

History: Laws 2003, ch. 434, § 2; repealed Laws 2005, ch. 292, § 9.

## ANNOTATIONS

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-2 NMSA 1978, relating to definitions, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8D-3. Repealed.**

History: Laws 2003, ch. 434, § 3; repealed Laws 2005, ch. 292, § 9.

## ANNOTATIONS

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-3 NMSA 1978, relating to special urban school district application requirements, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8D-4. Repealed.**

History: Laws 2003, ch. 434, § 4; repealed Laws 2005, ch. 292, § 9.

## ANNOTATIONS

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-4 NMSA 1978, relating to special urban school district requirements, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8D-5. Repealed.**

History: Laws 2003, ch. 434, § 5; repealed Laws 2005, ch. 292, § 9.

## ANNOTATIONS

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-5 NMSA 1978, relating to district responsibilities, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

### **22-8D-6. Repealed.**

History: Laws 2003, ch. 434, § 7; repealed Laws 2005, ch. 292, § 9.

## ANNOTATIONS

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-6 NMSA 1978, relating to , effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

## **22-8D-7. Repealed.**

History: Laws 2003, ch. 434, § 7; repealed Laws 2005, ch. 292, § 9.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repeals 22-8D-7 NMSA 1978, relating to report to legislature and governor, effective July 1, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

## **ARTICLE 8E Charter School District Act of 2005**

### **22-8E-1. Short title.**

Sections 1 through 8 of this act may be cited as the "Charter School District Act of 2005".

History: Laws 2005, ch. 292, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

### **22-8E-2. Definition.**

As used in the Charter School District Act of 2005 [22-8E-1 NMSA 1978], "charter school district" means an existing school district that operates under a charter approved by the department, that is nonreligious, that does not charge tuition and that does not have admission requirements in addition to those found in the Public School Code [22-1-1 NMSA 1978].

History: Laws 2005, ch. 292, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

### **22-8E-3. Charter school district application requirements; process.**

A. Before a school district applies for a charter from the department, the local school board shall adopt a resolution approving the application plan and hold at least two public hearings on the matter. The school district shall advertise the charter school district application plan in the same manner as other legal notices of the school district.

In addition, the school district shall send a notice to the principal of each school in the district, with instructions that each school distribute the notice to the families whose children are enrolled in the school. The local school board may amend the charter school district application after the public hearings. The local school board shall vote to approve the final application before the school district submits it to the department.

B. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter school district.

C. The department shall establish by rule the process and requirements for applying for charter school district status and the process and requirements for renewing charter school district status. In each case, the department shall hold a public hearing.

D. The department shall approve no more than nine charter school districts altogether, three small, three medium and three large districts as determined by the department.

E. The department shall disapprove an initial application or application for renewal of charter school district status when it determines, after a hearing, that the application is not in the best interests of the students, the school district or the community.

History: Laws 2005, ch. 292, § 3.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

### **22-8E-4. Charter contract.**

A. The local school board of a school district that meets the requirements for a charter school district shall enter into a contract with the department establishing its charter to operate as a charter school district for five years.

B. The contract shall reflect all agreements regarding the operation of the charter school district. The terms of the contract may be revised at any time with the approval of both the department and the charter school district.

C. The charter shall include:

(1) assurances that the charter school district shall comply with state laws pertaining to accreditation, state educational standards, assessment and accountability and financial requirements;

(2) a statement of mission and purpose for the operation of the charter school district, including the charter school district's goals and objectives;

(3) evidence that the charter school district's educational and operational plans are economically sound and comply with all state and federal laws and rules;

(4) a description of the charter school district's educational programs and student performance standards and curriculum that must meet or exceed department standards and must be designed to enable each student to achieve those standards;

(5) a description of the way the charter school district's educational program will meet the individual needs of the students, including students with disabilities and students determined to be at risk;

(6) an explanation of the relationship that will exist between the charter school district and its employees and a description of the way the terms and conditions of employment will be addressed with affected employees; and

(7) a description of all waivers from department rules requested and granted.

D. The charter school district shall:

(1) continue to operate as a public, nonsectarian public school district and operate in the same geographic boundaries that existed for the school district prior to becoming a charter school district;

(2) receive state money as provided in the Public School Code;

(3) provide special education services as required by state and federal law;

(4) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it was before becoming a charter school district; and

(5) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

E. The charter school district shall be accountable to the department for ensuring compliance with its charter and applicable state and federal laws and rules.

F. Employees of a charter school district shall be considered continuous employees without interruption of employment pursuant to the School Personnel Act [22-10-1 NMSA 1978] and shall be afforded procedural due process rights and protection.

G. The governing body of the charter school district shall continue to be the local school board.

History: Laws 2005, ch. 292, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

### **22-8E-5. Charter school district responsibilities; exemptions from public school code.**

A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.

B. The charter school district is exempt from provisions of the Public School Code and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.

C. The department may waive other requirements the secretary deems appropriate.

History: Laws 2005, ch. 292, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

### **22-8E-6. Renewal of charter.**

A. A charter for a charter school district may be renewed for successive periods of five years each.

B. Before it submits an application for renewal to the department, the local school board shall hold a public hearing to adopt a resolution approving the application for renewal.

C. A charter school district renewal application submitted to the department shall contain:

(1) a report on the progress that the charter school district has made toward achieving the goals of its charter;

(2) a list of schools in the charter school district that have made adequate yearly progress;

(3) a list of schools in the charter school district that have not made adequate yearly progress, together with an indication of the school improvement status of each of those schools;

(4) a petition in support of the charter school district renewing its charter school district status signed by not less than sixty-five percent of the employees in the charter school district;

(5) a resolution by the local school board requesting renewal of the charter;  
and

(6) any other information that the department deems appropriate.

History: Laws 2005, ch. 292, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

#### **22-8E-7. Evaluation; grounds for nonrenewal, probation or revocation of charter.**

A. The department shall provide ongoing evaluation of the charter school district's compliance with accreditation and state laws pertaining to state educational standards, assessment and accountability and financial requirements. Department staff shall visit the charter school district at least once each year to provide technical assistance and to determine the status of the charter school district and the progress of the charter school district toward the goals of its charter.

B. If the department finds that the charter school district is not in compliance with its charter or with any applicable state or federal law or rules, or is not in the best interests of the students, the school district or the community, the department may deny renewal, revoke the charter or place the charter school district on probationary status.

History: Laws 2005, ch. 292, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

#### **22-8E-8. Report to the legislative education study committee and the governor.**

Each December, the department and each charter school district shall report to the legislative education study committee and the governor regarding the progress that each charter school district has made toward achieving the goals of its charter.

History: Laws 2005, ch. 292, § 8.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 292, § 10 makes the act effective July 1, 2005.

## ARTICLE 9 Federal Aid to Education

### 22-9-1. Gifts and grants for education.

The state board, the state superintendent and the department of education are authorized to accept any gifts or grants from the federal government in aid of education, school construction or school lunch programs in the state.

**History:** 1953 Comp., § 77-7-1, enacted by Laws 1967, ch. 16, § 101.

## ANNOTATIONS

**Cross references.** — As to school lunch programs generally, see 22-13-13 NMSA 1978.

### 22-9-2. Federal aid to education; state educational agency.

The department shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law.

**History:** 1953 Comp., § 77-7-2, enacted by Laws 1967, ch. 16, § 102; 2004, ch. 27, § 22.

## ANNOTATIONS

**Cross references.** — As to designation of state superintendent and state librarian as state educational authorities for administration of federal grants, see 22-9-8 NMSA 1978.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

**The 2004 amendments**, effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.

### 22-9-3. State educational agency; powers; duties.



Whenever the department is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

- A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;
- B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the department or its representative from agencies receiving federal funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal funds; and
- G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds.

History: 1953 Comp., § 77-7-3, enacted by Laws 1967, ch. 16, § 103; 2004, ch. 27, § 23.

## ANNOTATIONS

**Cross references.** — As to designation of agency for submission of state plan for federal grants under Public Law 93-380, see 22-9-6 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.

### **22-9-4. Limitation on accepting grants and gifts.**

Federal funds, gifts or grants relating to aid for education, school construction or school lunch programs may be accepted by the state only if supervision and control of courses of instruction and the personnel of public schools is reserved to the state or its local subdivisions.

**History:** 1953 Comp., § 77-7-4, enacted by Laws 1967, ch. 16, § 104.

### **22-9-5. Custody of funds; budgets; disbursements.**

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction or school lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the state board shall be budgeted, accounted for and disbursed as provided by law, and by the regulations of the department of finance and administration.

**History:** 1953 Comp., § 77-7-5, enacted by Laws 1967, ch. 16, § 105.

### **ANNOTATIONS**

**Cross references.** — As to boards of finance for public school funds for school districts, see 22-8-38 to 22-8-40.1.

As to disbursements for rural library services, see 22-9-7 NMSA 1978.

### **22-9-6. Authorization to receive federal grants and to submit a state plan.**

For purposes of receiving federal grants pursuant to Section 842 of Public Law 93-380, Assistance to States for State Equalization Plans, the state department of public education is designated the state agency and is authorized to submit a state plan to the United States secretary of education.

**History:** 1953 Comp., § 77-7-6, enacted by Laws 1976, ch. 21, § 1; 1977, ch. 246, § 64; 1980, ch. 151, § 50; 1988, ch. 64, § 39.

### **ANNOTATIONS**

**Cross references.** — As to state equalization guarantee distributions generally, see 22-8-25 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state department of public education" for "public school finance division of the department of finance and administration".

**Federal act.** — Section 842 of Public Law 93-380, referred to in this section, appears as 20 U.S.C. § 246.

### **22-9-7. Federal grant-in-aid funds; custody; deposit; disbursement.**

The state treasurer is the trustee for all funds apportioned to the state under any act of congress and he is directed to enter into agreements with, and to comply with the rules and regulations of, such agencies of the federal government as are necessary to

procure for the state grants of federal aid to education. Any funds received under any act of congress shall be held by the state treasurer in special funds designated in accordance with the purposes of the grant made and shall be paid out by him only on warrant of the secretary of finance and administration. Warrants shall be issued only upon voucher of the superintendent of public instruction for disbursements other than for rural library service. Disbursements made for rural library service shall be made only upon voucher issued by the state librarian.

**History:** Laws 1939, ch. 162, § 2; 1941 Comp., § 55-519; 1953 Comp., § 73-6-32; Laws 1961, ch. 126, § 8; 1977, ch. 247, § 192.

### **22-9-8. State educational authorities for federal grant administration.**

The superintendent of public instruction shall be the state educational authority to represent the state in administration of any funds received under any act of congress to authorize grants to states in aid of education other than grants for aid to rural library service and, as to such grants and funds received thereunder, the state librarian shall be the authority to represent the state in the administration of the funds.

**History:** Laws 1939, ch. 162, § 3; 1941 Comp., § 55-520; 1953 Comp., § 73-6-33; Laws 1961, ch. 126, § 9.

## **ANNOTATIONS**

**Cross references.** — As to designation and powers of state board as educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 and 22-9-3 NMSA 1978.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

**Grants under Title I, Public Law 815**, 81st Cong. (2d sess.), may properly be applied for and administered by the superintendent of public instruction. 1951-52 Op. Att'y Gen. No. 5344. See also 1951-52 Op. Att'y Gen. No. 5365.

### **22-9-9. Agencies for grants-in-aid; powers; duties.**

Whenever, under any act of the congress of the United States, federal aid to education is made available to the states:

A. the superintendent of public instruction shall:

(1) enter into any agreements with the proper federal agency or agencies necessary to procure for this state all benefits which may be available under any such act of congress;

(2) provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to local school jurisdictions and teacher-training institutions, to educational agencies and institutions, conducting adult education, and to the state educational authority for any other purpose or purposes;

(3) provide an adequate system of reports to be made to such superintendent from local school jurisdictions and teacher-preparation institutions, from educational agencies and institutions conducting adult education, and from such other jurisdictions, institutions and agencies as may be required;

(4) develop and provide a plan of apportioning among local school jurisdictions any funds received for expenditure within such jurisdictions in such manner as to assist effectively in equalizing educational opportunities in public elementary and secondary schools within the state, such plan to conform as near as may be to any requirements of the act of congress and rules and regulations issued thereunder;

(5) develop and provide a plan of apportioning any funds received for expenditures in eligible institutions based on recommendations of the board of educational finance;

(6) develop and provide a plan for apportioning funds received for expenditure for adult education among public educational agencies and institutions in this state in such manner as will effectively contribute to the development of an economical, effective and comprehensive program of adult education; and

(7) make surveys and prepare and maintain state standards for the development of improved administrative units and attendance areas for the public elementary and secondary schools in anticipation of the availability of funds for the construction or alteration of buildings in connection with the public elementary and secondary schools, and for such purpose the superintendent may cooperate with any other public agency which he may designate; and

B. the state librarian of this state is hereby authorized and directed to:

(1) enter into any and all agreements with the proper federal agency or agencies necessary to procure for this state all benefits for rural or other library service which may be available under any such act of congress;

(2) make and administer all plans which may be necessary to carry out any provisions of any such act of congress which offers aid to library service;

(3) provide for and install an adequate system of auditing of the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to libraries and library services;

(4) provide for an adequate system of reports to be made to him from libraries and library services; and

(5) develop and provide a plan for apportioning any funds received for expenditure for library service which will provide for maintenance of a cooperative and integrated system of library service throughout the state, for suitable cooperative arrangements with school systems, cooperative agricultural extension services, and other appropriate agencies, and in such manner of apportioning as will effectively lessen inequalities of opportunity for library service.

**History:** Laws 1939, ch. 162, § 4; 1941 Comp., § 55-521; 1953 Comp., § 73-6-34; Laws 1961, ch. 126, § 10; 1961, ch. 217, § 1; 1977, ch. 246, § 48.

### ANNOTATIONS

**Cross references.** — As to powers of state board of education when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-3 NMSA 1978.

As to disbursement by state librarian of federal funds for rural library services, see 22-9-7 NMSA 1978.

### **22-9-10. Reports; federal funds; federal agencies; legislature.**

A. Whenever required by any act of congress authorizing federal aid to education or any rules issued pursuant thereto:

(1) the state superintendent shall make reports with respect to expenditure of funds received and progress of education generally, progress of adult education generally or any other matters in the form and containing information required by the appropriate federal agencies; and

(2) the state librarian shall make reports with respect to expenditure of funds received and progress of library service in the form and containing information required by the appropriate federal agencies.

B. Annually, by November 1, the state superintendent shall submit to the legislative education study committee, the legislative finance committee and the library of the legislative council service a detailed report of all federal funds distributed to the state department of public education in the federal fiscal year ending September 30, one year prior to the date of the report, with a description of the purpose for which the state received the money and a detailed accounting of how the funds were expended.

**History:** Laws 1939, ch. 162, § 5; 1941 Comp., § 55-522; 1953 Comp., § 73-6-35; Laws 1961, ch. 126, § 11; 2001, ch. 313, § 2.

## ANNOTATIONS

**Cross references.** — As to powers of state board of education when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-3 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, added Subsection B and made stylistic changes.

### **22-9-11. [School facility construction grants-in-aid; enforcement of labor standards.]**

In the event that the state shall accept any provision of any such act of congress which authorizes and grants aid in the construction of school facilities, the superintendent of public instruction shall, by contract or otherwise, enforce labor standards not less beneficial to employees on such projects than those required under Sections 1 and 2 of the act of August 30, 1935 (49 Stat. 1011, ch. 825), as amended; provided, that the act of congress authorizing such aid shall so require.

**History:** Laws 1939, ch. 162, § 6; 1941 Comp., § 55-523; 1953 Comp., § 73-6-36.

## ANNOTATIONS

**Federal act.** — Sections 1 and 2 of the congressional act of August 30, 1935, as amended, referred to in this section, appear as 40 U.S.C. §§ 276a and 276a-1. Now see 40 U.S.C.S. § 3141 et seq.

### **22-9-12. Official notice of acceptance of federal acts for education and library service.**

The superintendent of public instruction shall transmit to the proper federal agency designated in any act of congress authorizing federal aid to education, official notice of acceptance of any parts and titles of the act and transmit therewith certified copies of this act [22-9-7 to 22-9-12 NMSA 1978] and apportionment plans required in connection with the granting of any funds by any act of congress. In the case of aid to rural or other library service authorized in any act of congress, the official notice with the necessary certified copies as relate to library service shall be transmitted by the state librarian.

**History:** Laws 1939, ch. 162, § 9; 1941 Comp., § 55-524; 1953 Comp., § 73-6-37; Laws 1961, ch. 126, § 12.

### **22-9-13. [Superintendent of public instruction declared sole agency for administration of federal aid to education.]**

The superintendent of public instruction is hereby designated as the sole agency of the state of New Mexico for the administration of any and all plans which may be established or funds which may be available to the state, or for which the state may be eligible by virtue of any legislation enacted by the federal government, to authorize federal assistance to states and communities to enable them to increase public elementary and secondary school construction.

**History:** 1953 Comp., § 73-6-37.1, enacted by Laws 1955, ch. 135, § 1.

## ANNOTATIONS

**Cross references.** — As to designation of state board of education as sole educational agency for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 NMSA 1978.

As to enforcement of labor standards relating to school facility construction grants-in-aid, see 22-9-11 NMSA 1978.

### **22-9-14. [Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.]**

Said superintendent shall, as required or necessary for such eligibility, set forth and promulgate standards and procedures, conforming to federal requirements, for determining eligibility of local educational agencies for payment under such federal legislation, and the amounts thereof, and the need for the facilities to be constructed, which standards and procedures shall provide reasonable assurance that:

A. such payments will be made only if, and to the extent, necessary to enable any local educational agency:

(1) to sell to the federal government or such agency as may be designated for such purpose obligation [obligations] in the amounts needed by such agency to construct the school facilities with respect to which the payments are made; or

(2) if such agency is legally unable to sell such obligations, to rent such facilities from a state school-building agency at rentals which the federal government or its designated agent determines to be comparable to those charged by state school-building agencies pursuant to agreements with the federal government or its designated agent; and,

B. such payments will be made only with respect to the construction of school facilities needed to relieve or prevent extreme overcrowding, double shifts or unhealthful or hazardous conditions.

**History:** 1953 Comp., § 73-6-37.2, enacted by Laws 1955, ch. 135, § 2.

## **22-9-15. [Accounting, budgeting and other fiscal methods to be prescribed by superintendent.]**

Said superintendent shall provide and require such accounting, budgeting and other fiscal methods and procedures as are necessary for the proper and efficient administration of such federal plan or plans.

**History:** 1953 Comp., § 73-6-37.3, enacted by Laws 1955, ch. 135, § 3.

## **22-9-16. [Reports.]**

Said superintendent shall provide for the making of such reports, in such form and containing such information as the federal government or its designated agent may from time to time reasonably require to carry out the provisions of applicable legislation, and for compliance with such provisions as may from time to time be necessary to assure the correctness and verification of such reports.

**History:** 1953 Comp., § 73-6-37.4, enacted by Laws 1955, ch. 135, § 4.

# **ARTICLE 10**

## **Certified School Personnel**

### **22-10-1. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 33 recompiles and amends 22-10-1 NMSA 1978, relating to the School Personnel Act, as 22-10A-1 NMSA 1978, effective April 4, 2003.

### **22-10-2. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-2 NMSA 1978 as present 22-10A-2 NMSA 1978, effective April 4, 2003.

### **22-10-3, 22-10-3.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-10-3 NMSA 1978, as amended by Laws 2000, ch. 38, § 1, relating to certificate requirements, types of certificates,



forfeiture of claims, exceptions, and administrator apprenticeships, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-3.1 NMSA 1978, as amended by Laws 1988, ch. 105, § 3, relating to the adoption of criteria and minimum statewide performance standards for the evaluation of all certified school administrators, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

### **22-10-3.2. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 53 recompiles and amends 22-10-3.2 NMSA 1978, relating to required training program for certified school personnel and school nurses in the detection and reporting of child abuse, neglect and substance abuse, as 22-10A-32 NMSA 1978, effective April 4, 2003.

### **22-10-3.3. [Recompiled.]**

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 36 recompiles and amends 22-10-3.3 NMSA 1978, relating to background checks, known convictions, reporting required, limited immunity, and penalty for failure to report, as 22-10A-5 NMSA 1978, effective April 4, 2003.

### **22-10-3.4 to 22-10-3.6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-10-3.4 NMSA 1978, as enacted by Laws 1997, ch. 238, § 2, relating to certificate requirements, types of certificates, forfeiture of claims, exceptions, and administrator apprenticeships, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-3.5 NMSA 1978, as enacted by Laws 1999, ch. 249, § 1, relating to the issuance of alternative certificates, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-3.6 NMSA 1978, as enacted by Laws 1999, ch. 249, § 2, relating to discrimination against persons with alternative certificates, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

### **22-10-4. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-10-4 NMSA 1978, as amended by Laws 1997, ch. 238, § 3, relating to certificate fees, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

### **22-10-4.1. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 31 recompiles and amends 22-10-4.1 NMSA 1978, relating to the distribution and appropriation of educator certification funds, as 22-8-44 NMSA 1978, effective April 4, 2003.

### **22-10-5 to 22-10-9. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-10-5 NMSA 1978, as amended by Laws 1975, ch. 306, § 4, relating to the duties of certified school personnel, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-6 NMSA 1978, as enacted by Laws 1973, ch. 135, § 1, relating to additional duties of school principals, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 109, relating to payment of certified school personnel salary, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-8 NMSA 1978, as amended by Laws 1975, ch. 306, § 5, relating to compensation for attendance at educational meetings, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-10-9 NMSA 1978, as amended by Laws 1975, ch. 306, § 6, relating to professional status of persons teaching, supervising an instructional program, counseling or providing special instructional services, in a public school or state agency, administering in a public school, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

### **22-10-10. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-10 NMSA 1978 as 22-10A-34 NMSA 1978, effective April 4, 2003.

## **22-10-11. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-11 NMSA 1978 as 22-10A-21 NMSA 1978, effective April 4, 2003.

## **22-10-12. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-12 NMSA 1978 as 22-10A-22 NMSA 1978, effective April 4, 2003.

## **22-10-13. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-13 NMSA 1978 as 22-10A-23 NMSA 1978, effective April 4, 2003.

## **22-10-14. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-14 NMSA 1978 as 22-10A-24 NMSA 1978, effective April 4, 2003.

## **22-10-14.1. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-14.1 NMSA 1978 as 22-10A-25 NMSA 1978, effective April 4, 2003.

## **22-10-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 33, § 33 repeals former 22-10-15 NMSA 1978, as amended by Laws 1975, ch. 306, § 11, relating to the procedure to be followed by a local school board or the governing body of a state agency in refusing to reemploy a certified school instructor with tenure rights. For provisions of former section, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978 [now 22-10A-24 and 22-10A-25 NMSA 1978].

Laws 1986, ch. 33 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

## **22-10-16. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-16 NMSA 1978 as 22-10A-26 NMSA 1978, effective April 4, 2003.

## **22-10-17. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-17 NMSA 1978 as 22-10A-27 NMSA 1978, effective April 4, 2003.

## **22-10-17.1. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-17.1 NMSA 1978 as 22-10A-28 NMSA 1978, effective April 4, 2003.

## **22-10-18. [Recompiled.]**

### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

## **22-10-19, 22-10-20. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 33, § 33 repeals former 22-10-19 and 22-10-20 NMSA 1978, as amended by Laws 1975, ch. 306, § 14 and Laws 1983, ch. 166, § 1, respectively, giving the state board authority to promulgate regulations for the conduct of hearings before local school boards and governing authorities of state agencies and relating to appeals to the state board, effective May 21, 1986. For provisions of former sections, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978 [now 22-10A-24 and 22-10A-25 NMSA 1978].

## **22-10-21. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-21 NMSA 1978 as 22-10A-30 NMSA 1978, effective April 4, 2003.

### **22-10-22. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 52 recompiles and amends 22-10-22 NMSA 1978, relating to suspension and revocation of teaching certificates, as 22-10A-31 NMSA 1978, effective April 4, 2003.

### **22-10-23. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-23 NMSA 1978 as 22-10A-35 NMSA 1978, effective April 4, 2003.

### **22-10-24. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-24 NMSA 1978 as 22-10A-36 NMSA 1978, effective April 4, 2003.

### **22-10-25. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-25 NMSA 1978 as 22-10A-37 NMSA 1978, effective April 4, 2003.

### **22-10-26. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-26 NMSA 1978 as 22-10A-38 NMSA 1978, effective April 4, 2003.

### **22-10-27. [Recompiled.]**

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-10-27 NMSA 1978 as 22-10A-39 NMSA 1978, effective April 4, 2003.

## **ARTICLE 10A**

### **School Personnel Act**

#### **22-10A-1. Short title.**

Chapter 22, Article 10A NMSA 1978 may be cited as the "School Personnel Act".

**History:** 1953 Comp., § 77-8-1, enacted by Laws 1975, ch. 306, § 1; 1991, ch. 187, § 2; 1978 Comp., § 22-10-1, recompiled and amended as 1978 Comp., § 22-10A-1 by Laws 2003, ch. 153, § 33.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1975, ch. 306, § 1, repeals 77-8-1, 1953 Comp., as enacted by Laws 1967, ch. 16, § 106, relating to requirements for certificates, and enacts the above section.

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "Sections 77-8-1 through 77-8-24 NMSA 1953 may be cited as the 'Certified School Personnel Act'."

**The 2003 amendment,** recompiled former 22-10-1 NMSA 1978 as present 22-10A-1 NMSA 1978, effective April 4, 2003, and substituted "10A" for "10" following "Article" near the beginning of the section.

**Purpose of provisions.** — The purpose of the Certified School Personnel Act is to protect the public against incompetent teachers and to insure proper educational qualifications, personal fitness and a high standard of teaching performance. *New Mexico State Bd. of Educ. v. Stoudt*, 91 N.M. 183, 571 P.2d 1186 (1977).

The purpose of the Certified School Personnel Act is to promote a sound public policy of retaining in the public school system teachers who have become increasingly valuable by reason of their experience. By statute, these public servants are assured an indefinite tenure of position during satisfactory performance of their duties. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

**Public school instructors and administrators are state employees** within the constraints of the prohibition against serving in the legislature while receiving compensation as an employee of the state. 1988 Op. Att'y Gen. No. 88-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Unlicensed teacher's right to recover for services, 30 A.L.R. 893, 42 A.L.R. 1226, 118 A.L.R. 646.

Matters proper for consideration in appointment of teachers, 94 A.L.R. 1484.

Tests of moral character or fitness as requisite to issuance of teacher's license or certificate, 96 A.L.R.2d 536.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

78 C.J.S. Schools and School Districts § 197.

## **22-10A-2. Definitions.**

As used in the School Personnel Act [Chapter 22, Article 10A NMSA 1978]:

A. "discharge" means the act of severing the employment relationship with a certified school employee prior to the expiration of the current employment contract;

B. "state agency" means any state institution or state agency providing an educational program requiring the employment of certified school instructors;

C. "sabbatical leave" means leave of absence with pay as set by the local school board or governing authority of a state agency during all or part of a regular school term for purposes of study or travel related to the staff member's duties and of direct benefit to the instructional program;

D. "terminate" means, in the case of a certified school employee, the act of not reemploying an employee for the ensuing school year and, in the case of a non-certified school employee, the act of severing the employment relationship with the employee;

E. "working day" means every calendar day, excluding Saturday, Sunday or legal holiday; and

F. "just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of his duties and that is not in violation of the employee's civil or constitutional rights.

**History:** 1953 Comp., § 77-8-1.1, enacted by Laws 1975, ch. 306, § 2; 1990, ch. 90, § 1; 1991, ch. 187, § 3; 1994, ch. 110, § 1; 1978 Comp., § 22-10-2, recompiled as 1978 Comp., § 22-10A-2 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Cross references.** — As to sabbatical leave programs generally, see 22-10-23 to 22-10-26 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, added present Subsections A, D and E, redesignated former Subsections A and B as present Subsections B and C, and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, deleted "Certified" preceding "School Personnel Act" in the introductory phrase; added Subsection F; and made a related stylistic change.

**The 1994 amendment,** effective May 18, 1994, substituted "with a certified school employee" for "with an employee" in Subsection A, and rewrote Subsection D, which read "'terminate' the act of not reemploying an employee for the ensuing school year."

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-2 NMSA 1978, as 22-10A-2 NMSA 1978, effective April 4, 2003.

**Reduction in force.** — Reduction in force is not "just cause" to discharge a teacher. *Aguilera v. Hatch Valley Public. Schools Board of Education*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**"Just cause" for termination.** — Evidence of teacher's arrest for driving under the influence and charges of resisting an officer and battery did not show conduct that had any relationship to his competence as an employee or to the proper performance of his duties. *Kibbe v. Elida Sch. Dist.*, 2000-NMSC-006, 128 N.M. 629, 996 P.2d 419.

### **22-10A-3. License or certificate required; application fee; general duties.**

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school or state agency; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the person to perform that function. This subsection does not apply to a person performing the functions of a practice teacher as defined by the state board.



B. The state board shall charge a reasonable fee for each application for or the renewal of a license or certificate. The application fee may be waived if the applicant meets a standard of indigency established by the department.

C. A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until he demonstrates that he holds a valid license or certificate. This section does not apply to practice teachers as defined by rules of the state board.

D. Each licensed school employee shall:

(1) enforce all laws and rules applicable to his public school and school district or to the educational program of the state agency;

(2) if teaching, teach the prescribed courses of instruction;

(3) exercise supervision over students on property belonging to the public school or state agency and while the students are under the control of the public school or state agency; and

(4) furnish reports as required.

**History:** 1978 Comp., § 22-10A-3, enacted by Laws 2003, ch. 153, § 34.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

#### **22-10A-4. Teachers and school administrators; professional status; licensure levels; salary alignment.**

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the department has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed department-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of the teacher's career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of the 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses.

History: 1978 Comp., § 22-10A-4, enacted by Laws 2003, ch. 153, § 35; 2005, ch. 315, § 4 and Laws 2005, ch. 316, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Effective date of this 2003 act.** — The "effective date of this 2003 act" referred to in Subsection E means Laws 2003, ch. 153 which is April 4, 2003.

**2005 amendments.** — Laws 2005, ch. 315, § 4 and Laws 2005, ch. 316, § 1 enact identical amendments, effective April 7, 2005, that delete the former provision in Subsection C that a level one license shall be issued for the first three years of teaching.

### **22-10A-5. Background checks; known convictions; reporting required; limited immunity; penalty for failure to report.**

A. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for good and just cause. Records and related information shall be privileged and shall not be disclosed to

a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

B. Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.

C. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of his federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain his federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school.

D. A local superintendent shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

E. The state board may suspend or revoke the license of a local superintendent who fails to report a criminal conviction involving moral turpitude of a licensed school employee.

F. A person who in good faith reports any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee shall not be held liable for civil damages as a result of the report; provided that the person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person.

**History:** Laws 1997, ch. 238, § 1; 1998, ch. 60, § 1; 1999, ch. 281, § 24; 2001, ch. 293, § 6; 1978 Comp., § 22-10-3.3, recompiled and amended as 1978 Comp., § 22-10A-5 by Laws 2003, ch. 153, § 36.

## ANNOTATIONS

**The 1998 amendment** rewrote this section to the extent that a detailed comparison is impracticable. Laws 1998, ch. 60 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature.

**The 1999 amendment**, effective June 18, 1999, inserted "at a public school, including a charter school" and "or a charter school" throughout Subsection B.

**The 2001 amendment**, effective June 15, 2001, in Subsection B, added "regional education cooperative" to each of the first five sentences and added "contractor or contractor's employee" to the fourth sentence.

**The 2003 amendment**, recompiled former 22-10-3.3 NMSA 1978 as present 22-10A-5 NMSA 1978, effective April 4, 2003, and in Subsection A substituted "licensure" for "certification" three times, deleted "of education" following "the department" near the beginning, and substituted "license" for "certificate" near the middle; divided former Subsection B into present Subsections B and C and deleted former Subsection C; deleted "including a charter school" at the end of present Subsection B; in present Subsection C substituted "licensed" for "certified" following "been initially" near the beginning of the first sentence, substituted "twenty-four" for "twelve" following "within" near the beginning of the first sentence, deleted "of education" following "the department" near the end of the first sentence, deleted "including a charter school" near the middle of the second sentence, inserted "or charter school" following "education cooperative" near the end of the second sentence, deleted "including a charter school" following "public school" near the middle of the third sentence, deleted "of education" following "the department" twice in the fourth sentence, substituted "twenty-four" for "twelve" following "not more than" near the end of the fourth sentence, and deleted "including a charter school" at the end; and added present Subsections D, E and F.

### **22-10A-6. Educational requirements for licensure.**

A. The state board shall require a person seeking licensure or reciprocity in elementary or secondary education to have completed the following minimum requirements in the college of arts and sciences:

- (1) twelve hours in English;
- (2) twelve hours in history, including American history and western civilization;
- (3) six hours in mathematics;

- (4) six hours in government, economics or sociology;
- (5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and
- (6) six hours in fine arts.

B. In addition to the requirements specified in Subsections A and C of this section, the state board shall require that a person seeking standard or alternative elementary licensure shall have completed six hours of reading courses, and a person seeking standard or alternative secondary licensure shall have completed three hours of reading courses in subject matter content. The state board shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection.

C. Except for licensure by reciprocity, the state board shall require, prior to initial licensure, no less than fourteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a teacher and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

D. Nothing in this section shall preclude the state board from establishing or accepting equivalent requirements for purposes of reciprocal licensure or minimum requirements for alternative licensure.

E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the state board that other licensure requirements are more appropriate for vocational teacher preparatory programs.

**History:** 1978 Comp., § 22-2-8.7, enacted by Laws 1986, ch. 33, § 8; 1987, ch. 225, § 1; 2001, ch. 255, § 1; 2001, ch. 261, § 1; recompiled and amended as 1978 Comp., § 22-10A-6 by Laws 2003, ch. 153, § 37.

## ANNOTATIONS

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**2001 amendments.** — Laws 2001, ch. 261, § 1, effective June 15, 2001, adding Subsection B and redesignated the remaining subsections accordingly; substituting "Subsections A and C" for "Subsections A and B" in Subsection E; and substituting "Subsections A through C" for "Subsections A and B" in Subsection F, was approved April 4, 2001. However, this section was also amended by Laws 2001, ch. 255, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"A. The state board shall require any person seeking certification in elementary or secondary education to complete the following minimum requirements in the college of arts and sciences:

"(1) twelve hours in English;

"(2) twelve hours in history, including American history and western civilization;

"(3) six hours in mathematics;

"(4) six hours in government, economics or sociology;

"(5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and

"(6) six hours in fine arts.

"B. In addition to the requirements specified in Subsection A of this section, the state board shall require that a person seeking standard or alternative elementary certification shall have completed six hours of reading courses, and a person seeking standard or alternative secondary certification shall have completed three hours of reading courses in subject matter content. The state board of education shall establish requirements that provide a reasonable period of time to comply with the provisions of this section.

"C. The state board shall require, prior to certification, no less than fourteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a certified school instructor and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

"D. Nothing in this section shall preclude the state board from establishing or accepting equivalent requirements for purposes of reciprocal certification or minimum requirements for alternative certification.

"E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the state board that other certification requirements are more appropriate for vocational teacher preparatory programs."

Because Laws 2001, ch. 255 was approved earlier on April 4, 2001, this section is set out as amended by Laws 2001, ch. 261, § 1. See 12-1-8 NMSA 1978.

**The 2003 amendment**, recompiled former 22-2-8.7 NMSA 1978 as present 22-10A-6 NMSA 1978, effective April 4, 2003, and substituted "Educational requirements for licensure" for "Certification requirements" in the section heading; substituted "licensure or reciprocity" for "certification" following "person seeking" near the beginning of Subsection A; in Subsection B substituted "licensure" for "certification" twice in the first sentence, and inserted "The state board shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection." at the end; in Subsection C inserted "Except for licensure by reciprocity," at the beginning, substituted "initial licensure" for "certification" following "prior to" near the beginning, and

substituted "teacher" for "certified school instructor" following "supervision of a" near the middle; substituted "licensure" for "certification" twice in Subsection D; deleted former Subsection E and redesignated former Subsection F as present Subsection E; and substituted "licensure" for "certification" following "that other" near the middle of present Subsection E.

**Temporary provisions.** — Laws 2001, ch. 255, § 2 and Laws 2001, ch. 261, § 2, effective June 15, 2001, provide that the requirements in Subsection B of Section 22-2-8.7 NMSA 1978 [now 22-10A-6 NMSA 1978] shall apply to students first entering a college or university beginning in the fall of 2001.

**Compiler's notes.** — This section was compiled as Section 22-2-8.7 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

## **22-10A-7. Level one licensure**

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

- (1) holds a baccalaureate degree from an accredited educational institution;
- (2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;
- (3) has passed the New Mexico teacher assessments examination; and
- (4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special education and vocational education.

G. Beginning with the 2003-2004 school year, with the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be thirty thousand dollars (\$30,000) for a standard nine and one-half month contract.

H. Teachers who hold level one licenses on the effective date of the 2003 act must be evaluated by the end of the 2006-2007 school year.

**History:** 1978 Comp., § 22-10A-7, enacted by Laws 2003, ch. 153, § 38; 2005, ch. 315, § 5 and Laws 2005, ch. 316, § 2.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Effective date of this 2003 act.** — The "effective date of this 2003 act" referred to in Subsection H means Laws 2003, ch. 153 which is April 4, 2003.

**2005 amendments.** — Laws 2005, ch. 315, § 5 and Laws 2005, ch. 316, § 2 enact identical amendments effective April 7, 2005, that change the level one license from a three-year license to a five-year license in Subsection A; require at least three full school years of formal mentorship and intensive performance evaluation before a person may apply for a level two license in Subsection A and change the period of time within which to demonstrate progress and competence from three years to five years.

### **22-10A-8. Alternative level one license.**

A. The department shall issue an alternative level one license to a person who is at least eighteen years of age and who has:

(1) completed a baccalaureate degree at an accredited institution of higher education, including completion of a minimum of thirty credit hours at either the undergraduate or graduate level in the subject area of instruction for which he is applying for a license;

(2) completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which he is applying for a license; or



(3) completed a doctoral or law degree at an accredited institution of higher education; and

(4) passed the New Mexico teacher assessments examination; and

(5) completed a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrated to the department, in conjunction with the school district or state agency, that he has met the state board-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A degree referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

C. An alternative level one teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

D. A school district or state agency shall not discriminate against a teacher on the basis that he holds an alternative level one license.

**History:** 1978 Comp., § 22-10A-8, enacted by Laws 2003, ch. 153, § 39.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-9. Teacher mentorship program for level one teachers; purpose; department duties.**

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all level one teachers. The department shall work with licensed school employees, representatives from teacher preparation programs and the commission on higher education to establish the framework.

C. The framework shall include:

- (1) individual support and assistance for each beginning teacher from a designated mentor;
- (2) structured training for mentors;
- (3) an ongoing, formative evaluation that is used for the improvement of teaching practice;
- (4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;
- (5) support from local school boards, school administrators and other school district personnel; and
- (6) regular review and evaluation of the teacher mentorship program.

D. The department shall:

- (1) require submission and approval of each school district's teacher mentorship program;
- (2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place; and
- (3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program.

History: 1978 Comp., § 22-10A-9, enacted by Laws 2003, ch. 153, § 40; 2005, ch. 315, § 6 and Laws 2005, ch. 316, § 3.

### ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**2005 amendments.** — Laws 2005, ch. 315, § 6 and Laws 2005, ch. 316, § 3 enact identical amendments, effective April 7, 2005, that provide in Subsection C(4) that the framework shall include evaluation during at least the first three years of teaching.

### **22-10A-10. Level two licensure.**

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who successfully completes the level one license or is granted reciprocity as provided by department rules; demonstrates essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications as required by the department.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special education and vocational education.

D. With the adoption by the department of the statewide objective performance evaluation for level two teachers, the minimum salary for a level two teacher for a standard nine and one-half month contract shall be as follows:

- (1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
- (2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000); and
- (3) for the 2005-2006 school year, forty thousand dollars (\$40,000).

History: 1978 Comp., § 22-10A-10, enacted by Laws 2003, ch. 153, § 41; 2005, ch. 315, § 7 and Laws 2005, ch. 316, § 4.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**2005 amendments.** — Laws 2005, ch. 315, § 7 and Laws 2005, ch. 316, § 4 enact identical amendments, effective April 7, 2005, that delete the former provision that an applicant complete the three year level one license.

### **22-10A-11. Level three licensure; tracks for teachers and school administrators.**

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in

a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be as follows:

- (1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
- (2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000);
- (3) for the 2005-2006 school year, forty thousand dollars (\$40,000);
- (4) for the 2006-2007 school year, forty-five thousand dollars (\$45,000); and
- (5) for the 2007-2008 school year, fifty thousand dollars (\$50,000).

D. A level three-B license is a nine-year license granted to a school administrator who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

E. The department shall grant a level three-B license to an applicant who has been a level three-A instructional leader for at least one year, has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program and demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

F. Beginning with the 2007-2008 school year, the standard contract and minimum annual salary for a level three-B school principal shall be based on the size of the school in which the school principal is employed, as follows:

- (1) for school principals of schools with two hundred or fewer students, a minimum salary of fifty-eight thousand dollars (\$58,000) for a standard ten-month contract;

(2) for school principals of schools with two hundred one to four hundred students, a minimum salary of sixty thousand dollars (\$60,000) for a standard ten-month contract;

(3) for school principals of schools with four hundred one to six hundred students, a minimum salary of sixty-two thousand dollars (\$62,000) for a standard ten-month contract;

(4) for school principals of schools with six hundred one to eight hundred students, a minimum salary of sixty-four thousand dollars (\$64,000) for a standard ten-month contract;

(5) for school principals of schools with eight hundred one to one thousand students, a minimum salary of sixty-six thousand dollars (\$66,000) for a standard ten-month contract; and

(6) for school principals of schools with more than one thousand students, a minimum salary of sixty-eight thousand dollars (\$68,000) for a standard ten-month contract.

History: 1978 Comp., § 22-10A-11, enacted by Laws 2003, ch. 153, § 42; 2005, ch. 315, § 8 and Laws 2005, ch. 316, § 5.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**2005 amendments.** — Laws 2005, ch. 315, § 8 and Laws 2005, ch. 316, § 5, effective April 7, 2005, except for Subsection F, enact identical amendments to provide in Subsection A that if a level three-A teacher does not demonstrate competency in a school year, the school district shall provide the teacher with professional development and peer intervention during the following school year and that if by the end of that school year the teacher fails to demonstrate competency, the school district may choose not to contract with the teacher to teach in the classroom. Pursuant to 12-1-8 NMSA 1978, this section is set out as amended by Laws 2005, ch. 316, § 5.

**Laws 2005, ch. 316, § 5,** effective April 7, 2005, changes the school year in Subsection F from 2005-2006 to 2007-2008.

As amended by **Laws 2005, Subsection F of ch. 315, § 8,** provides:

F. Beginning with the 2005-2006 school year, the standard contract and minimum annual salary for a level three-B school principal shall be based on the size of the school in which the school principal is employed, as follows:

- (1) for school principals of schools with two hundred or fewer students, a minimum salary of fifty-eight thousand dollars (\$58,000) for a standard ten-month contract;
- (2) for school principals of schools with two hundred one to four hundred students, a minimum salary of sixty thousand dollars (\$60,000) for a standard ten-month contract;
- (3) for school principals of schools with four hundred one to six hundred students, a minimum salary of sixty-two thousand dollars (\$62,000) for a standard ten-month contract;
- (4) for school principals of schools with six hundred one to eight hundred students, a minimum salary of sixty-four thousand dollars (\$64,000) for a standard ten-month contract;
- (5) for school principals of schools with eight hundred one to one thousand students, a minimum salary of sixty-six thousand dollars (\$66,000) for a standard ten-month contract; and
- (6) for school principals of schools with more than one thousand students, a minimum salary of sixty-eight thousand dollars (\$68,000) for a standard ten-month contract.

## **22-10A-12. Limited reciprocity.**

A teacher or school principal licensed in another state may be granted a level two or level three license if he has teaching experience, demonstrates the required competencies and meets other requirements and qualifications for the license for which he applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if he deems it necessary. A teacher who holds an out-of-state license may apply for a lower level license if he does not meet the requirements for the higher level.

**History:** 1978 Comp., § 22-10A-12, enacted by Laws 2003, ch. 153, § 43.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

## **22-10A-13. Native American language and culture certificates.**

The state board may issue a Native American language and culture certificate to a person proficient in a Native American language and culture of a New Mexico tribe or pueblo who meets criteria established by the state board. A baccalaureate degree is not required for the person applying for this certificate. The Native American language and

culture certificate shall be issued and renewable in accordance with procedures established by the state board.

**History:** 1978 Comp., § 22-10A-13, enacted by Laws 2003, ch. 153, § 44.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-14. Certificates of waiver.**

A. If a local superintendent or governing authority of a state agency certifies to the department that an emergency exists in the hiring of a qualified person, the department may issue a certificate of teaching waiver or assignment waiver.

B. The department may issue a certificate of teaching waiver to a person who holds a baccalaureate degree but does not meet other requirements for licensure as a level one teacher. Certificates of teaching waivers are one-year waivers and may be renewed only if the holder provides satisfactory evidence of continued progress toward a level one license.

C. At the request of a local superintendent, the department may issue a certificate of assignment waiver to a licensed teacher who is assigned to teach outside his teaching endorsement area. A certificate of assignment waiver may be renewed each school year if the teacher provides satisfactory evidence of continued progress toward meeting the requirements for endorsement.

D. A teacher who holds a teaching or assignment waiver shall not be assigned to a school that has not made adequate yearly progress for two consecutive years.

**History:** 1978 Comp., § 22-10A-14, enacted by Laws 2003, ch. 153, § 45.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-15. Substitute teacher certificate.**

The department shall provide by rule for the qualifications for a substitute teacher certificate. Substitute teacher certificates shall be issued by the department.

**History:** 1978 Comp., § 22-10A-15, enacted by Laws 2003, ch. 153, § 46; 2004, ch. 92, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**The 2004 amendment,** effective July 1, 2004, changed "state board" to "department" in two places and deleted "A local school board may provide for additional qualifications or requirements as it deems necessary".

### **22-10A-16. Parental notification.**

A. Within sixty calendar days from the beginning of each school year, every school district shall issue a notice to parents that they may obtain information regarding the professional qualifications of their children's teachers, instructional support providers and school principals. At a minimum, the information shall include:

- (1) whether the teacher has met state qualifications for licensure for the grade level and subjects being taught by the teacher;
- (2) whether the teacher is teaching under a teaching or assignment waiver;
- (3) the teacher's degree major and any other license or graduate degree held by the teacher; and
- (4) the qualifications of any instructional support providers if the student is served by educational assistants or other instructional support providers.

B. A local superintendent shall give written notice to the parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject.

C. The local superintendent shall:

- (1) ensure that the notice required by this section is provided by the end of the four-week period following the assignment of that person to the classroom;
- (2) ensure that the notice required by this section is provided in a bilingual form to a parent whose primary language is not English;
- (3) retain a copy of the notice required pursuant to this section; and
- (4) ensure that information relating to teacher licensure is available to the public upon request.

**History:** 1978 Comp., § 22-10A-16, enacted by Laws 2003, ch. 153, § 47.



## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-17. Instructional support provider licenses.**

A. The department shall license instructional support providers, including educational assistants, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, interpreters for the deaf, diagnosticians and other service providers. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The department shall provide by rule for the requirements for licensure of types of instructional support providers. If an instructional support provider practices a licensed profession, he shall provide evidence satisfactory to the department that he holds a current, unsuspended license in the profession for which he is applying to provide instructional support services. The instructional support provider shall notify the school district and department immediately if his professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license.

History: 1978 Comp., § 22-10A-17, enacted by Laws 2003, ch. 153, § 48; 2004, ch. 27, § 24.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department".

### **22-10A-17.1. Educational assistants; licensing framework; qualifications; minimum salaries.**

A. All persons who perform services as educational assistants in public schools or in those special state-supported schools within state agencies must hold valid, educational assistants licensure issued by the public education department. Educational assistants shall be assigned, and serve as assistants, to school staff duly licensed by the public education department. While there may be brief periods when educational

assistants are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.

B. The public education department will, through appropriate rules, institute a licensure system for educational assistants. The highest level of license must ensure that educational assistants who hold that level of licensure meet the standard for paraprofessionals established in federal statute and regulation for employment in a Title 1 program. Educational assistants hired on or after January 8, 2002, who provide instructional support in a Title 1 program, must meet the qualifications for the highest level of licensure on the effective date of this statute. Paraprofessionals hired prior to January 8, 2002, must meet the qualifications for the highest level of licensure by January 8, 2006.

C. The minimum annual salary for licensed educational assistants shall be twelve thousand dollars (\$12,000) effective in the 2004-2005 school year.

D. The minimum salaries specified in Subsection C of this section may be adjusted in accordance with appropriations for that purpose in each school year as established by the secretary of public education.

E. School districts shall initiate the implementation of a career salary framework that supports the licensure system in public education department rules in fiscal year 2005.

History: Laws 2004, ch. 30, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 30, § 2 makes this section effective July 1, 2004.

### **22-10A-18. School principals; duties.**

In addition to other duties prescribed by law, a school principal shall:

A. under the general supervision of the local superintendent, assume administrative responsibility and overall instructional leadership for the public school to which he is assigned, including the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school;

B. recommend to the local superintendent the employment, promotion, transfer, discharge and termination of school employees in his school;

C. evaluate the performance of school employees and develop professional development plans or job improvement plans to assist school employees to improve;

D. take disciplinary action against school employees;

E. develop a proposed budget for the public school, with input from the school council, and submit it to the local superintendent; and

F. perform other duties assigned to him by the local superintendent to implement the policies of the local school board.

**History:** 1978 Comp., § 22-10A-18, enacted by Laws 2003, ch. 153, § 49.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-19. Teachers and school principals; accountability; evaluations; professional development; peer intervention; mentoring.**

A. The state board shall adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees. The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process. Evaluation by other school employees shall be one component of the evaluation tool for school administrators.

B. As part of the highly objective uniform statewide standard of evaluation for teachers, the school principal shall observe each teacher's classroom practice to determine the teacher's ability to demonstrate state-adopted competencies.

C. At the beginning of each school year, teachers and school principals shall devise professional development plans for the coming year, and performance evaluations shall be based in part on how well the professional development plan was carried out.

D. If a level two or three-A teacher's performance evaluation indicates less than satisfactory performance and competency, the school principal may require the teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and competency by the end of the period, the peer interveners may recommend termination of the teacher.

E. At least every two years, school principals shall attend a training program approved by the department to improve their evaluation, administrative and instructional leadership skills.

**History:** 1978 Comp., § 22-10A-19, enacted by Laws 2003, ch. 153, § 50.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

### **22-10A-19.1. Professional development; systemic framework; requirements; department duties.**

A. The department shall develop a systemic framework for professional development that provides training to ensure quality teachers, school principals and instructional support providers and that improves and enhances student achievement. The department shall work with licensed school employees, the commission on higher education and institutions of higher education to establish the framework.

B. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students;

(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees and parents.

History: Laws 2004, ch. 27, § 25.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

### **22-10A-20. Staffing patterns; class load; teaching load.**

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

- (1) no portable classrooms are available;
- (2) no other available sources of funding exist to meet its need for additional classrooms;
- (3) the school district is planning alternatives to increase building capacity for implementation within one year; and
- (4) the parents of all children affected by the waiver have been notified in writing:

(a) of the statutory class load requirements;

(b) that the school district has made a decision to deviate from these class load requirements; and

(c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent.

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty.

**History:** 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1; 1993, ch. 226, § 5; 1993, ch. 228, § 1; 1994, ch. 109, § 1; recompiled and amended as 1978 Comp., § 22-10A-20 by Laws 2003, ch. 153, § 51.

## ANNOTATIONS

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, substituted "instructional assistant" for "aide" in Subsections A, C(1), D(1), D(2), and D(4); substituted "twenty-two" for "twenty-

three" in Subsection D(2); added present Subsection D(3) and redesignated former Subsection D(3) as present Subsection D(4); substituted "grades three through six" for "grades two through six" in Subsection 4; added present Subsection H and redesignated former Subsection H as present Subsection I; and inserted "and the 1988-89 school year" in present Subsection I.

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, in Subsection C, updated the school year dates, made changes in the grade level references, and added Paragraphs (5) to (7); rewrote Subsection D; in Subsection F, substituted "with a membership of four hundred or less" for "with an ADM of four hundred or less"; in Subsection G, deleted "for a period not to exceed two years" following "in Subsection A of this section" near the beginning; substituted present Subsection H for the former subsection which read "The state superintendent may waive the individual class load requirements established in Subsection B of this section for a period not to exceed two years upon a demonstration of necessary alternative curricular planning or a temporary shortage of classroom facilities"; and, in Subsection I, substituted "for the 1990-91 school year" for "for the 1987-88 school year and the 1988-89 school year" in the last sentence.

**The 1991 amendment**, effective June 14, 1991, in Subsection C, deleted "and instructional assistant entitlement" following "class load" in Paragraph (2), added present Paragraph (3), redesignated former Paragraphs (3) to (7) as Paragraphs (4) to (8) and substituted "1993-94" for "1992-93" in Paragraph (4), "1994-95" for "1993-94" in Paragraph (5), "1995-96" for "1994-95" in Paragraph (6), "1996-97" for "1995-96" in Paragraph (7), and "1997-98" for "1996-97" in Paragraph (8); substituted "1992-93" for "1991-92" in Paragraph (2) of Subsection D; and substituted "1991-92" for "1990-91" in Subsection I.

**The 1992 amendment**, effective May 20, 1992, substituted "four hundred" for "400" in Subsection F and "1993-94 school year" for "1992-93 school year" several times throughout the section.

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 226, § 5, approved April 6, 1993 and effective July 1, 1993, and Laws 1993, ch. 228, § 1, approved April 7, 1993 and effective June 18, 1993, which deleted "and grade one" following "kindergarten" in two places and "twenty-two students for grade two; twenty-four students for grade three; and twenty-five students for grades four through six" in Subsection A; added the provisions of current Subsections B, C, E and G to I; deleted former Subsections C to F, pertaining to the dates for phasing in the provisions of Subsection A, the effective date of the provisions of former Subsection B and the authority of the state superintendent to waive class load requirements in certain cases; redesignated former Subsections B, G, H and I as Subsections E, F, J and K; rewrote Subsection F; added "Notwithstanding the provisions of Subsection F of this section" at the beginning of Subsection J; substituted "1993-94" for "1992-93" in the third sentence of Subsection K; and made minor stylistic changes. The section is set out above as amended by Laws 1993, ch. 228, § 1. See 12-1-8 NMSA 1978.

**The 1994 amendment**, effective May 18, 1994, substituted the last sentence in Subsection K for the former last two sentences, which read: "For purposes of this subsection, "noninstructional duties" means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, "noninstructional duties" shall mean only noon hall duty, noon ground duty and noon cafeteria duty"; and made minor stylistic changes throughout the section.

**The 2003 amendment**, recompiled former 22-2-8.2 NMSA 1978 as present 22-10A-20 NMSA 1978, effective April 4, 2003, and substituted "educational" for "instructional" following "assistance of an" near the end of Subsection A; substituted "educational" for "instructional" following "assistance of an" near the end of Subsection B; deleted "Effective with the 1994-1995 school year" at the beginning of Subsection C; inserted present Subsection F and redesignated the subsequent paragraphs accordingly; substituted "G" for "F" following "Subsection" near the beginning of present Subsection H; deleted "of education" following "department" near the middle of present Subsection I; deleted "of education" following "department" near the beginning of present Subsection J; in present Subsection K substituted "G" for "F" following "Subsection" near the beginning and deleted "of education" following "department" near the end; and substituted "Teachers" for "Effective with the 1987-88 school year, certified school instructors" at the beginning of present Subsection L.

**Amendments to section made in General Appropriations Act were not proper.** — Amendments to this section made in the General Appropriations Act of 1989 were not proper, where the 1989 appropriations measure changed the effective dates for various actions under the statute and enlarged the authority of the state superintendent to waive class load requirements. The amendments constituted general legislation which, though necessary or desirable, could not constitutionally be included in an appropriations bill. 1989 Op. Att'y Gen. No. 89-26.

**Compiler's notes.** — This section was compiled as Section 22-2-8.2 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

## **22-10A-21. Employment contracts; duration.**

A. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be in writing on forms approved by the state board. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the state board.

B. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be for a period of one school year except:



(1) contracts for less than one school year are permitted to fill personnel vacancies which occur during the school year;

(2) contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;

(3) contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;

(4) contracts not to exceed three years are permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and

(5) contracts not to exceed three years are permitted at the discretion of the local school board for certified school instructors in public schools who have been employed in the school district for three consecutive school years.

C. Persons employed under contracts for periods of less than one school year as provided in Paragraphs (1) and (2) of Subsection B of this section shall be accorded all the duties, rights and privileges of the Certified School Personnel Act [Chapter 22, Article 10A NMSA 1978].

D. In determination of eligibility for unemployment compensation rights and benefits for certified school instructors where those rights and benefits are claimed to arise from the employment relationship between governing authorities of state agencies or local school boards and certified school instructors, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10-12 NMSA 1978, a person employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

**History:** 1953 Comp., § 77-8-8, enacted by Laws 1967, ch. 16, § 113; 1975, ch. 306, § 7; 1986, ch. 33, § 19; 1999, ch. 214, § 1; 1978 Comp., § 22-10-11, recompiled as 1978 Comp., § 22-10A-21 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1999 amendment**, effective June 18, 1999, substituted "three years" for "two years" in Paragraph B(4).

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-11 NMSA 1978, as 22-10A-21 NMSA 1978, effective April 4, 2003.

**Contracts governed by ordinary rules of contract law.** — Contracts for employment made by a school district and its employees are governed by the ordinary rules of contract law, except where expressly restricted by statute. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Subsection A is directory only.** — Because Subsection A does not prescribe the result that will follow if a contract is not on a form approved by the state board, it is directory only. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Extension of two-year contract.** — A two-year contract between a local school board and a certified school administrator may not be extended for an additional year, in light of this section, which states that a school administrator's contract may not exceed two years. 1988 Op. Att'y Gen. No. 88-55.

**Words "for any other good and just cause" in employment contract** did not allow the state board of education to revoke a teacher's certificate for any reason that was not related to the purposes of the Certified School Personnel Act. New Mexico State Bd. of Educ. v. Stoudt, 91 N.M. 183, 571 P.2d 1186 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 194.

Power of school board to make contract extending beyond its own term, 70 A.L.R. 802, 149 A.L.R. 336.

Teachers' association or other organization, right to make membership or nonmembership in, a condition of employment as teacher, 72 A.L.R. 1225.

Power of school authorities to transfer teacher from one school or district to another, 103 A.L.R. 1382.

## **22-10A-22. Notice of reemployment; termination.**

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the local school board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or termination shall

automatically extend a certified school instructor's employment contract for a period in excess of one school year.

**History:** 1953 Comp., § 77-8-9, enacted by Laws 1967, ch. 16, § 114; 1975, ch. 306, § 8; 1986, ch. 33, § 20; 1978 Comp., § 22-10-12, recompiled as 1978 Comp., § 22-10A-22 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Cross references.** — As to grounds and procedure for refusal of reemployment of certified school instructors with tenure rights, see 22-10A-24 NMSA 1978.

As to applicability of provisions of section, see 22-10A-26 NMSA 1978.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-12 NMSA 1978, as 22-10A-22 NMSA 1978, effective April 4, 2003.

**Mandatory construction.** — Statutes requiring giving of notice of reemployment or dismissal are generally construed as mandatory, and in the absence of the giving of such notice reemployment is usually held to be effected. 1961-62 Op. Att'y Gen. No. 62-129.

**Failure to serve required notice upon nontenured teacher.** — Because appeal to the state board was available only to tenured teachers for a local board's failure to serve the required notice, the failure of the local board to give a nontenured teacher the written notice required by the regulation 14 days before the end of the school year did not require that the court order her re-employment for an additional year. *Provoda v. Maxwell*, 111 N.M. 578, 808 P.2d 28 (1991).

A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance with this section, complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 117 N.M. 492, 873 P.2d 238 (1994).

**Law reviews.** — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 204 et seq.; 231 to 233.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal, 72 A.L.R. 283.

Marriage of teacher as grounds for dismissal, 81 A.L.R. 1033, 118 A.L.R. 1092.

Reinstatement of teacher as restoration of original status as regards incidental rights or privileges, 89 A.L.R. 687.

Right to dismiss public schoolteacher on ground that services are no longer needed, 100 A.L.R.2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher, 4 A.L.R.3d 1090.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Right to unemployment compensation or social security benefits of teacher or other school employee, 33 A.L.R.5th 643.

78 C.J.S. Schools and School Districts § 214 et seq.

## **22-10A-23. Reemployment; acceptance; rejection; binding contract.**

A. Each certified school instructor shall deliver to the local school board of the school district or to the governing authority of the state agency in which the person is employed a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

- (1) the date written notice of reemployment is served upon the person; or
- (2) the last day of the school year when no written notice of reemployment or termination is served upon the person on or before the last day of the school year.

B. Delivery of the written acceptance of reemployment by a certified school instructor creates a binding employment contract between the certified school instructor and the local school board or the governing authority of the state agency until the

parties enter into a formal written employment contract. Written employment contracts between local school boards or governing authorities of state agencies and certified school instructors shall be executed by the parties not later than ten days before the first day of a school year.

**History:** 1953 Comp., § 77-8-10, enacted by Laws 1967, ch. 16, § 115; 1975, ch. 306, § 9; 1986, ch. 33, § 21; 1978 Comp., § 22-10-13, recompiled as 1978 Comp., § 22-10A-23 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-13 NMSA 1978, as 22-10A-23 NMSA 1978, effective April 4, 2003.

**Failure to serve required notice upon nontenured teacher.** — A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance with 22-10-12 NMSA 1978, complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Necessity for acceptance.** — Where if teacher did not receive notice of termination of employment, and such would constitute an offer of reemployment, but teacher did not deliver an acceptance to school board within statutory period, there was no binding contract of employment. *Hyde v. Taos Mun. School*, 84 N.M. 206, 501 P.2d 194 (1972).

**Time requirement for acceptance.** — This section does not authorize written acceptance within 15 days of the end of school, but from the end of school; moreover, the entirety of the section indicates that acceptance is contemplated only after school has ended without the teacher having received any notice. *Provoda v. Maxwell*, 111 N.M. 578, 808 P.2d 28 (1991).

### **22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures.**

A. A local school board or governing authority of a state agency may terminate an employee with fewer than three years of consecutive service for any reason it deems sufficient. Upon request of the employee, the superintendent or administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

B. Before terminating a non-certified school employee, the local school board or governing authority shall serve the employee with a written notice of termination.

C. An employee who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 [recompiled] or this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The employee may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the employee within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or administrator. Neither the local superintendent or administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.

D. A local school board or governing authority may not terminate an employee who has been employed by a school district or state agency for three consecutive years without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support his contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or administrator. The submission of this statement constitutes a representation on the part of the employee that he can support his contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The employee and the local superintendent or administrator may each be accompanied by a person of his choice. First, the superintendent shall present the factual basis for his determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present his contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All

witnesses may be questioned by the local school board or governing authority, the employee or his representative and the local superintendent or administrator or his representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. No record shall be made of the proceeding. The local school board or governing authority shall notify the employee and the local superintendent or administrator of its decision in writing within five working days from the conclusion of the meeting.

**History:** 1953 Comp., § 77-8-11, enacted by Laws 1967, ch. 16, § 116; 1975, ch. 306, § 10; 1979, ch. 86, § 1; 1983, ch. 103, § 1; reenacted by Laws 1986, ch. 33, § 22; 1987, ch. 320, § 5; 1990, ch. 90, § 2; 1991, ch. 187, § 4; 1993, ch. 226, § 27; 1994, ch. 110, § 2; 1978 Comp., § 22-10-14, recompiled as 1978 Comp., § 22-10A-24 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

### I. GENERAL CONSIDERATION.

**The 1990 amendment**, effective May 16, 1990, inserted "governing authority of a state agency" in the catchline and in the first sentence of Subsection A and "or governing authority" following "local school board", "or state agency" following "school district", and "local" before "superintendent" throughout the section; added the final four sentences in Subsection A; in Subsection B, substituted "five working days" for "five calendar days" in two places and deleted "local school board's" preceding "action to terminate him" at the end of the second sentence; in Subsection C, inserted "state agency" in Subparagraph (c) of Paragraph (2); substituted "ten working days" for "five calendar days" in the third sentence of Subsection D; and, in Subsection E, substituted "in no less than five or more than fifteen working days" for "within ten calendar days" in the first sentence and "five working days" for "five calendar days" in the final sentence.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1993 amendment**, effective July 1, 1993, substituted "Subsection A" for "Subsection B" in the first sentence and "were received" for "was received" in the third sentence of Subsection B; substituted "Subsection B" for "Subsection C" in two places in the first sentence of Subsection D and in the fourth sentence of Subsection E; and substituted "Subsection D" for "Subsection E" in the fifth sentence of Subsection E.

**The 1994 amendment**, effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, rewrote the first sentence of Subsection A, added Subsection B and redesignated former Subsections B through E as Subsections C through F and made related changes, substituted "or this section" for "or Subsection A of this section" in Subsection C, and substituted "terminate" for "refuse to reemploy" in Subsection D.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-14 NMSA 1978, as 22-10A-24 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Section 22-10-12 NMSA 1978 referred to in Subsection C was recompiled by Laws 2003, ch. 153, § 72 as 22-10A-22 NMSA 1978, effective April 4, 2003.

**Constitutionality.** — The procedures in this section, 22-10-14.1 [now 22-10A-25 NMSA 1978], 22-10-17 [now 22-10A-27 NMSA 1978], and 22-10-17.1 NMSA 1978 [now 22-10A-28 NMSA 1978] satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Effect of 1994 amendment.** — The 1994 amendment to this section and 22-10-14.1 NMSA 1978 [now 22-10A-25 NMSA 1978] does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

**Law reviews.** — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Request for hearing, sufficiency under statute requiring hearing on request before discharge, 89 A.L.R.2d 1018.

Who is "teacher" for purposes of tenure statute, 94 A.L.R.3d 141.

Termination of teacher's tenure status by resignation, 9 A.L.R.4th 729.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## II. TENURE RIGHTS.

### A. GENERALLY.

**Compiler's notes.** — Most of the cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment. Prior to the reenactment, the section provided for tenure rights for certified school instructors employed for three consecutive school years and having entered into an employment contract for a fourth consecutive school year. See now 22-10-11E NMSA 1978 [now 22-10A-21 NMSA 1978], which provides that, except as provided in 22-10-12 NMSA 1978 [now 22-10A-22 NMSA 1978], no person employed by contract pursuant to 22-10-11 NMSA 1978 [now 22-10A-21 NMSA 1978] shall have a legitimate objective expectancy of reemployment, and Subsection F of this section.



**Policy behind tenure statute.** — The legislature recognized the sound public policy of retaining in the public school system teachers who had become increasingly valuable by reason of their experience and had by statute assured these public servants an indefinite tenure of position during satisfactory performance of their duties. 1963-64 Op. Att'y Gen. No. 63-152 (rendered under former law).

**Drawing on facts predating statute not retroactive application.** — The supreme court has held that teacher tenure laws are prospective in application. However, a statute is not applied retroactively merely because it draws upon antecedent facts for its operation. *Lucero v. Board of Regents*, 91 N.M. 770, 581 P.2d 458 (1978).

**Persons to whom applicable.** — Only certified school instructors with three or more years of service are entitled to procedural due process prior to nonrenewal; the statutory scheme does not give similar protection to administrators at the expiration and nonrenewal of their contracts. *Cole v. Ruidoso Mun. Sch.*, 947 F.2d 903 (10th Cir. 1991).

While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 117 N.M. 492, 873 P.2d 238 (1994).

The legislature purposely excluded school administrators from the protections afforded certified school instructors. *Naranjo v. Board of Educ.*, 119 N.M. 401, 891 P.2d 542 (1995).

**Teacher at state school held entitled to tenure.** — Where a certified teacher seeking recognition as a tenured teacher had been employed for three consecutive years prior to the effective date of the 1975 amendment making this section applicable to state agencies, and had entered into a contract for the fourth consecutive year after the amendment became effective, his years of service prior to that date could be counted towards the required number of years of employment, since a contract had been entered into after the effective date of the amendment. *Lucero v. Board of Regents*, 91 N.M. 770, 581 P.2d 458 (1978).

**Section required only that a certified school instructor be employed by a school district;** it did not limit that employment to teaching positions or to employment in a single school within that district. *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974)(decided prior to 1983 amendment).

**"Employed"** required that a contract be entered into for four consecutive years and services be rendered. 1968 Op. Att'y Gen. No. 68-70.

**Teacher did not acquire tenure** where the three years of service were not consecutive, being interrupted by a leave of absence for one year. 1968 Op. Att'y Gen. No. 68-70.

**Instructor lost tenure rights upon employment as administrator.** — A certified school instructor who had previously acquired tenure rights as a certified school instructor with a public school district lost those tenure rights as a result of being reemployed for the next consecutive school year as a certified school administrator. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment adding last sentence of Subsection B).

An individual who voluntarily changed his teacher status to become a certified school administrator did not retain a property interest as a tenured certified school instructor entitled to protection by due process. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment).

**Reduction in force or staff realignment.** — A tenured teacher subject to termination under a reduction-in-force plan is entitled to bump a non-tenured teacher holding a position for which both are certified, or take priority over a non-tenured teacher in obtaining the necessary certification for a vacant position for which neither is presently certified. However, a tenured teacher can be terminated and a non-tenured teacher retained as an alternative to a staff realignment which would seriously affect the educational program. *New Mexico State Bd. of Educ. v. Abeyta*, 107 N.M. 1, 751 P.2d 685 (1988).

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

## **B. PROCEDURE FOR REFUSAL TO REEMPLOY.**

**Compiler's notes.** — The cases cited in the notes below were decided under former 22-10-15 NMSA 1978, repealed in 1986.

**Sufficiency of notice of termination.** — Where teacher with tenure rights was only given two days notice - excluding the date of service - before the end of the school year, and under the regulations prescribed by the state board she was entitled to no less than 14 days notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as the section and the rule permitted, to a timely notice, pursuant to the requirements of the rule. *Brininstool v. New Mexico State Bd. of Educ.*, 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

Evaluation reports by a school principal and a supervisor addressed "To Whom It May Concern," copies of which were sent to counsel for teacher, did not constitute the

written statement of the cause or causes for his dismissal even though the letter by which these evaluation reports were transmitted referred to them as formal charges on file with the local board, and also advised of complaints and observations made against teacher by school patrons and parents. *Belen Mun. Bd. of Educ. v. Sanchez*, 75 N.M. 386, 405 P.2d 229 (1965).

**Grounds for termination.** — Absent grounds personal to a teacher, to terminate his services it is necessary to show affirmatively that there is no position available which he is qualified to teach, and where a local board asserts no grounds personal to the teacher, it is up to them to prove that no position is available for which he is qualified. *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974).

Absent grounds personal to the teacher, to terminate her services it was necessary to show affirmatively that there was no position available which tenured teacher was qualified to teach. *Fort Sumner Mun. School Bd. v. Parsons*, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971).

### C. HEARINGS.

**Compiler's notes.** — The cases cited in the notes below were decided under former 22-10-19 NMSA 1978, repealed in 1986.

**Hearing prerequisite to appeal.** — It is well settled that a teacher must first seek a hearing before the local board and, if dissatisfied there, appeal from an adverse decision of the local board to the state board of education. *Shepard v. Board of Educ.*, 81 N.M. 585, 470 P.2d 306 (1970).

The right to appeal to the state board, affirmatively authorized, is from a decision of the local board "after a hearing." The negative implication is that where no hearing has been held, an appeal to the state board is not authorized. Absent a hearing before the local board, neither the state board nor the court of appeals has jurisdiction over any matter presented. *Quintana v. State Bd. of Educ.*, 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

A teacher whose contract was not renewed and who so desired had an obligation to call for a hearing before the local school board, to be followed by an appeal to state board of education in event decision of the local board was unsatisfactory, before resorting to the courts for relief. *Jones v. Board of School Dirs.*, 55 N.M. 195, 230 P.2d 231 (1951).

**Local board's decision must rest on its conclusion of law** and the conclusion must in turn be supported by one or more findings of fact. *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Admission of hearsay evidence.** — Where discharged school principal, appealing from his discharge for insubordination, complained of the admission of four written exhibits at the local board hearing on the basis that the documents were hearsay and prejudicial to his interest, and where none of the four exhibits contained evidence of insubordination during the term of the current contract, but each tended to establish that principal's insubordination during the current contract was willful, admission of the written hearsay was not error, since it could not have said that principal's right to a fair hearing, or his interests, was substantially prejudiced thereby. *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

### **III. NON-TENURED EMPLOYERS.**

**Due process required.** — Exhaustion of administrative remedies as a precursor to plaintiff's suit for wrongful termination was not required where school district did not inform plaintiff of his right to attend the board meeting where his termination would be discussed, and thereby deprived plaintiff of his due process right to employ the administrative process mandated by this section. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

#### **22-10A-25. Appeals; independent arbitrator; qualifications; procedure; binding decision.**

A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section 22-10-14 NMSA 1978 [recompiled] may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section 22-10-14 NMSA 1978 [recompiled] and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify him for any appeal and render the local school board's or governing authority's decision final.

B. The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who

has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.

E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or

governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

L. No official record shall be made of the hearing. Either party desiring a record of the arbitration proceedings may, at his own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not be deemed an official transcript of the proceedings nor shall it imply any right of automatic appeal or review.

M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-14 NMSA 1978 [recompiled], such departure shall be presumed to be harmless error.

P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.

Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

R. Local school districts shall file a record with the department of education of all terminations and all actions arising from terminations annually.

**History:** 1978 Comp., § 22-10-14.1, enacted by Laws 1986, ch. 33, § 23; 1990, ch. 90, § 3; 1991, ch. 187, § 5; 1994, ch. 110, § 3; recompiled as 1978 Comp., § 22-10A-25 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, deleted "who has been employed by a school district for three consecutive years and" following "school instructor" and substituted "may appeal the decision to an arbitrator" for "may request an appeal to an independent arbitrator" in the first sentence, rewrote the second sentence which read "A written request for an appeal shall be submitted to the local superintendent within five calendar days from the receipt of the local school board's written decision or the refusal of the board to grant a hearing", substituted "appeal" and "the appeal" for "request" and "his request" in the third and fourth sentences, and deleted "request for" before "appeal" the first time the word appears in the fourth sentence; in Subsection B, substituted "ten working days" for "ten calendar days" in the first sentence and "five working days" for "five calendar days" in the third sentence; substituted "thirty working days" for "thirty calendar days" in Subsection E; inserted "local school" preceding "board's" in the second sentence of Subsection J and in Subsection K; substituted "ten working days" for "ten calendar days" in the third sentence of Subsection M; inserted "or state agency" following "school district" in two places in Subsection N and following "public school" near the end of Subsection P; and, in Subsection Q, substituted "assigned at the discretion of the arbitrator" for "borne by the school district; provided that if the certified school instructor does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceedings and the arbitrator's fees" at the end thereof.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1994 amendment**, effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, substituted "Subsection E of Section 22-10-14 NMSa 1978" for "Subsection D of Section 22-10-14 NMSA 1978" in Subsection A, and substituted "professional or labor organization" for "teachers' organization" in Subsection C.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-14.1 NMSA 1978, as 22-10A-25 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Section 22-10-14 NMSA 1978 referred to in Subsections A and O was recompiled by Laws 2003, ch. 153, § 73 as 22-10A-24 NMSA 1978, effective April 4, 2003.

**Constitutionality.** — The procedures in 22-10-14 [now 22-10A-24 NMSA 1978], this section, 22-10-17 [now 22-10A-27 NMSA 1978], and 22-10-17.1 NMSA 1978 [now 22-10A-28 NMSA 1978] satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Effect of 1994 amendment.** — The 1994 amendment to this section and 22-10-14 NMSA 1978 does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

**Adequate review necessary for reversal.** — Before the state board opts to reject the decision of its hearing officer, particularly when the credibility of the witnesses is at issue, at the very least it must review so much of the transcript of the proceedings before the hearing officer as is necessary to support its decision (decided under former 22-10-20 NMSA 1978). *Board of Educ. v. New Mexico State Bd. of Educ.*, 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**Arbitration not required.** — Plaintiff was not required to appeal his termination by a school district to an independent arbitrator before filing suit for wrongful termination, where the district's own procedures successfully thwarted any possible effort by plaintiff to utilize available administrative procedures. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

**Board's reversal of hearing officer held erroneous.** — The state board improvidently found that the local board did not establish sufficient cause for its discharge of a teacher by a preponderance of the evidence, in light of the number of witnesses testifying before the local board as to the teacher's sexual advances and the nature of their testimony (decided under former 22-10-20 NMSA 1978). *Board of Educ. v. New Mexico State Bd. of Educ.*, 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**Appeals to state board under former 22-10-20 NMSA 1978.** — See *Board of Educ. v. State Bd. of Educ.*, 79 N.M. 332, 443 P.2d 502 (Ct. App. 1968); *Morgan v. State Bd. of Educ.*, 80 N.M. 754, 461 P.2d 236 (Ct. App. 1969), cert. denied, 81 N.M. 41, 462 P.2d 626 (1970); *Wickersham v. New Mexico State Bd. of Educ.*, 81 N.M. 188, 464 P.2d 918 (Ct. App. 1970); *Shepard v. Board of Educ.*, 81 N.M. 585, 470 P.2d 306 (1970); *Quintana v. State Bd. of Educ.*, 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970); *Fort Sumner Mun. School Bd. v. Parsons*, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971); *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971); *Brown v. New Mexico State Bd. of Educ.*, 83 N.M. 99, 488 P.2d 734 (1971); *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971); *Board of Educ. v. New Mexico State Bd. of Educ.*, 88 N.M. 10, 536 P.2d 274 (Ct. App. 1975); *Bertrand v. New Mexico State Bd. of Educ.*, 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976); *New Mexico State Bd. of Educ. v. Stoudt*, 91 N.M. 183, 571 P.2d 1186 (1977); *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982) (specially concurring opinion); *Redman v. Board of Regents*, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

**22-10A-26. Excepted from provisions.**



Sections 22-10-12 through 22-10-14.1 NMSA 1978 [recompiled] do not apply to the following:

- A. a certified school instructor employed to fill the position of a certified school instructor entering military service;
- B. a person who is employed as a certified school administrator; or
- C. a non-certified school employee employed to perform primarily district wide management functions.

**History:** 1953 Comp., § 77-8-13, enacted by Laws 1967, ch. 16, § 118; 1975, ch. 191, § 1; 1983, ch. 103, § 2; 1991, ch. 187, § 6; 1993, ch. 226, § 28; 1994, ch. 110, § 4; 1978 Comp., § 22-10-16, recompiled as 1978 Comp., § 22-10A-26 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, substituted "seventy years" for "sixty-five years" in Subsection C.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection C, which read "a person attaining seventy years of age prior to the last day of the school year"; redesignated former Subsection D as Subsection C; and made a minor stylistic change.

**The 1994 amendment,** effective May 18, 1994, substituted "Sections 22-10-12 through 22-10-14.1" for "Sections 22-10-12 through 22-10-15" near the beginning of the section, deleted former Subsection A, which read "a person not holding a standard certificate", redesignated former Subsection B as Subsection A, added present Subsection B, and rewrote Subsection C, which read " a person not qualified to teach".

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-16 NMSA 1978, as 22-10A-26 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Sections 22-10-12 through 22-10-14.1 NMSA 1978 were recompiled by Laws 2003, ch. 153, § 73 as 22-10A-22, 22-10A-23, 22-10A-24 and 22-10A-25 NMSA 1978, respectively, effective April 4, 2003.

**Former subsection excepting administrators construed.** — See *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974); *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 117 N.M. 492, 873 P.2d 238 (1994).

## **22-10A-27. Discharge hearing; procedures.**

A. A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause according to the following procedure:

(1) the superintendent shall serve a written notice of his intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of his intent to recommend discharge the cause for his recommendation and shall advise the certified school employee of his right to a discharge hearing before the local school board or governing authority as provided in this section.

B. A certified school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise his right to a hearing before the local school board or governing authority by giving the local superintendent or administrator written notice of that election within five working days of his receipt of the notice to recommend discharge.

C. The local school board or governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the local superintendent or administrator receives the written election from the certified school employee and shall give the certified school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the local superintendent or administrator and the certified school employee, may be accompanied by a person of his choice.

E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.

F. The local school board or governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and shall have the power to administer oaths.

G. The local superintendent or administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, he had just cause to discharge the certified school employee.

H. The local superintendent or administrator shall present his evidence first, with the certified school employee presenting his evidence thereafter. The local school board or governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the local school board or governing authority.

J. The local school board shall render its written decision within twenty days of the conclusion of the discharge hearing.

**History:** 1953 Comp., § 77-8-14, enacted by Laws 1967, ch. 16, § 119; 1975, ch. 306, § 12; reenacted by Laws 1986, ch. 33, § 24; 1989, ch. 281, § 1; 1990, ch. 90, § 4; 1991, ch. 187, § 7; 1978 Comp., § 22-10-17, recompiled as 1978 Comp., § 22-10A-27 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

### I. GENERAL CONSIDERATION.

**The 1989 amendment**, effective June 16, 1989, inserted references to "certified school instructor" and "certified school administrator" throughout the section and added the last sentence in Subsection C.

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" and "or administrator" following "superintendent" throughout the section; substituted "ten working days" for "five calendar days" near the end of Subsection B; substituted "in no less than five and no more than fifteen working days" for "within ten calendar days" in the fourth sentence and "five working days" for "five calendar days" in the final sentence of Subsection C; and, near the middle of Subsection D substituted "five working days" for "five calendar days."

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-17 NMSA 1978, as 22-10A-27 NMSA 1978, effective April 4, 2003.

**Constitutionality.** — The procedures in 22-10-14 [now 22-10A-24 NMSA 1978], 22-10-14.1 [now 22-10A-25 NMSA 1978], this section, and 22-10-17.1 NMSA 1978 [now 22-10A-28 NMSA 1978] satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

### **Constitutionality.**

Considered together, the pre- and post-termination procedures of the School Personnel Act, 22-10A-27 to -28 NMSA 1978, comport with due process requirements. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**The legislature can constitutionally prescribe the methods for adjudicating a dispute** over termination of a certified school employee's right to continued employment because that right is a public right created by statute. Board of Educ. v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994).

**"Discharge" includes temporary or permanent removal.** — "Discharge," as used in this section, prohibiting the discharge of certified instructors without an opportunity for notice and hearing, includes removing the teacher either temporarily or permanently from employment. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**Law reviews.** — For annual survey of New Mexico employment law, see 16 N.M.L. Rev. 39 (1986).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 204 et seq.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Assertion of immunity as grounds for discharge of teacher, 44 A.L.R.2d 799.

Right to dismiss public schoolteacher on the grounds that services are no longer needed, 100 A.L.R.2d 1141.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of a public schoolteacher, 4 A.L.R.3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Use of illegal drugs as grounds for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Appearance: dismissal of, or disciplinary action against, public schoolteachers for violation of regulation as to dress or personal appearance of teachers, 58 A.L.R.3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Insubordination: what constitutes "insubordination" as ground for dismissal of public schoolteacher, 78 A.L.R.3d 83.

Tardiness: dismissal of public schoolteacher because of unauthorized absence or tardiness, 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Maternity leave: mandatory maternity leave rules or policies for public schoolteachers as constituting violation of equal protection clause of fourteenth amendment to federal constitution, 17 A.L.R. Fed. 768.

78 C.J.S. Schools and School Districts § 270 et seq.

## II. DISCHARGE PROCEDURE.

**Reduction in force.** — A school board cannot discharge a certified school teacher before her current employment contract expires solely because of a reduction in force. *Aguilera v. Hatch Valley Public Schools Board of Education*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Preponderance of evidence.** — It is incumbent upon a school board to demonstrate by a preponderance of the evidence that teacher's "discharge" was based upon her performance, competence, or turpitude. *Aguilera v. Hatch Valley Public Schools Board of Education*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Compiler's notes.** — The cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment.

**Construction of this section and 22-10-21 NMSA 1978 [now 22-10A-30 NMSA 1978].** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Section inapplicable to suspensions with pay for duration of contract.** — School board's action in suspending school superintendent with pay for the duration of his contract period did not amount to a discharge and was not protected by the statutory requirements for a hearing. *Black v. Board of Educ.*, 87 N.M. 45, 529 P.2d 271 (1974).

**Neutral tribunal not required at pre-termination hearing,** because the statutory framework of the School Personnel Act, 22-10A-27 to -28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court review. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** — By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth by the School Personnel Act, 22-10A-27 to -28 NMSA 1978. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Whether discharged teacher was entitled to pre-discharge work conferences** was a factual question where allegations against her were based on insubordination and willful misconduct. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Determination as to good cause for discharge.** — In the absence of a statutory definition of the term, it is the function of the state board of education in the exercise of its sound discretion to determine the question of "good cause," and its determination is conclusive unless the evidence discloses that it acted unlawfully, arbitrarily or capriciously. *Lopez v. State Bd. of Educ.*, 70 N.M. 166, 372 P.2d 121 (1962).

**School boards may discharge superintendent without interim appointment.** — The school board may discharge those employees of the school district that it directly employs, specifically superintendents, and is not required to hire an interim employee to fulfill this task or wait for the superintendent to recommend his own discharge. *Stanley v. Raton Bd. of Educ.*, 117 N.M. 717, 876 P.2d 232 (1994).

**Assault while intoxicated.** — State board of education did not act unlawfully, arbitrarily or capriciously in finding good cause for the termination of a teacher's contract where teacher assaulted a woman in a bar while intoxicated. *Lopez v. State Bd. of Educ.*, 70 N.M. 166, 372 P.2d 121 (1962).

**Insubordination.** See *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

**Timing of hearing mandatory.** — The time specified for conducting a dismissal hearing pursuant to this section is mandatory, unless waived by the parties or unless a continuance is sought and obtained for good cause. *Board of Educ. v. Singleton*, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**Appeal limited to issues urged at hearing.** — A school board's delay in according a dismissed teacher a timely hearing under this section and the provisions of her contract could not be urged as a basis for dismissal of the board's appeal, where this ground was not initially argued in the administrative hearing below. *Board of Educ. v. Singleton*, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**22-10A-28. Appeals; independent arbitrator; qualifications; procedure; binding decision.**

A. A certified school employee aggrieved by a decision of a local school board or governing authority to discharge him after a discharge hearing held pursuant to Section 22-10-17 NMSA 1978 [recompiled] may appeal the decision to an independent arbitrator. A written notice of appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the copy of the written decision of the local school board or governing authority.

B. The local school board or governing authority and the certified school employee shall meet within ten calendar days from the receipt of the notice of appeal and select an independent arbitrator to conduct the appeal, or, in the event the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the public school is located to select the independent arbitrator. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional organization of which the certified school employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The local school board or governing authority shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the local superintendent or administrator had just cause to discharge the certified school employee. The local school board or governing authority shall present its evidence first, with the certified school employee presenting his evidence thereafter.

E. The hearing shall be held within thirty working days from the selection of the independent arbitrator. The independent arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the certified school employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil

action or in the manner provided by the American arbitration association's voluntary labor arbitration rules if that entity is used by the parties.

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. An official record shall be made of the hearing. Either party may order a transcript of the record at his own expense.

K. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

L. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-17 NMSA 1978 [recompiled], such departure shall be presumed to be harmless error.

M. The decision of the independent arbitrator shall be final and binding on both parties and shall be nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the court of appeals by filing a notice of appeal as provided by the New Mexico rules of appellate procedure.

N. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

**History:** 1978 Comp., § 22-10-17.1, enacted by Laws 1986, ch. 33, § 25; 1990, ch. 90, § 5; 1991, ch. 187, § 8; recompiled as 1978 Comp., § 22-10A-28 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, in the first sentence, inserted "local school" preceding "board" the second time the reference appears and substituted "may appeal the decision" for "may request an appeal", in the second sentence, inserted "or administrator" and substituted "five working days" for "five calendar days" and, in the third sentence, substituted "The appeal shall be" for "The request for an appeal to an independent arbitrator shall be"; substituted "five working



days" for "five calendar days" in the final sentence of Subsection B; in Subsection E, substituted "thirty working days" for "thirty calendar days" in the first sentence and inserted "or certified school administrator" in the second sentence; substituted "labor arbitration rules" for "rules for arbitration" near the end of Subsection H; substituted "thirty working days" for "thirty calendar days" in the third sentence of Subsection K; in Subsection N, substituted "Each party" for "Either party" at the beginning of the first sentence and rewrote the second sentence which read "The arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be borne by the school districts; provided that if the certified school instructor or administrator does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceeding and the arbitrator's fees"; and deleted former Subsection O relating to compliance with the American arbitration association's rules.

**The 1991 amendment**, effective June 14, 1991, substituted "employee" for "instructor or certified school administrator" throughout the section; substituted "notice of appeal" for "request for an appeal" in the second sentence in Subsection A and in the first sentence in Subsection B; in Subsection A, substituted "a discharge hearing held" for "his statement to the local school board presented" in the first sentence and deleted the former third sentence which read "The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was not based on good and just cause"; in Subsection C substituted "professional organization" for "teachers' or administrators' organization"; in Subsection D, inserted "de novo" in the first sentence and substituted the second and third sentences for the former second sentence which read "The issue to be decided by the independent arbitrator is whether the board's decision to discharge the certified school instructor or certified school administrator was based on good and just cause"; and made minor stylistic changes throughout the section.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-17.1 NMSA 1978, as 22-10A-28 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Section 22-10-17 NMSA 1978 referred to in Subsections A and L was recompiled by Laws 2003, ch. 153, § 73 as 22-10A-27 NMSA 1978, effective April 4, 2003.

**Constitutionality.** — The procedures in 22-10-14 [now 22-10A-24 NMSA 1978], 22-10-14.1 [now 22-10A-25 NMSA 1978], 22-10-17 [now 22-10A-27 NMSA 1978], and this section NMSA 1978 satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

Considered together, the pre- and post-termination procedures of the School Personnel Act, 22-10A-27 to -28 NMSA 1978, comport with due process requirements. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Neutral tribunal not required at pre-termination hearing**, because the statutory framework of the School Personnel Act, 22-10A-27 to -28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court review. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** – By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth in this section. *West v. San Jon Board of Education*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Compulsory arbitration is constitutional** and the procedures used in judicial tribunals need not be used in compulsory arbitration, so long as the arbitration procedures are sufficient to guarantee a fair proceeding. Therefore, the provisions of this section mandating compulsory arbitration of the grievances of discharged school employees do not violate an employee's right of access to the courts, or right to jury trial; nor do these provisions unconstitutionally delegate power to a nonjudicial tribunal. *Board of Educ. v. Harrell*, 118 N.M. 470, 882 P.2d 511 (1994).

**Unconstitutional limit on judicial review.** — Because due process and the separation of powers principle requires that parties to statutorily mandated arbitration be offered meaningful review of the arbitrator's decision, the provision of Subsection M limiting judicial review of the arbitrator's decision to cases "where the decision was procured by corruption, fraud, deception or collusion" must be stricken as a violation of due process and as an unconstitutional delegation of judicial power. *Board of Educ. v. Harrell*, 118 N.M. 470, 882 P.2d 511 (1994).

**Standard of review.** — Subsection D requires the reviewing entity to determine whether the alleged misconduct actually occurred and constitutes just cause for discharge. *Santa Fe Pub. Schs. v. Romero*, 2001-NMCA-103, 131 N.M. 383, 37 P.3d 100.

## **22-10A-29. Compensation payments to discharged personnel.**

A. Payment of compensation to any certified school instructor employed by a local school board or by the governing authority of a state agency and payment of compensation to any certified school administrator employed by a local school board shall terminate as of the date, after a hearing, that a written copy of the decision of the local school board or the governing authority of the state agency to discharge the person is served on the person. If the compensation of the person discharged during the term of a written employment contract is to be paid monthly during a twelve-month period for services to be performed during a period less than twelve months, the person shall be entitled to a pro rata share of the compensation payments due for the period during the twelve months in which no services were to be performed.

B. In the event the action of the local school board in discharging a certified school instructor or administrator or the action of the governing authority of a state agency in discharging a certified school instructor is reversed on appeal, payment of compensation to the person shall be reinstated in full but subject to any additional compensation allowed other certified school instructor or administrator of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the person from a school district or state agency during the period the compensation was terminated.

**History:** 1953 Comp., § 77-8-15, enacted by Laws 1967, ch. 16, § 120; 1975, ch. 306, § 13; 1978 Comp., § 22-10-18, recompiled as 1978 Comp., § 22-10A-29 by Laws 2003, ch. 153, § 72.

### ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-18 NMSA 1978, as 22-10A-29 NMSA 1978, effective April 4, 2003.

**The legislature can constitutionally prescribe the methods for adjudicating a dispute** over termination of a certified school employee's right to continued employment because that right is a public right created by statute. Board of Educ. v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994).

**Offset provision in Subsection B is not exclusive;** rather, a school district or state agency may offset an award by any compensation that a terminated employee received from any source during his period of termination. Board of Educ. v. Jennings, 102 N.M. 762, 701 P.2d 361 (1985).

### **22-10A-30. Supervision and correction procedures.**

The state board shall prescribe by regulations procedures to be followed by a local school board or the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school personnel before notice of intent to discharge is served upon them and by the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school instructors before notice of intent to discharge is served upon them. These regulations shall provide that written records shall be kept on all action taken by a local school board or the governing authority of a state agency to improve any person's unsatisfactory work performance and all improvements made in the person's work performance. These written records shall be introduced as evidence at any hearing for the person conducted by the local school board or the governing authority of the state agency.

**History:** 1953 Comp., § 77-8-18, enacted by Laws 1967, ch. 16, § 123; 1975, ch. 306, § 16; 1986, ch. 33, § 26; 1978 Comp., § 22-10-21, recompiled as 1978 Comp., § 22-10A-30 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-21 NMSA 1978, as 22-10A-30 NMSA 1978, effective April 4, 2003.

**Section is consistent with 22-10-17 NMSA 1978.** — Under this section the notice of discharge provided for in 22-10-17 NMSA 1978 [now 22-10A-27 NMSA 1978] is not to be served until the procedures of the state board regulations have been followed. *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971) (decided prior to 1986 changes to this section and 22-10-17 NMSA 1978).

**Purpose of work conferences** is to allow certified school personnel to work harmoniously with a supervisor to perform appointed tasks adequately. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982)(specially concurring opinion).

**Meaning of "unsatisfactory work performance".** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Sexual harassment** constitutes "unsatisfactory work performance," therefore requiring work conferences. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## 22-10A-31. Denial, suspension and revocation of licenses.

In accordance with the procedures provided in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the state board may deny, suspend or revoke a department-issued license for incompetency, moral turpitude or any other good and just cause.

**History:** 1953 Comp., § 77-8-19, enacted by Laws 1967, ch. 16, § 124; 1973, ch. 124, § 3; 1997, ch. 238, § 4; 1998, ch. 55, § 31; 1999, ch. 265, § 33; 1978 Comp., § 22-10-22, recompiled and amended as 1978 Comp., § 22-10A-31 by Laws 2003, ch. 153, § 52.

## ANNOTATIONS

**Cross references.** — As to service of process in civil actions generally, see Rule 1-004 NMRA.

**The 1997 amendment** deleted "for" following "immorality or" in Subsection A, in Paragraph B(1), substituted "describe the rights of the person holding the certificate and include instructions for requesting a hearing" for "also designate a place, time and date, not less than thirty days from the date of the service of the notice of the suspension or revocation, for a hearing" in the second sentence, and added the last two sentences in that paragraph, added Subsection C and redesignated the following subsection accordingly, and made minor stylistic changes. Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**The 1998 amendment**, effective September 1, 1998, rewrote Subsection D and made minor stylistic changes.

**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

**The 2003 amendment**, recompiled former 22-10-22 NMSA 1978 as present 22-10A-31 NMSA 1978, effective April 4, 2003, and rewrote this section to the extent that a detailed comparison is impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

## **22-10A-32. Licensed school employees; required training program.**

A. All licensed school employees shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed within the licensed school employee's first year of employment by a school district.

B. Pursuant to the policy and rules adopted by the state board, the department shall develop a training program, including training materials and necessary training staff, to meet the requirement of Subsection A of this section to make the training available in every school district. The department shall coordinate the development of the program with appropriate staff at the human services department and the department of health.

C. The training program developed pursuant to this section shall be made available by the department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure.

**History:** Laws 1988, ch. 48, § 1; 1993, ch. 226, § 25; 1978 Comp., § 22-10-3.2, recompiled and amended as 1978 Comp., § 22-10A-32 by Laws 2003, ch. 153, § 53.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, deleted "by July 1, 1991 or, after that date" following "completed" in the second sentence of Subsection A and substituted "department of health" for "health and environment department" at the end of Subsection B.

**The 2003 amendment,** recompiled former 22-10-3.2 NMSA 1978 as present 22-10A-32 NMSA 1978, effective April 4, 2003, and deleted "of education" following "the department" throughout the section; substituted "Licensed school employees" for "Certified school personnel and school nurses" in the section heading; in Subsection A, substituted "licensed school employees" for "certified school personnel and school nurses" following "All" at the beginning, substituted "licensed school employees" for "person's" near the end and deleted "in the state" at the end; in Subsection B, substituted "rules" for "regulations" following "the policy" near the beginning of the first sentence, deleted "in the state" at the end of the first sentence; and substituted "licensure" for "certification" at the end of Subsection C.

### **22-10A-33. Violence; vandalism; reporting.**

A. A school administrator, teacher or other school employee who observes or has direct knowledge from a participant or victim of an act of violence upon a school administrator, teacher or other school employee in the lawful discharge of his duties or vandalism to public school property shall file an incident report describing the incident pursuant to procedures established by the department.

B. A person who files an incident report pursuant to this section shall not be discriminated against in any manner or discharged by a local superintendent because he has filed that report.

C. The department shall establish uniform reporting procedures for incidents of violence or vandalism described in Subsection A of this section. The procedures shall include requirements for:

- (1) incidents to be reported, incident description and report on action taken in response to the reported incident;
- (2) annual incident reports by local superintendents of all reported incidents to local school boards;
- (3) annual incident reports by local school boards of all reported incidents to the state superintendent; and

(4) annual incident reports by the state superintendent of all reported incidents to the state board. The annual incident report filed with that board shall be summarized and submitted to an appropriate interim committee of the legislature with recommendations to decrease the incidence of violence and vandalism in the public schools.

**History:** Laws 1989, ch. 344, § 2; 1978 Comp., § 22-1-7, recompiled and amended as 1978 Comp., § 22-10A-33 by Laws 2003, ch. 153, § 54.

## ANNOTATIONS

**The 2003 amendment,** recompiled former 22-1-7 NMSA 1978 as present 22-10A-33 NMSA 1978, effective April 4, 2003, and deleted "Public schools" at the beginning of the section heading; in Subsection A, deleted "public" preceding "school administrator" once near the beginning and once near the middle, inserted "school" following "teacher" near the beginning, deleted "of a local school board" following "employee" once near the beginning and once near the middle, substituted "an incident" for "a" following "shall file" near the end, deleted "state" following "established by the" near the end and deleted "of public education" at the end; substituted "superintendent" for "school board" near the end of Subsection B; in Subsection C deleted "state" following "The" near the beginning, and deleted "of public education" following "department" near the beginning; deleted "of public instruction" following "superintendent" near the end of Subsection C(3); and deleted "of public instruction" following "superintendent" near the beginning of Subsection C(4).

**Compiler's notes.** — This section was compiled as Section 22-1-7 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

### **22-10A-34. Communicable diseases; prohibited employment; penalty.**

A. No person afflicted with a communicable disease in a transmissible state dangerous to the health of students shall be employed in a public or private school in this state.

B. The department of health after consultation with the state board shall adopt and issue regulations designating those communicable diseases in a transmissible stage that are dangerous to the health of students.

C. Each person employed in a public or private school, including bus drivers, shall present to the governing authority of the school where employed, upon initial employment, a certificate from a licensed physician stating that the person is free from all communicable diseases in a transmissible stage dangerous to the health of students.

D. The certificate from a licensed physician shall be according to a form prescribed by the department of health and approved by the state board. The certificate must be

obtained from a licensed physician not more than ninety days prior to the date of employment.

E. Any person violating the provisions of this section by not obtaining a certificate from a licensed physician as required is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-8-7, enacted by Laws 1967, ch. 16, § 112; 1977, ch. 45, § 1; 1993, ch. 226, § 26; 1978 Comp., § 22-10-10, recompiled as 1978 Comp., § 22-10A-34 by Laws 2003, ch. 153, § 72.

#### ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "department of health" for "health and social services department" in Subsections B and D and substituted "transmissible stage" for "transmissible state" near the end of Subsection C.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-10 NMSA 1978, as 22-10A-34 NMSA 1978, effective April 4, 2003.

#### **22-10A-35. Local sabbatical leave program authorized.**

A local school board may provide as part of its compensation plan a program of sabbatical leave for its certified employees. The governing authority of a state agency may provide a program of sabbatical leave for its certified school instructors.

**History:** 1953 Comp., § 77-8-20, enacted by Laws 1969, ch. 116, § 1; 1975, ch. 306, § 17; 1978 Comp., § 22-10-23, recompiled as 1978 Comp., § 22-10A-35 by Laws 2003, ch. 153, § 72.

#### ANNOTATIONS

**Cross references.** — For definition of "sabbatical leave," see 22-10A-2 NMSA 1978.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-23 NMSA 1978, as 22-10A-35 NMSA 1978, effective April 4, 2003.

#### **22-10A-36. Approved program required for sabbatical leave.**

Sabbatical leave may be granted only upon the presentation and approval by the state department of education of a full program of study or travel related to the certified employee's duties and showing direct benefit to the instructional program.

**History:** 1953 Comp., § 77-8-22, enacted by Laws 1969, ch. 116, § 3; 1975, ch. 306, § 18; 1978 Comp., § 22-10-24, recompiled as 22-10A-36 by Laws 2003, ch. 153, § 72.

#### ANNOTATIONS



**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-24 NMSA 1978, as 22-10A-36 NMSA 1978, effective April 4, 2003.

## **22-10A-37. Minimum conditions for sabbatical leave.**

Any sabbatical leave program adopted by a local school district or a state agency shall provide the following as minimum conditions:

A. only those certified employees who have completed at least six years of continuous service in a certified capacity with the school district or those certified school instructors who have completed at least six years of continuous service in a certified capacity with the state agency are eligible. For purposes of this section, a leave of absence without pay shall not be considered as an interruption of continuous service but the leave of absence without pay shall not be counted in determining the six-year requirement;

B. further sabbatical leave may be granted in the seventh year of service following a period of sabbatical leave under the same conditions as other sabbatical leaves are granted;

C. sabbatical leave shall be granted only upon agreement by the employee to return to the school system or state agency for at least two years following the leave or repayment to the school district or state agency of the salary received during the period of leave. Such agreement shall be placed in a supplementary contract executed prior to authorization for the sabbatical leave;

D. the maximum term of any one period of sabbatical leave shall be one year;

E. the employee shall be guaranteed an equivalent or better position upon return to the school system or state agency;

F. if regular salary increments for length of service are contained in the salary schedule, the period of leave shall be counted as period of service in the computation of future length of service increments; and

G. the employee may continue his participation in the educational retirement plan by making appropriate contributions as agreed by the local school board or the governing authority of the state agency and the educational retirement board.

**History:** 1953 Comp., § 77-8-23, enacted by Laws 1969, ch. 116, § 4; 1975, ch. 306, § 19; 1978 Comp., § 22-10-25, recompiled as 22-10A-37 by Laws 2003, ch. 153, § 72.

## **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recomiles former 22-10-25 NMSA 1978, as 22-10A-37 NMSA 1978, effective April 4, 2003.

### **22-10A-38. Pay for sabbatical leave.**

Sabbatical leave pay may be allowed in any amount up to one-half of the employee's regular salary for the year immediately preceding the leave and payment shall be made by one of the two following methods:

A. one-half to be paid at the end of the first year after return and one-half at the end of the second year after return; or

B. during the term of the leave upon the furnishing of security satisfactory to the local school board or the governing authority of the state agency assuring the employee's remaining in the system for two years after the leave or repayment to the school district or state agency of the salary received during the period of leave.

**History:** 1953 Comp., § 77-8-24, enacted by Laws 1969, ch. 119, § 5; 1975, ch. 306, § 20; 1978 Comp., § 22-10-26, recompiled as 22-10A-38 by Laws 2003, ch. 153, § 72.

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-26 NMSA 1978, as 22-10A-38 NMSA 1978, effective April 4, 2003.

### **22-10A-39. Noncertified school personnel; salaries.**

Notwithstanding the provisions of Section 50-4-22 NMSA 1978, a local school district shall pay a minimum wage rate of six dollars (\$6.00) per hour to all noncertified school personnel.

**History:** Laws 1994, ch. 95, § 1; 1978 Comp., § 22-10-27, recompiled as 1978 Comp., § 22-10A-39 by Laws 2003, ch. 153, § 72.

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-10-27 NMSA 1978, as 22-10A-39 NMSA 1978, effective April 4, 2003.

## **ARTICLE 11**

### **Educational Retirement**

#### **22-11-1. Short title.**

Chapter 22, Article 11 NMSA 1978 may be cited as the "Educational Retirement Act".

**History:** 1953 Comp., § 77-9-1, enacted by Laws 1967, ch. 16, § 125; 1991, ch. 118, § 2.

## ANNOTATIONS

**The 1991 amendment,** effective July 1, 1991, substituted "Chapter 22, Article 11 NMSA 1978" for "Sections 77-9-1 through 77-9-45 New Mexico Statutes Annotated, 1953 Compilation".

**No state income tax on contributions.** — The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. *Vaughn v. State, Taxation & Revenue Dep't*, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statute or ordinance providing for pensions for teachers, 37 A.L.R. 1162.

78 C.J.S. Schools and School Districts § 338 et seq.

### 22-11-2. Definitions.

As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;

(5) a person regularly employed by the department holding a license issued by the department at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a license issued by the department at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a license issued by the department at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan, provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits.

History: 1953 Comp., § 77-9-2, enacted by Laws 1967, ch. 16, § 126; 1975, ch. 306, § 21; 1978, ch. 167, § 1; 1982, ch. 37, § 1; 1991, ch. 118, § 3; 1993, ch. 69, § 1; 1993, ch. 232, § 7; 1995, ch. 148, § 1; 1999, ch. 261, § 1; 2001, ch. 283, § 1; 2003, ch. 39, § 1; 2004, ch. 27, § 26.

## ANNOTATIONS

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "except for a participant"; in Subsection B, divided former Paragraph (1) into Paragraphs (1) through (3) and designated its subsequent paragraphs accordingly, in Paragraph (1), added Subparagraph (a) and the designation for Subparagraph (b) and inserted "a person regularly employed as a teaching, nursing and administrative employee" in Paragraphs (2) and (3); in Subsection C, inserted "but who is"; in Subsections D to F, inserted references to participants; added Subsections V to X; and made minor stylistic changes throughout the section.

**1993 amendments.** — Laws 1993, ch. 69, § 1, effective June 18, 1993, which, in subsection B, inserted "or community college" and substituted "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2), substituted "New Mexico girls' school" for "girls' welfare home" in Paragraph (4), and deleted "or the public school finance division" preceding "holding a standard" in Paragraph (5); substituted "medical condition" for "physical condition" in Subsection R; substituted "current" for "present" in Subsection T; substituted "22-11-47 through 22-11-52" for "22-11-46 through 22-11-51" in Subsection X; and made minor stylistic changes, was approved March 19, 1993. However Laws 1993, ch. 232, § 7, effective July 1, 1993, also amending this section by inserting "or community college" and substituting "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2) of Subsection B; substituting "New Mexico girls' school" for "girls' welfare home" and "Los Lunas medical center" for "Los Lunas mental hospital" in Paragraph (4) of Subsection B; deleting "or the public school finance division" following "or the board" in Paragraph (5) of Subsection B; adding Paragraph (8) of Subsection B; substituting "current" for "present" in Subsection T; substituting "22-11-47 through 22-11-52" for "22-11-46 through 22-11-51" in Subsection X; and making minor stylistic changes throughout the section, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 232, § 7. See 12-1-8 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, added Subsection X and redesignated former Subsection X as Subsection Y.

**The 1999 amendment**, effective June 18, 1999, deleted "except for a participant" at the end of Subsections B(2) to B(4); added the language beginning "Albuquerque technical-vocational institute" at the end of Subsection V; and in Subsection W(1), substituted the language beginning "the university of New Mexico" and ending "or western New Mexico university" for "a qualifying state educational institution", and added the language beginning "or a person regularly employed" and ending "on or after July 1, 1999".

**The 2001 amendment**, effective June 15, 2001, inserted "or retired member" in Subsection A; and added Subsection Z.

**The 2003 amendment**, effective June 20, 2003, added "'Salary' includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for

the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;" at the end of Subsection X.

**The 2004 amendment**, effective May 19, 2004, amended Paragraph (4) of Subsection B to change "certified school instructor" to "licensed school employee" and change "state board" to "department", and amended Paragraphs (5), (7) and (8) of Subsection B to change "state board" to "department" and to change "standard certificate" to "license".

**Effective date of Educational Retirement Act.** — The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch. 16), contains no effective date. However, Laws 1967, ch. 16, § 303, makes the Public School Code effective on July 1, 1967.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** — When a legislator is retired and no longer an employee, he is not, pursuant to this section, a "regular member" under the Educational Retirement Act and is not excluded from membership and participation in another state retirement program by 22-11-16 NMSA 1978; therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-5.

**Public Employees Retirement Act (PERA) retiree** who returns to employment with a governmental entity whose employees are covered exclusively under the provisions of the Educational Retirement Act (ERA) for retirement purposes may not continue to receive PERA benefits. Such retiree's benefits must be suspended. That retiree is employed by an affiliated public employer and his "membership," within the meaning of that term, is not provided for in the ERA. 1987 Op. Att'y Gen. No. 87-79.

### **22-11-3. Educational retirement board; members; terms; vacancies.**

- A. The "educational retirement board" is created.
- B. The board shall be composed of seven members, consisting of the following:
  - (1) the superintendent of public instruction;
  - (2) the state treasurer;
  - (3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;
  - (4) one member to be elected for a term of four years by the members of the New Mexico education association;



(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; and

(6) two members to be appointed by the governor for terms of four years each.

C. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one member appointed by the governor shall serve for a term of two years, and the other member appointed by the governor shall serve for a term of one year.

D. Vacancies occurring in the term of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.

**History:** 1953 Comp., § 77-9-3, enacted by Laws 1967, ch. 16, § 127; 1977, ch. 246, § 65; 1988, ch. 64, § 40.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, deleted Subsection B(2) which read "the director of public school finance" and redesignated former Subsection B(3) as present Subsection B(2); added present Subsection B(3); and made a minor stylistic change in Subsection D.

**Member of board has right to resign** his office, and where no particular method of resigning is provided by law, no formal method is necessary or required. 1963-64 Op. Att'y Gen. No. 63-35 (rendered under former law).

### **22-11-4. Board; regular and special meetings.**

A. The board shall hold regular meetings four times each year and may, by its bylaws, provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chairman or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], the chairman or any of three members of the board may cancel or reschedule a meeting.

**History:** 1953 Comp., § 77-9-4, enacted by Laws 1967, ch. 16, § 128; 2003, ch. 39, § 2.

## ANNOTATIONS

**The 2003 amendment**, effective June 20, 2003, inserted "by" following "the chairman or" near the middle of Subsection B; and inserted Subsection C.

### **22-11-5. Board; record; quorum; compensation.**

A. The board shall elect from its membership a chairman and a vice chairman.

B. A record shall be taken and preserved of all meetings of the board.

C. A quorum of the board shall be required for the transaction of any business. A majority of the members of the board constitute a quorum. Each member of the board shall have one vote and a proposal shall pass by the affirmative vote of a majority of the members present at the meeting.

D. While performing their duties, each member of the board shall be entitled to receive per diem and mileage as provided by the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 77-9-5, enacted by Laws 1967, ch. 16, § 129.

### **22-11-5.1. Restrictions on receipt of gifts; restriction on campaign contributions; required reporting.**

A. Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a board member nor an employee of the board shall receive or accept anything of value directly or indirectly from a person who:

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

**History:** Laws 1999, ch. 153, § 2.

## ANNOTATIONS

**Compiler's notes.** — Despite the heading on this section, Laws 1999, ch. 153, § 2 was enacted without any provisions relating to restrictions on campaign contributions or the required reporting thereof. This section was enacted with only a Subsection A.

### **22-11-6. Board; powers; duties.**

The board shall:

- A. properly and uniformly enforce the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];
- B. hire employees and delegate administrative authority to these employees;
- C. make an actuarial report on the financial operation of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] to the legislature at each regular session every odd-numbered year;
- D. accept donations, gifts or bequests; and
- E. adopt regulations pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

**History:** 1953 Comp., § 77-9-6, enacted by Laws 1967, ch. 16, § 130.

### **22-11-7. Educational retirement director; bond.**

A. The board shall employ an educational retirement director. The director shall be the administrative officer for the board in carrying out the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and shall have those additional duties provided in the regulations of the board.

B. Before assuming the duties of office, the director shall obtain an official bond payable to the fund and conditioned upon the faithful performance of his duties during his term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be not less than twenty-five thousand dollars (\$25,000). The board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the division for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the fund. Any bond obtained shall be approved by the board and filed with the secretary of state.

**History:** 1953 Comp., § 77-9-7, enacted by Laws 1967, ch. 16, § 131.

### **22-11-8. Medical authority; fees.**

A. The board shall employ the services of a medical authority. The medical authority shall examine, make reports and certify the physical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

B. The board shall pay the medical authority a reasonable fee for his professional services.

**History:** 1953 Comp., § 77-9-8, enacted by Laws 1967, ch. 16, § 132.

### **22-11-9. Actuary; fees.**

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for his professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every three years.

**History:** 1953 Comp., § 77-9-9, enacted by Laws 1967, ch. 16, § 133; 2003, ch. 39, § 3.

### **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, added Subsection C.

### **22-11-10. Salaries; fees; expenditures.**

A. The amount of salaries and fees to be paid by the board shall be fixed by the regulations of the board.

B. Salaries and fees paid, and all other necessary expenditures of the board, shall be paid out of the fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-9-10, enacted by Laws 1967, ch. 16, § 134.

### **22-11-11. Educational retirement fund.**

A. The educational retirement fund is created.

B. The state treasurer shall be the custodian of the fund and the board shall be the trustee of the fund.

C. All membership fees, contributions from members and local administrative units, securities evidencing the investment of money from the fund, interest, gifts, grants or bequests shall be deposited in the fund.

**History:** 1953 Comp., § 77-9-11, enacted by Laws 1967, ch. 16, § 135.

### **ANNOTATIONS**

**Appropriations.** — Laws 2002, ch. 110, § 58, effective March 6, 2002, appropriates \$500,000 from the educational retirement fund to the educational retirement board in fiscal years 2002 through 2007 for work on the educational retirement board building in Santa Fe county, as extended through fiscal year 2008 by Laws 2003, ch. 429, § 52.

**Compiler's notes.** — Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

### **22-11-12. Fund; disbursements.**

The state treasurer shall make disbursements from the fund only on warrants issued by the department of finance and administration or through any other process as approved by the department of finance and administration. Warrants for disbursements from the fund shall be issued by the department of finance and administration only upon voucher of the director.

**History:** 1953 Comp., § 77-9-12, enacted by Laws 1967, ch. 16, § 136; 1993, ch. 69, § 2.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added the language beginning "or through any other process" at the end of the first sentence.

### **22-11-13. Board authority to invest the fund; prudent investor standard; indemnification of board.**

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act.

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. Such a contract shall not be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

D. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

G. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section.

**History:** 1953, Comp., § 77-9-13, enacted by Laws 1967, ch. 16, § 137; 1969, ch. 203, § 1; 1970, ch. 81, § 3; 1975, ch. 211, § 5; 1987, ch. 71, § 1; 1989, ch. 22, § 1; 1993, ch. 69, § 3; 2001, ch. 190, § 1; 2005, ch. 240, § 6.

## ANNOTATIONS

**Cross references.** — As to applicability of insurance or banking laws to administration of article, see 22-11-43 NMSA 1978.

**Bracketed material.** — The bracketed word "depository" in Paragraph A(5) was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**The 1989 amendment,** effective March 10, 1989, in Subsection B, added "or consideration" at the end of the first sentence and added the fourth and fifth sentences.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 2001 amendment,** effective June 15, 2001, in Paragraphs A(5) and A(7), substituted "debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust" for "or commercial paper of any corporation", inserted "or any security convertible to common stock" following "common stock", inserted "partnership or trust" preceding "organized", and deleted "that the corporation shall have a minimum net worth of twenty-five million dollars (\$25,000,000); and provided" preceding "that the fund shall not"; and in Paragraph A(10), deleted "and which has net assets of at least twenty-five million dollars (\$25,000,000)" following "United States".

**The 2005 amendment,** effective July 1, 2005, deletes former Subsections A(1) through 10 which provided the classes of securities and investments in which the retirement board could invest and reinvest funds; adds Subsection A to authorize the board to invest and reinvest the fund in accordance with the Uniform Prudent Investor Act; adds Subsection B which provide that the board shall reports and investment policies to the legislative finance committee and the department of finance and administration; deletes former Subsection D which provided that the prudent man rule applies to investment of the fund; deletes the former provision of Subsection F which provided that the board may employ investment advisory services and investment management services; provides in Subsection F that the board may employ the investment management services and related management services of a trust company or national bank exercising trust powers or an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay for the services from funds administered by the board.

**Act not severable.** — Laws 2005, ch. 240, § 8 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall likewise be invalid and that the provisions of this act are not severable.

**Investment Company Act.** — The federal Investment Company Act of 1940, referred to in Paragraph A(9), is codified as 15 U.S.C. § 80a-1 et seq.

## **22-11-14. Fund; restrictions.**

A. No member of the board or employee of the board shall have any interest, directly or indirectly, in the gains or profits of any investments made by the board, except for regular salaries and per diem and mileage allowances authorized pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

B. No member of the board or employee of the board shall, directly or indirectly for himself or as an agent or partner for others, borrow from the fund or deposits of the board, or in any manner use the fund or deposits except to make current and necessary disbursements authorized by the board.

C. No member of the board or employee of the board shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the board.

**History:** 1953 Comp., § 77-9-14, enacted by Laws 1967, ch. 16, § 138.

### **ANNOTATIONS**

**Cross references.** — As to compensation of members of board, see 22-11-5 NMSA 1978.

As to payment of salaries and fees by board, see 22-11-10 NMSA 1978.

## **22-11-15. Fund; refunds; payments.**

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate set by the board, reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has exempted himself from the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]; or

(3) the member was not reemployed following a period of disability during which he received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars (\$1,000) and no written claim is made to



the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971.

**History:** 1953 Comp., § 77-9-15, enacted by Laws 1967, ch. 16, § 139; 1971, ch. 12, § 1; 1984, ch. 19, § 1; 1993, ch. 69, § 4; 2003, ch. 39, § 4.

### ANNOTATIONS

**Cross references.** — As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to retirement benefit options, see 22-11-29 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added present Subsection B; redesignated former Subsections B and C as Subsections C and D; and made a minor stylistic change.

**The 2003 amendment,** effective June 20, 2003, substituted "set by the board" for "equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund" near the middle of Subsection A.

**No state income tax on contributions.** — The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. *Vaughn v. State, Taxation & Revenue Dep't*, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

### 22-11-16. Regular membership.

Except as otherwise provided in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], being a regular member shall be a condition of employment and shall exclude membership and participation in any other state retirement program.

**History:** 1953 Comp., § 77-9-16, enacted by Laws 1967, ch. 16, § 140.

### ANNOTATIONS

**Cross references.** — As to optional coverage of persons qualified to be regular members and covered by retirement program for federal civil service employees, see 22-11-19 NMSA 1978.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** — Since when a legislator is retired and no longer an employee he is not, pursuant to 22-11-2 NMSA 1978, a "regular member" under the Education Retirement Act and is not excluded from membership and participation in another state retirement program by this section, therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-5.

**Public employees retirement association.** — Full-time city public school teacher who was a member of the educational retirement system, and who was simultaneously employed on a part-time basis by the city, was not required to be a member of the Public Employees Retirement Association. 1988 Op. Att'y Gen. No. 88-70.

### **22-11-16.1. Regular membership continuation of certain transferred employees.**

Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection B of Section 22-11-2 NMSA 1978, a regular member who is an employee of a local administrative unit that is a state educational institution named in Article 12, Section 11 of the constitution of New Mexico and who transfers to a general hospital or outpatient clinics of that hospital operated by the local administrative unit will have the option to continue his regular membership rather than become a member of a retirement plan offered by the general hospital or outpatient clinics of that hospital. The option shall be exercised by filing a written election with both the educational retirement director and the designated officer of the local administrative unit. This election shall be made within sixty days after the effective date of the regular member's transfer and shall be irrevocable as long as the employee is employed by the general hospital or outpatient clinics of that hospital operated by the local administrative unit.

**History:** 1978 Comp., § 22-11-16.1, enacted by Laws 1999, ch. 290, § 1.

### **22-11-17. Provisional membership.**

A. A provisional member shall be covered by the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. This option to exempt must be exercised within one year of employment according to the regulations adopted by the board. Any provisional member exempting himself pursuant to this section shall be entitled to a refund of any

contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall have the right to earned service-credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed by the local administrative unit in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member.

D. A provisional member who revokes the exemption from coverage may, at any time before June 30, 2006, acquire earned service credit for periods of employment during which the exemption or exemptions were in force if both the member contributions and the local administrative unit contributions, at the rates in effect during the periods of employment and applied to the earnings of the member during those periods, are paid to the fund, together with interest at the actuarial rate set by the board. The contributions shall be paid in the following manner:

(1) both the member contributions and the local administrative unit contributions, together with interest, shall be paid by the member; or

(2) if the member tenders payment of the member contributions, with interest, the local administrative unit by whom the member was employed may, but shall not be obligated to, pay the local administrative unit contributions, with interest.

E. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the New Mexico girls' school, the New Mexico boys' school or the Los Lunas medical center shall have the option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the public employees retirement association of New Mexico. This option shall be exercised by filing a written election with both the educational retirement director and the executive secretary of the public employees retirement association of New Mexico. This election shall be made within six months after employment and shall be irrevocable

regardless of subsequent employment or reemployment in any administrative unit enumerated in this subsection. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-17, enacted by Laws 1967, ch. 16, § 141; 1971, ch. 268, § 1; 1973, ch. 382, § 1; 1983, ch. 101, § 1; 1987, ch. 208, § 1; 1989, ch. 30, § 1; 1993, ch. 69, § 5; 2003, ch. 227, § 1.

## ANNOTATIONS

**The 1989 amendment,** effective July 1, 1989, in Subsection C, substituted all of the present language of Paragraph (1) beginning with "board's" for "average rate earned by the fund during the five fiscal years preceding the fiscal year in which payment is made", and substituted "1992" for "1986" in Paragraph (4).

**The 1993 amendment,** effective June 18, 1993, deleted a portion of Subsection C, pertaining to conditions governing the right of a provisional member to acquire earned service credit for periods of employment during which the exemption or exemptions were in force and, in Subsection D, substituted "New Mexico girls' school" for "girls' welfare home" and made minor stylistic changes.

**The 2003 amendment,** effective June 20, 2003, inserted "by the local administrative unit" following "shall be informed" in Subsection C; added present Subsection D; redesignated former Subsection D as present Subsection E; in present Subsection E, substituted "medical center" for "mental hospital" following "the Los Lunas", and substituted "executive secretary" for "director" following "director and the".

**Social Security Act.** — The Social Security Act, referred to in Subsection A, is compiled as 42 U.S.C. § 301 et seq.

**Suspension of benefits upon resumption of employment.** — An employee of the department of finance and administration, retired pursuant to the provisions of the Public Employee's Retirement Act, may not resume employment with the department of education without suspension of retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former § 10-11-22).

An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former § 10-11-8).

**Public Employee Retirement Act annuitants whom the department of education subsequently employs** and who elect to participate in the educational retirement system by making contributions to that system do not "qualify for (retirement) coverage" under Paragraph D, since they are not considered as having acquired any service credit

for purposes of educational retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former § 10-11-22).

**"Double dipping" disallowed.** — This section does not contemplate a useless act or a manipulative election of coverage under the Public Employees Retirement Act for the sole purpose of enabling the state employee to engage in "double dipping". 1987 Op. Att'y Gen. No. 87-38.

### **22-11-18. Provisional members employed after July 1, 1971.**

A provisional member that is employed after July 1, 1971, must be covered under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and does not have the option granted under Section 22-11-17 NMSA 1978 to exempt himself from coverage except that if he is a provisional member employed by an administrative unit enumerated in Section 22-11-17D NMSA 1978, he shall have the option provided by that subsection.

**History:** 1953 Comp., § 77-9-17.1, enacted by Laws 1971, ch. 73, § 1.

### **22-11-19. Regular or provisional membership; optional coverage.**

A. Any person qualified to be a regular or provisional member covered by a retirement program established for federal civil service employees shall have six months after the commencement of employment to file a written notice with the director of his election not to be covered by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. If the person so elects, he may withdraw any contributions made pursuant to the Educational Retirement Act.

B. Any person qualified to be a regular or provisional member and who was employed by a regional education cooperative on July 1, 1993 shall have the right to exempt himself from Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] coverage within thirty days and such exemption shall be irrevocable as long as the person is employed by a regional cooperative.

**History:** 1953 Comp., § 77-9-18, enacted by Laws 1967, ch. 16, § 142; 1993, ch. 232, § 8.

## **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

### **22-11-19.1. [Exemption of certain participants covered under Comprehensive Employment and Training Act.]**

All participants covered under the Comprehensive Employment and Training Act (Public Law 95-524) are exempt from coverage under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], effective July 1, 1979, except for those employees who have vested in the plan by that date.

**History:** Laws 1979, ch. 316, § 1.

#### ANNOTATIONS

**Comprehensive Employment and Training Act.** — The federal Comprehensive Employment and Training Act referred to in this section, was found at 29 U.S.C. §§ 801 to 999 before it was repealed in 1982 by P.L. 97-300, Title I, § 184(a)(1).

#### **22-11-19.2. Regular or provisional membership; regional education cooperatives.**

Any person employed by a regional education cooperative and qualified to be a regular or provisional member shall have the right to acquire earned service credit for periods of employment with the regional education cooperative when the member was neither covered nor retired under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], under the following conditions:

A. both the member and the administrative unit contributions, at the rates in effect during the periods of employment and applied to earnings of the member during such periods, are paid to the fund, together with interest, at a rate equal to the board's actuarial earnings assumption rate at the time of purchase;

B. both member and administrative unit contributions, together with interest, are paid by the member; or

C. the member tenders payment of his contributions, together with interest and the local administrative unit by which he was employed may, but shall not be obligated to, pay the administrative unit contributions, together with interest.

**History:** 1978 Comp., § 22-11-19.2, enacted by Laws 1993, ch. 232, § 9.

#### **22-11-20. Repealed.**

#### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 69, § 11 repeals 22-11-20 NMSA 1978, as enacted by Laws 1967, ch. 16, § 143, relating to membership fees, effective June 18, 1993. For provisions of former section see 1989 Replacement Pamphlet.

#### **22-11-21. Contributions; members; local administrative units.**

A. Each member shall make contributions to the fund according to the following schedule:

(1) through June 30, 2005, an amount equal to seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006, an amount equal to seven and six hundred seventy-five thousandths percent of the member's annual salary;

(3) from July 1, 2006 through June 30, 2007, an amount equal to seven and seventy-five hundredths percent of the member's annual salary;

(4) from July 1, 2007 through June 30, 2008, an amount equal to seven and eight hundred twenty-five thousandths percent of the member's annual salary; and

(5) on and after July 1, 2008, an amount equal to seven and nine-tenths percent of the member's annual salary.

B. Each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) through June 30, 2005, a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2005 through June 30, 2006, a sum equal to nine and forty hundredths percent of the annual salary of each member employed by the local administrative unit;

(3) from July 1, 2006 through June 30, 2007, a sum equal to ten and fifteen hundredths percent of the annual salary of each member employed by the local administrative unit;

(4) from July 1, 2007 through June 30, 2008, a sum equal to ten and ninety hundredths percent of the annual salary of each member employed by the local administrative unit;

(5) from July 1, 2008 through June 30, 2009, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(6) from July 1, 2009 through June 30, 2010, a sum equal to twelve and four-tenths percent of the annual salary of each member employed by the local administrative unit;

(7) from July 1, 2010 through June 30, 2011, a sum equal to thirteen and fifteen hundredths percent of the annual salary of each member employed by the local administrative unit; and

(8) on and after July 1, 2011, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit.

**History:** 1953 Comp., § 77-9-20, enacted by Laws 1967, ch. 16, § 144; 1974, ch. 5, § 1; 1981, ch. 293, § 1; 1984, ch. 19, § 2; 1991, ch. 140, § 1; 1992, ch. 117, § 1; 2005, ch. 273, § 1.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, added "Until July 1, 1992" at the beginning of Subsection B and added Subsection C.

**The 1992 amendment,** effective March 10, 1992, substituted "1993" for "1992" near the beginning of Subsections B and C; and substituted "sixty-five hundredths" for "six-tenths" in Subsection C.

**The 2005 amendment,** effective June 17, 2005, deletes the former provision of Subsection A that each member shall contribute seven and six-tenths percent of his annual salary; provides in Subsections A(1) through (8) a schedule of annual contributions; deletes former provision of Subsection B which provided that each local administrative unit shall make an annual contribution of seven and six-tenths percent of the annual salary of each member employed by the administrative unit; provides in Subsections B(1) through (5) a schedule of annual contributions; and deletes former Subsection C which provided that each administrative unit shall make an annual contribution of eight and sixty-five hundredths percent of the annual salary of each member employed by the administrative unit.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 A.L.R.2d 1197.

### **22-11-21.1. Member contributions; tax treatment.**

Commencing on July 1, 1983, each local administrative unit shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by Subsection A of Section 22-11-21 NMSA 1978 for all annual salary earned by the member. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the



Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or to receive the contributed amounts directly instead of having them paid by the local administrative unit to the educational retirement system.

**History:** 1978 Comp., § 22-11-21.1, enacted by Laws 1983, ch. 91, § 1.

### **ANNOTATIONS**

**Internal Revenue Code.** — For the Internal Revenue Code, referred to in the second sentence, see 26 U.S.C. § 1 et seq. Section 414(h) of the code, referred to in the first sentence, appears as 26 U.S.C. § 414(h).

**Provisions are salary reductions subject to FICA tax.** — "Pickup" provisions of this section and 10-11-125 NMSA 1978, whereby the state designated certain employee pension contributions as employer contributions, constituted salary reduction agreements, and, as such, were subject to FICA taxes under 26 U.S.C. § 3121(v)(1)(B), 42 U.S.C. § 409(l)(2), and 26 U.S.C. § 3306(r)(1)(B), following the 1984 amendments to those sections. *Public Employees' Retirement Bd. v. Shalala*, 153 F.3d 1160 (10th Cir. 1998).

### **22-11-21.2. Salary calculation; limitations.**

In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995. For a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, the limitation on compensation shall not be in excess of the member's base salary as specified in the member's annual faculty contract or the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, whichever is less.

**History:** 1978 Comp., § 22-11-21.2, enacted by Laws 1995, ch. 148, § 2; 1999, ch. 274, § 2.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, added the last sentence.

**Internal Revenue Code.** — Section 401 of the Internal Revenue Code of 1986 is codified as 26 U.S.C. § 401.

### **22-11-21.3. Pick up; rollover.**

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Subsection D of Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Section 22-11-17 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and the applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification.

**History:** Laws 1998, ch. 38, § 1; 2003, ch. 227, § 2.

### **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, inserted "of 1986" following "Internal Revenue Code" throughout the section, in Subsection A inserted "Subsection D of Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or" following "member contributions permitted by," added the last sentence; in Subsection B, deleted "educational retirement" near the beginning, inserted "Section 22-11-17 NMSA 1978 and" following "set forth in."

**The Internal Revenue Code of 1986** is codified as Title 26 U.S.C.S.

### **22-11-22. Payment; records.**

A. Contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund. The board may assess an interest charge and a penalty charge on any remittance not made by its due date.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts.

**History:** 1953 Comp., § 77-9-21, enacted by Laws 1967, ch. 16, § 145; 1984, ch. 19, § 3; 1993, ch. 69, § 6.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "Membership fees and" at the beginning of Subsection A; added the second sentence of Subsection B; and deleted "and fees" following "contributions" in the first sentence of Subsection C.

### **22-11-23. Retirement eligibility.**

A. On and after July 1, 1984:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] that he would be eligible to receive if he were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthdate but after the fifty-fifth birthdate, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service-credit may retire and receive retirement benefits pursuant to

the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of his last cumulated four quarters of earned service-credit, regardless of later amendment.

**History:** 1953 Comp., § 77-9-22, enacted by Laws 1967, ch. 16, § 146; 1971, ch. 12, § 2; 1974, ch. 5, § 2; reenacted by 1981, ch. 293, § 2; 1984, ch. 19, § 4; 1993, ch. 69, § 7.

## ANNOTATIONS

**Cross references.** — As to deferred retirement, see 22-11-27 NMSA 1978.

As to earned service-credit generally, see 22-11-33 NMSA 1978.

As to allowed service-credit generally, see 22-11-34 NMSA 1978.

As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credit under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "cumulated four quarters" for "cumulated years" in Subsection B and made a minor stylistic change in Subsection A.

**Nature of retirement rights.** — Benefits under the Educational Retirement Act of this state are retirement allowances and not mere gratuities inasmuch as the employees themselves maintain in part the fund. When an employee meets all of the requirements for retirement - that is to say, when the contingency occurs on which payments are to be made - he or she acquires a vested right in his retirement benefits under the act and any subsequent discharge or other happenings cannot defeat this right. 1959-60 Op. Att'y Gen. No. 60-217.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Services included in computing period of services for purpose of teachers' retirement benefits, 2 A.L.R.2d 1033.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 A.L.R.2d 506.

Validity of repeal or modification of pension statute provisions, 52 A.L.R.2d 437.

Misconduct as affecting right to pension or retention of position in retirement system, 76 A.L.R.2d 566.

## **22-11-24. Retirement benefits; minimum contributory employment.**

A. A member must have acquired not less than five years of contributory employment to be eligible for retirement benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

B. A member desiring to retire before having completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. A member may acquire five years or less of contributory employment by contributing to the fund, for each year of contributory employment desired, a sum equal to the prevailing combined contributions of the member and the local administrative unit in effect at the time the contributory employment is acquired. This contribution shall be computed on the member's average annual salary for the last five years of employment plus an additional sum as interest from the effective date of the Educational Retirement Act as fixed by the board, but not to exceed three percent a year.

C. Years of contributory employment purchased pursuant to this section shall not be considered as an addition to service actually performed in computing the sum of the member's retirement benefit.

D. The retirement benefits of members retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] prior to July 1, 1959 and who have acquired contributory employment years by purchase, shall be computed upon the basis of the amount paid therefor.

**History:** 1953 Comp., § 77-9-23, enacted by Laws 1967, ch. 16, § 147.

### **ANNOTATIONS**

**Effective date of Educational Retirement Act.** — The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch. 16), contains no effective date. However, Laws 1967, ch. 16, § 303, makes the Public School Code effective on July 1, 1967.

## **22-11-25. Retirement; reemployment.**

A. A member retired pursuant to the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] may remove himself from retirement status by returning to employment. A reemployed member shall make regular contributions pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. Upon termination of reemployment, the member shall be eligible for retirement benefits again based upon all service-credit acquired. In no case shall the retirement benefits be less than the member was receiving prior to his reemployment. Except as provided in Subsection B of this section, the member shall not receive greater retirement benefits

than he was receiving prior to his reemployment unless he has not less than five years of employment subsequent to July 1, 1957 with all contributions required by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] having been paid on the earnings derived through his employment.

B. A member retired pursuant to the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] returning to employment for not less than one year after July 1, 1957 and prior to July 1, 1963 shall be eligible for retirement benefits pursuant to this section if the following conditions occur:

(1) the member's contributions on the salary earned during that period of reemployment must be paid at the rate which was in effect at that time. If this contribution is made, the local administrative unit employing the member during that period shall pay the local administrative units [unit's] contribution at the rate in effect at that time; and

(2) the member shall have fulfilled the five-year contributory employment requirement specified in Section 22-11-24 NMSA 1978.

C. At the time of retirement following a period of reemployment, the member's retirement benefits shall be paid in accordance with the terms of the option selected at the time of the first retirement. A member qualified to retire pursuant to this section after having reentered employment after retiring prior to July 1, 1957 shall be eligible to retire under the options specified in Section 22-11-29 NMSA 1978.

**History:** 1953 Comp., § 77-9-24, enacted by Laws 1967, ch. 16, § 148.

## ANNOTATIONS

**Suspension of benefits upon resumption of employment.** — An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former § 10-11-8).

**The suspension provisions of the disbursing system** apply to the benefits granted pursuant to the reciprocity act to a member retired under the public employee retirement association and the educational retirement system who resumes employment. 1988 Op. Att'y Gen. No. 88-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled, 27 A.L.R.2d 1442.

**22-11-25.1. Return to employment; benefits continued; administrative unit contributions.**

A. Except as provided in Subsections B and E of this section, beginning January 1, 2002 and continuing until January 1, 2012, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself from retirement.

B. A retired member who was retired on or before January 1, 2001, has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and is reemployed by a local administrative unit may continue employment at the local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A or B of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member who returns to employment pursuant to Subsections A or B of this section shall not make contributions to the fund as specified in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]; however, the local administrative unit's contributions as specified in that act shall be paid to the fund as if the retired member was a non-retired employee.

E. Beginning July 1, 2003 and continuing until January 1, 2012, a retired member who retired on or before January 1, 2001 and who has not been employed as an employee or independent contractor by a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement.

**History:** Laws 2001, ch. 283, § 2; 2003, ch. 80, § 1; 2003, ch. 145, § 1.

## **ANNOTATIONS**

**2003 amendments.** — Laws 2003, ch. 145, § 1, effective June 20, 2003, inserted "Except as provided in Subsections B and E of this section" near the beginning of Subsection A, inserted present Subsections B and E; renumbered former Subsections B and C as Subsections C and D, inserted "or B" following "Subsection A" in present Subsection C; and in Subsection D, inserted "pursuant to Subsections A or B of this section" following "employment" and "local" preceding "administrative."

This section was also amended by Laws 2003, ch. 80, Section 1. The amendments are identical except Chapter 80 included the following language that was not included in Chapter 145: "provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period".

Laws 2003, ch. 145 was approved on April 4, 2003 and Laws 2003, ch. 80 was approved on March 21, 2003. This section is set out as amended by Laws 2003, ch. 145, § 1. See 12-1-8 NMSA 1978.

## **22-11-25.2. Persons receiving retirement benefits pursuant to the Public Employees Retirement Act.**

A. An employee who is retired pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and who has not suspended retirement benefits received pursuant to that act shall not make contributions to the fund as otherwise required in the Educational Retirement Act.

B. An employee who continues to receive retirement benefits pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and who does not make contributions to the fund is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of employment with a local administrative unit.

C. Nothing in this section shall affect the obligation of a local administrative unit to make contributions to the fund as required in the Educational Retirement Act.

**History:** Laws 2003, ch. 248, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 243, § 14 makes the act effective July 1, 2003.

## **22-11-26. Death during reemployment.**

If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Subsection A of Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's contributions, including contributions made by the member during the period of last reemployment, plus accumulated interest at the rate set by the board, less the total benefits received prior to the last reemployment; or



B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Subsection A of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected.

**History:** 1953 Comp., § 77-9-25, enacted by Laws 1967, ch. 16, § 149; 1981, ch. 294, § 1; 1993, ch. 69, § 8; 1999, ch. 93, § 1; 2003, ch. 39, § 5.

## ANNOTATIONS

**The 1993 amendment,** effective June 18, 1993, substituted "retirement" for "retiring" in the introductory paragraph and substituted the language beginning "last reemployment" for "death" at the end of Subsection A.

**The 1999 amendment,** effective June 18, 1999, in Subsection A substituted the language beginning "an amount" to the end for "the difference, if any, between the member's total contribution and total benefits received prior to last reemployment, plus contributions made by the member during the period of last reemployment".

**The 2003 amendment,** effective June 20, 2003, in Subsection A inserted "Subsection A of" following "pursuant to" near the beginning and substituted "rate set by the board," for "average rate earned by the fund during the preceding five fiscal years," near the end; and inserted "of Subsection A" following "Option C" near the beginning of Subsection B.

### **22-11-27. Deferred retirement; restriction.**

A. A member eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

B. A member may terminate his employment and retire at any time after his age and his earned service-credit equal the sum of seventy-five if the contributions he has made are left in the fund.

C. A member having five years or more of earned service-credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the contributions he has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment unless the employment falls within exceptions established by statute or rule of the board.

**History:** 1953 Comp., § 77-9-26, enacted by Laws 1967, ch. 16, § 150; 1971, ch. 12, § 3; 1974, ch. 5, § 3; 2003, ch. 39, § 6.

## ANNOTATIONS

**Cross references.** — As to retirement eligibility generally, see 22-11-23 NMSA 1978.

**The 2003 amendment**, effective June 20, 2003, added "unless the employment falls within exceptions established by statute or rule of the board" at the end of Subsection D.

### **22-11-28. Applications for retirement; effective date.**

A. Application for retirement shall be made by a member on forms provided by the board.

B. Retirement pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall become effective on July 1 following approval of the application for retirement by the board. With approval of the board and the local administrative unit employing the member, retirement pursuant to the Educational Retirement Act may become effective on the first day of any month during the year.

**History:** 1953 Comp., § 77-9-27, enacted by Laws 1967, ch. 16, § 151; 1975, ch. 191, § 2.

### **22-11-29. Retirement benefit options.**

A. Upon retirement pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], a member may elect, and such election shall be irrevocable, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his retirement in any one of the following optional forms:

(1) **OPTION B.** A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(2) **OPTION C.** A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at

retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

E. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this section and before the benefits paid to him have equaled the sum of his accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

F. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

G. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection C of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

H. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void.

**History:** 1953 Comp., § 77-9-28, enacted by Laws 1967, ch. 16, § 152; 1977, ch. 314, § 1; 1981, ch. 294, § 2; 1984, ch. 19, § 5; 1987, ch. 86, § 1; 1999, ch. 93, § 2; 2003, ch. 39, § 7.

## ANNOTATIONS

**Cross references.** — As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

**The 1999 amendment**, effective June 18, 1999, inserted the language beginning "plus accumulated" and ending "fiscal years" in Subsection E, and made a minor stylistic change.

**The 2003 amendment**, effective June 20, 2003, inserted "of Subsection A of this section" following "Option B or C" near the beginning of Subsection C; in Subsection D, inserted "of Subsection A of this section" following "Option B" and substituted "set by the board" for "earned by the fund during the preceding fiscal year" following "plus interest at the rate" near the middle; in Subsection E, inserted "of Subsection A of this section" following "Option B or C" near the beginning and substituted "rate set by the board" for "average rate earned by the fund during the preceding five fiscal years" following "interest at the" near the middle; and substituted "rate set by the board" for "rate earned by the fund during the preceding fiscal year" following "interest at the rate" near the middle of Subsection G.

### 22-11-30. Retirement benefits.

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if his date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a

sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] on or after July 1, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service credit beginning on or after July 1, 1991.

H. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later.

**History:** 1953 Comp., § 77-9-29, enacted by Laws 1967, ch. 16, § 153; 1971, ch. 12, § 4; 1974, ch. 5, § 4; 1985, ch. 170, § 1; 1987, ch. 86, § 2; 1991, ch. 140, § 2; 1993, ch. 69, § 9; 2003, ch. 39, § 8.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "but not later than June 30, 1991" near the beginning of Subsection F; added Subsection G; redesignated former Subsection G as Subsection H; and made a minor stylistic change in Subsection D.

**The 1993 amendment**, effective June 18, 1993, added the second sentence of Subsection H.

**The 2003 amendment**, effective June 20, 2003, inserted "credit" following "years earned service" near the end of Subsection F; and inserted "Unless otherwise required by the provisions of the Internal Revenue Code of 1986," at the beginning of the second sentence of Subsection H.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 14 A.L.R.2d 634.

### **22-11-30.1. Educational retirement; qualified excess benefit.**

The educational retirement board, by rule, may establish and maintain a qualified excess benefit arrangement under Section 415(m) of the United States Internal Revenue Code of 1986 for employees hired before July 1, 1999. The amount of annual benefit that would be payable but for the limitation imposed by Section 415 of the United States Internal Revenue Code of 1986 to an employee hired before July 1, 1999 shall be paid from a qualified excess benefit arrangement established and maintained pursuant to this section.

**History:** Laws 1999, ch. 274, § 1.

## ANNOTATIONS

**Internal Revenue Code.** — Section 415 of the Internal Revenue Code is codified as 26 U.S.C. § 415.

### **22-11-31. Cost-of-living adjustment; additional contributions.**

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative factor computed to provide an annuity adjustment pursuant to the provisions of Subsection B of this section;

(2) "annuity" means any benefit payable under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] as a retirement benefit, disability benefit or survivor benefit;

(3) "calendar year" means the full twelve months beginning January 1 and ending December 31;

(4) "consumer price index" means the average of the monthly consumer price indexes for a calendar year for the entire United States for all items as published by the United States department of labor;

(5) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(6) "preceding calendar year" means the full calendar year preceding the July 1 on which a benefit is to be adjusted.

B. On or after July 1, 1984, each annuity shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five or on July 1 following the year a member retires, whichever is later. The annuity shall be adjusted by applying an adjustment factor that results in either an adjustment equal to one-half of the percentage increase or decrease of the consumer price index between the next preceding calendar year and the preceding calendar year,

except that the adjustment shall not exceed four percent, in absolute value, nor be less than two percent, in absolute value. In the event that the percentage increase or decrease of the consumer price index is less than two percent, in absolute value, the adjustment factor shall be the same as the percentage increase or decrease of the consumer price index. No negative adjustment in the retirement benefit shall reduce the member's benefit below that which he received upon the date of his retirement.

C. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] in effect prior to July 1, 1984 shall have his annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which he attains the age of sixty-five, when he shall have his annuity readjusted annually and cumulatively under the provisions of this section. A member who retires after attaining the age of sixty-five shall have his annuity adjusted annually and cumulatively commencing on July 1 of the year following his retirement.

D. A retired member who returns to work shall be subject to the provisions of this section as they exist at the time of his final retirement.

E. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member who the board certifies was disabled at regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the third full year following the year in which the member was approved by the board for disability or retirement.

F. The board shall adjust the benefits of each person receiving an annuity as of June 30, 1999. The adjustment shall be made on July 1, 1999 on the basis of an increase of two dollars (\$2.00) per month for each year since the member's last retirement plus an increase of one dollar (\$1.00) per month for each year of credited service at the time of the last retirement.

**History:** 1953 Comp., § 77-9-30, enacted by Laws 1967, ch. 16, § 154; 1971, ch. 12, § 5; 1974, ch. 5, § 5; reenacted by 1979, ch. 333, § 2; 1981, ch. 293, § 3; 1984, ch. 19, § 6; 1987, ch. 86, § 3; 1991, ch. 140, § 3; 1999, ch. 9, § 1.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, designated formerly undesignated provisions as Subsections C and D; deleted former Subsection C, relating to adjustment of benefits of persons receiving an annuity as of June 30, 1987; added Subsections E and F; and made a minor stylistic change in Subsection B.

**The 1999 amendment**, effective June 18, 1999, inserted "Public Employees" in Paragraph A(2), substituted "who" for "whom" in Subsection E, and in Subsection F substituted "1999" for "1991" and inserted "the last".



## **22-11-32. Adjustment of benefits.**

A. If retirement or disability benefits cause a decrease in the amount of monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be reduced to result in the maximum total benefits to the member or beneficiary.

B. If there is a change in the effect of retirement or disability benefits on any monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be adjusted to result in the maximum total benefits to the member or beneficiary. In no event shall the retirement or disability benefits be increased in an amount greater than that authorized by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

C. The provisions of this section are mandatory and are not subject to option or election by any member or beneficiary. Each member or beneficiary shall inform the director of all facts necessary for the director to carry out the provisions of this section.

D. If the director, in good faith, seeks to ascertain all facts necessary to comply with provisions of this section, but payment of retirement or disability benefits is made without making an adjustment as provided by this section, neither the board, the director or any public officer or employee shall be liable because of the payment.

E. As used in this section:

(1) "retirement or disability benefits" means retirement or disability benefits payable to a member or beneficiary pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];

(2) "public agency" includes the federal government, any department or agency of the federal government, any state and any department, agency and political subdivision of a state; and

(3) "total benefits" means retirement or disability benefits plus any other monetary payments due to the member or beneficiary from any public agency.

**History:** 1953 Comp., § 77-9-31, enacted by Laws 1967, ch. 16, § 155.

### **ANNOTATIONS**

**Cross references.** — As to effect of article upon benefits being paid under laws repealed by article or under laws establishing public employees retirement association, see 22-11-44 NMSA 1978.

## **22-11-33. Earned service credit.**

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when he was engaged in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board. These payments may be made in installments, and, if the payments made to the fund are insufficient for the restoration of any full year of earned service credit, the member shall be certified to have acquired earned service credit for that period of time which is proportionate to the payments made.

**History:** 1953 Comp., § 77-9-33, enacted by Laws 1967, ch. 16, § 156; 2003, ch. 39, § 9.

## ANNOTATIONS

**Cross references.** — As to entitlement to service-credit of certain persons covered under public employees' retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**The 2003 amendment**, effective June 20, 2003, substituted "set by the board" for "earned by the fund during the five-year period immediately preceding the application for the earned service-credit" following "rate of interest" near the middle of Subsection C.

### **22-11-34. Allowed service credit.**

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code of 1986 for those periods of time when he was:

(1) employed prior to July 1, 1967 in a federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service credit shall be allowed without contribution;

(2) engaged in military service that interrupted his employment in New Mexico if he returned to his employment within eighteen months following honorable discharge. This service credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service credit pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 for each year of service credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based on actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service credit shall not be paid by the employer. The purchase of service credit provided in this section shall be carried out by the member within three years after the date of the member's employment following service; or

(4) employed:

(a) in a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after July 1, 1967; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the state board at the time of employment.

B. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period not to exceed one year and, if the sum paid does not equal the amount required for any full year of allowed service credit, the member shall acquire allowed service credit for that period of time that is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in a position covered by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or a law repealed by that act. No allowed service credit shall be purchased

pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

C. No member shall be certified to have acquired allowed service credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-34, enacted by Laws 1967, ch. 16, § 157; 1975, ch. 321, § 1; 1977, ch. 331, § 2; 1981, ch. 291, § 1; 1986, ch. 48, § 1; 1989, ch. 30, § 2; 1993, ch. 69, § 10; 1997, ch. 103, § 1; 1998, ch. 38, § 3; 2003, ch. 39, § 10.

## ANNOTATIONS

**Cross references.** — As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**The 1989 amendment**, effective July 1, 1989, in Subsection A(1) substituted "employed" for "serving as a teacher or administrator" in the first sentence; in Subsection A(3) inserted "or the commissioned corps of the public health service" in the first sentence, substituted "1992" for "1987" in the last sentence, and deleted "military" preceding "service" throughout the subsection; in Subsection A(4) deleted "a teacher or administrator" at the beginning of Subparagraphs (a) through (c) and deleted "a certified teacher or certified administrator" at the beginning of Subparagraph (d); and in Subsection B substituted all of the present language of the first sentence following "equal to" for "the prevailing combined percentage of contributions of members and local administrative units in effect at the time of application for allowed service-credit times the member's annual salary if the member is employed, or time the member's annual salary during the member's last year of employment if the member is not employed at the time of the application" and inserted "at the discretion of the board" in the fourth sentence.

**The 1993 amendment**, effective June 18, 1993, rewrote Subparagraph (4)(d) of Subsection A which read "in any private school in New Mexico accredited by the state board of education"; inserted "or employer" in the first sentence and substituted "paid for the member" for "paid by the member" in the second sentence of Subsection B;

substituted "Paragraphs (1) through (4) of Subsection A of this section" for "those Paragraphs" in Paragraph (2) of Subsection C; and made a minor stylistic change in Subsection A.

**The 1997 amendment**, in the last sentence of Paragraph A(3), deleted "prior to July 1 1992 or" preceding "three years" and deleted "whichever is later" following "service", and added the fourth sentence in Subsection B. Laws 1997, ch. 103 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**The 1998 amendment** inserted "pursuant to the Internal Revenue Code of 1986" near the middle of Subsection A; substituted "a" for "any" throughout the section; in Paragraph A(3), substituted "pursuant to" for "under" and inserted "and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994" near the end of the first sentence, and substituted "on" for "upon" in the second sentence; and in Subsection B, deleted "of" following "over a period" and substituted "that" for "which" in the fifth sentence. Laws 1998, ch. 38 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature.

**The 2003 amendment**, effective June 20, 2003, substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" following "employed prior to" near the beginning of Paragraph A(1); substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" near the end of Subparagraph A(4)(c); in Subsection B deleted "The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid for the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment." at the beginning, and substituted "by that act. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit." for "thereby" at the end.

**Effective date of Educational Retirement Act.** — The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch. 16), contains no effective date. However, Laws 1967, ch. 16, § 303, makes the Public School Code effective on July 1, 1967.

**Uniform Services Employment and Reemployment Rights Act.** — The federal Uniform Services Employment and Reemployment Rights Act, referred to in Paragraph A(3), is codified, generally, as 38 U.S.C.S. § 4301 et seq.

**Public Health Service officers.** — Active duty as a uniformed commissioned officer in the United States Public Health Service qualifies as "military service" pursuant to Subsection (A)(3) in the following situations: (1) When the service was performed while the commissioned corps was declared to be a military service pursuant to 42 U.S.C. § 217, or (2) when the officer was detailed to a branch of the armed services, as 10 U.S.C. § 101(4) defines that term. 1987 Op. Att'y Gen. No. 87-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Services included in computing period of service for purpose of teachers' seniority, 2 A.L.R.2d 1033.

## **22-11-35. Disability benefit; eligibility; medical examination.**

A. A member shall be eligible for disability benefits if he has acquired ten years or more of earned service-credit and the board certifies the member to be totally disabled to continue his employment and unable to obtain and retain other gainful employment commensurate with his background, education and experience.

B. Prior to any certification of disability by the board, the board shall require each applicant for disability benefits to submit himself to a medical examination by the medical authority.

**History:** 1953 Comp., § 77-9-35, enacted by Laws 1967, ch. 16, § 158.

### **ANNOTATIONS**

**Scope of board's authority.** — The legislature, through this section has granted the board the authority to award disability benefits if certain requirements are met. If the board certifies the eligible member to be totally disabled, the board must award benefits. Once the determination of total disability is made, it is the duty of the board to certify the member as disabled. There is nothing in this grant of authority which authorizes the board to refuse to accept an application for disability if the applicant continues to hold a property interest in a bus contract. *Gonzales v. New Mexico Educ. Retirement Bd.*, 109 N.M. 592, 788 P.2d 348, cert. denied, 498 U.S. 818, 111 S. Ct. 61, 112 L. Ed. 2d 36 (1990).

## **22-11-36. Disability benefit; continued eligibility; re-examinations.**

A. Unless designated by the medical authority as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of his being placed on a disability status, present himself to the medical authority for a medical re-examination. The medical authority shall certify to the director after each medical examination whether there is a substantial betterment of the member's disability. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with his background,

education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if a certificate of medical re-examination by the medical authority is not filed with the director within thirty days after the date upon which the member should have been re-examined where the failure to file the certificate was due to the unexcused failure or the refusal of the member to report for the medical re-examination. Payment of disability benefits shall be resumed only after the member has complied with the requirements of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require further or more frequent medical examinations of members having a disability status.

D. A member receiving disability benefits who is unable to report for a medical re-examination because of his physical condition or because he resides outside the state shall notify the director of this fact not later than fifteen days in advance of the date for the medical re-examination. The board shall designate a medical doctor in the vicinity of the residence of the member to make the medical re-examination and to report the findings to the board.

E. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled.

**History:** 1953 Comp., § 77-9-36, enacted by Laws 1967, ch. 16, § 159; 2003, ch. 39, § 11.

## ANNOTATIONS

**Cross references.** — As to reports of improved health by members receiving disability benefits, see 22-11-39 NMSA 1978.

As to suspension of payments for failure to make reports, see 22-11-40 NMSA 1978.

**The 2003 amendment**, effective June 20, 2003, in Subsection A added "Unless designated by the medical authority as being permanently disabled," at the beginning and deleted "or is not" following "whether there is" near the middle; inserted "who is" following "disability benefits" near the beginning of Subsection D; and added Subsection E.

### **22-11-37. Disability benefit.**

A. The annual disability benefit shall be equal to two percent of the member's average annual salary multiplied by the number of years of the member's total service-credit if the result is greater than one-third of the member's average annual salary. If the

result of that formula is less than one-third of the member's average annual salary, the annual disability benefit shall be equal to the lesser of the following amounts:

(1) two percent of the member's average annual salary multiplied by the sum of the member's total service-credit plus the number of years, calculated to the nearest completed quarter, from the effective date of the member's disability to the member's sixtieth birthday; or

(2) one-third of the member's average annual salary.

B. A member's average annual salary for the purpose of computing disability benefits shall be the average salary for the last five years of employment or for any other consecutive five-year period for which contribution was made by the member, whichever is higher.

C. The annual disability benefit shall be paid in equal monthly installments.

**History:** 1953 Comp., § 77-9-37, enacted by Laws 1967, ch. 16, § 160; 1973, ch. 350, § 1; 1991, ch. 140, § 4.

### ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "two percent" for "one and one-half percent" in the first sentence and in Paragraph (1); inserted "annual" preceding "salary" in Subsection B; and made minor stylistic changes in Subsections A and B.

### **22-11-38. Disability retirement.**

A member receiving disability benefits upon attaining the age of sixty years shall be considered as retiring pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] at the rate of benefits received for the disability.

**History:** 1953 Comp., § 77-9-38, enacted by Laws 1967, ch. 16, § 161.

### **22-11-39. Report of improved health; penalty.**

A. A member receiving disability benefits shall report to the director in writing any substantial improvement in his disability within thirty days after he has or reasonably should have knowledge of the improvement.

B. A member failing to report to the director as required by this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-9-39, enacted by Laws 1967, ch. 16, § 162.



## ANNOTATIONS

**Cross references.** — As to requirement of reports and examinations of members receiving disability benefits generally, see 22-11-36 NMSA 1978.

### **22-11-40. Reports; restoration to fund.**

A. The payment of disability benefits shall be suspended by the director upon notification by the board that the member has failed or refused to make any report required by the board to be made by him. Payment of disability benefits shall be resumed only after the required report is made. The member shall have no right or claim for benefits withheld during a period of suspension.

B. If a member is obligated to restore any sum of money to the fund and fails or refuses to do so for a period of three months after written demand is made by the director, he shall forfeit his membership and receive no further benefits pursuant to the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits he has received and shall withdraw from any such balance of contributions the amount of money the member is obligated to restore to the fund. Any balance of the contribution remaining in the fund shall be paid to the former member or his beneficiary. In the event the money the former member is obligated to restore to the fund is not restored to the fund, the former member shall be subject to civil action by the board for its recovery.

**History:** 1953 Comp., § 77-9-40, enacted by Laws 1967, ch. 16, § 163.

## ANNOTATIONS

**Cross references.** — As to suspension of benefits upon failure to file certificate of reexamination, see 22-11-36 NMSA 1978.

### **22-11-41. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1993, ch. 69, § 11 repeals 22-11-41 NMSA 1978, as enacted by Laws 1967, ch. 16, § 164, relating to prohibitions on insurance and continued eligibility after retirement, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **22-11-42. Nonassignability; division of funds as community property; child support obligations.**

A. Except as specifically provided in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

**History:** 1953 Comp., § 77-9-42, enacted by Laws 1967, ch. 16, § 165; 1987, ch. 242, § 1; 1989, ch. 125, § 3; 1990, ch. 49, § 17; 1991, ch. 118, § 4; 2003, ch. 39, § 12.

## ANNOTATIONS

**Cross references.** — As to exemption from legal process for Public Employees Retirement Act benefits, see 10-11-135 NMSA 1978.

As to exemption from legal process for Judicial Retirement Act benefits, see 10-12B-7 NMSA 1978.

As to exemption from legal process for Magistrate Retirement Act benefits, see 10-12C-7 NMSA 1978.

As to exemption from legal process for interest from state police pension fund, see 29-4-10 NMSA 1978.

As to exemption from legal process for married persons or heads of households, see 42-10-1 NMSA 1978.

As to rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

As to form for claim of exemptions on executions, see Rule 4-803 NMRA.

As to form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804 NMRA.

As to form for application for writ of garnishment and affidavit, see Rule 4-805 NMRA.

As to form for notice of right to claim exemptions from execution, see Rule 4-808A NMRA.

As to form for claim of exemption from garnishment, see Rule 4-809 NMRA.

**The 1989 amendment**, effective June 16, 1989, added "child support obligations" to the catchline; substituted "Subsections B and C" for "Subsection B" in Subsection A; substituted "Educational" for "Education" in the first sentence of Subsection B; and added Subsection C.

**The 1990 amendment**, effective May 16, 1990, deleted "Tax exemption" in the catchline, deleted "and shall also be exempt from any state income tax" at the end of Subsection A and substituted "board" for "association" at the end of the second sentence of Subsection C.

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "guarantee fund or similar assessment"; in Subsection B, in the second sentence, inserted "or participant" and in two locations in the third sentence inserted "or a carrier or contractor for the alternative retirement plan"; in Subsection C, in the second and third sentences, inserted "or a carrier or contractor for the alternative retirement plan" and, in the fourth sentence, inserted "or participant" twice and "or alternative retirement plan".

**The 2003 amendment**, effective June 20, 2003, added "A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable." at the end of Subsection B; and added "In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable." at the end of Subsection C.

**Applicability.** — Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

**Exemption from income tax permitted.** — The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State, Taxation & Revenue Dep't*, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**Repeal of tax exemption.** — Because no private contractual rights were granted by the retirement plan, there was no impairment or breach of contract resulting from the 1990 repeal of the tax exemption provision and, although the plan conferred property rights that vested upon accumulating minimum earned service credits, those rights did not include the right to receive pension benefits exempt from tax. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

Because the retirement plan provided no contractual or vested right to receive an irrevocable tax exemption, there was no constitutionally protected private interest in the tax exemption and there was no due process violation when the exemption was repealed. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**"Trading" tax exemptions for health care.** — Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrevocable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.

## **22-11-43. Insurance or banking laws inapplicable.**

In the absence of specific provisions to the contrary, no law of this state regulating insurance policies, insurance companies or banking institutions shall apply to the administration of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

**History:** 1953 Comp., § 77-9-43, enacted by Laws 1967, ch. 16, § 166.

## **22-11-44. Saving clause; retirement benefits; disability benefits.**

A. Any person retired pursuant to the provisions of any laws repealed by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall be considered to have retired pursuant to the Educational Retirement Act and shall continue to receive retirement benefits in the same amount as received prior to the enactment of the Educational Retirement Act.

B. Any person receiving disability benefits pursuant to any laws repealed by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall continue to receive disability benefits in the same amount as received prior to the enactment of the Educational Retirement Act, and shall be considered to have been granted disability benefits pursuant to and be subject to the provisions of the Educational Retirement Act.

C. Nothing in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall be construed to adversely affect any benefits being paid pursuant to any laws repealed by the Educational Retirement Act or any laws establishing the public employees retirement association of New Mexico.

D. No person who was heretofore covered under the provisions of any statute repealed by the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] shall be retired at a monthly benefit which is less than he would have received had his employment continued to be performed under such repealed provisions.

**History:** 1953 Comp., § 77-9-44, enacted by Laws 1967, ch. 16, § 167.

### **22-11-44.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 69, § 11 repeals 22-11-44.1 NMSA 1978, as enacted by Laws 1982, ch. 37, § 2, relating to the transfer of assets of the New Mexico activities association, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **22-11-45. Elections of the public employees retirement association; payment of contributions.**

Any person covered under the public employees retirement association of New Mexico on or subsequent to July 1, 1961 employed by a local administrative unit any time between July 1, 1957 and July 1, 1961 shall not be entitled to service-credit for this time either under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or under the public employees retirement association of New Mexico unless he elects in

writing with the public employees retirement association of New Mexico to be credited with the service-credit. If a person so elects, he shall pay the employee's contribution to the public employees retirement association of New Mexico in an amount which would have been deducted if he had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The local administrative unit shall then make the employers' contribution for the period involved to the public employees retirement association of New Mexico in a sum equal to the amount which would have been contributed by an employer if the person had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The election provided for by this section shall be made within one year from the person's subsequent date of employment in a position in which he is covered by the public employees retirement association of New Mexico. If the election is not made within this period, no further right to elect shall exist.

**History:** 1953 Comp., § 77-9-45, enacted by Laws 1967, ch. 16, § 168.

## **ANNOTATIONS**

**Cross references.** — As to Public Employees Retirement Act, see 10-11-1 NMSA 1978 et seq.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**22-11-46. Reserved.**

**22-11-47. Alternative retirement plan; election of coverage.**

A. Beginning October 1, 1991, any employee who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied

instead toward the alternative retirement plan as if the participant had been participating in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

D. Notwithstanding the provisions of Subsections A through C of this section, a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, who does not elect to participate in the alternative retirement plan and whose base salary, as specified in the member's annual faculty contract, does not exceed the limitations set forth in Section 401(a) (17) of the Internal Revenue Code of 1986, as amended, in any contract year shall become a participant in the alternative retirement plan with respect to any amount by which the limitations set forth in Section 401(a) (17) of the Internal Revenue Code of 1986, as amended, or the member's total salary, whichever is less, exceeds the member's base salary. Those members shall be deemed to be both members of the educational retirement plan and participants in the alternative retirement plan.

**History:** 1978 Comp., § 22-11-47, enacted by Laws 1991, ch. 118, § 5; 1999, ch. 261, § 2; 1999, ch. 274, § 3.

## ANNOTATIONS

**1999 amendments.** — Laws 1999, ch. 261, § 2, effective June 18, 1999, in Subsection A, inserting language in the first sentence, adding a second sentence, and inserting "or October 1, 1999, whichever is applicable" in the last sentence, was approved on April 8, 1999. However, Laws 1999, ch. 274, § 3, effective June 18, 1999, adding Subsection D, was approved later on April 8, 1999. The section is set out as amended by Laws 1999, ch. 274, § 3. See 12-1-8 NMSA 1978.

**Internal Revenue Code.** — Section 401 of the Internal Revenue Code is codified as 26 U.S.C.S. § 401.

### **22-11-48. Alternative retirement plan; contributory employment.**

A. Contributions made by a qualifying state educational institution on behalf of a participant together with any interest accrued on those contributions shall be credited to the benefit of the participant and shall be distributed or treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

B. Contributions of a participant who terminates employment together with any applicable interest accrued on those contributions shall remain the property of the participant and the contributions, interest and any benefits based on them shall be treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

**History:** 1978 Comp., § 22-11-48, enacted by Laws 1991, ch. 118, § 6.

## **22-11-49. Alternative retirement plan; contributions.**

A. Each participant shall contribute an amount equal to the percent of the participant's salary that the participant would have been required to contribute as a regular member. The contribution shall be made in the manner provided for by the board.

B. Each qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would have been required of the employer if the participant was, instead, a regular member. Of the contribution made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable, a sum equal to three percent of the annual salary of each participant shall be contributed to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board; provided, however, that on July 1 following any report by the actuary to the board that concludes that less than three percent of the contributions made by a qualifying state educational institution on behalf of its participants is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, the three percent shall be reduced to the percentage determined by the actuary.

C. Contributions required by the provisions of this section may be made by a reduction in salary or by a public employer pick-up pursuant to any applicable provision of the Internal Revenue Code of 1986, as amended.

**History:** 1978 Comp., § 22-11-49, enacted by Laws 1991, ch. 118, § 7; 1999, ch. 261, § 3.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, inserted "or October 1, 1999, whichever is applicable" in the second sentence of Subsection B.

## **22-11-50. Alternative retirement plan; tax treatment.**

The board shall have the authority to determine whether the alternative retirement plan shall be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, and shall make that determination based upon which choice is most advantageous to the participants as a whole.

**History:** 1978 Comp., § 22-11-50, enacted by Laws 1991, ch. 118, § 8.

### **ANNOTATIONS**

**Internal Revenue Code.** — Sections 401(a) and 403(a) of the Internal Revenue Code, referred to in this section, appear as 26 U.S.C. §§ 401(a) and 403(a), respectively.



## **22-11-51. Benefits.**

No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates provided, however, that retirement benefits shall be paid in the form of a lifetime income and, except for death benefits, single sum cash payments shall not be permitted.

**History:** 1978 Comp., § 22-11-51, enacted by Laws 1991, ch. 118, § 9; 1999, ch. 261, § 4.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, purported to amend this section but made no change.

## **22-11-52. Alternative retirement plan; selection of contractor or carrier; administration.**

A. The board shall solicit and review proposals for providing retirement, death and any other benefits deemed desirable by the board for participants in the alternative retirement plan. The board shall solicit proposals for providing the benefits through annuity contracts or certificates that are fixed or variable in nature or some combination thereof.

B. The board, after consultation with the qualifying state educational institutions, shall select no less than two nor more than three contractors or carriers to provide the contracts or certificates. In making its selection, the board shall consider, among other things, the following criteria:

- (1) the portability of the benefits offered based upon the number of states and institutions of higher education in which the offeror provides similar benefits;
- (2) the nature and extent of the rights and benefits that would be provided to the participants;
- (3) the relation of the rights and benefits to the contributions that would be made by the participants and the qualifying state educational institutions;
- (4) the ability of the offeror to provide the rights and benefits;
- (5) the suitability of the rights and benefits for recruitment and retention of employees by the qualifying state educational institutions; and

(6) compliance with the requirements of the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978].

C. The board shall provide for the administration and maintenance of the alternative retirement plan and may adopt rules and regulations for that purpose.

**History:** 1978 Comp., § 22-11-52, enacted by Laws 1991, ch. 118, § 10.

### **22-11-53. Correction of errors and omissions; estoppel.**

A. If an error or omission in an application for retirement or its supporting documents results in an overpayment to a member or the beneficiary of a member, the board shall correct the error or omission and adjust all future payments accordingly. The board shall recover all overpayments that are made.

B. A member or the beneficiary of a member who is paid more than the amount he is owed because he provided fraudulent information on his application for retirement shall be liable for the repayment of that amount to the fund, interest on that amount at the rate set by the board and costs of collection, including attorney fees. Recovery of overpayments shall extend back to the date of the first payment that was made based on fraudulent information.

C. The board shall not be estopped from acting in accordance with applicable statutes because of statements of fact or law made by the board or its employees.

**History:** Laws 1998, ch. 38, § 2.

## **ARTICLE 12**

### **Compulsory School Attendance**

#### **22-12-1. Short title.**

Chapter 22, Article 12 NMSA 1978 may be cited as the "Compulsory School Attendance Law".

**History:** 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169; 2003, ch. 153, § 55.

### **ANNOTATIONS**

**Cross references.** — For constitutional provision pertaining to compulsory school attendance, see N.M. Const., art. XII, § 5.

**The 2003 amendment**, effective April 4, 2003, substituted "Chapter 22, Article 12 NMSA 1978" for "Sections 22-12-1 through 22-12-7 NMSA 1978" at the beginning of the section.

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

## **22-12-2. Compulsory school attendance; responsibility.**

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

(1) the person is specifically exempted by law from the provisions of this section;

(2) the person has graduated from a high school;

(3) the person is at least seventeen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents; or

(4) with consent of the parent of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age.

B. A person subject to the provisions of the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing authority of a private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

History: 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4; 1997, ch. 194, § 1; 2001, ch. 183, § 1; 2004, ch. 28, § 2.

## ANNOTATIONS

**Cross references.** — As to excusal of certain students from full-time school attendance, see 22-12-6 NMSA 1978.

As to age of majority, see 28-6-1 NMSA 1978.

**The 1997 amendment** deleted former Paragraph A(5) relating to persons with learning disabilities or mental, physical or emotional conditions being excused from compulsory school attendance, and made minor stylistic changes at the end of Paragraphs A(3) and (4). Laws 1997, ch. 194 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

**The 2001 amendment**, effective June 15, 2001, substituted "seventeen years" for "sixteen years" in Paragraph A(3).

**The 2004 amendment**, effective May 19, 2004, deleted from Paragraph (4) of Subsection A and Subsection C, "guardian or person having custody or control" and added new Subsection D.

**Duty to protect children.** — Compulsory attendance laws in no way restrain a child's liberty so as to render the child and his parents unable to care for the child's basic needs. Thus, the state does not incur under the Due Process Clause an affirmative duty to protect school children who attend state-run schools from deprivations by private actors merely on the basis of compulsory attendance laws. *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992), cert. denied, 507 U.S. 914, 113 S. Ct. 1266, 122 L. Ed. 2d 662 (1993).

**Legislature did not intend for the law to require a student to attend the public schools** of his district, nor that such a student be required to do so by any rule of any other body. 1973 Op. Att'y Gen. No. 73-59.

**Validity of regulations prohibiting school attendance by certain students.** — A rule which requires the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper, clearly violates the compulsory attendance law, therefore, if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

Children under 17 (now 18) years of age may not be excluded or exempted from school because they are married. 1967 Op. Att'y Gen. No. 67-117.

**Constitutionality of prohibiting home instruction.** — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as

guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment, which inserted "a home school" in introductory language of Subsection A).

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? *State v. Edgington*," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 253 et seq.

Regulations forbidding pupils to leave school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Personal liability of school authorities for dismissal or suspension of pupil, 42 A.L.R. 763.

Inmates of charitable institutions as residents entitled to school privileges, 48 A.L.R. 1098.

Expulsion or suspension from private school or college, 50 A.L.R. 1497.

Marriage or other domestic relations as ground for exclusion of pupil from public school, 63 A.L.R. 1164.

Failure of student to attain or maintain prescribed scholastic rating as grounds for dropping him, 86 A.L.R. 484.

Health measures, power of municipal school authorities to prescribe, as a condition of school attendance, 93 A.L.R. 1413.

Releasing public school pupils from attendance for purposes of attending religious-education classes, 2 A.L.R.2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 A.L.R.2d 1401.

Marriage or pregnancy of public school student as ground for expulsion, exclusion or restriction of activities, 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school-attendance law, 65 A.L.R.3d 1222.

Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

Validity of regulation of athletic eligibility of students voluntarily transferring from one school to another, 15 A.L.R.4th 885.

79 C.J.S. Schools and School Districts §§ 463 to 474.

### **22-12-2.1. Interscholastic extracurricular activities; student participation.**

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. No student shall be absent from school for school-sponsored interscholastic extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply only to interscholastic extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in grade nine.

**History:** 1978 Comp., § 22-12-2.1, enacted by Laws 1986, ch. 33, § 27; 1987, ch. 305, § 1; 1988, ch. 20, § 1; 1993, ch. 27, § 1; 1997, ch. 239, § 1; 1997, ch. 245, § 1.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, deleted former Subsections C and D, regarding absences in the 1989-90 and 1990-91 school years, and redesignated former Subsections E to G as present Subsections C to E, substituting "Subsections A and B" for "Subsections A through D" in present Subsection C.

**The 1993 amendment**, effective June 18, 1993, deleted "Effective with the 1986-87 school year," at the beginning of Subsections A and B and substituted "fifteen days" and "fifteen times" for "ten days" and "ten times" in Subsection B.

**1997 amendments.** — Identical amendments to this section, enacted by Laws 1997, ch. 239, § 1 and Laws 1997, ch. 245, § 1, inserted "interscholastic" at the beginning of the section heading and throughout the section, in Subsection C, substituted "only to interscholastic" for "to all", and in Subsection E, substituted "academic record in grade nine" for "second semester of grade eight" at the end. This section is set out as amended by Laws 1997, ch. 245, § 1. See 12-1-8 NMSA 1978. Laws 1997, ch. 239 and Laws 1997, ch. 245 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature.

### **22-12-3. Religious instruction excusal.**

A student may, subject to the approval of the school principal, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of his parents at a time period not in conflict with the academic program of the school. The local school board and its school employees shall not assume responsibility for the religious instruction or permit it to be conducted on school property.

**History:** 1953 Comp., § 77-10-2.1, enacted by Laws 1971, ch. 238, § 1; 1997, ch. 258, § 1; 2003, ch. 153, § 56.

#### **ANNOTATIONS**

**Cross references.** — For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

**The 1997 amendment**, effective July 1, 1997, substituted "class period" for "hour" in the first sentence and substituted "religious instruction or permit it" for "religious instructions or permit them" in the second sentence.

**The 2003 amendment**, effective April 4, 2003, deleted "local" following "approval of the " near the beginning of the section; substituted "principal" for "board" following "school" near the beginning of the section; and inserted "school" preceding "employees shall not" near the end of the section.

### **22-12-4. Right to education.**

All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present;

B. except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and

C. any school age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of the health and environment department shall have a right to attend public school in the school district in which the institution, in which he is a client, is located if:

(1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board of education.

**History:** 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by 1978, ch. 211, § 10.

## ANNOTATIONS

**Secretary of health and environment.** — Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**No contractual right to free public education.** — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**School board may allocate attendance within district.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.



**Students may not be forced to attend particular public school**, although enrollment in another school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

## **22-12-5. School attendance.**

A. Local school boards may admit school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may permit school-age persons to transfer to a school outside the child's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards may charge a tuition fee for the right to attend public school within the school district only to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a school-age person similarly situated within the school district for the current school year.

D. When the parent or guardian of a student not living in the state pays an ad valorem property tax for school purposes within the district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per pupil as determined by the ad valorem tax credit utilized in calculating state equalization guarantee distribution.

**History:** 1953 Comp., § 77-10-4, enacted by Laws 1967, ch. 16, § 172; 1979, ch. 55, § 1; 1990 (1st S.S.), ch. 9, § 11.

### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective June 18, 1990, substituted "the school district" for "their school district" in Subsection A, added present Subsection B, redesignated former Subsections B and C as present Subsections C and D, adding "distribution" at the end of Subsection D.

**Child who lives in state is state resident.** — For the purpose of public school education, a child is considered a resident of the state if he lives in the state. 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Students may not be forced to attend particular public school**, although enrollment in another school within or without the local district is subject to availability of

accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Tuition assessment is mandatory** although Subsection B uses the word "may." 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality, construction and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college, 83 A.L.R.2d 497, 56 A.L.R.3d 641.

79 C.J.S. Schools and School Districts §§ 455 to 462.

## **22-12-6. Certificates of employment.**

A. Any student subject to the provisions of the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] attaining the age of fourteen may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

B. The certificate of employment shall contain the following information:

- (1) the name, age and residence of the person excused from full-time school attendance;
- (2) by whom the person is to be employed or is employed;
- (3) the last class grade attended by the person; and
- (4) a statement that the person is excused from full-time school attendance until the certificate is revoked.

**History:** 1953 Comp., § 77-10-6, enacted by Laws 1967, ch. 16, § 174.

### **ANNOTATIONS**

**Cross references.** — As to excusal of persons from school attendance requirement generally, see 22-12-2 NMSA 1978.

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

## **22-12-7. Enforcement of attendance law; habitual truants; penalty.**

A. Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law against an habitual truant, a local school board or governing authority of a private school or its authorized representatives shall give written notice of the habitual truancy by certified mail to or by personal service on the parent of the student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law.

C. If unexcused absences continue after written notice of habitual truancy as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need of services because of habitual truancy and thus subject to the provisions of the Children's Code [32A-1-1 NMSA 1978]. In addition to any other disposition, the children's court may order the habitual truant's driving privileges to be suspended for a specified time not to exceed ninety days on the first finding of habitual truancy and not to exceed one year for a subsequent finding of habitual truancy.

D. If, after review by the juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused by the parent of the student, then the matter will be referred by the juvenile probation office to the district attorney's office or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law. Charges against the parent may be filed in metropolitan court, magistrate court or district court.

E. A parent of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) may be imposed, or the parent of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law continue, upon the second and subsequent convictions, the parent of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 2004.

History: 1953 Comp., § 77-10-7, enacted by Laws 1967, ch. 16, § 175; 1975, ch. 332, § 4; 1981, ch. 7, § 2; 1986, ch. 33, § 28; 1987, ch. 222, § 1; 2004, ch. 28, § 3.

### ANNOTATIONS

**The 2004 amendment**, which become applicable July 1, 2004, added "against habitual truant" and "habitual truancy" throughout the section, deleted "guardian or custodian" and "guardian or one having custody" throughout the section, deleted from Subsection D, "the children's court division or by the district judge of the children's court division", and added the last sentence permitting charges against a parent to be filed in magistrate, metropolitan or district court and amended Subsection F to change the applicability of the section from July 1, 1987 to July 1, 2004.

**Constitutionality of prohibiting home instruction.** — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment to 22-12-2 NMSA 1978, which inserted "a home school" in the introductory language of Subsection A).

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? *State v. Edgington*," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

### **22-12-8. Early identification; unexcused absences and truancy.**

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is truant, the school district shall contact the student's parent to inform the parent that the student is truant and to discuss possible interventions. The provisions of this section do not apply to any absence if the parent has contacted the school to explain the absence.

History: 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1; 2004, ch. 28, § 4.

### ANNOTATIONS

**The 2004 amendment**, effective May 19, 2004, amended this section to require the school district to contact a parent that a student is truant and discuss possible interventions and deleted "legal guardian or custodian".

### **22-12-9. Unexcused absences and truancy; attendance policies.**

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "truant" means a student who has accumulated five unexcused absences within any twenty-day period; and

(3) "unexcused absence" means an absence from school or a class for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law [22-12-1 NMSA 1978] or rules of the local school board or governing authority of a private school.

B. Each school district shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, truants and habitual truants and provides intervention strategies that focus on keeping truants in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings; and

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district.

C. School districts shall report truancy and habitual truancy rates to the department in a form and at such times as the department determines and shall document efforts made to keep truants and habitual truants in educational settings.

History: Laws 2004, ch. 28, § 1; 2005, ch. 260, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 28 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

**The 2005 amendment,** effective June 17, 2005, adds Subsection B(2) to provide that each school district shall maintain an attendance policy that uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings and provides in Subsection D that school districts shall document efforts made to keep truants and habitual truants in educational settings.

# ARTICLE 13

## Courses of Instruction and School Programs

### 22-13-1. Subject areas; minimum instructional areas required; accreditation.

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music, a language other than English and instruction that meets content and performance standards shall be provided in physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (2) mathematics;
- (3) language other than English;
- (4) communication skills;
- (5) science;
- (6) art;
- (7) music;
- (8) social studies;
- (9) New Mexico history;
- (10) United States history;

- (11) geography;
- (12) physical education; and
- (13) health education.

E. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education.

F. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

History: 1978 Comp., § 22-13-1, enacted by Laws 2003, ch. 153, § 57; 2005, ch. 315, § 9.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2003, ch. 153, § 57 repeals former 22-13-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 180, and enacts the above section, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

**The 2005 amendment,** effective April 7, 2005, adds kindergarten in Subsection B and provides in Subsection B that students shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills; provides in Subsection C that classes shall provide instruction that meets content and performance standards shall be provided in physical education and health education; adds health education in Subsection D(13); and adds Subsection F to provide that in ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### 22-13-1.1. Graduation requirements.

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-

step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan and is reasonably informed about:

- (1) curricular and course options;
- (2) opportunities available that lead to different post-high-school options; and
- (3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

- (1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;
- (2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;
- (3) monitor compliance with the requirements of this section; and
- (4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

- (1) four units in English, with major emphasis on grammar and literature;



(2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical education;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English; and

(7) nine elective units and eight elective units for students entering the ninth grade in the 2005-2006 school year that meet department content and performance standards. Student service learning shall be offered as an elective.

G. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

H. Final examinations shall be administered to all students in all classes offered for credit.

I. A student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma.

J. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student.

K. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

History: 1978 Comp., § 22-2-8.4, enacted by Laws 1986, ch. 33, § 5; 1987, ch. 320, § 2; 1988, ch. 105, § 2; 1989, ch. 220, § 1; 1990 (1st S.S.), ch. 3, § 3; 1993, ch. 68, § 3; 1993, ch. 92, § 1; 1993, ch. 226, § 7; 1993, ch. 230, § 1; 1995, ch. 174, § 1; 1995, ch. 180, § 1; 1997, ch. 234, § 2; 2001, ch. 257, § 1; 2001, ch. 276, § 1; recompiled and amended as 1978 Comp., § 22-13-1.1 by Laws 2003, ch. 153, § 58; 2004, ch. 29, § 1; 2005, ch. 314, § 1 and Laws 2005, ch. 315, § 10.

## ANNOTATIONS

**Cross references.** — As to student achievement, see 22-2C-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, inserted "or during the ninth grade" in Subsection A and added Subsection E.

**The 1989 amendment,** effective June 16, 1989, added "which may include a language other than English" at the end of Subsection B(6).

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, deleted "in grades nine through twelve" following "twenty-three units" near the beginning of Subsection B.

**1993 amendments.** — Laws 1993, ch. 68, § 3, effective July 1, 1994, inserting "defensive driving" near the end of Paragraph (7) and adding Subsection F, was approved March 19, 1993. Laws 1993, ch. 92, § 1, effective March 31, 1993 rewriting Subsection D and adding Subsection E, was approved March 31, 1993. Laws 1993, ch. 226, § 7 effective July 1, 1993, deleting "Beginning with students entering the ninth grade in the 1986-87 school year" at the beginning of Subsections B and D and deleting "Effective with the 1987-88 school year" at the beginning of Subsection C, was approved April 7, 1993. However, Laws 1993, ch. 230, § 1, effective June 18, 1993, also amending this section by adding the final sentence of Subsection D, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 230, § 1. See 12-1-8 NMSA 1978.

**1995 amendments.** — Laws 1995, ch. 174, § 1, effective June 16, 1995, deleting "Effective with the 1987-88 school year" from the beginning of Subsection C, and

adding "Beginning with the 1996-97 school year, the state competency examinations on social science shall include a section on the United States constitution and the constitution of New Mexico" as the second sentence of Subsection D, was approved April 6, 1995. However, Laws 1995, ch. 180, § 1, effective June 16, 1995, also amending this section by adding the last sentence in Subsection B and deleting the first part of Subsection C which read "Effective with the 1987-88 school year", but not giving effect to the changes made by the first 1995 amendment, was approved April 6, 1995. The section is set out as amended by Laws 1995, ch. 180, § 1. See 12-1-8 NMSA 1978.

**The 1997 amendment** inserted "American sign language" following "health education" near the end of Paragraph B(7), and inserted the second sentence in Subsection D. Laws 1997, ch. 234 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**2001 amendments.** — Laws 2001, ch. 276, § 1, effective June 15, 2001, in Subsection D, deleting "Beginning with students entering the ninth grade in the 1986-87 school year" from the beginning of the subsection, substituting "state graduation examination" for "state competency examination" throughout the subsection, and inserting "writing" preceding "science and social science", was approved April 4, 2001. However, this section was also amended by Laws 2001, ch. 257, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

"B. Successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

"(1) four units in English, with major emphasis on grammar and literature;

"(2) three units in mathematics;

"(3) two units in science, one of which shall have a laboratory component;

"(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

"(5) one unit in physical fitness;

"(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

"(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational

education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; American sign language; and other electives approved by the state board.

"With the approval of the local school board, participation in a marching band, on an athletic team or in an athletic sport during the school day may count toward fulfillment of the physical education required unit.

"C. Final examinations shall be administered to all students in all classes offered for credit.

"D. No student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. The state competency examinations on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system he takes and passes the state competency examination, he may receive a high school diploma.

"E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

Because Laws 2001, ch. 257 § 1 was approved earlier on April 4, 2001, this section is set out as amended by Laws 2001, ch. 276, § 1. See 12-1-8 NMSA 1978.

**The 2003 amendment**, recompiled former 22-2-8.4 NMSA 1978 as present 22-13-1.1 NMSA 1978, effective April 4, 2003; deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**The 2004 amendment**, effective July 1, 2004, deleted Subsection A, added new Subsections A through G, redesignated Subsections C and D as Subsections G and H, added Subsection I, added Subsection J, redesignated former Subsection E as Subsection K and changed "state board" to "secretary of public education" in Subsection K.

**2005 amendments.** — **Laws 2005, ch. 315, § 10**, effective April 7, 2005, effective April 7, 2005, deletes reference to "guardian" in Subsections A and B; and deletes "other

physical activity" in subsection F(5). Laws 2005, ch. 314, § 1. Pursuant to Section 12-1-8 NMSA 1978 this section is set out as amended by Laws 2005, ch. 315, § 10.

**Laws 2005, ch. 314, § 1**, also amends 22-13-1.1 NMSA 1978 to add a new Subsection F(7) to provide that the units shall include one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and change the elective units for students entering the ninth grade in the 2005-2006 school year from eight units to seven and one-half units in Subsection F(8). Section 22-13-1.1 NMSA 1978, as amended by Laws 2005, ch. 314, § 1 provides:

**22-13-1.1. Graduation requirements.**

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan and is reasonably informed about:

- (1) curricular and course options;
- (2) opportunities available that lead to different post-high-school options; and
- (3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

- (1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;

(2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;

(3) monitor compliance with the requirements of this section; and

(4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical education;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English;

(7) one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and

(8) nine elective units and seven and one-half elective units for students entering the ninth grade in the 2005-2006 school year that meet state board content and performance standards. Student service learning shall be offered as an elective.

G. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

H. Final examinations shall be administered to all students in all classes offered for credit.

I. A student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, math, writing, science and social science. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma.

J. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent or guardian and school counselor or other school official charged with coursework planning for the student.

K. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-1.2. High school curricula and end-of-course tests; alignment.**

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public post-secondary educational institutions in New Mexico. The department shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

**History:** 1978 Comp., § 22-13-1.2, enacted by Laws 2003, ch. 153, § 59.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 makes the act effective immediately. Approved April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-1.3. Reading initiative; design.**

A. The department shall design and implement a statewide reading initiative to improve reading proficiency in the state. The design of the reading initiative shall be based upon quality, scientifically based reading research that has been shown to improve reading proficiency and shall include the following:

- (1) consistent assessment and evaluation of student reading levels;
- (2) appropriate professional staff development to assist licensed school employees in the instruction of reading;
- (3) extra time in the student's day or year for implementation of reading programs;
- (4) rewards provided to teachers and other applicable licensed school employees in public schools that improve student reading proficiency; and
- (5) criteria for public schools to establish an individualized reading plan for students who fail to meet grade level reading proficiency standards.

B. The department shall use national experts to work with the department to develop an immediate reading initiative and a long-term plan for sustained reading improvement.

C. The department shall involve school district personnel, especially licensed elementary reading specialists, parents and other interested persons in the design of the reading initiative.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 1; 2001, ch. 289, § 1; 1978 Comp., § 22-2-6.11, recompiled and amended as 1978 Comp., § 22-13-1.3 by Laws 2003, ch. 153, § 60.



## ANNOTATIONS

**Cross references.** — For state department of education, see N.M. Const., art. XII, § 6, 22-2-5 and 22-2-6 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "The department of education" for "The state department of public education" in Subsections A, B and C; added Paragraph A(5); and deleted "local" preceding "school district personnel" in Subsection C.

**The 2003 amendment**, recompiled former 22-2-6.11 NMSA 1978 as present 22-13-1.3 NMSA 1978, effective April 4, 2003, and deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-1.4. Honors or similar classes in mathematics and language arts.**

Beginning with the 2006-2007 school year, each school district shall offer at least one honors or similar academically rigorous class each in mathematics and language arts in each high school.

History: Laws 2005, ch. 78, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 78 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

### **22-13-1.5. Core curriculum framework; purpose; curriculum.**

A. School districts and charter schools may create core curriculum frameworks to provide high quality curricula in kindergarten through grade six to prepare students for pre-advanced placement and advanced placement coursework in grades seven through twelve.

B. The framework shall include:

(1) a curriculum that is aligned with state academic content and performance standards that is challenging, specific as to content and sequential from grade to grade, similar to a core curriculum sequence;

(2) in-depth professional development for teachers that includes vertical teaming in content areas; and

(3) content, materials and instructional strategies or methodologies that current research demonstrates are likely to lead to improved student achievement in pre-advanced placement and advanced placement coursework in grades seven through twelve.

C. The framework may be selected from previously developed curricula or may be developed by the school district or charter school.

D. A school district or charter school that meets department eligibility requirements may apply to the department for support of its core curriculum framework. Applications shall be in the form prescribed by the department and shall include the following information:

(1) a statement of need;

(2) goals and expected outcomes of the framework;

(3) a detailed description of the curriculum to be implemented;

(4) a detailed work plan and budget for the framework;

(5) documentation of the research upon which the anticipated success of the framework is based;

(6) a description of any partnership proposed to implement the framework, supported by letters of commitment from the partner;

(7) an evaluation plan; and

(8) any other information that the department requires.

E. The department shall award grants within ninety days of the deadline for receipt of grant applications.

F. The department shall adopt and promulgate rules to implement the provisions of this section.

History: Laws 2005, ch. 300, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 300 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

#### **22-13-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repeals 22-13-2 NMSA 1978, relating to required course of instruction in drug abuse education in the public schools. For provisions of former section, see 1978 Original Pamphlet.

#### **22-13-3. Early childhood education programs required.**

A. In accordance with state board regulations, every local school board shall establish and conduct early childhood education programs.

B. The state board shall adopt and promulgate regulations providing for:

(1) minimum standards for the conduct of early childhood education programs; and

(2) qualifications of any person teaching in those programs.

C. The cost of operating early childhood education programs shall be included in the budget prepared for the school district.

D. As used in this section, "early childhood education programs" means kindergarten programs for every child who has attained his fifth birthday prior to September 1 of the school year, except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand, established by a local school board for the development or enrichment of persons within the school district.

E. The provisions of this section shall be effective with the 1988-89 school year, and waivers may be granted upon the request of the parent or legal guardian pursuant to Section 22-12-2 NMSA 1978.

**History:** 1953 Comp., § 77-11-2, enacted by Laws 1967, ch. 16, § 181; reenacted by 1973, ch. 357, § 1; 1974, ch. 8, § 20; 1977, ch. 2, § 2; 1986, ch. 33, § 29; 1987, ch. 320, § 6; 1988, ch. 35, § 1; 1993, ch. 226, § 29.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, inserted "except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand" in Subsection D.

**The 1993 amendment,** effective July 1, 1993, deleted "and may provide transportation for students attending those programs" at the end of Subsection A.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Power and duty of school authorities to maintain kindergarten, 70 A.L.R. 1313.

79 C.J.S. Schools and School Districts § 484.

### **22-13-3.1. Even start family literacy program; created; guidelines; benchmarks, performance standards and evaluations.**

A. The "even start family literacy program" is created in the department of education to provide funding for preschool reading readiness and parenting education. The purpose of the program is to support the educational and developmental needs of students in preschool; address cultural diversity; and provide family support that leads to improved literacy, improved ability for students to succeed in school and economic self-sufficiency. Priority for funding shall be provided to those public schools that have the highest proportion of limited English proficient students, students living in poverty and Native American students.

B. The department of education shall develop even start family literacy program benchmarks and performance standards, guidelines for program approval and funding approval criteria. The department shall disseminate the program information in all public

schools and shall provide technical assistance to public schools in developing proposals.

C. The department of education shall distribute money to public schools with approved even start family literacy programs that meet the specified criteria based upon actual program costs to ensure the implementation of performance based budgeting measures.

D. Public schools that receive even start family literacy program funds shall annually evaluate and report to the department of education the results of the program, including the number of children and families served, the services provided and the gains achieved by the children and their families.

E. If the department of education determines that a local even start family literacy program is not meeting benchmarks and performance standards, the department shall notify the public school that continued failure to meet benchmarks and performance standards will result in cessation of funding for the program for the next school year.

F. The department of education shall compile the results of the even start family literacy program and report annually to the legislative education study committee.

**History:** Laws 2001, ch. 168, § 1.

## **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-3.2. Full-day kindergarten programs.**

A. The state board shall adopt rules for the development and implementation of child-centered and developmentally appropriate full-day kindergarten programs. Establishment of full-day kindergarten programs shall be voluntary on the part of school districts and student participation shall be voluntary on the part of parents.

B. The department of education shall require schools with full-day kindergarten programs to conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate kindergarten.

C. The department of education shall monitor full-day kindergarten programs and ensure that they serve the children most in need based upon indicators in the at-risk index. If the department of education determines that a program is not meeting the benchmarks necessary to ensure the progress of students in the program, the department of education shall notify the school district that failure to meet the benchmarks shall result in the cessation of funding for the following school year. The department of education shall compile the program results submitted by the school districts and make an annual report to the legislative education study committee and the legislature.

D. Full-day kindergarten programs shall be phased in over a five-year period as follows with priority given to those school districts that serve children in schools with the highest proportion of students most in need based upon indicators in the at-risk index or that serve children by means of grade-level schools that serve an entire school district:

(1) effective with the 2000-2001 school year, one-fifth of New Mexico's kindergarten classes may be full day;

(2) effective with the 2001-2002 school year, two-fifths of New Mexico's kindergarten classes may be full day;

(3) effective with the 2002-2003 school year, three-fifths of New Mexico's kindergarten classes may be full day;

(4) effective with the 2003-2004 school year, four-fifths of New Mexico's kindergarten classes may be full day; and

(5) effective with the 2004-2005 school year, all of New Mexico's kindergarten classes may be full day.

E. School districts shall apply to the department of education to receive funding for full-day kindergarten programs. In granting approval for funding of full-day kindergarten programs, the department of education shall ensure that full-day kindergarten programs are first implemented in schools that have the highest proportion of students most in need based upon the at-risk index and in schools with available classroom space.

**History:** Laws 2000, ch. 107, § 3; 2001, ch. 296, § 1; 1978 Comp., § 22-2-19, recompiled as 1978 Comp., § 22-13-3.2 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Cross references.** — For state department of education, see N.M. Const., art. XII, § 6, 22-2-5 and 22-2-6 NMSA 1978.

As to length of school day, see 22-2-8.1 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, in Subsection C and D, substituted "at-risk index" for "at-risk factor"; in Subsection D, inserted "school" prior to "districts" and added the language beginning "or that serve" to the end of the subsection; in Subsection E, substituted "and in schools with available classroom space" for "and to schools with available classroom space".

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-3.3. Short title.**

Sections 1 through 5 [22-13-3.3 to 22-13-3.7 NMSA 1978] of this act may be cited as the "Literacy For Children At Risk Act".

**History:** Laws 1989, ch. 113, § 1; 1978 Comp., § 22A-1-1, recompiled as 1978 Comp., § 22-13-3.3 by Laws 2003, ch. 153, § 72.

## **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-1 NMSA 1978 as 22-13-3.3 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-3.4. Purpose.**

The purpose of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978] is to promote greater literacy among children.

**History:** Laws 1989, ch. 113, § 2; 1978 Comp., § 22A-1-2, recompiled as 1978 Comp., § 22-13-3.4 by Laws 2003, ch. 153, § 72.

## **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-2 NMSA 1978 as 22-13-3.4 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-3.5. Definitions.**

As used in the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978]:

A. "child at risk" means a child who attends public school in New Mexico and whose reading, writing or math literacy level, as determined by his school district, falls in the forty-ninth percentile or lower; and

B. "department" means the state department of public education.

**History:** Laws 1989, ch. 113, § 3; 1978 Comp., § 22A-1-3, recompiled as 1978 Comp., § 22-13-3.5 by Laws 2003, ch. 153, § 72.

## **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-3 NMSA 1978 as 22-13-3.5 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-3.6. Literacy for children at risk fund created; administration of fund.**

A. There is created in the state treasury a fund that shall be designated as the "literacy for children at risk fund" that shall be used to set up learning laboratories for the purpose of improving the reading, writing or math literacy level of any child at risk.



B. The literacy for children at risk fund shall be eligible to receive funds from sources that include, but are not limited to, the following:

- (1) appropriations;
- (2) grants, public and private; and
- (3) gifts, public and private.

All funds received by the department for the literacy for children at risk fund shall be used only to carry out the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

**History:** Laws 1989, ch. 113, § 4; 1978 Comp. § 22A-1-4, recompiled as 1978 Comp., § 22-13-3.6 by Laws 2003, ch. 153, § 72.

### ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-4 NMSA 1978 as 22-13-3.6 NMSA 1978.

### **22-13-3.7. Disbursement of funds; approved projects.**

A. Any school district may apply for a grant from the literacy for children at risk fund for the purpose of acquiring, equipping and staffing a learning laboratory.

B. The department shall adopt regulations setting forth the criteria that a school district shall meet in order to qualify for a grant from the literacy for children at risk fund. The criteria to qualify for a grant shall include, but are not limited to, the following:

- (1) the learning laboratory shall improve the reading, writing or math literacy levels of children at risk by at least one grade level per year, as demonstrated to the department's satisfaction;
- (2) the learning laboratory shall encompass the teaching of children in kindergarten through grade twelve who are reading below grade level;
- (3) the learning laboratory shall have reading diagnostic capabilities; and
- (4) the learning laboratory shall have the capability to self-monitor the performance of both the learning laboratory and the children at risk utilizing the laboratory.

C. The amount of any grant awarded under Subsections A and B of this section shall be equal to eighty percent of the total cost of acquiring, equipping and staffing a learning laboratory. Any grant awarded is contingent upon the qualifying school district

demonstrating to the department's satisfaction that it can pay for twenty percent of the total cost of the learning laboratory.

D. Any school district that establishes a learning laboratory under this section may use the laboratory for any other reading, writing or math literacy program when it is not in use for the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

E. The department, after approving the application of a school district to receive a grant under the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978], shall authorize a disbursement of funds, in an amount equal to the grant, from the literacy for children at risk fund directly to the approved school district.

**History:** Laws 1989, ch. 113, § 5; 1978 Comp. § 22A-1-4, recompiled as 1978 Comp., § 22-13-3.7 by Laws 2003, ch. 153, § 72.

#### **ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-5 NMSA 1978 as 22-13-3.7 NMSA 1978.

#### **22-13-4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repeals 22-13-4 NMSA 1978, relating to evaluation of early childhood education programs. For provisions of former section, see 1978 Original Pamphlet.

#### **22-13-5. Special education.**

School districts shall provide special education and related services appropriate to meet the needs of all children requiring special education and related services. Regulations and standards shall be developed and established by the state board for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. Services for students age three through twenty-one may include, but are not

limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the state board and providing parent education. The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, headstart programs, schools or community-based settings.

**History:** 1953 Comp., § 77-11-3, enacted by Laws 1967, ch. 16, § 182; 1969, ch. 256, § 1; reenacted by 1972, ch. 95, § 1; 1978, ch. 211, § 11; 1985, ch. 7, § 1; 1985, ch. 93, § 2; 1989, ch. 135, § 1; 1995, ch. 69, § 2.

## ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "appropriate" for "sufficient" in the first sentence; rewrote the third sentence, which formerly read: "Beginning on July, 1986, school districts shall also provide services for four-year old developmentally disabled children whose parents or guardians request such services"; and rewrote the fourth sentence, which formerly read: "Beginning on July 1, 1987, school districts shall also provide services for three-year-old developmentally disabled children whose parents or guardians request such services".

**The 1995 amendment,** effective June 16, 1995, deleted "for exceptional children" at the end in the section heading; in the first sentence, inserted "and related services" and substituted "children requiring special education and related services" for "exceptional children, unless otherwise provided by law"; substituted "provision" for "conduct" in the second sentence; in the fourth sentence, substituted "preschool" for "developmentally disabled" and inserted "with disabilities"; added the fifth and sixth sentences; in the seventh sentence, inserted "for students age three through twenty-one", inserted "but are not limited to", deleted "and diagnosing" following "evaluating", and substituted "related services as defined by the state board" for "speech, physical or occupational therapy"; and in the eighth sentence, inserted "certified", substituted "shall" for "may" and substituted the language beginning "provided in age-appropriate" for "either home based or center based".

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**State forbidden from discriminating against handicapped in providing education.** — The state is obligated by both federal and state law to provide all its pre-college age children with appropriate educations. Under federal law relating to state programs receiving federal financial assistance, the state is forbidden from discriminating against

the handicapped in meeting this obligation. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 678 F.2d 847 (10th Cir. 1982).

**Discretionary nature of Public Law 94-142**, appearing as 20 U.S.C. § 1400 et seq., frees the state to participate or not in the acquisition of federal funds under the federal Elementary and Secondary Education Act as it chooses. Its choice not to participate is, without more, a governmental decision that is within the state's power and not subject to judicial inquiry. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**State has no obligation to seek federal funds.** — The theory that the state has a continuing obligation to seek federal funds to implement educational goals for handicapped children must fail in light of the congressional amendment rendering the federal Elementary and Secondary Education Act discretionary. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**State's status as monitor over spending of federal funds.** — The state may not technically be required to monitor compliance with § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Its failure to insure compliance by the local school districts, however, implicates it under § 504 insofar as the state's status as the recipient of federal financial assistance obligates it not to permit, directly or indirectly, programs benefiting from federal financial assistance received by the state, to discriminate against handicapped persons within the context of the regulations promulgated under § 504. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**Students in psychiatric care and substance abuse treatment centers.** — Public schools have no constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric care and substance abuse treatment centers, but if the student is handicapped, federal law may require such education. 1988 Op. Att'y Gen. No. 88-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program, 33 A.L.R.4th 1166.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Construction of "stay-put" provision of Education of the Handicapped Act (20 U.S.C. § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section, 103 A.L.R. Fed. 120.

Obligation of public educational agencies, under Individuals with Disabilities Education Act (20 USCA §§ 1400 et seq.), to pay tuition costs for students unilaterally placed in private schools - post-Burlington cases, 152 A.L.R. Fed. 485.

Who is prevailing party for purposes of obtaining attorney's fees under § 615(i)(3)(B) of Individuals with Disabilities Education Act (20 USCA § 1415(i)(3)(B)) (IDEA), 153 A.L.R. Fed. 1

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student, 166 A.L.R. Fed. 503.

## **22-13-6. Special education; definitions.**

As used in the Public School Code [Chapter 22 NMSA 1978]:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act [28-16A-1 NMSA 1978]; and

D. "gifted child" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the state board pursuant to that section. Nothing in this section shall preclude a school district from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department of education approved gifted programs for those students who meet the established criteria.

**History:** 1953 Comp., § 77-11-3.1, enacted by Laws 1972, ch. 95, § 2; 1978, ch. 211, § 12; 1985, ch. 93, § 3; 1986, ch. 33, § 30; 1994, ch. 25, § 1; 1995, ch. 69, § 3.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1972, ch. 95, § 2, repealed 77-11-3.1, 1953 Comp., as enacted by Laws 1967, ch. 290, § 1, relating to nonprofit training centers for educating or training handicapped students, and enacted a new 22-13-6 NMSA 1978.

**The 1994 amendment**, effective July 1, 1994, deleted "Community Services" preceding "Act" in Subsection C; and rewrote and restructured Subsection D, which formerly contained an introductory paragraph and Paragraphs (1) to (3).

**The 1995 amendment**, effective June 16, 1995, substituted "children with disabilities" for "developmentally disabled" in Subsection C, deleted combined former Subsections D and E to form Subsection D, and inserted "school" preceding "district" and deleted "state" preceding "department of education" in the last sentence in Subsection D.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-6.1. Gifted children; determination.**

A. The department shall adopt standards pertaining to the determination of who is a gifted child and shall publish those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:

- (1) creativity or divergent-thinking ability;

- (2) critical-thinking or problem-solving ability;
- (3) intelligence; and
- (4) achievement.

History: 1978 Comp., § 22-13-6.1, enacted by Laws 1994, ch. 25, § 2; 2005, ch. 25, § 1.

## **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2005 amendment**, effective June 17, 2005, allows each school district to create a single district-wide gifted education program advisory committees or as many committees as there are high schools in the district and provides that each committee shall reflect the cultural diversity of the enrollment of the district of the schools the committee advises.

### **22-13-7. Special education; responsibility.**

A. The state board shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education with the approval of the state board shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The state board shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts. Portions of the program may be subcontracted, and periodic reports regarding the efficacy of programs for exceptional children shall be made to the legislative education study committee.

D. The department of education shall coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement.

**History:** 1953 Comp., § 77-11-3.2, enacted by Laws 1972, ch. 95, § 3; 1978, ch. 211, § 13; 1990, ch. 94, § 4; 1993, ch. 229, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1972, ch. 95, § 3, repealed 77-11-3.2, 1953 Comp., as enacted by Laws 1971, ch. 109, § 1, relating to provision of special education services and facilities by localities, and enacted a new 22-13-7 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, substituted "state board" for "state board of education" in Subsections A and B, deleted "department" after "health and environment" at the end of Subsection B, added Subsection C, and made minor stylistic changes in Subsection B.

**The 1993 amendment,** effective June 18, 1993, deleted "and environment" at the end of Subsection B and added Subsection D.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Secretary of health and environment.** — Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Requisite conditions and appropriate factors affecting educational placement of handicapped children, 23 A.L.R.4th 740.

### **22-13-8. Special education; private.**

A. The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them.

B. A local school board may make an agreement with private, nonsectarian, nonprofit educational training centers for educating exceptional children and for



providing for payment for such education. All financial agreements between local boards and private, nonsectarian, nonprofit educational training centers must be negotiated in accordance with regulations promulgated by the director. Payment for education and services under such agreements shall be made by the local board of education from funds available.

C. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers must be approved by the state superintendent. All agreements must provide for diagnosis and an educational program for each child which meets state standards for such programs. The agreements must also acknowledge the authority and responsibility of the local board and the department of education to conduct on-site evaluations of programs and pupil progress to insure meeting state standards.

D. Exceptional children attending a private, nonsectarian, nonprofit training center shall be counted in the special education membership of the school district as enrolled in the Class D special education program.

**History:** 1953 Comp., § 77-11-3.3, enacted by Laws 1972, ch. 95, § 4; 1974, ch. 8, § 21; 1977, ch. 81, § 1; 1978, ch. 211, § 14.

## ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of, and sufficiency of compliance with, state standards for approval of private school to receive public placements of students or reimbursement for their educational costs, 48 A.L.R.4th 1231.

### **22-13-9. Part-time schools.**

A. When fifteen or more certificates of employment have been issued within a school district, the local school board of that school district shall establish a part-time school for students issued certificates of employment pursuant to the provisions of Section 22-12-6 NMSA 1978 unless excused from establishing the school for sufficient reasons by the state superintendent.

B. If a part-time school is established in a school district, all students issued certificates of employment shall attend the part-time school unless excused for sufficient reason by the superintendent of schools of the school district.

C. The state board shall adopt regulations concerning the establishment and operation of part-time schools; however, all part-time schools shall give instruction for not less than one hundred fifty hours a year.

**History:** 1953 Comp., § 77-11-4, enacted by Laws 1967, ch. 16, § 183.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-10. Part-time schools; restriction on employment of students; penalty.**

A. Any person, business or corporation employing a person subject to the provisions of the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] who has attained the age of fourteen years shall permit the person to attend a part-time school established in the school district where the person resides or is employed.

B. When the maximum number of hours of employment for a person having attained the age of fourteen years is established by state or federal law, the hours of attendance at a part-time school shall be computed as hours of employment under these laws. Nothing in this section shall affect the right of an employer to reduce accordingly the compensation to be paid a person because of the time spent in a part-time school.

C. Any person, business or corporation violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-5, enacted by Laws 1967, ch. 16, § 184.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-13-11. Repealed.**

### **ANNOTATIONS**

**Temporary provisions.** — Laws 2003, ch. 394, § 6, effective April 8, 2003, all personnel, appropriations, money, records, property, equipment and supplies applied to the administration of the state's adult basic education programs by the state department of public education shall be transferred to the commission on higher education. All contracts and agreements relating to the activities of the personnel and records transferred pursuant to the provisions of this section shall also be transferred.

**Repeals.** — Laws 2003, ch. 394, § 7 repeals 22-13-11 NMSA 1978, relating to adult education classes. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-13-12. Approved driver-education courses.**

A. The state board or its designated representative shall adopt and promulgate minimum standards for approved driver-education and motorcycle driver-education courses taught in any school in the state.

B. A driver-education or motorcycle driver-education course shall provide to students legally entitled to operate the type of motor vehicle involved, classroom instruction and behind-the-wheel or on-the-motorcycle training in the safe operation of the motor vehicle.

C. An approved driver-education or motorcycle driver-education course is a course of instruction certified by the state superintendent as meeting the minimum standards for such a driver-education course adopted by the state board or its designated representative.

**History:** 1953 Comp., § 77-11-7, enacted by Laws 1967, ch. 16, § 186; 1973, ch. 381, § 4.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-13-13. School lunch program.**

A. The state board shall prescribe standards and regulations for the establishment and operation of school lunch programs in the state. The department of education shall provide technical advice and assistance to any school district in connection with the establishment or operation of a school lunch program.

B. A local school board may accept gifts or grants for use in connection with a school lunch program in the school district.

C. A "school lunch program" means a program under which lunches are served by a public school in the state on a nonprofit basis to students attending the school.

**History:** 1953 Comp., § 77-11-8, enacted by Laws 1967, ch. 16, § 187.

### **ANNOTATIONS**

**Cross references.** — As to designation of state board as sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-13.1. Temporary provision; food and beverages sold outside of school meal programs.**

The public education department, in collaboration with the department of health and one representative each from the New Mexico action for healthy kids, parents, students, school food service directors, school boards, school administrators, agriculture, dairy producers and the food and beverage industry, shall adopt rules no later than December 31, 2005 governing foods and beverages sold in all public schools to students outside of federal department of agriculture school meal programs. The rules shall, at a minimum, address nutrition standards, portion sizes and times when students may access these items. Nothing in this section shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers or groups when the items are intended for sale off the school campus.

**History:** Laws 2005, ch. 115, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 115 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## **22-13-14. Emergency drills; requirement.**

A. An emergency drill shall be conducted in each public and private school of the state at least once each week during the first four weeks of the school year and at least once each month thereafter until the end of the school year. Two drills during the year shall be shelter-in-place drills and one shall be an evacuation drill, as directed by the department. The remainder of the drills shall be fire drills. It shall be the responsibility of the person in charge of a school to carry out the provisions of this section.

B. In locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism.

C. The department shall determine penalties for any person failing to meet the provisions of this section.

History: 1953 Comp., § 77-11-9, enacted by Laws 1967, ch. 16, § 188; 1979, ch. 81, § 1; 2005, ch. 27, § 1.

### **ANNOTATIONS**

**Cross references.** — For fire protection training programs, see 59A-52-6 NMSA 1978.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2005 amendment,** effective July 1, 2005, requires that two emergency drills during the year be shelter-in-place drill, one drill be an evacuation drill and the remainder of the drills be fire drills.

## **22-13-15. Public school instruction; prohibition;**

A. No person shall teach sectarian doctrine in a public school.

B. Any person violating the provisions of this section by teaching sectarian doctrine in a public school shall be immediately discharged from further employment with a

school district. The provisions of Sections 22-10-17 through 22-10-20 NMSA 1978 relating to the discharge of certified school personnel apply to this section.

**History:** 1953 Comp., § 77-11-10, enacted by Laws 1967, ch. 16, § 189.

## **ANNOTATIONS**

**Cross references.** — For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring religious tests and requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

**Compiler's notes.** — Sections 22-10-19 and 22-10-20 NMSA 1978, referred to in the second sentence in Subsection B, were repealed in 1986.

Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-16. Private school programs; solicitations; permit; penalty.**

A. It is unlawful for any private school, or its agent, to canvass a prospective student in New Mexico for the purpose of selling to the student a scholarship or collecting tuition from the student in advance of the date for registration for the school without first obtaining a permit from the state board. This shall not be construed to prevent canvassing by schools for prospective students where no scholarship is sold or where no fee for tuition is collected in advance of registration. This shall also not be construed to prevent a school from advertising.

B. To obtain a permit as required by this section, an application shall be filed with the state board, signed by an authorized representative of the school, accompanied by any reasonable fee required by the state board and containing the following:

- (1) the name and location of the school seeking the permit;
- (2) the number of instructors employed by the school;
- (3) the courses of instruction offered by the school; and
- (4) any additional information required by the state board.

C. The state board may revoke, at any time, any permit issued by it for satisfactory cause.

D. Any person violating any provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-11, enacted by Laws 1967, ch. 16, § 190.

### ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Instruction by correspondence schools as commerce, 26 A.L.R. 360, 47 A.L.R. 782.

Liability of private school or educational institution for breach of contract arising from provision of deficient educational instruction, 46 A.L.R.5th 581.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student, 47 A.L.R.5th 1.

78 C.J.S. Schools and School Districts §§ 58, 811.

### **22-13-17 to 22-13-24. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 1979, ch. 54, § 1, repeals 22-13-17 to 22-13-24 NMSA 1978, enacted by Laws 1969, ch. 180, §§ 27 to 33 and Laws 1972, ch. 2, § 1, relating to education enrichment program and diesel mechanics program. For provisions of former sections, see 1978 Original Pamphlet.

### **22-13-25. Academic competitions.**

Each public school in each conference shall provide academic competitions similar to its athletic competitions. A student who participates in an academic competition shall qualify for an academic letter in the subject in which he competes. Academic competitions between schools shall be governed by the New Mexico activities association.

**History:** Laws 2001, ch. 70, § 1.

## ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-26. Youth programs established.**

The children, youth and families department, the state department of public education, the department of health, the human services department and the labor department shall each contract for programs, subject to appropriations provided for that purpose, funded through a public-private partnership, for community-based after-school and other prevention programs and services for youth. Each department shall ensure, prior to contracting for services, that private matching funding is available and committed for the purpose of the contract.

**History:** Laws 2003, ch. 161, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 161 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-13-27. Distance learning and computer-based courses.**

Public schools that offer distance learning and computer-based courses of study shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.



**History:** Laws 2003, ch. 162, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 162 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## ARTICLE 13A Incentives for School Improvement

### ANNOTATIONS

**(Repealed by Laws 2003, ch. 153, § 73.)**

**Compiler's notes.** — Laws 2003, ch. 143, § 2, effective July 1, 2004, and contingent upon adoption of an amendment to N.M. Const., art. XII, § 6, repeals Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978. The amendment to art. XII, § 6 was adopted at the special election held September 23, 2003. Laws 2003, ch. 153, § 73, repeals Article 13A, effective April 4, 2003.

### **22-13A-1 to 22-13A-6. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 2003, ch. 153, § 73 repeals 22-13A-1 NMSA 1978, as amended by Laws 1997, ch. 236, § 1, relating to the short title, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-13A-2 NMSA 1978, as amended by Laws 1997, ch. 236, § 2, relating to the purpose of the Incentives for School Improvement Act, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-13A-3 NMSA 1978, as enacted by Laws 1989, ch. 137, § 3, relating to defining terms used in the Incentives for School Improvement Act,

effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-13A-4 NMSA 1978, as amended by Laws 1997, ch. 236, § 3, relating to the creation and administration of the incentives for school improvement program, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-13A-5 NMSA 1978, as amended by Laws 1997, ch. 236, § 4, relating to the measurement criteria for the incentives for school improvement program, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

Laws 2003, ch. 153, § 73 repeals 22-13A-6 NMSA 1978, as amended by Laws 1997, ch. 236, § 6, relating to the creation of the incentives for school improvement fund, effective April 4, 2003. For provisions of former section, see 2001 Replacement Pamphlet.

## **ARTICLE 13B**

### **Twenty-First Century Education**

(Repealed by Laws 1993, ch. 286, § 1.)

#### **22-13B-1 to 22-13B-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13, as amended by Laws 1993, ch. 286, § 1, repeals 22-13B-1 to 22-13B-9 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, §§ 1 to 9, effective July 1, 1998. For provisions of former sections, see 1993 Replacement Pamphlet.

## **ARTICLE 14**

### **Vocational Education or Rehabilitation**

#### **22-14-1. Definitions.**

As used in Sections 22-14-2 through 22-14-16 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable an individual to engage in a remunerative occupation. Vocational education may provide, but is not limited to, guidance and counseling, vocational instruction, training for vocational education instructors, transportation, and training material and equipment;

B. "handicapped individual" means any individual under a physical or mental disability which constitutes a substantial handicap to employment but which is of such a nature that vocational rehabilitation may be reasonably expected to enable the individual to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a handicapped individual to engage in a remunerative occupation. Vocational rehabilitation may provide, but is not limited to, medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance, and training material and equipment; and

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education or vocational rehabilitation.

**History:** 1953 Comp., § 77-12-1, enacted by Laws 1967, ch. 16, § 191.

## ANNOTATIONS

**Cross references.** — As to technical and vocational institute districts, see 21-16-1 NMSA 1978 et seq.

As to development training, see 21-19-7 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1

### **22-14-2. Vocational education; state governing authority.**

A. The commission is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education unless otherwise provided by law.

B. The commission is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or for any federal aid funds, except as may otherwise be provided by law.

C. The commission may delegate to the department its administrative functions relating to vocational education.

**History:** 1953 Comp., § 77-12-2, enacted by Laws 1967, ch. 16, § 192; 2005, ch. 328, § 1.

## ANNOTATIONS

**Cross references.** — For designation of state board as sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, see 22-9-2 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changes "state board" to "commission" and deletes "vocational rehabilitation" in Subsections A and B; and adds Subsection C to provide that the commission may delegate to administrative functions relating to vocational education to the department.

### **22-14-2.1. Vocational rehabilitation; state governing authority.**

A. The department is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational rehabilitation, unless otherwise provided by law.

B. The department is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

History: Laws 2005, ch. 328, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 328 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

### **22-14-3. State agency for vocational education; authority.**

The commission is the sole agency of the state for the supervision of the administration of federal aid funds relating to vocational education. The commission may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

- B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the commission or the department from agencies receiving federal aid funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal aid funds;
- G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds;
- H. coordinate as required by the federal agency with the state workforce development board; and
- I. as required by the federal agency, make available a list of all school dropout, post-secondary and adult programs assisted pursuant to the state plan.

**History:** 1953 Comp., § 77-12-3, enacted by Laws 1967, ch. 16, § 193; 2005, ch. 328, § 3.

## **ANNOTATIONS**

**Cross references.** — For powers and duties of state board when designated as sole agency of state for administration or supervision of administration of federal aid funds generally, see 22-9-3 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, the former provision that the state board was the sole agency for the administration of federal funds and provides that the commission is the sole agency for the administration of federal funds relating to vocational education; adds subsection H to provide that the commission may coordinate as required by the federal agency with the state workforce development board; and adds subsection I to provide that the commission may as required by the federal agency make available a list of school dropout, post-secondary and adult programs assisted pursuant to the state plan.

### **22-14-3.1. State agency for vocational rehabilitation; authority.**

The department is the sole agency of the state for the administration or the supervision of the administration of any federal aid funds pertaining to vocational rehabilitation. The department may:

- A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;
- B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the department from agencies receiving federal aid funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal aid funds; and
- G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds.

History: Laws 2005, ch. 328, § 4.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 328 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

#### **22-14-4. Repealed.**

History: 1953 Comp., § 77-12-4, enacted by Laws 1967, ch. 16, § 194; repeals Laws 2005, ch. 328, § 9.

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 328, § 9 repeals 22-14-4 NMSA 1978, relating to vocational education division, effective June 17, 2005. For provisions of former section, see 2003 Replacement Pamphlet.

#### **22-14-5. Instructional support and vocational education division; powers; duties.**

Subject to the policies of the commission, the instructional support and vocational education division of the department shall:

- A. provide vocational education to qualified persons;
- B. act as the representative of the commission in administering any state plan or federal aid funds relating to vocational education;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;
- D. enter into reciprocal agreements with other states to provide vocational education;
- E. accept gifts or grants to be used for vocational education;
- F. enforce rules for the administration of laws relating to vocational education; and
- G. conduct research and compile statistics relating to vocational education.

**History:** 1953 Comp., § 77-12-5, enacted by Laws 1967, ch. 16, § 195; 1993, ch. 226, § 30; 2005, ch. 328, § 5.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted "of the department of education" in the introductory paragraph and substituted "enforce" for "adopt" at the beginning of Subsection F.

**The 2005 amendment**, effective June 17, 2005, changes "state board" to "commission" and the "vocational education division" to the "instructional support and vocational education division".

#### **22-14-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-14-6 NMSA 1978, as enacted by Laws 1971, ch. 324, § 1, transferring the division of the services for the blind of the health and social services department to the vocational rehabilitation division of the department of education, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

#### **22-14-7. Vocational rehabilitation division; director.**

A. The "vocational rehabilitation division" is created within the department.

B. The secretary shall appoint a director of the vocational rehabilitation division to be known as the "director of vocational rehabilitation".

**History:** 1953 Comp., § 77-12-6, enacted by Laws 1967, ch. 16, § 196; 2005, ch. 328, § 6.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, deletes the former provision in Subsection B that with the approval of the state board, the state superintendent shall appoint a director; provides in Subsection B that the secretary shall appoint a director; and deletes former Subsection C which provided that the state board may delegate to the vocational rehabilitation division its administrative functions relating to vocational rehabilitation.

### **22-14-8. Vocational rehabilitation division; powers; duties.**

The vocational rehabilitation division of the public education department shall:

- A. provide vocational rehabilitation to qualified individuals;
- B. administer any state plan or federal aid funds relating to vocational rehabilitation;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;
- D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
- E. accept gifts or grants to be used for vocational rehabilitation;
- F. enforce regulations for the administration of laws relating to vocational rehabilitation;
- G. conduct research and compile statistics relating to vocational rehabilitation; and
- H. ensure that behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

**History:** 1953 Comp., § 77-12-7, enacted by Laws 1967, ch. 16, § 197; 1989, ch. 88, § 1; 1993, ch. 226, § 31; 1993, ch. 229, § 2; 2004, ch. 46, § 11.



## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, added Subsection H.

**1993 amendments.** — Laws 1993, ch. 226, § 31, effective July 1, 1993, inserting "of the department of education" in the introductory paragraph and substituting "enforce" for "adopt" at the beginning of Subsection F, was approved April 7, 1993. However, Laws 1993, ch. 229, § 2, effective June 18, 1993, also amending this section by deleting former Subsection H, which read "coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement" and making related grammatical changes, but not giving effect to the changes made by the first 1993 amendment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 229, § 2. See 12-1-8 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, added Subsection H and made other minor amendments.

**Severability clauses.** — Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

### **22-14-9. Custody of funds; budgets; disbursements.**

A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.

B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the instructional support and vocational education division or the director's authorized representative.

C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the vocational rehabilitation division or the director's authorized representative.

D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received.

**History:** 1953 Comp., § 77-12-8, enacted by Laws 1967, ch. 16, § 198; 2005, ch. 328, § 7.

### ANNOTATIONS

**Cross references.** — For provisions relating to custody, budgeting and disbursement of federal aid funds generally, see 22-9-5 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changes "vocational education" to "the instructional support and vocational education division" and provides that warrants may be issued by the director's authorized representative in Subsection B and provides in Subsection C that warrants may be disused by the vocational rehabilitation division or the director's authorized representative.

### 22-14-10. Recompiled.

### ANNOTATIONS

**Recompilations.** — Laws 1993, ch. 226, § 53B recompiles 22-14-10 NMSA 1978, as enacted by Laws 1971, ch. 324, § 4, relating to the division as the designated agency for federal funds, as 22-14-30 NMSA 1978, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### 22-14-11. Vocational rehabilitation; eligibility.

Vocational rehabilitation shall be provided to any person who:

- A. is a resident of the state at the time of filing an application for vocational rehabilitation; and
- B. qualifies for eligibility under a vocational rehabilitation program established by the state; or
- C. qualifies for eligibility under the terms of an agreement that the state has with the federal government or with another state.

**History:** 1953 Comp., § 77-12-9, enacted by Laws 1967, ch. 16, § 199; 2005, ch. 328, § 8.

### ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, deletes "vocational education".

### 22-14-11.1. Third party liability.

A. The vocational rehabilitation division shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation.

B. When the division provides vocational rehabilitation services to qualified individuals, the division is subrogated to any right of the individual against a third party for recovery of costs incurred.

**History:** Laws 1983, ch. 60, § 1.

## **22-14-12. Hearings.**

A. A fair hearing shall be provided for any individual applying for or receiving vocational rehabilitation aggrieved by any action or inaction of the vocational rehabilitation division or of the director of vocational rehabilitation.

B. The state board shall adopt regulations for the conduct of hearings pursuant to this section.

**History:** 1953 Comp., § 77-12-10, enacted by Laws 1967, ch. 16, § 200; 1983, ch. 60, § 2.

## **22-14-13. Nontransferable or nonassignable rights.**

The rights of any individual under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

**History:** 1953 Comp., § 77-12-11, enacted by Laws 1967, ch. 16, § 201.

## **22-14-14. Limitations on political activities.**

No person engaged in administering any vocational education or vocational rehabilitation program pursuant to Sections 22-14-1 through 22-14-16 NMSA 1978 shall use his official authority or influence to permit the use of the vocational education or vocational rehabilitation program to interfere with any public election or partisan political campaign. Nor shall such person take any active part in the management of a political campaign, or participate in any political activity beyond the person's constitutional rights of voting and of free speech. Nor shall he be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose. Any person violating the provisions of this section shall be subject to discharge or suspension.

**History:** 1953 Comp., § 77-12-12, enacted by Laws 1967, ch. 16, § 202.

## **22-14-15. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1983, ch. 60, § 4, repeals 22-14-15 NMSA 1978, as enacted by Laws 1967, ch. 16, § 203, relating to the cooperation of health officials in the examination of applicants for vocational rehabilitation. For provisions of former section, see 1978 original pamphlet.

Laws 1983, ch. 60, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **22-14-16. Admission to state educational institutions; exemption from certain fees.**

Upon written request of the state board, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, all handicapped individuals meeting the standards of the institution.

**History:** 1953 Comp., § 77-12-14, enacted by Laws 1967, ch. 16, § 204.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

### **22-14-17 to 22-14-19. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1983, ch. 156, § 3, repeals 22-14-17 to 22-14-19 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, §§ 1 to 3, relating to the northern New Mexico rehabilitation center, effective July 1, 1983. For provisions of former sections, see 1978 Original Pamphlet.

### **22-14-20. New Mexico school for the visually handicapped; certain functions transferred.**

There is transferred to the services for the blind administrative unit of the vocational rehabilitation division of the department of education those powers, fiscal responsibilities, duties, records, equipment, lands, buildings and personnel of the New Mexico school for the visually handicapped pertaining to the training, rehabilitating and employing of blind persons over the age of eighteen years in cooperation with any other federal or state agency.

**History:** 1953 Comp., § 73-23-1.2, enacted by Laws 1971, ch. 324, § 5; 1973, ch. 209, § 2; 1978 Comp., § 21-5-3, recompiled as 1978 Comp., § 22-14-20 by Laws 1983, ch. 60, § 3.

### **22-14-21. Products of clients of the commission for the blind; purchasing agent to determine value.**

It is the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of the commission for the blind and offered for sale to the state, or any other governmental agency or political subdivision thereof having its own purchasing agency, by the commission for the blind and approved for that use by the state purchasing agent, to revise the prices from time to time in accordance with changing market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as are necessary to carry out the purpose of Sections 22-14-21 through 22-14-23 NMSA 1978.

**History:** 1941 Comp., § 6-410, enacted by Laws 1953, ch. 163, § 1; 1953 Comp., § 73-23-7; Laws 1977, ch. 159, § 1; 1978 Comp., § 21-5-9, recompiled as 1978 Comp., § 22-14-21 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 32.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Products of clients of services for the blind; division of vocational rehabilitation; purchasing agent to determine value"; substituted "the commission for the blind" for "services for the blind" in two places; substituted "22-14-21 through 22-14-23 NMSA 1978" for "73-23-7 through 73-23-9 NMSA 1953" at the end of the section; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

### **22-14-22. Purchases by state agencies and subdivisions.**

Except as hereinafter provided, all products thereafter procured by or for the state, or any governmental agency or political subdivision thereof having its own purchasing agency, shall be procured in accordance with applicable specifications of the state purchasing agent from the commission for the blind or duly established agencies or branches thereof whenever the products are available at the price determined, as provided in Section 22-14-21 NMSA 1978, to be a fair market price for the product so manufactured, and no advertisement or notice for bids from other suppliers shall be necessary.

**History:** 1941 Comp., § 6-411, enacted by Laws 1953, ch. 163, § 2; 1953 Comp., § 73-23-8; 1977, ch. 159, § 2; 1978 Comp., § 21-5-10, recompiled as 1978 Comp., § 22-14-22 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 33.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "the commission for the blind" for "services for the blind"; substituted "22-14-21 NMSA 1978" for "73-23-7 NMSA 1953"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

### **22-14-23. Application of funds.**

All money received by the commission for the blind or any duly established agency or branch thereof from the sale of products manufactured by clients of the commission for the blind to the state, any subdivision thereof or any other purchaser shall be placed in a special fund, which shall be used only for ordinary and necessary business expenses and to purchase raw materials, supplies and capital improvements for the manufacturing of products and to pay such compensation to the clients manufacturing the products as may be determined to be reasonable by the commission for the blind.

**History:** 1941 Comp., § 6-412, enacted by Laws 1953, ch. 163, § 3; 1953 Comp., § 73-23-9; Laws 1977, ch. 159, § 3; 1981, ch. 71, § 1; 1978 Comp., § 21-5-11, recompiled as 1978 Comp., § 22-14-23 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 34.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "the commission for the blind" for "services for the blind" in two places; inserted "manufactured by clients of the commission for the blind"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 5; 68 Am. Jur. 2d Schools § 53 et seq.

### **22-14-24. Purpose.**

The purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 is to provide blind persons with remunerative employment, to enlarge the economic opportunities for the blind and to stimulate them to greater efforts in striving to make themselves self-supporting, by authorizing blind persons licensed in accordance with the provisions of those sections to operate vending stands on any state property where vending stands may be properly and satisfactorily operated by blind persons, by granting blind persons

a preference in the operation of vending stands on state property, by authorizing cooperation with the United States government in the administration of the vending stand program for the blind on federal property and by authorizing the commission to establish, maintain and operate a vending stand program for the blind.

**History:** 1953 Comp., § 59-12-1, enacted by Laws 1957, ch. 180, § 1; 1971, ch. 324, § 2; 1978 Comp., § 28-9-1, recompiled as 1978 Comp., § 22-14-24 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 10.

## ANNOTATIONS

**Cross references.** — For employment of the handicapped, see 28-10-1 NMSA 1978 et seq.

### 22-14-25. Definitions.

For the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978:

A. "blind person" means a person having not more than ten percent visual acuity in the better eye with correction. This means a person who has:

(1) not more than 20/200 central visual acuity in the better eye after correction; or

(2) an equally disabling loss of the visual field, i.e., a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. Such blindness shall be certified by a duly licensed ophthalmologist, subject to approval of the New Mexico board of medical examiners;

B. "commission" means the commission for the blind;

C. "license" means a written instrument issued by the commission to a blind person pursuant to Sections 22-14-24 through 22-14-29 NMSA 1978, authorizing the blind person to operate a vending stand on state, federal or other property;

D. "state property" means any building or land owned, leased or occupied by any department or agency of the state or any instrumentality wholly owned by the state or by any county or municipality or by any other local governmental entity; and

E. "vending stand" means:

(1) such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary for the vending of such articles as may be approved by the commission, agency or person having control of the property on which the stand is to be located; and

(2) manual or coin-operated vending machines or similar devices for vending the articles mentioned in Paragraph (1) of this subsection.

**History:** 1953 Comp., § 59-12-2, enacted by Laws 1957, ch. 180, § 2; 1978 Comp., § 28-9-2, recompiled as 1978 Comp., § 22-14-25 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 11.

## **22-14-26. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 108, § 16 repeals former 22-14-26 NMSA 1978, as enacted by Laws 1971, ch. 324, § 3 and recompiled by Laws 1983, ch. 60, § 3, defining "division," effective July 1, 1986. For provisions of former section, see 1984 Replacement Pamphlet.

## **22-14-27. Assuring preferences to blind persons.**

The head or governing body of each department or agency and of each county or municipality or other local governmental entity having control of state property shall:

A. adopt policies and take action as may be necessary to assure that blind persons licensed by the commission will be given a preference in the establishment and operation of vending stands on property under its control, when vending stands may be properly and satisfactorily operated by blind persons;

B. cooperate with the commission in surveys of property under its control to find suitable locations for the operation of vending stands by blind persons and, after it has been determined that there is need for a vending stand and after the commission has determined that the stand may be properly and satisfactorily operated by a blind person, issue to the commission a permit for the operation of a vending stand by a licensed blind person and cooperate with the commission in the installation of the vending stand; and

C. provide appropriate vending space and utility services for the operation of vending stands at no cost to the commission or to the blind licensee.

**History:** 1953 Comp., § 59-12-3, enacted by Laws 1957, ch. 180, § 3; 1978 Comp., § 28-9-4, recompiled as 1978 Comp., § 22-14-27 by Laws 1983, ch. 60, § 3; 1985, ch. 233, § 1; 1986, ch. 108, § 12.

### **ANNOTATIONS**

**Determinations where cooperative effort.** — While under this section there was to be a cooperative effort between the division (now the commission) and the agency, it was the division that made the determination as to the need for a vending stand and the



further determination that such stand might be properly and satisfactorily operated by a blind person. 1964 Op. Att'y Gen. No. 64-77.

## **22-14-28. Powers and duties of the commission relating to the vending stand program.**

In carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978, the commission:

- A. shall prescribe regulations governing:
  - (1) personnel standards;
  - (2) the protection of records and confidential information;
  - (3) eligibility for licensing of blind persons as vending stand operators;
  - (4) termination of licenses;
  - (5) the title to vending stand equipment and the interest in stocks of merchandise;
  - (6) procedures for fair hearings; and
  - (7) such other regulations as may be necessary to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;
- B. shall appoint such personnel as may be necessary for the administration of the vending stand program;
- C. shall make surveys to find locations where vending stands may be properly and satisfactorily operated by blind persons and shall establish vending stands as it deems appropriate;
- D. shall furnish each vending stand established with adequate suitable equipment, shall be responsible for the maintenance and repair of the equipment and shall furnish each vending stand with an adequate initial stock of merchandise;
- E. shall provide such management and supervisory services as are deemed necessary by the commission to assure that each vending stand will be operated in the most effective and productive manner possible;
- F. shall cooperate with the United States department of education in the administration of the vending stand program on federal property and adopt such methods of operation and take such action as may be required to secure the full benefits of that program;

G. shall prepare and submit to the governor annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out the purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 and estimates of the amounts to be made available for this purpose from all sources;

H. shall take such other action as may be necessary or appropriate to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

I. may enter into agreements with private nonprofit organizations for furnishing services to the vending stand program; provided that all such services and activities of the nonprofit organizations relating to the vending stand program shall be subject to the commission's supervision and control;

J. may, in its discretion, set aside funds from the operation of vending stands for such purposes as maintenance and replacement of equipment, the purchase of new equipment, the provision of management services, guaranteeing a fair minimum return to all vending stand operators and such other purposes as it may determine appropriate and which are not inconsistent with federal laws and regulations relating to the "setting aside of funds"; provided that in no case shall the amount set aside from any vending stand exceed a reasonable sum in relation to the net profit to the operator of the stand in the opinion of the executive officer of the agency; and

K. may accept gifts and donations made unconditionally, or subject to such conditions as it may determine appropriate, for the purposes of carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978 and may use, hold, invest or reinvest such gifts for those purposes.

**History:** 1953 Comp., § 59-12-4, enacted by Laws 1957, ch. 180, § 4; 1978 Comp., § 28-9-5, recompiled as 1978 Comp., § 22-14-28 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 13.

## ANNOTATIONS

**Broad powers granted.** — In order that the division (now the commission) be able to achieve the statutory ends, the legislature granted it broad powers. 1964 Op. Att'y Gen. No. 64-77.

### 22-14-29. Hearings.

The commission shall provide an opportunity for a fair hearing to any licensed vending stand operator dissatisfied with any action arising from the operation or administration of the vending stand program.

**History:** 1953 Comp., § 59-12-5, enacted by Laws 1957, ch. 180, § 5; 1978 Comp., § 28-9-6, recompiled as 1978 Comp., § 22-14-29 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 14.

## **22-14-30. Vocational rehabilitation division; designated agency for federal funds.**

The vocational rehabilitation division of the department of education is designated the sole state agency to administer and receive any federal funds relating to vocational rehabilitation of the blind.

**History:** 1953 Comp., § 77-12-8.1, enacted by Laws 1971, ch. 324, § 4; 1978 Comp., § 22-14-10, recompiled as 1978 Comp., § 22-14-30 by Laws 1993, ch. 226, § 53.

### **ANNOTATIONS**

**Cross references.** — As to designation of state agencies for administration or receipt of federal funds generally, see 22-9-1 NMSA 1978 et seq.

## **ARTICLE 15 Instructional Material**

### **22-15-1. Short title.**

Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law".

**History:** 1953 Comp., § 77-13-1, enacted by Laws 1967, ch. 16, § 205; 1975, ch. 270, § 1; 2005, ch. 80, § 1.

### **ANNOTATIONS**

**Cross references.** — As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

**The 2005 amendment,** effective April 4, 2005, reenacts this section without amendment.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 318 et seq.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

Furnishing free textbooks to sectarian school or student therein, 93 A.L.R.2d 986.

## **22-15-2. Definitions.**

As used in the Instructional Material Law [22-15-1 NMSA 1978]:

A. "division" or "bureau" means the instructional material bureau of the department;

B. "director" or "chief" means the chief of the bureau;

C. "instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media;

D. "multiple list" means a written list of those instructional materials approved by the department;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law; and

F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership.

History: 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2; 1993, ch. 226, § 35; 2005, ch. 80, § 2.

### **ANNOTATIONS**

**The 2003 amendment**, effective June 20, 2003, substituted "of" for "in" following "material bureau" in Subsection A; and added "including on-line resources, distance learning media and productivity software" at the end of Subsection C.

**The 2005 amendment**, effective April 4, 2005, changes the definition of "instructional material" to textbooks and media that are uses as the basie for instruction, including combinations of textbooks, kits, supplementary material and electronic media.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-3. Bureau; chief.**

A. The "instructional material bureau" is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a chief of the bureau.

**History:** 1953 Comp., § 77-13-3, enacted by Laws 1967, ch. 16, § 207; 1975, ch. 270, § 3; 1993, ch. 226, § 36.

### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline, which formerly read "Division director; surety bond"; substituted "instructional material bureau" for "state instructional material division" in Subsection A; substituted "chief of the bureau" for "director of the division to be known as the 'state instructional material director' "; and deleted former Subsection C, pertaining to the official bond of the director.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-4. Bureau; duties.**

Subject to the policies and regulations of the department, the bureau shall:

A. administer the provisions of the Instructional Material Law [22-15-1 NMSA 1978];

B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process.

History: 1953 Comp., § 77-13-4, enacted by Laws 1967, ch. 16, § 208; 1975, ch. 270, § 4; 1993, ch. 226, § 37; 1997, ch. 100, § 1; 2005, ch. 80, § 3.

### ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "Bureau" and "bureau" for "Division" and "division" in the catchline and introductory paragraph; inserted "and regulations" in the introductory paragraph; deleted "adopt and" at the beginning of Subsection B; and added Subsection D, making related grammatical changes.

**The 1997 amendment**, effective July 1, 1998, inserted "and instructional material funds" in Subsection B.

**The 2005 amendment**, effective April 4, 2005, adds Subsection E to require the bureau to enforce rules that require local school boards to implement a process that ensures parents and community members are involved in the instructional material review process.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-5. Instructional material fund.**

A. The state treasurer shall establish a fund to be known as the "instructional material fund".

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]. Transportation charges for the delivery of instructional material to a school district, a state institution, a private school as agent or an adult

basic education center and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional materials that appear on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material.

**History:** 1953 Comp., § 77-13-5, enacted by Laws 1967, ch. 16, § 209; 1975, ch. 270, § 5; 1992, ch. 76, § 1; 1997, ch. 100, § 2.

## ANNOTATIONS

**Cross references.** — As to payment of fines for violations of minimum hour laws into fund, see 50-4-18 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "a" preceding "state institution" in the second sentence of Subsection B and added the third sentence of that subsection.

**The 1997 amendment,** effective July 1, 1998, made a stylistic change in Subsection B.

**Compiler's notes.** — Laws 2003, ch. 143, § 2, effective July 1, 2004, and contingent upon adoption of an amendment to N.M. Const., art. XII, § 6, repeals Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978. The amendment to art. XII, § 6 was adopted at the special election held September 23, 2003.

## 22-15-6. Disbursements from the instructional material fund.

Disbursements from the instructional material fund shall be by warrant of the department of finance and administration upon vouchers issued by the department of education.

**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6; 1993, ch. 226, § 38.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "director".

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-7. Students eligible; distribution.**

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the state board in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a private early childhood education program approved by the state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the commission on higher education is entitled to the free use of instructional material from the instructional material bureau of the department of education.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school as agent or adult basic education center receiving instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

**History:** 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1; 1993, ch. 226, § 39; 1997, ch. 100, § 3; 2003, ch. 394, § 5.

### **ANNOTATIONS**

**Cross references.** — As to transfer of unused materials, see 22-15-10 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "22-13-3 NMSA 1978" for "77-11-2 NMSA 1953" and made a minor stylistic change in the second sentence.

**The 1997 amendment,** effective July 1, 1998, in Subsection C, made a stylistic change and substituted "by" for "of".

**The 2003 amendment,** effective April 8, 2003, in Subsection A, substituted "commission on higher education" for "state board" following "approved by the" and added "from the instructional material bureau of the department of education" at the end.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1,



2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No.88-37.

## **22-15-8. Multiple list; selection; review process.**

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [22-15-1 NMSA 1978]. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution, private school as agent or adult basic education center may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

History: 1953 Comp., § 77-13-8, enacted by Laws 1967, ch. 16, § 212; 1975, ch. 270, § 8; 1986, ch. 33, § 31; 1993, ch. 226, § 40; 1997, ch. 100, § 4; 2003, ch. 146, § 1; 2005, ch. 80, § 4.

## ANNOTATIONS

**Cross references.** — As to contracts with publishers for purchase and delivery of materials on list, see 22-15-13 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, inserted "and other community members" in the second sentences of Subsections A and B.

**The 1997 amendment,** effective July 1, 1998, made a stylistic change in Subsection B.

**2003 amendments.** — Laws 2003, ch. 146, § 1, effective June 20, 2003, added the second sentence of Subsection A, pertaining to ten percent of instructional material on the multiple list concerning language arts and social studies.

**The 2005 amendment,** effective April 4, 2005, adds Subsection C to require the department to establish an instructional review process for the adoption of instructional material on a multiple list; provides in new Subsection D that participants in the summer review institute shall receive a stipend as determined by department rule, and in new Subsection E requires the department to charge a processing fee to vendors of instructional material.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Severability clauses.** — Laws 1986, ch. 33, § 35 provides for the severability of the act if any part or application thereof is held invalid.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

### **22-15-8.1. Instructional material adoption fund.**

The "instructional material adoption fund" is created in the state treasury. The fund consists of fees charged to publishers to review their instructional materials, income from investment of the fund, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department and money in the fund is appropriated to the department to pay expenses associated with adoption of instructional material for the multiple list.

History: Laws 2005, ch. 80, § 5.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 80, § 8 makes this act effective April 4, 2005.

### **22-15-9. Distribution of funds for instructional material.**

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district, state institution or adult basic education center may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget adjustment request to the department. Adult basic education centers may expend up to one hundred percent of their instructional material funds for items that are not on the multiple list.

D. The department shall establish procedures for the distribution of funds directly to school districts, state institutions and adult basic education centers. The department shall provide payment to a publisher or depository on behalf of a private school for instructional material included on the multiple list provided for in Section 22-15-8 NMSA 1978.

E. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

History: 1953 Comp., § 77-13-9, enacted by Laws 1967, ch. 16, § 213; 1969, ch. 180, § 26; 1975, ch. 270, § 9; 1977, ch. 99, § 2; 1979, ch. 125, § 1; 1992, ch. 76, § 2; 1993, ch. 226, § 41; 1997, ch. 100, § 5; 1999, ch. 237, § 1; 2005, ch. 80, § 6.

## ANNOTATIONS

**Cross references.** — As to annual reports, see 22-15-12 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, substituted "forty-day membership" for "forty-day average daily membership" several times throughout the section; in Subsection B made minor stylistic changes in the first and second sentences and substituted "MEM" for "ADM" in the third sentence; and, in Subsection C, inserted "including the rebinding of used instructional material" in the first and second sentences.

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "division" throughout the section; substituted "not less than ninety percent" for "equal to ninety percent" in the first sentence of the first paragraph of Subsection B; deleted the former third sentence of the first paragraph of Subsection B, which read "Kindergarten MEM shall be calculated on a .5 full-time equivalent basis"; rewrote Subsection C; and substituted "expenditure" for "requisitioning against" near the end of Subsection D.

**The 1997 amendment**, effective July 1, 1998, added "Distribution of Funds for" in the section heading; deleted former Subsection A, relating to the establishment of separate instructional material accounts; redesignated the first paragraph of former Subsection B as Subsection A; in the first sentence of Subsection A, deleted "credit" following "allocate" and deleted "the instructional material account of" preceding "each", and deleted "transportation charges and" preceding "emergency" in the second sentence; redesignated the second paragraph of former Subsection B as Subsection B; in Subsection B, in the first sentence, substituted "adjusting" for "compensating" and deleted "of credit" following "under-estimation", and deleted the former second sentence, relating to disposition of funds remaining for the allocation; rewrote Subsection C; added Subsection D and redesignated former Subsection D as Subsection E; and rewrote Subsection E.

**The 1999 amendment**, effective June 18, 1999, in Subsection A, added the third sentence and deleted the last sentence which read: "For the purpose of this allocation, additional pupils shall be counted as four pupils".

**The 2005 amendment**, effective April 4, 2005, changes the deadline in subsection A for allocations of entitlements from July 1 to April 1 of each year, in Subsection C, increases the amount of allocations that may be used for instructional material from thirty to fifty percent and provides for a waiver of the use of funds allocated for instructional material, in Subsection D requires the department make payment to the publisher or depository on behalf of a private school for instructional material on the multiple list and in Subsection E provides that funds remaining for the purchase of instructional material at the end of the fiscal year shall be retained and used in subsequent year.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-10. Sale or loss or return of instructional material.**

A. With the approval of the chief, instructional material acquired by a school district, state institution, private school or adult basic education center pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] may be sold at a price determined by officials of the school district, state institution, private school or adult basic education center. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution, private school or adult basic education center may hold the parent, guardian or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the state board, the local school district shall bear the cost.

C. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] shall be sent to the department of education.

E. Upon order of the chief, a school district, state institution, private school or adult basic education center shall transfer to the department of education or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools.

**History:** 1953 Comp., § 77-13-10, enacted by Laws 1967, ch. 16, § 214; 1975, ch. 270, § 10; 1989, ch. 280, § 1; 1993, ch. 226, § 42; 1997, ch. 100, § 6.

### ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

**The 1993 amendment,** effective July 1, 1993, substituted "chief" for "director" in Subsections A and D; substituted "department of education" and "department" for "division" in Subsections C and D; added the final sentence of Subsection C; and made a minor stylistic change in Subsection D.

**The 1997 amendment,** effective July 1, 1998, substituted "acquired by" for "distributed to" in Subsection A; in Subsection B, deleted "as agent" following "center" in the first sentence and deleted "of education" in the last sentence; added Subsection C and redesignated the remaining subsections accordingly; rewrote Subsection D; in Subsection E, deleted "as ordered" following "transfer" and substituted "purchased with" for "purchased from the"; and made stylistic changes throughout the section.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### 22-15-11. Record of instructional material.

Each school district, state institution, private school or adult basic education center shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the division.

**History:** 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11; 1997, ch. 100, § 7.

### ANNOTATIONS

**The 1997 amendment,** effective July 1, 1998, deleted former Subsection A, which read: "The division shall keep accurate records of the cost of all instructional material

distributed pursuant to the Instructional Material Law", deleted the Subsection B designation, and substituted "including cost records" for "distributed to it pursuant to the Instructional Material Law".

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-12. Annual report.**

Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center acquiring instructional material pursuant to the Instructional Material Law [22-15-1 NMSA 1978] shall file a report with the department that includes an itemized list of instructional material purchased by the eligible entity, by vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance.

History: 1953 Comp., § 77-13-12, enacted by Laws 1967, ch. 16, § 216; 1975, ch. 270, § 12; 1993, ch. 226, § 43; 1997, ch. 100, § 8; 2005, ch. 80, § 7.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "division" in two places and deleted former Subsections A to C, pertaining to contents of the annual report.

**The 1997 amendment**, effective July 1, 1998, substituted "acquiring" for "receiving".

**The 2005 amendment**, effective April 4, 2005, requires eligible entities to file a report that includes an itemized list of instructional material purchased by the entity by vendor, the total cost of the material, the average per-student cost and the year-end cash balance.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-13. Contracts with publishers.**

A. The state board may enter into a contract with a publisher or a publisher's authorized agent for the purchase and delivery of instructional material selected from the multiple list adopted by the state board.

B. Payment for instructional material purchased by the state board shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authorized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the state board with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the state board; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

**History:** 1953 Comp., § 77-13-13, enacted by Laws 1967, ch. 16, § 217; 1975, ch. 270, § 13; 1993, ch. 156, § 6; 1993, ch. 226, § 44.

### **ANNOTATIONS**

**1993 amendments.** — Laws 1993, ch. 156, § 6, effective June 18, 1993, adding a new Subsection D relating to the right of the department of education to transcribe and reproduce instructional material for the use of students with visual impairment, was approved April 2, 1993. However, Laws 1993, ch. 226, § 44, effective July 1, 1993, also amending this section by substituting "authorized agent" for "representative" in Subsections A and C, but not giving effect to the changes made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 44. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts §§ 491, 492.

## **22-15-14. Reports; budgets.**

A. Annually, the department of education shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the department of education shall make reports to the state board concerning the administration and execution of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14; 1993, ch. 226, § 45.

### **ANNOTATIONS**

**Cross references.** — As to instructional material fund generally, see 22-15-5 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" in Subsections A and B.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-15. Short title.**

This act [22-15-15 to 22-15-20 NMSA 1978] may be cited as the "Historical Codes Act".

**History:** Laws 1981, ch. 29, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003.

However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-16. Purpose.**

It is the purpose of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978] to promote an appreciation, necessary to a complete education, for the heritage and history of our civilization through the posting of historical codes pursuant to the provisions of the Historical Codes Act.

**History:** Laws 1981, ch. 29, § 2.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-17. Funding.**

Each local school board is authorized to accept contributions from private sources in order to carry out the provisions of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978].

**History:** Laws 1981, ch. 29, § 3; .

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-18. Posting of copy.**

Each local school board may, to the extent funds are available pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act, post, in a nondiscriminatory manner not favoring one religious or ethno-cultural background over another, durable,

permanent copies of the historical codes in each regular instructional classroom in the school district.

**History:** Laws 1981, ch. 29, § 4.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-19. Other funds prohibited.**

No funds from any other source other than those accepted pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act shall be used to carry out the provisions of Section 4 [22-15-18 NMSA 1978] of that act.

**History:** Laws 1981, ch. 29, § 5.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Individuals with Disabilities Education Act.** — The federal Individuals with Disabilities Education Act, referred to in the above section, appears throughout titles 20, 25, 29, and 42 of the United States Code.

### **22-15-20. Definition.**

As used in the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978], "historical codes" means:

- A. the ten commandments;
- B. the code of Hammurabi;

- C. any injunctive compendium from the Koran;
- D. any compendium of Confucian teachings;
- E. any excerpts from the Bhagavad-Gita;
- F. the teachings of Gautama Buddha or his followers; or
- G. any other teachings representing disparate ethno-cultural or religious backgrounds.

**History:** Laws 1981, ch. 29, § 6; .

### ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-21 to 22-15-25. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 2003, ch. 313, § 7 repeals 22-15-21 to 22-15-25 NMSA 1978, relating to Braille Literacy Act, effective. For provisions of former sections, see 2001 Replacement Pamphlet. For similar present provisions, see 22-15-26 NMSA 1978 et seq.

### **22-15-26. Short title.**

This act [22-15-26 to 22-15-31 NMSA 1978] may be cited as the "Braille Access Act".

**History:** Laws 2003, ch. 313, § 1.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 313, § 8 makes the act effective on July 1, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the

constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-27. Purposes.**

The purposes of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] are to:

- A. enhance literacy;
- B. increase braille proficiency;
- C. improve employability for blind and visually impaired students; and
- D. reduce the cost of acquiring braille and other alternate accessible format materials.

**History:** Laws 2003, ch. 313, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 313, § 8 makes the act effective on July 1, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-28. Definitions.**

As used in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978]:

- A. "alternate accessible format" means one of several alternatives to traditional print, including braille, large print and computer text files;
- B. "braille" means the tactile system of reading and writing used by persons who are blind and visually impaired, as defined by the braille authority of North America;
- C. "department" means the state department of public education;
- D. "educational institution" means a public school or public post-secondary educational institution;

E. "instructional materials" means textbooks, workbooks, teacher manuals or editions, blackline masters, transparencies, test packets, software, CD-ROMs, videotapes and cassette tapes;

F. "structural integrity" means all of the printed instructional materials, including the text of the material, sidebars, table of contents, chapter headings and subheadings, footnotes, indexes, glossaries and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs or charts, though the publisher should include a brief textual description of any such nontextual element when it is practical to do so and mention of the nontextual element when a description is not practical;

G. "student" means a blind or visually handicapped person accepted, enrolled or attending an educational institution; and

H. "textbook" means a book, a system of instructional materials or a combination of a book and supplementary instructional material that conveys information to the student or otherwise contributes to the learning process, including electronic textbooks.

**History:** Laws 2003, ch. 313, § 3.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 313, § 8 makes the act effective on July 1, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

### **22-15-29. Instructional materials.**

A. A publisher that prints instructional materials for students attending educational institutions shall provide, upon request of the educational institution, any printed instructional materials in an electronic format mutually agreed upon by the publisher and the educational institution.

B. The formats used shall include any nationally recognized standard for conversion of publishing files to braille, such as DAISY/NISO XML.

C. If no nationally recognized standard is appropriate, as determined by the department, publishers shall provide the file in another mutually agreed upon computer or electronic format, such as Microsoft Word, ASCII text or LaTeX.

D. The educational institution may use the electronic version of printed instructional materials that is provided pursuant to the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] to transcribe or arrange for the transcription of the printed instructional materials into an alternate accessible format. The educational institution has the right to provide the alternate accessible format copy of the printed instructional materials to students as permitted by federal copyright law, including the provisions of Section 316 of Public Law 104-197.

E. The electronic version of the printed instructional materials shall:

- (1) comply with any applicable federal standard;
- (2) otherwise maintain the structural integrity of the printed instructional materials; and
- (3) include the latest corrections and revisions of the printed instructional materials as necessary.

F. The publisher shall provide the electronic versions of the printed instructional materials to the educational institution at no additional cost and within ten business days after receipt of a written request that does all of the following:

- (1) certifies that the educational institution or the student has purchased the printed instructional materials for use by the student;
- (2) certifies that the student is unable to use printed instructional materials;
- (3) certifies that the printed instructional materials are for use by the student in connection with a course at the educational institution; and

(4) is signed by the:

(a) person responsible for providing educational services pursuant to the federal Individuals with Disabilities Education Act;

(b) coordinator of services for students with disabilities at the educational institution;

(c) person responsible for monitoring the educational institution's compliance with the federal Americans with Disabilities Act of 1990 or Section 504 of the federal Rehabilitation Act of 1973; or

(d) vocational rehabilitation counselor responsible for providing services under an individualized plan for employment created pursuant to the federal Rehabilitation Act of 1973.

G. A publisher may require that the request include a statement signed by the educational institution agreeing that:

(1) the electronic copy of the printed instructional materials will be used solely for the student's educational purposes; and

(2) the student or educational institution will not copy, publish or in any other way distribute the printed instructional materials for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student who has signed a statement agreeing to the terms contained in this section and unless it is otherwise permitted by federal law.

H. A publisher who manufactures instructional materials using any type of video or audio format, CD ROM [CD-ROM] or other digital format for students attending educational institutions shall, to the maximum extent practicable, upon request, provide an accessible version of the instructional materials or, if an accessible version is not available, provide other electronic versions of the instructional materials, subject to the same conditions and limitations for printed instructional materials.

I. Nothing in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright pursuant to applicable federal copyright law.

**History:** Laws 2003, ch. 313, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed word "CD-ROM" in Subsection H was inserted by the compiler. It was not enacted by the legislature, and is not part of the law.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**Section 316 of Public Law 104-197** is codified as 17 U.S.C.S § 121 and as note preceding 17 U.S.C.S. § 101.

**The Americans with Disabilities Act** is codified as 42 U.S.C.S. 12101 et seq.



**The Rehabilitation Act of 1973** is codified, generally, as 29 U.S.C.S. § 701 et seq. Section 504 is codified as 29 U.S.C.S. § 794.

## **22-15-30. Guidelines.**

The department, in consultation with representatives from educational institutions and publishers, shall adopt guidelines consistent with the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] for the implementation and administration of that act. The guidelines shall address all of the following:

- A. the designation of instructional materials deemed required or essential to student success;
- B. definitions clarifying what constitutes nontextual mathematics or science instructional materials that use mathematical notations and clarifying a publisher's obligations in regard to such instructional materials;
- C. definitions clarifying what is required to maintain structural integrity and requirements for textual descriptions of pictures, illustrations, graphs and charts;
- D. requirements for approval and procurement of textbooks that are available in a computer or electronic format and procedures for suspension of publishers from the procurement process if the publisher fails to comply with the provisions of the Braille Access Act;
- E. an administrative complaint process to be followed for complaints against a publisher;
- F. definitions clarifying what constitutes "educational purposes"; and
- G. any other matters the department deems necessary or appropriate to carry out the purposes of the Braille Access Act.

**History:** Laws 2003, ch. 313, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 313, § 8 makes the act effective on July 1, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **22-15-31. Private right of action.**

A student who contends that there has been a violation of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] has the right to pursue a private right of action in the district court if the student has exhausted the administrative complaint process. Organizations representing the interests of persons who are blind or who have other disabilities shall have standing to assert any right afforded in the Braille Access Act and shall be subject to the same requirements and terms as a student. Should the student or organization prevail in a lawsuit, the student or organization shall be entitled to injunctive relief and reasonable attorney fees and costs. No other type of monetary damages shall be available.

**History:** Laws 2003, ch. 313, § 6.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 313, § 8 makes the act effective on July 1, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 15 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 15 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 15 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 15, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

## **ARTICLE 15A Technology for Education**

### **22-15A-1. Short title.**

Chapter 22, Article 15A NMSA 1978 may be cited as the "Technology for Education Act".

**History:** Laws 1994, ch. 96, § 1; 2005, ch. 222, § 1.

### **ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, adds the statutory reference of the act.

### **22-15A-2. Definitions.**

As used in the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978]:

- A. "bureau" means the education technology bureau in the department of education;
- B. "chief" means the chief of the bureau;
- C. "council" means the council on technology in education; and
- D. "educational technology" means tools used in the educational process that constitute learning resources and may include closed circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber optic transmission, computer, video and audio laser and CD ROM [CD-ROM] discs, video and audio tapes or other technologies and the training, maintenance, equipment and computer infrastructure information, techniques and tools, used to implement technology in classrooms and library and media centers.

**History:** Laws 1994, ch. 96, § 2.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed word "CD-ROM" was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

#### **22-15A-3. Bureau established; chief appointed.**

A. The "education technology bureau" is created within the department of education.

B. With the approval of the state board, the state superintendent shall appoint a chief of the bureau.

**History:** Laws 1994, ch. 96, § 3.

#### **22-15A-4. Bureau duties.**

In accordance with the policies and regulations of the state board, the bureau shall:

A. administer the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978];

B. develop a statewide plan for the integration of educational technology into the public schools and coordinate technology-related education activities with other state agencies, the federal government, business consortia and public or private agencies or individuals;

C. assist school districts to develop and implement a strategic, long-term plan for utilizing educational technology in the school system;

D. upon approval of a school district's technology plan, make distributions to school districts from the educational technology fund;

E. recommend funding mechanisms that will support the development and maintenance of an effective educational technology infrastructure in the state;

F. promote collaboration among government, business, educational organizations and telecommunications entities to expand and improve the use of technology in education;

G. assess and determine the educational technology needs of school districts; and

H. provide staff support for and coordinate the activities of the council.

**History:** Laws 1994, ch. 96, § 4.

### **22-15A-5. Council on technology in education; created; purpose.**

The "council on technology in education" is created. The council shall advise the bureau, the state board and the legislature regarding the establishment of appropriate educational technology standards, technology-enhanced curricula, instruction, appropriations for educational technology and administrative resources and services for the public schools.

**History:** Laws 1994, ch. 96, § 5.

### **22-15A-6. Council membership.**

A. The council shall be composed of seventeen members. Members shall be appointed by the state board for terms of four years. As designated by the state board at the time of initial appointment, the terms of five members shall expire at the end of two years, the terms of five members shall expire at the end of three years and the terms of seven members shall expire at the end of four years.

B. When appointing members, the state board shall appoint:

(1) one member who shall have expertise in state government;

(2) three members who shall have expertise in school district administration;

(3) two members who shall have expertise in providing instructional services in post-secondary, technical-vocational or adult education;

(4) three members who shall have expertise in providing instructional services in elementary or secondary schools;

- (5) two members who shall be parents of school-age children;
- (6) one member who shall be a public school secondary student;
- (7) three members who shall have expertise in educational technology; and
- (8) two members at large.

C. In making appointments to the council, the state board shall give due consideration to gender and ethnicity to achieve a membership representative of the geographic and cultural diversity of New Mexico.

D. Members of the council shall elect a chairman from among the membership. The council shall meet at the call of the chairman not less than quarterly.

E. Members of the council shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 96, § 6.

### **22-15A-7. Council duties.**

The council shall:

A. advise the bureau on implementation of the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978];

B. work with the bureau to conduct periodic assessments of the need for educational technology in the public school system and make recommendations to the state board on how to meet those needs;

C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance instruction capabilities;

D. develop and recommend to the state board, a statewide plan to infuse educational technology into the public school system in support of state and national education goals; and

E. provide assistance to the bureau in review of school district technology plans.

**History:** Laws 1994, ch. 96, § 7.

### **22-15A-8. Educational technology fund; created.**

The "educational technology fund" is created in the state treasury. Money in the fund is appropriated to the department of education for the purpose of implementing the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978]. Money in the fund shall be distributed in the manner provided in the Technology for Education Act. Money in the fund shall only be expended pursuant to warrants issued by the department of finance and administration pursuant to vouchers signed by the chief or the state superintendent. Money in the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1994, ch. 96, § 8.

## **22-15A-9. Educational technology fund; distribution.**

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the school district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time-equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (6) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection; and

(6) the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Paragraph (5) of this subsection multiplied by the value calculated pursuant to Paragraph (4) of this subsection.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. A school district receiving funding pursuant to the Technology for Education Act [22-15A-1 NMSA 1978] is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act [22-8-1 NMSA 1978], on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days.

**History:** Laws 1994, ch. 96, § 9; 2000, ch. 89, § 1; 2003, ch. 147, § 11; 2004, ch. 125, § 5; 2005, ch. 274, § 3.

## ANNOTATIONS

**The 2000 amendment**, effective May 17, 2000, in Subsection B, inserted "adjusted" following "district's estimated", substituted "calculated pursuant to Subsection C of this section" for "as determined by the projected membership for the school year" in the first sentence and inserted "unadjusted" following "school district's" in the second sentence; added present Subsection C and redesignated the remaining subsections accordingly; and inserted "adjusted" preceding "entitlement" in present Subsection D.

**The 2003 amendment**, effective April 4, 2003, rewrote Subsection C and inserted "without making any additional reductions" preceding "shall allocate" in Subsection D.

**The 2004 amendment**, effective May 19, 2004, amended Subsection C to rewrite Paragraph (7) to substitute for "legislative council service" the "department of finance and administration" and to add at the end of the paragraph "An appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to July 15 of the fiscal year following the appropriation, the district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation" and to amend Paragraph (10) to substitute "the immediately two preceding" for "prior" preceding "fiscal years".

**The 2005 amendment**, effective April 6, 2005, provides in Subsection C(6) that the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Subsection C(5) multiplied by the value calculated pursuant to Subsection C(6) and deletes former Subsections C(7) through (13).

## **22-15A-10. Annual report.**

Annually, at a time specified by the department of education, each school district receiving distributions from the educational technology fund shall file a report with the department of education regarding distributions received, direct legislative appropriations for educational technology made and not rejected, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education.

**History:** Laws 1994, ch. 96, § 10; 2003, ch. 147, § 12.

### **ANNOTATIONS**

**The 2003 amendment**, effective April 4, 2003, substituted "each school district" for "each local school district" and inserted "direct legislative appropriations for educational technology made and not rejected" following "distributions received".

## **22-15A-11. Educational technology deficiencies; correction.**

A. No later than September 1, 2005, the bureau, with the advice of the council and the office of the chief information officer, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council, for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the educational technology deficiency correction fund, the bureau shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code [13-1-28 NMSA 1978], enter into contracts to correct the deficiencies.

E. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state



money is expended in the most prudent manner possible consistent with the original purpose.

History: Laws 2005, ch. 222, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 222 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

#### **ANNOTATIONS**

**Temporary provision.** — Laws 2005, ch. 222, § 4, adds a temporary provision which provides that no later than December 1, 2005, the education technology bureau of the public education department shall prepare a report summarizing the educational technology adequacy standard, describing the outstanding educational technology deficiencies and estimating the cost of correcting the deficiencies and that the report shall be submitted to the governor, the legislature and appropriate interim legislative committees.

### **22-15A-12. Educational technology deficiency correction fund**

The "educational technology deficiency correction fund" is created in the state treasury. The fund shall consist of money appropriated, distributed or transferred to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the education technology bureau for the purpose of making allocations to correct educational technology deficiencies pursuant to Section 22-15A-11 NMSA 1978. Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chief of the education technology bureau.

History: Laws 2005, ch. 222, § 3.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 222 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## **ARTICLE 15B**

### **Educational Technology Opportunity Program**

## **22-15B-1. Statewide educational technology opportunity program; findings and purpose.**

A. The legislature finds that:

(1) local school districts need increased access to information technologies, extensive professional development and sustained network support to use technology effectively;

(2) the technological needs of New Mexico's individual school children and classrooms are best defined by the teachers and principals who work with them on a day-to-day basis;

(3) New Mexico is fortunate to have high technology laboratories and corporations that have programs to supply low-cost, state-of-the-art central processing units for use in New Mexico classrooms; and

(4) there are large nonprofit programs in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment.

B. The purpose of this act is to establish a statewide educational technology opportunity program for New Mexico's teachers and students by creating a partnership between private industry, state government and local school districts that will build, distribute and install low-cost, network-ready computers in New Mexico classrooms over the next three years.

**History:** Laws 1999, ch. 234, § 1.

### **ANNOTATIONS**

**Meaning of "this act".** — The phrase "this act", referred to in Subsection B, means Laws 1999, ch. 234, which enacted 22-15B-1 and 22-15B-2 NMSA 1978.

## **22-15B-2. Educational technology opportunity program; duties of the state department of public education.**

A. The state department of public education shall contract with a nonprofit corporation to administer the statewide educational technology opportunity program. The department shall select a contractor that has a program in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment. In administering the statewide educational technology opportunity program, the contractor, in coordination with the department, shall:

(1) solicit and accept applications for computer assistance from local school teachers through the local school principals;

(2) establish criteria for evaluating applications for computer assistance. The criteria shall include requirements for an established technology plan and an established network infrastructure;

(3) establish a review process involving public and private entities to evaluate each application, determine the amount of computer assistance needed and allocate the available computers to ensure that computer assistance is distributed equitably; and

(4) submit an annual report to the state board of education, the governor and the legislature on the progress of the program, showing the regional distribution of the program, the number of computers distributed and the cost of each computer.

B. Upon the approval of an application for computer assistance, the contractor shall distribute the allocated computers directly to the classroom and teacher. Pursuant to the contract and upon the receipt of an invoice, the state department of public education shall reimburse the contractor for the state portion of the cost of the computer assistance granted.

C. The state department of public education, after consulting with private industry, local school districts and other interested parties, shall promulgate such rules as are necessary to implement the statewide educational technology opportunity program.

**History:** Laws 1999, ch. 234, § 2.

## **ARTICLE 15C**

### **School Library Materials**

#### **22-15C-1. Short title.**

This act [22-15C-1 to 22-15C-10 NMSA 1978] may be cited as the "School Library Material Act".

**History:** Laws 2003, ch. 149, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15C-2. Definitions.**

As used in the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978]:

A. "additional student" means a student in the certified forty-day membership of the current year for a school district or state institution above the number certified in the forty-day membership of the prior year for the school district or state institution;

B. "bureau" means the instructional material bureau of the department of education;

C. "fund" means the school library material fund;

D. "library material processing" means cataloging of school library material, including in electronic format, according to nationally accepted standards, and the application of bar code labels and call-number classification labels to the material;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of school library material pursuant to the School Library Material Act;

F. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the state board for public school students; and

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(4) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation of the state board; and

G. "school library material" means books and other educational media, including online reference and periodical databases, that are made available in a school library to students for circulation and use in the library.

**History:** Laws 2003, ch. 149, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-15C-3. School library material fund; creation.**

The "school library material fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department of education may distribute money to school districts and state institutions to pay for the cost of purchasing school library material. The cost of purchasing school library material may include shipping and handling charges for the delivery of school library material. The fund shall consist of appropriations, gifts, grants, donations and bequests. Money in the fund shall be appropriated to the department of education to pay for the cost of purchasing school library material. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the state superintendent or his designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003, ch. 149, § 3.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15C-4. Administration of the school library material fund; bureau; duties.**

Subject to the policies and rules of the state board, the bureau shall:

- A. administer the provisions of the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978];
- B. enforce rules for the handling, safekeeping and distribution of school library material and money from the fund;
- C. enforce inventory and accounting procedures to be followed by school districts and state institutions; and
- D. withdraw or withhold the privilege of participating in the free use of school library material in case of noncompliance with the provisions of the School Library Material Act or rules adopted pursuant to that act.

**History:** Laws 2003, ch. 149, § 4.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **22-15C-5. Students eligible; distribution.**

A. A qualified student or person eligible to become a qualified student attending a public school or a state institution in a grade from the first through the twelfth grade of instruction is entitled to the free use of school library material. A student enrolled in an early childhood education program as defined in Section 22-13-3 NMSA 1978 is also entitled to the free use of school library material.

B. A school district or state institution shall purchase school library material as an agent for the benefit of students entitled to the free use of school library material.

C. A school district or state institution receiving school library material pursuant to the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978] is responsible for circulation of the school library material for use by eligible students and for the safekeeping of the school library material.

**History:** Laws 2003, ch. 149, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **22-15C-6. Distribution of money for school library material.**

A. On or before July 1 of each year, the department shall allocate from the fund at least ninety percent of the estimated entitlement for each school district or state institution as determined from the estimated forty-day membership for the next school year to each school district and state institution. The entitlement of a school district or state institution is the portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Additional students shall be counted as six students for the purpose of the allocation.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department shall establish procedures to distribute funds directly to school districts and state institutions.

D. A school district or state institution that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 6; 2005, ch. 213, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**The 2005 amendment,** effective June 17, 2005, changes "distribute" to "allocate" in Subsection A.

### **22-15C-7. Sale or loss or return of school library material.**

A. With the approval of the bureau, school library material acquired by a school district or state institution pursuant to the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978] may be sold at a price determined by officials of the school district or state institution. The selling price shall not exceed the cost of school library material to the state.

B. A school district or state institution may hold a parent, guardian or student responsible for loss, damage or destruction of school library material while the school library material is in the possession of a student. A school district may withhold the grades, diploma and transcripts of a student responsible for damage or loss of school library material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for the damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the state board, the school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain the funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-15C-8. Record of school library material.**

A school district or state institution shall keep an accurate record of school library material that includes a cost record. A school district or state institution shall comply with record-keeping procedures prescribed by the bureau.

**History:** Laws 2003, ch. 149, § 8.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15C-9. Annual report.**

Annually, at a time specified by the department of education, each local school district and state institution acquiring school library material pursuant to the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978] shall file a report with the department of education.

**History:** Laws 2003, ch. 149, § 9.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15C-10. Reports; budgets.**

A. Annually, the department of education shall submit a budget for the next fiscal year to the department of finance and administration showing expenditures for school library material to be paid from the fund, including reasonable shipping and handling charges and library material processing expenses.

B. Upon request, the department of education shall make reports to the state board concerning the administration and execution of the School Library Material Act [22-15C-1 to 22-15C-10 NMSA 1978].

**History:** Laws 2003, ch. 149, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 15D**

### **Fine Arts Education**



## **22-15D-1. Short title.**

Sections 1 through 6 of this act [22-15D-1 to 22-15D-6 NMSA 1978] may be cited as the "Fine Arts Education Act".

**History:** Laws 2003, ch. 152, § 1.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **22-15D-2. Purpose.**

A. The purpose of the Fine Arts Education Act [22-15D-1 to 22-15D-6 NMSA 1978] is to encourage school districts to offer opportunities for elementary school students to participate in fine arts activities, including visual arts, music, theater and dance.

B. Participation in fine arts programs encourages cognitive and affective development by:

- (1) focusing on a variety of learning styles and engaging students who might otherwise fail;
- (2) training students in complex thinking and learning;
- (3) helping students to devise creative solutions for problems;
- (4) providing students new challenges; and
- (5) teaching students how to work cooperatively with others and to understand and value diverse cultures.

**History:** Laws 2003, ch. 152, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **22-15D-3. Definition.**

As used in the Fine Arts Education Act [22-15D-1 to 22-15D-6 NMSA 1978], "fine arts education programs" includes programs of education through which students participate in activities related to visual arts, music, theater and dance.

**History:** Laws 2003, ch. 152, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15D-4. State board and department of education; powers and duties.**

A. The state board shall issue guidelines for the development and implementation of fine arts education programs.

B. The department of education shall:

(1) administer and enforce the provisions of the Fine Arts Education Act [22-15D-1 to 22-15D-6 NMSA 1978]; and

(2) assist local school boards in developing and evaluating programs.

**History:** Laws 2003, ch. 152, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-15D-5. Program plan and evaluation.**

A. A local school board may prepare and submit to the department of education a fine arts education program plan in accordance with guidelines issued by the state board.

B. At a minimum, the plan shall include the fine arts education programs being taught, the ways in which the fine arts are being integrated into the curriculum and an evaluation component.

C. At yearly intervals, the local school board, the department of education and a parent advisory committee from the school district shall review the goals and priorities of the plan and make appropriate recommendations to the state board.

**History:** Laws 2003, ch. 152, § 5.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-15D-6. Fine arts education programs; eligibility for state financial support.**

A. To be eligible for state financial support, a fine arts education program shall:

(1) provide for the educational needs of students in the areas of visual arts, music, theater or dance;

(2) integrate the fine arts into the curriculum;

(3) use certified school instructors to supervise those who are teaching the program if those persons do not hold valid teaching licenses in one or more of the disciplines included in fine arts education; and

(4) require background checks in accordance with Section 22-10-3.3 NMSA 1978 [recompiled].

B. A fine arts education program shall meet each requirement of Subsection A of this section and be approved by the department of education to be eligible for state financial support.

**History:** Laws 2003, ch. 152, § 6.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 152 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Compiler's notes.** — Section 22-10-3.3 NMSA 1978, referred to in Paragraph A(4), was recompiled as 22-10A-5 NMSA 1978 by Laws 2003, ch. 153, § 36, effective April 4, 2003.

## ARTICLE 16

### Transportation of Students

#### 22-16-1. State transportation division; director.

A. The "state transportation division" is created within the department of education.

B. The state superintendent shall appoint a director of the state transportation division to be known as the "state transportation director".

C. The state board may delegate to the state superintendent its administrative functions relating to public school transportation.

**History:** 1953 Comp., § 77-14-1, enacted by Laws 1967, ch. 16, § 219; 1995, ch. 208, § 4.

## ANNOTATIONS

**Cross references.** — As to emergency transportation, see 22-17-1 NMSA 1978 et seq.

**The 1995 amendment,** effective July 1, 1995, deleted "With approval of the state board" from the beginning of Subsection B, and substituted "Superintendent" for "transportation division" in Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 263 to 269.

One transporting children to or from school as independent contractor, 66 A.L.R. 724.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils, 41 A.L.R.3d 344.

78 C.J.S. Schools and School Districts § 7.

### **22-16-2. State transportation division; duties.**

Subject to the policies of the state board, the state transportation division of the department of education shall:

- A. establish standards for school bus transportation;
- B. establish standards for school bus design and operation pursuant to provisions of Section 22-16-11 NMSA 1978;
- C. establish procedures pertaining to the resolution of transportation issues in areas where local school districts are engaged in school district boundary disputes;

D. enforce those regulations adopted by the state board relating to school bus transportation;

E. audit records of school bus contractors or school district-owned bus operations in accordance with regulations promulgated by the state transportation director;

F. establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code [66-1-1 NMSA 1978]; and

G. establish regulations for the purpose of permitting commercial advertisements on school buses.

**History:** 1953 Comp., § 77-14-2, enacted by Laws 1967, ch. 16, § 220; 1975, ch. 342, § 3; 1976 (S.S.), ch. 20, § 3; 1978, ch. 200, § 2; 1978, ch. 211, § 15; 1979, ch. 53, § 1; 1979, ch. 305, § 5; 1993, ch. 226, § 46; 1995, ch. 208, § 5; 1997, ch. 233, § 2.

## ANNOTATIONS

**Cross references.** — For provisions relating to financing of public school bus transportation generally, see 22-8-29 to 22-8-32 NMSA 1978.

For school bus advertisements, see Chapter 22, Article 28 NMSA 1978.

For transportation of blind children to New Mexico school for visually handicapped, see 21-5-6 NMSA 1978.

For design and operation regulations for school buses, see 22-16-11 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, inserted "of the department of education" in the introductory paragraph; inserted "for school bus design and operation" and substituted "22-16-11" for "66-7-365" in Subsection B; substituted "vocational and special" for "cooperative" in Paragraph (2) of Subsection C; deleted former Paragraphs (3) to (5) of Subsection C, pertaining to transportation routes to and from training centers for exceptional children, early childhood education programs and state institutions under the authority of the secretary of health, making a related grammatical change; deleted former Subsection D, which read "cooperate with the director in matters relating to the financing of public school bus transportation"; redesignated former Subsections E to G as Subsections D to F; deleted "issue and" at the beginning of Subsection D; substituted "state transportation director" for "school transportation director" in Subsection E; and substituted "the Motor Vehicle Code" for "Section 66-1-4 NMSA 1978" in Subsection F.

**The 1995 amendment**, effective July 1, 1995, inserted "provisions of" in Subsection B, rewrote Subsection C, and in Subsection F, deleted "inspect" preceding "and certify" and inserted "that are".

**The 1997 amendment** added Subsection G. Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**Duty of care.** — The state transportation division of the state board of education had a legal duty to establish bus stops on school bus routes, and thus owed a duty of care to a child injured in an accident while crossing a road to catch the bus to her school. *Gallegos v. State Bd. of Educ.*, 1997-NMCA-040, 123 N.M. 362, 940 P.2d 468.

### **22-16-3. School bus service contracts.**

A. A school district may provide transportation services to students through the use of school bus service contracts. School districts may enter into school bus service contracts with individual school bus owner-operators or with school bus fleet owners or with both. A school district shall not enter into any school bus fleet service contract with any person who is simultaneously employed by that school district as an individual school bus owner-operator.

B. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board. The contracts shall be in writing on forms approved by the state board.

C. In addition to approving the form of the contract, the state board shall, by regulation, establish the parameters of school bus service contracts to include recognition of fuel costs, operation and maintenance costs and employee salary and benefits costs. In entering into school bus service contracts, school districts shall give preference to in-state service providers and the use of multiple providers. Upon request, the department shall provide assistance to local school districts in the negotiation and award of school bus service contracts.

D. A school district may enter into a school bus service contract for a term not to exceed five years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board.

E. In the event a contract with a school bus operator is terminated, the buses owned by the operator that are used pursuant to his school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value.

**History:** 1953 Comp., § 77-14-3, enacted by Laws 1967, ch. 16, § 221; 1993, ch. 226, § 47; 1995, ch. 208, § 6.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted "local school board and the" in the first sentence and substituted "approved by the state board" for "provided by the state transportation division" at the end of the second sentence of Subsection A; and made a minor stylistic change in Subsection C.

**The 1995 amendment**, effective July 1, 1995, added Subsection A, redesignated former Subsection A as Subsection B, deleted "and the state transportation director" at the end of the first sentence in Subsection B, added Subsection C, redesignated former Subsection B as Subsection D, substituted "five years" for "four years" and deleted "if approval is granted by the state transportation director" following "school board" in Subsection D, and redesignated former Subsection C as Subsection E.

#### **22-16-4. School bus routes; limitations; exceptions; minimum requirements.**

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and D of this section, no school bus route shall be maintained for distances less than:

- (1) one mile one way for students in grades kindergarten through six;
- (2) one and one-half miles one way for students in grades seven through nine; and
- (3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department of education with the approval of the state board, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

**History:** 1953 Comp., § 77-14-4, enacted by Laws 1967, ch. 16, § 222; 1975, ch. 342, § 4; 1987, ch. 149, § 3; 1993, ch. 234, § 1; 1995, ch. 208, § 7.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, in Subsection C, deleted "extremely" preceding "hazardous" near the beginning, added "General" at the beginning of the second sentence and added the language beginning "but the standards" at the end of the second sentence.

**The 1995 amendment**, effective July 1, 1995, substituted "established by the local school district" for "approved annually" in Subsection A, deleted "approved or" preceding "maintained" in Subsection B, inserted "of the department of education" in Subsection C, and deleted former Subsections E, F and G relating to bus routes serving less than ten students.

### **22-16-4.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-16-4.1 NMSA 1978, as enacted by Laws 1979, ch. 289, § 2 and ch. 305, § 6, concerning vocational education school bus routes, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **22-16-5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 208, § 16 repeals 22-16-5 NMSA 1978, amended by Laws 1975, ch. 342, § 5, relating to procedures for the local school board to object to a school bus route, effective July 1, 1995. For provisions of former section, see 1993 Replacement Pamphlet.

### **22-16-6. Reimbursement of parents or guardians.**

A local school board may, subject to regulations adopted by the state board, provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

**History:** 1953 Comp., § 77-14-6, enacted by Laws 1967, ch. 16, § 224; 1973, ch. 337, § 1; 1990 (1st S.S.), ch. 9, § 12; 1993, ch. 226, § 48; 1995, ch. 208, § 8.

#### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective June 18, 1990, added the Subsection A designation, inserting therein "subject to regulations adopted by the state board and", "or in cases where the local school board has authorized a parent to receive



reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone", and "of the department of education", made minor stylistic changes, and added Subsections B and C.

**The 1993 amendment**, effective July 1, 1993, deleted the subsection designation "A" at the beginning of the section and deleted former Subsections B and C, pertaining to the requirement for application for reimbursement of a parent for transportation costs and defining "attendance zone".

**The 1995 amendment**, effective July 1, 1995, deleted "and with the approval of the state transportation director" preceding "provide" near the beginning of the section, and deleted the former last sentence of the section which read: "A schedule providing for the reimbursement of parents and guardians in an amount that is reasonable and comparable to that which would be paid to a school bus contractor for the transportation of pupils, when computation for payment excludes the factors of size and age of school bus equipment and the driver's salary, shall be established by the state transportation division of the department of education with the approval of the state board."

**Purpose of reimbursement schedule.** — The reimbursement schedule provision to be established by the state transportation director with the consent and approval of the state board of education is apparently designed to insure a maximum amount of uniformity in payments for this type of transportation in school districts where similar conditions prevail. 1966 Op. Att'y Gen. No. 66-134 (decided under prior law).

## **22-16-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repeals 22-16-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 225, concerning county school bus transportation expenditures, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **22-16-8. Cattleguards on school bus routes.**

The board of county commissioners of each county shall construct cattleguards where privately owned fences intersect school bus routes in the county when consent is obtained from each owner of real property upon which the cattleguards are to be constructed. The cost of constructing the cattleguards shall be paid out of the county road fund as other county road expenses are paid.

**History:** 1953 Comp., § 77-14-8, enacted by Laws 1967, ch. 16, § 226.

## **22-16-9. School buses; termination of use; resale.**

A. When a school bus is being operated for purposes other than to actually transport students to and from school or on school activity trips, all markings indicating "school bus" shall be covered or removed.

B. When a school bus is sold to be used exclusively for purposes other than the transportation of students, all school bus identification shall be removed. In addition, unless the motor vehicle is painted a different color than that prescribed by the state board for school buses, a series of diagonal black stripes shall be painted on the rear of the motor vehicle. The stripes shall be at least three feet long, four inches wide, and shall be spaced not more than ten inches apart.

C. The provisions of this section shall apply to any school bus that is operated on any public street or highway, except for the purpose of taking it to a place to be painted or moving it to a place of storage.

**History:** 1953 Comp., § 77-14-9, enacted by Laws 1967, ch. 16, § 227.

### **22-16-10. Use of state or county equipment for snow removal.**

The state or any county may, in order to provide for the public health, safety and welfare, use its road equipment for snow removal on any school bus route.

**History:** 1953 Comp., § 77-14-10, enacted by Laws 1975, ch. 79, § 1.

### **22-16-11. Regulations relative to school buses.**

A. The state transportation director, appointed as provided in Section 22-16-1 NMSA 1978, shall adopt and enforce regulations adopted by the state board not inconsistent with the Motor Vehicle Code [66-1-1 NMSA 1978] to govern the design and operation of all school buses, used for the transportation of school children, when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and the regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees and every person employed under contract by a school district shall be subject to the regulations.

B. Any officer or employee of any school district who violates any of the regulations or fails to include obligation to comply with the regulations in any contract executed by him on behalf of a school district is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus, under contract with a school district, who fails to comply with any of the regulations is guilty of breach of contract, and the contract may be canceled after notice and hearing by the state transportation director acting in conjunction with the responsible officers of the school district.

C. Any driver of a school bus who fails to comply with any of the regulations is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-7-365, enacted by Laws 1978, ch. 35, § 469; 1978 Comp., § 66-7-365, recompiled as 1978 Comp., § 22-16-11 by Laws 1993, ch. 226, § 53; 1995, ch. 208, § 9.

## ANNOTATIONS

**Cross references.** — For duty of the state transportation division to establish standards pursuant to this section, see 22-16-2 NMSA 1978.

As to overtaking and passing a school bus, see 66-7-347 NMSA 1978.

As to the markings which indicate a school bus, see 66-7-347 and 22-16-9 NMSA 1978.

For special lighting equipment on school buses, see 66-7-348 NMSA 1978.

For the penalty for a misdemeanor, see 66-8-7 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, inserted "adopted by the state board" in Subsection A, substituted "state transportation director" for "director of transportation" in Subsections A and B, and made minor stylistic changes throughout the section.

**Liability under Tort Claims Act.** — Neither the adoption and enforcement of regulations to govern the design and operation of school buses, nor the design, planning and enforcement of safety rules for school bus transportation, fall within the meaning of "operation" of a motor vehicle, for purposes of 41-4-5 NMSA 1978 (liability of government employees under Tort Claims Act). *Chee Owens v. Leavitts Freight Serv., Inc.*, 106 N.M. 512, 745 P.2d 1165 (Ct. App. 1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts § 480.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

## ARTICLE 17 Emergency Transportation

### 22-17-1. Short title.

Sections 1 through 4 [22-17-1 to 22-17-4 NMSA 1978] of this act may be cited as the "Emergency Transportation Act".

**History:** 1953 Comp., § 77-14A-1, enacted by Laws 1974, ch. 38, § 1.

### 22-17-2. Public regulation commission permits.

A. Subject to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978], the public regulation commission may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district for the operation of such buses for general public transportation if the commission determines that:

(1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;

(2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and

(3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.

B. Notice of approval or denial of the permit application shall be submitted to the state transportation director and to the applicant within ten days of final determination by the public regulation commission.

C. As used in the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978], "public transportation emergency" includes an event:

(1) that is open to the public;

(2) that, if in a class A county, is expected to attract over fifty thousand visitors and residents;

(3) that has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operation, maintenance or use of school buses or for loss of or damage to property of others; and

(4) for which school buses are needed to transport the public to the event because:

(a) existing public transportation systems cannot adequately and timely transport the public to the event;

(b) private transportation systems are unavailable or prohibitively expensive;  
or

(c) the event and the surrounding area are likely to suffer economic hardship if school buses are not utilized pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978].

**History:** 1953 Comp., § 77-14A-2, enacted by Laws 1974, ch. 38, § 2; 2001, ch. 48, § 2.

## ANNOTATIONS

**Cross references.** — As to exemption of motor vehicles used pursuant to article from motor carrier regulations, see 65-2-126 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "Public regulation commission" for "Corporation commission" in the section heading; substituted "public regulation" for "state corporation" in Subsection A; in Subsection B, deleted "of the state transportation division of the department of education" following "director", inserted "public regulation" preceding "commission"; and added Subsection C.

### **22-17-3. State transportation director; approval.**

A. Upon the receipt of approval of the permit application from the state corporation commission [public regulation commission], the state transportation director may grant a permit to operate school buses for general public transportation to a school district that operates its own school buses or to the independent school bus operator who operates school buses under contract with a school district, if he determines:

(1) that school bus service to students will not be adversely affected by issuing the permit;

(2) that the operation of such buses for general public transportation service by the district or the independent operator will not provide unnecessary duplication of a general public transportation service by school buses of another school district or independent school bus operator contracting with another district; and

(3) that there has been compliance with the rules and regulations of the state transportation director issued pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978].

B. The state transportation director, subject to the approval of the state superintendent of public instruction, shall by regulation provide for application fees, forms and permit procedures pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978].

C. A permit issued under this section shall be valid for one year and shall be annually renewed upon payment of a reasonable application fee to the state transportation division and certification by the state corporation commission [public regulation commission] of the permittee's compliance with all applicable laws. Notice of renewal of the permit shall be delivered by the state transportation division to the state corporation commission [public regulation commission] and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3.

### **ANNOTATIONS**

**Cross references.** — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

#### **22-17-4. Termination of permit.**

A permit issued pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978] shall be terminated by the state transportation director upon thirty days' written notice to the holder of the permit, if the state transportation director receives written notice from:

A. the state corporation commission [public regulation commission] that it has determined that a public transportation emergency in the area in which the permittee provides general public transportation no longer exists, or that public or private transportation systems are being adversely affected in such area; or

B. the local school board that such board has determined that school bus service to students is being adversely affected by providing general public transportation under the permit.

**History:** 1953 Comp., § 77-14A-4, enacted by Laws 1974, ch. 38, § 4.

### **ANNOTATIONS**

**Cross references.** — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

**Bracketed material.** — The bracketed material in Subsection A was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

## **ARTICLE 18**

### **General Obligation Bonds of School Districts**

#### **22-18-1. General obligation bonds; authority to issue.**

After consideration of the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation

bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, purchasing or improving school grounds, purchasing computer software and hardware for student use in public schools, providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978] or any combination of these purposes. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code [55-1-101 NMSA 1978].

**History:** 1953 Comp., § 77-15-1, enacted by Laws 1967, ch. 16, § 228; 1996, ch. 67, § 1; 2005, ch. 274, § 14.

## ANNOTATIONS

**Cross references.** — As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to school construction, see 22-20-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

**The 1996 amendment**, inserted "purchasing computer software and hardware for student use in public schools" near the end of the first sentence. Laws 1996, ch. 67 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

**The 2005 amendment**, effective April 6, 2005, provides that a school district may issue bonds after considering the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and that bonds may be issued to provide matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act.

**"School building".** — The term "school building" has been defined by the courts in the context of the expenditure of revenues from a bond issue to mean a structure which is used for teaching. 1981 Op. Att'y Gen. No. 81-1.

**Buildings for teacher housing not school buildings.** — Buildings used for teacher housing, which are not used for instructional purposes, do not fall within the meaning of the term "school building" as it is commonly used in bonding provisions. 1981 Op. Att'y Gen. No. 81-1.

Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 122.

## **22-18-2. Bond elections; qualification of voters; calling for bond elections.**

A. Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district owning real estate in the school district the question of creating a debt by issuing the bonds, and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

B. The election on the question of creating a debt by issuing general obligation bonds shall be held at the same time as a regular school district election or at any special school district election which is not within ninety days after a regular school district election. The question shall be submitted to a vote at a general or special school district election upon the initiative of a local school board or upon a petition being filed with a local school board signed by qualified electors of the school district having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls. The number of signatures required on the petition shall be at least ten percent of the number of votes cast for governor in the school district in the last preceding general election. For the purpose of determining the number of votes cast for governor in the school district at the last preceding general election, any portion of a voting division within the school district shall be construed to be wholly within the school district. A local school board shall call for a bond election at a regular or special school district election within ninety days from the date a properly signed petition is filed with it.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229; 2001, ch. 61, § 1.

### **ANNOTATIONS**



**Cross references.** — For requirement that persons be registered voters to vote in bond elections, see 22-18-4 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, substituted "filed with it" for "filed with them" at the end of Subsection B.

**Constitutionality of section.** — New Mexico Const., art. IX, § 11 violates the equal protection clause of the U.S. Const. by restricting the right to vote in school district bond elections to real estate owners, and likewise, this section, which implements N.M. Const., art. IX, § 11, conflicts with the equal protection clause of the U.S. Const. insofar as it restricts the franchise in school district bond elections to real estate owners or to those who have paid a property tax on property in the school district for the preceding year. *Prince v. Board of Educ.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**Provision means that a voter in a school bond election must be a resident of the district,** an owner of real estate within the same, but it is not necessary to have paid taxes on said real estate in order to vote in the school bond election. 1957-58 Op. Att'y Gen. No. 58-128. See *Prince v. Board of Educ.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Power of school district or school authorities to rescind or modify vote or resolution for bond issue, 68 A.L.R.2d 1041.

79 C.J.S. Schools and School Districts § 366.

### **22-18-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 61, § 3 repeals 22-18-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 230, relating to giving the public notice of bond elections and provisions for publications concerning bond elections, effective June 15, 2001. For provisions of former section, see 1998 Replacement Pamphlet.

### **22-18-4. Bond elections; conduct.**

A. A person is required to be a registered voter to vote in a bond election in a school district.

B. Bond elections in a school district shall be conducted pursuant to the Election Code [Chapter 1 NMSA 1978], except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, the School Election Law [1-22-1 to 1-22-19 NMSA 1978] and the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978].

**History:** 1953 Comp., § 77-15-4, enacted by Laws 1967, ch. 16, § 231; 1970, ch. 6, § 7; 2001, ch. 61, § 2.

## ANNOTATIONS

The **2001 amendment**, effective June 15, 2001, updated the code section references in Subsection B.

### **22-18-5. Bond elections; ballots.**

A. The question on the ballot of creating a debt by issuing general obligation bonds shall state the purpose or purposes for which the bonds are to be issued and the amount of the bond issue. Two or more separate questions may be submitted to the voters at a bond election, in which case, the vote on each question shall be separately counted, canvassed and certified.

B. Bond election ballots shall contain a place for a vote "For the school district bonds" and "Against the school district bonds" for each bond issue.

C. If paper ballots are used at a bond election, all questions to be voted on at the bond election shall be listed on one ballot.

**History:** 1953 Comp., § 77-15-5, enacted by Laws 1967, ch. 16, § 232.

## ANNOTATIONS

**Use of the language "for school purposes," with no other qualification, on a school bond issue** was too broad, because such language did not sufficiently apprise the voter of the exact purpose for which the election was held. Board of Educ. v. Hartley, 74 N.M. 469, 394 P.2d 985 (1964)(decided under prior law).

### **22-18-6. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2001, ch. 61, § 3 repeals 22-18-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 234, regarding the authority of local school boards to issue bonds, effective June 15, 2001. For provisions of former section, see 1998 Replacement Pamphlet.

### **22-18-7. Authority to issue bonds.**

If a majority of those persons voting on a question submitted to the voters in a bond election vote for creating a debt by issuing general obligation bonds, the local school board may, subject to the approval of the attorney general, proceed to issue the bonds.

**History:** 1953 Comp., § 77-15-7, enacted by Laws 1967, ch. 16, § 234.

## **22-18-8. Restriction on bond elections.**

In the event a majority of those persons voting on a question submitted to the voters in a bond election vote against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election, except upon the presentation of a petition pursuant to Section 22-18-2 NMSA 1978 and after the expiration of at least six months from the date of the previous bond election on the question. If a majority of those persons voting on a question submitted to the voters in a bond election for a second time within two years vote against creating a debt by issuing general obligation bonds, no bond election shall then be held on the same question for a period of two years from the date of first bond election on the question.

**History:** 1953 Comp., § 77-15-8, enacted by Laws 1967, ch. 16, § 235.

### **ANNOTATIONS**

**Bond elections on the "same question".** — Alamogordo school district's proposed February, 1989 bond question, which differed materially in amount of bonded indebtedness and in purpose, was not the "same question" that the voters defeated in May, 1987, and therefore did not violate this section. 1988 Op. Att'y Gen. No. 88-53.

## **22-18-9. Approval of bond issue by attorney general.**

No issue of bonds shall be valid or binding on any school district unless prior to the issuance of the bonds the attorney general approves the bond issue as to form and legality. The written approval of the attorney general shall be made a part of the transcript of the proceedings in connection with each bond issue. The local school board of each school district proposing to issue bonds shall provide the attorney general with all information necessary for this consideration of the form and legality of the bond issue.

**History:** 1953 Comp., § 77-15-9, enacted by Laws 1967, ch. 16, § 236.

### **ANNOTATIONS**

**Cross references.** — As to preparation and disposition of transcripts of proceedings relating to bond issues, see 6-15-2 NMSA 1978.

## **22-18-10. Bond election contests.**

No action concerning any question placed on the ballot at a bond election shall be maintained in the district court unless the action is filed within ten days after the publication of the certificate of results of the bond election by the superintendent of schools.

**History:** 1953 Comp., § 77-15-10, enacted by Laws 1967, ch. 16, § 237.

## **22-18-11. General obligation bonds; issuance; sale.**

A. General obligation bonds of a school district shall be issued and sold pursuant to the provisions of Sections 6-15-3 through 6-15-10 NMSA 1978.

B. Except as is otherwise provided by law, general obligation bonds issued by a school district shall be of the denomination or denominations, shall be payable at the place or places within or without the state or both, shall be in such form and shall bear such terms and conditions as the local school board of the school district determines.

C. General obligation bonds issued by a school district shall be signed by the president and attested by the secretary of the local school board, unless the bonds are issued in book entry or similar form without the delivery of physical securities. Any coupons appertaining to the bonds shall be signed by the president of the local school board either manually or by facsimile signature.

D. The general obligation bonds issued by a school district may be executed in the manner provided by the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 77-15-11, enacted by Laws 1967, ch. 16, § 238; 1983, ch. 265, § 47.

## **22-18-12. Budgetary provisions; payment of principal and interest.**

A. A local school board shall establish adequate budgetary provisions, approved by the public school finance division [office of education], to promptly pay, as it becomes due, all principal and interest on general obligation bonds issued by the school district.

B. The full faith and credit of a school district shall be pledged to the payment of the principal and interest on general obligation bonds issued by the school district.

C. The board of county commissioners shall levy and collect upon all taxable property within a school district in the county such tax as is necessary to pay the interest and principal on general obligation bonds issued by the school district as the interest and principal become due, without limitation as to rate or amount.

**History:** 1953 Comp., § 77-15-12, enacted by Laws 1967, ch. 16, § 239.

### **ANNOTATIONS**

**Public school finance division.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the

educational finance and cultural affairs department. Laws 1980, ch. 151, § 58, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and administration. Laws 1983, ch. 301, § 83, also provides that all references to the public school finance division shall be construed to mean the office of education of the department of finance and administration.

### **22-18-13. Timely payment of school district obligations.**

A. Whenever a paying agent has not received payment of principal or interest on school district general obligation bonds on the business day immediately prior to the date on which the payment is due, the paying agent shall so notify the state treasurer, the department of finance and administration, the department of education and the school district by telephone, facsimile or other similar communication, followed by written verification, of the payment status. The state treasurer shall immediately contact the school district and determine whether the school district will make the payment by the date on which it is due.

B. If the school district indicates that it will not make the payment by the date on which it is due, the state treasurer shall forward the amount in immediately available funds necessary to make the payment due on the bonds to the paying agent and shall withhold an equal amount from the next succeeding payment of the state equalization guarantee distribution. If the amount of the next succeeding payment is insufficient to pay the amount due, the state treasurer shall withhold amounts from each succeeding payment of the state equalization guarantee distribution, including payments to be made in succeeding fiscal years but not more than twelve consecutive months of payments, until the total payment of principal and interest due has been withheld.

C. The amounts forwarded to the paying agent by the state treasurer shall be applied by the paying agent solely to the payment of the principal or interest due on the general obligation bonds of the school district. The state treasurer shall notify the department of education, the chief financial officer of the school district, the department of finance and administration, the legislative finance committee and the legislative education study committee of amounts withheld and payments made pursuant to this section.

D. Upon the issuance of general obligation bonds by a school district, the school district shall file with the state treasurer a copy of the resolution that authorizes the issuance of the bonds, a copy of the official statement or other offering document for the bonds, the agreement, if any, with the paying agent for the bonds and the name, address and telephone number of the paying agent; provided, however, that the failure of a school district to file the information shall not affect the obligation of the state

treasurer to withhold the state equalization guarantee distribution pursuant to this section.

E. The state hereby covenants with the purchasers and holders of general obligation bonds issued by school districts that it will not repeal, revoke or rescind the provisions of this section or modify or amend the same so as to limit or impair the rights and remedies granted by this section; provided that nothing in this subsection shall be deemed or construed to require the state to continue the payment of a state equalization guarantee distribution to any school district or to limit or prohibit the state from repealing, amending or modifying any law relating to the amount of state equalization guarantee distributions to school districts or the manner of payment or the timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to the bonds within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

F. Whenever the state treasurer is required by this section to make a payment of principal or interest on bonds on behalf of a school district, the department of education shall initiate an audit of the school district to determine the reason for the nonpayment and to assist the school district, if necessary, in developing and implementing measures to ensure that future payments will be made when due.

G. Whenever the state treasurer makes a payment of principal and interest on bonds or other obligations of a school district and withholds amounts from the state equalization guarantee distribution pursuant to this section because of the failure to collect property taxes, the school district may transfer delinquent property taxes later collected out of the school district's bond redemption fund and into its general fund.

H. This section applies to general obligation bonds issued by a school district on or after July 1, 2003.

**History:** Laws 2003, ch. 46, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 46, § 2 makes the act effective on July 1, 2003.

# **ARTICLE 18A**

## **School District Loans**

### **22-18A-1. Short title.**

Sections 1 through 4 [22-18A-1 to 22-18A-4 NMSA 1978] of this act may be cited as the "School District Loan Act".

**History:** Laws 1989, ch. 134, § 1.

## **22-18A-2. Purpose.**

The purpose of the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978] is to provide school districts with financial assistance to make payment of principal and interest due on outstanding school district general obligation indebtedness.

**History:** Laws 1989, ch. 134, § 2.

## **22-18A-3. Fund created; administration.**

A. There is created in the state treasury a revolving loan fund to be known as the "public school district general obligation bonds loan fund". The fund is established as an additional source for payments of principal and interest due on public school district general obligation indebtedness already incurred or incurred in the future or for payments of any other obligations arising in connection with that indebtedness. The fund shall be drawn upon only in the event ad valorem taxes or other revenues of the public school district available for the described payments are either insufficient or are not received by the public school district at the time due or anticipated. The state department of public education shall administer the fund and may make loans from the fund in accordance with the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978]. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. The state department of public education shall deposit in the fund all receipts from the repayment of loans made pursuant to the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978].

C. Each July 1, balances in the public school district general obligation bonds loan fund in excess of one million dollars (\$1,000,000) shall be transferred to the state-support reserve fund.

**History:** Laws 1989, ch. 134, § 3.

## **22-18A-4. Loan program; duties of the state department of public education.**

A. The state department of public education shall adopt regulations to govern the application procedure and requirements for making loans under the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978].

B. The state department of public education may make a loan to a school district if the local school district board certifies to the state department of public education that there are insufficient ad valorem taxes or other school district revenues to meet a payment of principal or interest, or both, due on the school district's general obligation indebtedness or to meet any other obligation arising in connection with that

indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes to make any such payment will be delayed and not be available to make the payment when due.

C. A loan shall be made for a period of time not to exceed five years with an annual interest rate to be the lesser of five percent or the rate of interest determined by the state department of public education, so that the interest rate shall comply with federal arbitrage requirements. A loan shall be repaid in annual installments as determined by the state board of public education. Loans shall be made by the state department of public education pursuant to this section only, with the prior approval of the state board of finance.

**History:** Laws 1989, ch. 134, § 4.

## **22-18A-5. Temporary transfer of funds.**

If it is determined by the state department of public education and the department of finance and administration that there are insufficient ad valorem taxes or other public school district revenues to meet a payment of principal or interest due on public school district general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not be available to make the payment when due, the state department of public education and the department of finance and administration may request the state board of finance to direct a temporary transfer of a sufficient amount of money from the state-support reserve fund or the general fund operating reserve to the public school district general obligation bonds loan fund so that the payment becoming due may be made and a default avoided. In determining the order of transfer, money in the state-support reserve fund shall be transferred first, and if that amount is insufficient then the general fund operating reserve shall be used. If such a transfer is directed by the state board of finance, the state department of public education shall use the amount transferred to the state public school district general obligation bonds loan fund to make the payment.

**History:** Laws 1989, ch. 134, § 5.

## **ARTICLE 18B Qualified School Bonds**

### **22-18B-1. Short title.**

Sections 1 through 5 [22-18B-1 to 22-18B-5 NMSA 1978] of this act may be cited as the "Qualified School Bonds Act".

**History:** Laws 1999, ch. 225, § 1.



## **22-18B-2. Findings and purpose.**

A. The legislature finds that:

(1) the condition of public school facilities has a direct effect on the safety of teachers and students and on the ability of students to learn;

(2) public schools in rapidly growing urban areas of New Mexico and public schools in sparsely populated rural areas are unable to meet the capital needs for modernization of existing school facilities to meet the growing school-age population in New Mexico under present funding authorizations;

(3) additional funding options are necessary to meet the needs for teacher training to improve student achievement levels and to meet the needs of the work place by providing sufficient student training in the use of advanced technology;

(4) encouraging active community participation and private sector contributions to the public schools will enhance learning opportunities for New Mexico students;

(5) authorizing additional forms of financing for school modernization and construction will permit eligible taxpayers to take advantage of tax credits not currently available to bondholders and will increase the market options for state and local bonds;

(6) encouraging active community participation in the development of resources to build and modernize schools, to enhance educational technology and to enhance teacher training is essential to the success of students in the twenty-first century; and

(7) authorizing additional alternative procedures for the sale of bonds will allow New Mexico public schools and eligible taxpayers to participate in available tax credits and to leverage additional funds for the improvement of public school facilities.

B. The purpose of the Qualified School Bonds Act [22-18B-1 to 22-18B-5 NMSA 1978] is to implement a state program that allows eligible taxpayers to take advantage of available tax credits by expanding the incentives to purchase and hold bonds and thereby increasing the financing alternatives for modernization and rehabilitation of public school facilities and enhancing teacher training.

**History:** Laws 1999, ch. 225, § 2.

## **22-18B-3. Definitions.**

As used in the Qualified School Bonds Act [22-18B-1 to 22-18B-5 NMSA 1978]:

A. "allocation" means New Mexico's allocation of the national zone academy bond limitation pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986;

B. "council" means the public school capital outlay council;

C. "eligible taxpayer" means an entity that qualifies as an eligible taxpayer under Section 1397E(d)(6) of the Internal Revenue Code of 1986 and includes a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified contribution" means a contribution meeting the requirements of Section 1397E(d)(2) of the Internal Revenue Code of 1986, from a private entity to the qualifying school and includes:

(1) equipment for use in the qualifying school, including state-of-the-art technology and vocational equipment;

(2) technical assistance in developing curriculum or in training teachers in order to promote appropriate market-driven technology in the classroom;

(3) services of employees as volunteer mentors;

(4) internships, field trips or other educational opportunities outside the qualifying school for students; and

(5) any other property or service specified by the governing body of the qualifying school;

E. "qualified school bond" means a bond issued by the state or a political subdivision of the state that meets all of the requirements of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act and the requirements for a qualified zone academy bond pursuant to Section 1397E(d)(1) of the Internal Revenue Code of 1986;

F. "qualified purpose" means a purpose of a bond issue that meets the requirements of Section 1397E(d)(5) of the Internal Revenue Code of 1986 and Article 9, Section 11 of the constitution of New Mexico; and

G. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements for a qualified zone academy pursuant to Section 1397E(d)(4) of the Internal Revenue Code of 1986.

**History:** Laws 1999, ch. 225, § 3.

## **ANNOTATIONS**

**Internal Revenue Code.** — Section 1397E of the Internal Revenue Code is codified as 26 U.S.C. § 1397E.

#### **22-18B-4. Qualified school bonds; designation; terms; sale.**

A. The state or a political subdivision of the state that has been authorized to issue bonds may designate all or any part of the bonds as qualified school bonds if:

- (1) at least ninety-five percent of the proceeds from the sale of the proposed qualified school bonds are to be used for a qualified purpose at a qualifying school within the jurisdiction of the state or political subdivision;
- (2) the state or the political subdivision has the written approval of the governing body of the qualifying school to issue the proposed qualified school bonds;
- (3) the governing body of the qualifying school has written commitments from private entities for qualified contributions having a present value of not less than ten percent of the value of the proceeds from the sale of the proposed qualified school bonds; and
- (4) the council has reserved to the qualifying school an amount of the allocation equal to the proceeds from the sale of the proposed qualified school bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school bonds may be sold at a private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school bonds shall not be issued for a term longer than the term fixed pursuant to Section 1397E(d)(3) of the Internal Revenue Code of 1986 for qualified zone academy bonds issued during the month that the qualified school bonds are issued.

D. Qualified school bonds shall not bear interest.

**History:** Laws 1999, ch. 225, § 4.

#### **ANNOTATIONS**

**Internal Revenue Code.** — Section 1397E of the Internal Revenue Code is codified as 26 U.S.C. § 1397E.

#### **22-18B-5. Public school capital outlay council; allocation.**

A. The aggregate face amount of all qualified school bonds issued in a calendar year shall not exceed the allocation for that year.

B. The council is designated the state education agency pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986 and is responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a political subdivision desires to designate bonds as qualified school bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of Subsection A of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act have been satisfied.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event the face amount of all proposed qualified school bonds for a calendar year exceeds the allocation, the council shall ratably apportion the allocation among the state and political subdivisions that have timely filed valid applications for that year.

**History:** Laws 1999, ch. 225, § 5.

#### **ANNOTATIONS**

**Internal Revenue Code.** — Section 1397E of the Internal Revenue Code is codified as 26 U.S.C. § 1397E.

## **ARTICLE 19**

### **School Revenue Bonds**

#### **22-19-1. Short title.**

Sections 22-19-1 through 22-19-16 NMSA 1978 may be cited as the "School Revenue Bond Act".

**History:** 1953 Comp., § 77-16-1, enacted by Laws 1967, ch. 16, § 240.

#### **ANNOTATIONS**

**Cross references.** — As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

## **22-19-2. Definitions.**

As used in the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978]:

A. "income project" means purchasing, erecting, improving, repairing or furnishing a building, improvement or facility, including the land upon which it is situated, which will produce an income to the school district;

B. "net income from the income project" means all income derived from an income project, including the income pledged pursuant to the School Revenue Bond Act, less the operating costs of the income project; and

C. "operating costs" means expenses of operating, maintaining and keeping in repair an income project, including the cost of heating, electricity, insurance, service employees and equipment replacement.

**History:** 1953 Comp., § 77-16-2, enacted by Laws 1967, ch. 16, § 241.

## **22-19-3. Income projects.**

A local school board may borrow money to finance income projects of the school district pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

**History:** 1953 Comp., § 77-16-3, enacted by Laws 1967, ch. 16, § 242.

## **22-19-4. Bonds; mortgages.**

A. A local school board may issue bonds or other special obligations to finance the repayment of all money borrowed for an income project pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

B. A local school board may execute a mortgage, deed of trust or a security agreement upon the income project to secure payment of any bonds or other special obligations issued pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-4, enacted by Laws 1967, ch. 16, § 243.

### **22-19-5. Determination by local school board.**

Prior to borrowing money and issuing evidences of indebtedness to finance an income project, a local school board shall make a determination that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-5, enacted by Laws 1967, ch. 16, § 244.

### **22-19-6. Report to state board.**

Prior to borrowing any money to finance an income project, a local school board shall furnish to the state board the following information:

- A. a detailed description of the income project;
- B. an explanation of the necessity for the income project;
- C. an estimate of the total cost of the income project;
- D. an estimate of the amount of income anticipated from the income project;
- E. an estimate of the amount of income from existing buildings, improvements or facilities that will be pledged to pay for the income project;
- F. an estimate of the yearly operating cost of the income project; and
- G. an estimate of the anticipated yearly net income from the income project.

**History:** 1953 Comp., § 77-16-6, enacted by Laws 1967, ch. 16, § 245.

### **22-19-7. State board approval; determination by state board.**

A. A local school board shall obtain written approval of the state board before it borrows money, issues bonds or other special obligations, or executes mortgages, deeds of trust or security agreements for financing an income project pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

B. Prior to giving written approval to an income project, the state board shall determine that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-7, enacted by Laws 1967, ch. 16, § 246.

### **22-19-8. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the income project; and
- (2) the operating costs of the income project.

B. All income from the income project shall be used solely for the following purposes:

- (1) to pay the principal, interest and service charges on any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978]; and
- (2) to pay the operating costs of the income project.

**History:** 1953 Comp., § 77-16-8, enacted by Laws 1967, ch. 16, § 247.

### **22-19-9. Bonds; pledge of income; satisfaction of indebtedness.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall irrevocably pledge, for the prompt payment of the principal, interest and service charges thereof, the net income from the income project for which the bonds or other special obligations were issued. The bonds or other special obligations shall be equally and ratably secured, without priority, by this pledge of the net income from the income project.

B. A local school board shall operate the income project so as to insure a sufficient income to promptly pay the principal, interest and service charges, as they become due, on the bonds or other special obligations issued, after the payment of operating costs of the income project. A local school board shall establish a reserve fund not exceeding ten thousand dollars (\$10,000) to be used for the repayment of any money borrowed.

C. Satisfaction of any indebtedness created by any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall be limited solely to foreclosure of the income project upon which a mortgage, deed of trust or security agreement was executed, without the right to a deficiency judgment.

**History:** 1953 Comp., § 77-16-9, enacted by Laws 1967, ch. 16, § 248.

## **ANNOTATIONS**

**Cross references.** — As to pledge of additional revenue, see 22-19-12 NMSA 1978.

### **22-19-10. Proceeds of bond sales; retirement fund.**

A. Proceeds from the sale of bonds or other special obligations issued by a local school board pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall be deposited into a separate account to be used solely for the specific purposes for which the money was borrowed. All costs incident to issuing and selling bonds or other special obligations may be paid out of the proceeds of this account.

B. A local school board, at the time of issuing any bonds or other special obligations, shall establish a fund to be known as the "retirement fund." All net income from the income project and all proceeds remaining after completion of the income project shall be deposited into the retirement fund. All proceeds in the retirement fund shall be used solely for the purpose of repaying the principal, interest and service charges on any bonds or other special obligations issued for the income project.

**History:** 1953 Comp., § 77-16-10, enacted by Laws 1967, ch. 16, § 249.

### **22-19-11. Bonds; form; requirements.**

All bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. bear interest at a rate not to exceed a net of six percent a year, interest payable semiannually;

D. be sold at a price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent a year;

E. have the principal thereof paid in yearly amounts beginning not later than two years from their date of issuance; and

F. be sold at public or private sale, with or without a discount as provided by Subsection D of this section.



**History:** 1953 Comp., § 77-16-11, enacted by Laws 1967, ch. 16, § 250.

### **22-19-12. Pledge of additional revenue.**

A local school board may pledge, as security for the payment of the principal and interest on any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978], a part or the whole amount of income derived from an existing building, improvement or other facility subject to the control of the local school board. A local school board may pledge this income whether or not the existing building, improvement or facility is to be improved, repaired or furnished by the proceeds of the bonds or other special obligations.

**History:** 1953 Comp., § 77-16-12, enacted by Laws 1967, ch. 16, § 251.

### **22-19-13. Refunding bonds.**

A. A local school board may issue refunding bonds for the purpose of refunding, for not less than the principal amount thereof, bonds issued pursuant to the provisions of the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] or any act repealed thereby, or for the purpose of providing additional funds for any income project for which bonds have been authorized by a local school board, or for both purposes.

B. Except as otherwise provided in the School Revenue Bond Act, refunding bonds shall conform to the provisions of the School Revenue Bond Act which provide for the issuance of other revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded but no source of payment shall be pledged which is not authorized by the School Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale for not less than the par value of the bond or sold in part and exchanged in part. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded, or the proceeds or the obligations in which the proceeds are permitted by law to be invested shall be placed in trust to be held and applied to payment of the bond to be refunded.

**History:** 1953 Comp., § 77-16-13, enacted by Laws 1967, ch. 16, § 252.

### **ANNOTATIONS**

**Cross references.** — As to exchange of bonds, see 22-19-15 NMSA 1978.

### **22-19-14. Refunding bonds; issuance; sale; proceeds.**

A. No bond shall be refunded pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond, or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Refunding bonds and any other bonds authorized pursuant to the School Revenue Bond Act may be issued separately or in combinations of one or more series.

C. If any officer whose signature or facsimile signature appears on any bond or coupon authorized by the School Revenue Bond Act ceases to hold office before delivery of the bond, the signature or facsimile signature shall be valid for all purposes as if he had remained in office until delivery.

D. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or any agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased must have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

E. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank doing business in the state and which is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due, or where the bonds are subject to redemption under a call for redemption previously made, or where there is a voluntary surrender with the approval of the local school board.

F. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

G. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** 1953 Comp., § 77-16-14, enacted by Laws 1967, ch. 16, § 253.

## **22-19-15. Exchange of bonds.**

In authorizing any bonds pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978], a local school board, in its authorization resolution, may provide for exchange of any bonds issued for refunding bonds of larger or smaller denominations. Refunding bonds in the changed denominations shall be exchanged for the original bonds in the same aggregate principal amounts so that there is no overlapping of interest paid. Refunding bonds in changed denominations shall bear interest at the same rates, mature on the same dates, be in the same form and be identical with the original bonds surrendered for exchange in all respects except as to denominations, serial numbers and a recital as to the exchange. Where any exchange of bonds is made pursuant to the School Revenue Bond Act, the bonds surrendered by the holders at the time of exchange shall be canceled. The exchange shall be made only at the request of the holder of the bond to be surrendered, and the local school board may require the holder of the bond to pay all expenses incurred in connection with the exchange, including those of authorization and issuance of the refunding bonds.

**History:** 1953 Comp., § 77-16-15, enacted by Laws 1967, ch. 16, § 254.

### **22-19-16. Tax exemption; no charge against state.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] are exempt from taxation by the state or any of its political subdivisions.

B. No obligation created pursuant to the School Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** 1953 Comp., § 77-16-16, enacted by Laws 1967, ch. 16, § 255.

## **ARTICLE 19A**

### **Teacher Housing Revenue Bond**

#### **22-19A-1. Short title.**

This act [22-19A-1 to 22-19A-12 NMSA 1978] may be cited as the "Teacher Housing Revenue Bond Act".

**History:** Laws 2002, ch. 22, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **22-19A-2. Definitions.**

As used in the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978]:

- A. "bonds" means teacher housing revenue bonds;
- B. "federal payment" means a payment, grant, subsidy, contribution or other money from the United States or any of its agencies or instrumentalities that is not otherwise restricted as to use and that the federal government allows to be pledged or used to pay debt service on bonds; provided that for federal forest reserve or P.L. 874 funds, "federal payment" means that portion of the funds for which the state does not take credit for the state equalization guarantee pursuant to Section 22-8-25 NMSA 1978;
- C. "housing project" means a residential housing facility for teachers, including land and land improvements;
- D. "net income from the housing project" means all income derived from a housing project less the operating costs of the housing project;
- E. "operating costs" means expenses of operating, maintaining and keeping in repair a housing project, including the cost of utilities, insurance, service employees and equipment replacement; and
- F. "pledgeable revenue" means net income from the housing project and federal payments.

**History:** Laws 2002, ch. 22, § 2.

## ANNOTATIONS

**Cross references.** — As to receipt and distribution of federal forest reserve funds, see 6-11-2 and 6-11-3 NMSA 1978.

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

**PL 874 funds.** — "PL 874 funds", mentioned in Subsection B, refers to funds provided to states and localities by the federal government to assist in areas impacted by federal activities under P.L. 81-874, which was codified as 20 USCS § 236 et seq. 20 USCS § 236 et seq., were repealed in 1984. See 20 USCS § 7701 et seq., for present comparable provisions.

**22-19A-3. Bonds not general obligations of school district or state.**

A. A local school board may issue bonds to finance the purchase, construction, renovation, equipping and furnishing of a housing project and may irrevocably pledge any or all pledgeable revenue to the payment of those bonds and to the debt service reserve fund if one is established for the bonds.

B. Bonds shall be payable solely from pledgeable revenue and shall not constitute an indebtedness or general obligation of the school district, the state or other political subdivisions of the state.

**History:** Laws 2002, ch. 22, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **22-19A-4. Determination by local school board; federal payments.**

A. Prior to issuing bonds to finance the purchase, construction, renovation, equipping or furnishing of a housing project, a local school board shall make a determination that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

B. Revenue from federal payments may be pledged even if the federal payments are subject to annual appropriation. Federal payments shall not be pledged unless such use is allowed by federal law. The local school board shall include in its determination a statement as to the legality of pledging the federal payments and what other revenue will be available to make bond payments if federal payments are not appropriated.

**History:** Laws 2002, ch. 22, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **22-19A-5. Report to state board; state board approval.**

A. Prior to issuing bonds to finance a housing project, a local school board shall furnish to the state board the following information:

- (1) a detailed description of the housing project;
- (2) an explanation of the necessity for the housing project;

- (3) an estimate of the total cost of the housing project;
- (4) an estimate of the net income from the housing project and other revenues that will be pledged to pay for the housing project; and
- (5) an estimate of the yearly operating cost of the housing project.

B. A local school board shall obtain written approval of the state board before it issues bonds to finance a housing project pursuant to the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978].

C. Prior to giving written approval to a housing project, the state board shall determine that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

**History:** Laws 2002, ch. 22, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **22-19A-6. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the housing project;
- (2) receipt and amount of federal payments pledged to the repayment of the bonds; and
- (3) the operating costs of the housing project.

B. Pledgeable revenue that is pledged to the repayment of bonds shall first be used to pay the principal, interest and service charges on the bonds issued pursuant to the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978] and to fund a debt service reserve fund, if applicable.

**History:** Laws 2002, ch. 22, § 6.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

## **22-19A-7. Bonds; pledge of income.**

A. Bonds shall be payable solely from any or all pledgeable revenue, and the local school board shall irrevocably pledge that revenue to the prompt payment of the principal, interest and service charges on the bonds. The bonds shall be equally and ratably secured, without priority, by this pledge of pledgeable revenue.

B. If the bonds are payable solely from the net income of the housing project being financed, the local school board shall operate the housing project so as to ensure a sufficient income to promptly pay the principal, interest and service charges as they become due on the bonds.

C. The state pledges and agrees with the holders of bonds issued by a local school board and payable from pledgeable revenue that the state will not limit or alter the rights of the local school board to receive, collect and account for pledgeable revenue and to fulfill the terms of any agreement made with the bondholders or in any way impair the rights and remedies of the bondholders until the bonds, together with the interest on the bonds, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those bondholders, are fully paid and discharged.

**History:** Laws 2002, ch. 22, § 7; 2003, ch. 158, § 1.

### **ANNOTATIONS**

**The 2003 amendment,** effective April 4, 2003, added Subsection C.

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

## **22-19A-8. Proceeds of bond sales; retirement fund; reserve fund.**

A. Proceeds from the sale of bonds shall be deposited into a separate account to be used solely for the specific purposes for which the bonds were issued, including a debt service reserve fund. All costs incident to issuing and selling the bonds may be paid out of the proceeds of the bonds.

B. The local school board shall establish a "debt service fund" to be used solely for the payment of principal, interest and service charges on the bonds. Sufficient amounts from the pledged revenue shall be deposited in the debt service fund at least annually so that timely payments of principal, interest and service charges may be made. All proceeds remaining after completion of the housing project shall be deposited into the debt service fund.

C. The local school board may establish a "debt service reserve fund" to be used to pay bond payments in case the pledged revenue is insufficient.

**History:** Laws 2002, ch. 22, § 8.

### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

### **22-19A-9. Bonds; form; requirements.**

All bonds issued pursuant to the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978] shall:

- A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];
- B. have a duration of time not to exceed forty years from their date of issuance;
- C. have interest, appreciated principal value or any part thereof payable at intervals or at maturity as determined by the local school board;
- D. be sold at a price that does not result in a net effective interest rate in excess of twelve percent a year unless a higher rate of interest is approved by the state board of finance pursuant to the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978];
- E. have a principal maturity schedule as determined by the local school board; and
- F. be sold at public or private sale at, above or below par.

**History:** Laws 2002, ch. 22, § 9.

### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

### **22-19A-10. Refunding bonds.**

- A. A local school board may issue refunding bonds to refund outstanding bonds.



B. Except as otherwise provided in the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978], refunding bonds shall conform to the provisions of that act that provide for the issuance of teacher housing revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded, but no source of payment shall be pledged that is not authorized by the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978].

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale or sold in part and exchanged in part as provided in the Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978]. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded or the proceeds shall be placed in trust to be held and applied to payment of the bonds to be refunded.

**History:** Laws 2002, ch. 22, § 10.

## ANNOTATIONS

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

### **22-19A-11. Refunding bonds; issuance; sale; proceeds.**

A. A bond shall not be refunded unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Bonds and refunding bonds may be issued separately or in combinations of one or more series.

C. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or an agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased shall have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

D. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank that has trust powers and that is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the

proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due or where the bonds are subject to redemption under a call for redemption previously made or where there is a voluntary surrender with the approval of the local school board.

E. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978] is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

F. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** Laws 2002, ch. 22, § 11.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

#### **22-19A-12. Tax exemption; no charge against state.**

Bonds are exempt from taxation by the state or any of its political subdivisions. No obligation created pursuant to the Teacher Housing Revenue Bond Act [22-19A-1 to 22-19A-12 NMSA 1978] shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** Laws 2002, ch. 22, § 12.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2002, ch. 22 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 2002, 90 days after adjournment of the legislature.

## **ARTICLE 19B**

### **School District Board Anticipation Notes**

#### **22-19B-1. Short title.**

This act [22-19B-1 to 22-19B-9 NMSA 1978] may be cited as the "School District Bond Anticipation Notes Act".

**History:** Laws 2002, ch. 54, § 1.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-2. Purpose.**

The purpose of the School District Bond Anticipation Notes Act [22-19B-1 to 22-19B-9 NMSA 1978] is to provide a mechanism for school districts to obtain short-term financing for capital projects that are needed by the school district to meet the educational needs of students in the school district and to promote the health, safety, security and general welfare of the students in the school district.

**History:** Laws 2002, ch. 54, § 2.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-3. Definitions.**

As used in the School District Bond Anticipation Notes Act [22-19B-1 to 22-19B-9 NMSA 1978]:

A. "bond anticipation note" means a security evidencing an obligation of the school district that precedes the issuance of general obligation bonds; and

B. "general obligation bond" means indebtedness issued by a school district that constitutes a debt for the purpose of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 3.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-4. Issuance of bond anticipation notes.**

A. A school district may issue bond anticipation notes for any purpose for which general obligation bonds are authorized to be issued.

B. The principal amount of bond anticipation notes shall be payable solely from the proceeds of the general obligation bonds for which the bond anticipation notes are issued and shall not be considered debt of the school district for purposes of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 4.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

### **22-19B-5. Bond anticipation note details.**

A. Bond anticipation notes shall be authorized by resolution of the local school board and may be issued in such denominations as determined by the local school board.

B. Bond anticipation notes shall mature no later than one year from the date of issuance. The local school board shall covenant in the resolution authorizing the issuance of the bond anticipation notes to issue general obligation bonds in an amount necessary to retire the bond anticipation notes.

C. The annual interest rate and yield on the bond anticipation notes shall be stated in the resolution that authorizes the issuance of the bond anticipation notes; provided that the maximum net effective interest rate on bond anticipation notes shall not exceed ten percent a year.

D. Bond anticipation notes may be sold at, above or below par at a public sale, in a negotiated sale or to the New Mexico finance authority.

**History:** Laws 2002, ch. 54, § 5.

### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

### **22-19B-6. Limitations on issuance of bond anticipation notes.**

Bond anticipation notes shall not be issued:

A. unless the general obligation bonds for which bond anticipation notes are contemplated have been authorized at an election as required by Article 9, Section 11 of the constitution of New Mexico;

B. in a principal amount in excess of the amount of the general obligation bonds authorized to be issued at an election or, if some portion of the bonds authorized at that election have been issued, in a principal amount in excess of the amount of the authorized but unissued general obligation bonds;

C. in a principal amount in excess of the amount of outstanding general obligation bonds of the school district maturing within one year of the date of issuance of the bond anticipation notes; and

D. unless the proceeds of the bond anticipation notes are to be used for the same purpose for which the general obligation bonds are authorized.

**History:** Laws 2002, ch. 54, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-7. Publication of notice; validation; limitation of action.**

After adoption of a resolution authorizing issuance of bond anticipation notes, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district. After thirty days from the date of publication, any action attacking the validity of the proceedings had or taken by the local school board preliminary to and in the authorization and issuance of the bond anticipation notes described in the notice is perpetually barred.

**History:** Laws 2002, ch. 54, § 7.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-8. Cumulative and complete authority.**

The School District Bond Anticipation Notes Act [22-19B-1 to 22-19B-9 NMSA 1978] is an additional and alternative method for obtaining funding for capital projects by a school district and constitutes full authority for the exercise of powers granted to a local school board by that act. Powers conferred by the School District Bond Anticipation

Notes Act are supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state.

**History:** Laws 2002, ch. 54, § 8.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

#### **22-19B-9. Liberal interpretation.**

The School District Bond Anticipation Notes Act [22-19B-1 to 22-19B-9 NMSA 1978] shall be liberally construed to effect the purposes of the act.

**History:** Laws 2002, ch. 54, § 9.

#### **ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 makes the act effective immediately. Approved March 4, 2002.

**Severability clauses.** — Laws 2002, ch. 54, § 10 provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 20**

### **School Construction**

#### **22-20-1. School construction; approval of the public school facilities authority; compliance with statewide adequacy standards-state construction and fire standards applicable.**

A. Each local school board shall secure the approval of the director of the public school facilities authority or the director's designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure that was formerly used as a school building but that has not been used for that purpose during the previous year. A written application shall be submitted to the director requesting approval of the construction, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;

- (3) the estimated cost;
- (4) a description of the proposed construction project;
- (5) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and
- (6) such other information as may be required by the director.

B. The director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;
- (5) the construction project:

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

(b) if relevant, is appropriately integrated into the school district master plan;

- (6) the school district is financially able to pay for the construction; and
- (7) the secretary has certified that the construction will support the educational program of the school district.

C. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local school board making the application and the department of approval or disapproval of the application.

D. A local school board shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978], provided that, for a contract funded in whole or in part with insurance proceeds:

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

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

E. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978] and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district.

F. The provisions of Subsection E of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

G. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting.

**History:** 1953 Comp., § 77-18-1, enacted by Laws 1967, ch. 16, § 270; 1988, ch. 64, § 41; 2003, ch. 147, § 2; 2005, ch. 274, § 4.

## ANNOTATIONS

**Cross references.** — As to public works generally, see 13-4-1 NMSA 1978 et seq.

**The 1988 amendment**, effective May 18, 1988, substituted "the state superintendent" for "chief" in the catchline and in the second and last sentences in Subsection A; substituted "state superintendent or his designee" for "chief" in the first sentence in Subsection A and in Subsections B and C; added the designations (1) to (5) in Subsection B; and made minor stylistic changes.

**The 2003 amendment**, effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 2005 amendment**, effective April 6, 2005, deletes the requirement in Subsection A(4) that the application include a description of the structure to be built; adds Subsections B(5)(a) and (b) to provide that the project shall be approved if it is in compliance with statewide adequacy standards and is appropriately integrated into the school district master plan; adds Subsection D to provide that a construction contract shall contain provisions requiring the construction to be in compliance with statewide adequacy standards and that for a contract funded by insurance proceeds, the cost of settlement of an insurance claim shall not be increased by inclusion of the proceeds in the contract and the settlement shall be governed by insurance policies, memoranda of



coverage and rules related to them; adds Subsection E to provide that public school facilities shall be constructed pursuant to state standards or codes and rules for the prevention and control of fires and that municipal or county standards or codes do not apply the construction of public school facilities except structures constructed as part of a program of a school district; adds Subsection F to provide that the provisions of Subsection E relating to fire prevention shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code; and adds Subsection G to define "construction".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

## **22-20-2. School building construction; distance from highways.**

A. No local school board shall construct, or cause the construction of, any public school building within four hundred feet of any main artery of travel without the prior written approval of the state board.

B. The district court may enforce the provisions of this section by any appropriate civil remedy in an action brought by an interested party.

C. As used in this section, "main artery of travel" means any designated state or federal-aid highway used primarily to accommodate transient motor traffic through a municipality and any type of public highway used primarily to accommodate transient motor traffic through a rural community or area.

**History:** 1953 Comp., § 77-18-2, enacted by Laws 1967, ch. 16, § 271.

## **22-20-3. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 147, § 14, effective July 1, 2003, repeals 22-20-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 272, regarding approval of the state board for amounts of \$25,000 or more for school construction or remodeling. For provisions of former section, see 2001 Replacement Pamphlet.

## **22-20-4. Applicability.**

The provisions of Chapter 22, Article 20 NMSA 1978 do not apply to public school capital outlay projects subject to the oversight of the public school capital outlay council pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978].

**History:** 1978 Comp., § 22-20-4, enacted by Laws 2001, ch. 338, § 4.

## **ARTICLE 21**

### **Prohibited Sales by Personnel**

#### **22-21-1. Prohibiting sales to the department of education, to school districts and to school personnel; exception; penalty.**

A. A member of the state board, a member of a local school board, the state superintendent, an employee of the department of education, a certified school instructor or a certified school administrator shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department of education, school district or public school with which he is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department of education, school district or public school with which he is associated or employed.

B. The provisions of this section shall not apply to a person making a sale in the regular course of his business who complies with the provisions of Sections 13-1-1 through 13-1-26 NMSA 1978. The provisions of this section shall not apply in cases in which certified school instructors or certified school administrators contract to perform special services with the department of education, school district or public school with which they are associated or employed during time periods wherein service is not required under a contract for instruction or administration.

C. No member of the state board, member of a local school board, state superintendent, employee of the department of education, certified school instructor or certified school administrator shall solicit or sell or be a party to a transaction to solicit or sell insurance or investment securities to any employee of the department of education or any employee of the school district whom he supervises. Nothing in this subsection shall prohibit a financial institution from requiring the purchase of insurance in connection with a loan or offering and selling such insurance in accordance with the provisions of the Insurance Code [59A-1-1 NMSA 1978].

D. No state employee who supervises or exercises control over local school districts, which supervision or control includes but is not limited to school programs, capital outlay and operating budgets, shall enter into any business relationship with an employee of a local school district over which he exercises supervision or control.

E. Any person violating any provision of this section is guilty of a fourth degree felony under the Criminal Code [30-1-1 NMSA 1978]. The state board of education may suspend or revoke the certification of a certified school administrator or a certified school instructor for violation of this section.

**History:** 1953 Comp., § 77-19-1, enacted by Laws 1967, ch. 16, § 282; 1971, ch. 74, § 1; 1985, ch. 141, § 1.

## ANNOTATIONS

**Cross references.** — As to Governmental Conduct Act, see Chapter 10, Article 16 NMSA 1978.

As to sales to and contracts with schools or educational institutions by boards, officers and employees, see 21-1-35 NMSA 1978.

As to sentencing for felonies, see 31-18-15 NMSA 1978.

**Compiler's notes.** — Sections 13-1-1 through 13-1-26 NMSA 1978, referred to in Subsection B, were repealed by Laws 1984, ch. 65, § 175. For present comparable provisions, see 13-1-28 through 13-1-199 NMSA 1978, the Procurement Code.

**Purpose of this section and 21-1-35 NMSA 1978,** is to prevent a conflict of interest between school board members and the districts they are connected with. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

**Applicability of Conflict of Interest Act to school district employees.** — The Conflict of Interest Act does not apply to employees of school districts. 1969 Op. Att'y Gen. No. 69-19.

**Transfer by board of contract to wife of board member.** — No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36.

**Seeking of assistance from bidders in preparation of specifications.** — The conflict of interest provision of the public school code does not prohibit school districts from seeking the assistance of bidders in the preparation of specifications. 1969 Op. Att'y Gen. No. 69-19.

**Practice restricting district bus drivers in location of gas purchase prohibited.** — The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and such activity does not fall within the "regular course of business" exception of Subsection B. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

## **22-21-2. Prohibition on the sale or use of student, faculty and staff lists in direct marketing; remedies.**

A. No person shall sell or use student, faculty or staff lists with personal identifying information obtained from a public school or a local school district for the purpose of marketing goods or services directly to students, faculty or staff or their families by means of telephone or mail. The provisions of this section shall not apply:

(1) to legitimate educational purposes, which shall be determined by rules and regulations developed by the department of education; or

(2) when a parent of a student authorizes the release of the student's personal identifying information in writing to the public school or local school district. For the purposes of this subsection, "personal identifying information" means the names, addresses, telephone numbers, social security numbers and other similar identifying information about students maintained by a public school or local school district.

B. Any person receiving a solicitation may bring an action against any person who violates Subsection A of this section.

C. If a person is found to have violated Subsection A of this section in an action brought under Subsection B of this section, then the person shall be required to pay actual damages or the sum of five hundred dollars (\$500), whichever is greater, and reasonable attorneys' fees to the person receiving the solicitation.

**History:** 1978 Comp., § 22-21-2, enacted by Laws 2003, ch. 153, § 72; 1978 Comp., § 22-1-8, recompiled as 1978 Comp., § 22-21-2 by Laws 1993, ch. 166, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 143, § 2, effective July 1, 2004, and contingent upon adoption of an amendment to Article 12, Section 6 of the constitution of New Mexico, repeals Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978. This section was compiled as Section 22-1-8 NMSA 1978 at the time of the enactment of Laws 2003, Chapter 143, Section 2.

## **ARTICLE 22**

### **Variable School Calendars**

#### **22-22-1. Short title.**

This act [22-22-1 to 22-22-6 NMSA 1978] may be cited as the "Variable School Calendar Act".

**History:** 1953 Comp., § 77-22-1, enacted by Laws 1972, ch. 16, § 1.

## **22-22-2. Definition.**

As used in the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978], "variable school calendar" means a calendar for school or school district operations extending over a ten, eleven or twelve-month period or portions thereof in excess of nine months, which permits pupil attendance on a staggered schedule.

**History:** 1953 Comp., § 77-22-2, enacted by Laws 1972, ch. 16, § 2.

## **22-22-3. Purpose of act.**

The purpose of the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978] is to create an opportunity for public schools or school districts to operate beyond a nine-month period in any one calendar year in order to achieve optimum and maximum use of school facilities and personnel.

**History:** 1953 Comp., § 77-22-3, enacted by Laws 1972, ch. 16, § 3.

## **22-22-4. Variable school calendar.**

The local school board may operate a public school or the school district under a variable school calendar. The state board shall develop criteria for the establishment of a variable school calendar in a school district. Those criteria shall include a requirement that the local school board demonstrate substantial community support for implementation of the variable school calendar.

**History:** 1953 Comp., § 77-22-4, enacted by Laws 1972, ch. 16, § 4; 1993, ch. 24, § 1; 2003, ch. 153, § 61.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "department of education" in two places in the first sentence; added the second and third sentences; and made a minor stylistic change.

**The 2003 amendment**, effective April 4, 2003, deleted "request" from the end of the section heading; deleted "of any school district" following "school board" near the beginning, deleted "adopt by resolution a request to the state board for approval to" following "may" near the beginning, inserted "a public school or the school district" following "operate" near the middle, and deleted the last sentence.

## **22-22-5. Variable school calendar; action by state board.**

The state board may suspend or modify existing rules pertaining to school district operations upon recommendation of the state superintendent when those rules prevent

or impede the implementation of the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978].

**History:** 1953 Comp., § 77-22-5, enacted by Laws 1972, ch. 16, § 5; 1993, ch. 24, § 2; 1993, ch. 226, § 49; 2003, ch. 153, § 62.

### ANNOTATIONS

**1993 amendments.** — Laws 1993, ch. 24, § 2, effective June 18, 1993, which deleted "department and" preceding "board" in the catchline; substituted "state board" and "board" for "department" and "department of education" in the first and second sentences of Subsection A; and made related and other minor stylistic changes, was approved March 15, 1993. However, Laws 1993, ch. 226, § 49, effective July 1, 1993, also amending this section by substituting "state board" and "board" for "department" and "department of education" in Subsection A, deleting "of education" following "state board" in Subsection B, and making minor stylistic changes was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 49. See 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "state" for "department and" preceding "board" in the catchline; deleted Subsection A; deleted the "B." subsection designation; and deleted "and regulations" following "rules" twice in the section.

### **22-22-6. Variable school calendar; effect.**

The variable school calendar for a public school or school district shall be in lieu of any other school calendar provided by law, and all requirements for reporting or operating under existing school calendars shall be suspended for the public school or school district upon the initiation of operations under a variable school calendar. The public school or school district shall continue to operate under the approved variable school calendar until the local school board discontinues the variable school calendar.

**History:** 1953 Comp., § 77-22-6, enacted by Laws 1972, ch. 16, § 6; 1993, ch. 24, § 3; 2003, ch. 153, § 63.

### ANNOTATIONS

**The 1993 amendment,** effective June 18, 1993, substituted "state board" for "state department of education" and "department" and made minor stylistic changes.

**The 2003 amendment,** effective April 4, 2003, deleted "of approval of request" at the end of the section heading; substituted "The variable school" for "Upon approval of the state board of the request of a local school board for operation under a variable school calendar, such" at the beginning of the section; deleted "and the rules and regulations made pursuant thereto" at the end of the first sentence; inserted "public" preceding "school" near the beginning of the second sentence; substituted "discontinues" for

"requests the state board by resolution for approval of the discontinuance of" following "local school board" in the second sentence; and deleted "and the request is approved by the state board" at the end of the section.

## **ARTICLE 23**

### **Bilingual Multicultural Education**

#### **22-23-1. Short title.**

Chapter 22, Article 23 NMSA 1978 may be cited as the "Bilingual Multicultural Education Act".

History: 1953 Comp., § 77-23-1, enacted by Laws 1973, ch. 285, § 1; 2004, ch. 32, § 1.

#### **ANNOTATIONS**

**Cross references.** — As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

For constitutional provision requiring legislature to provide for training of teachers in English and Spanish languages and to provide means and methods to facilitate teaching of English language to Spanish-speaking students, see N.M. Const., art. XII, § 8.

For constitutional provision relating to educational rights of children of Spanish descent, see N.M. Const., art. XII, § 10.

**The 2004 amendment**, effective May 19, 2004, revised the short title to include all of Chapter 22, Article 23 NMSA 1978.

**Law reviews.** — For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M.L. Rev. 364 (1973).

For note, "Bilingual Education: Serna v. Portales Municipal Schools," see 5 N.M.L. Rev. 321 (1975).

#### **22-23-1.1. Legislative findings.**

The legislature finds that:

A. while state and federal combined funding for New Mexico's bilingual multicultural education programs was forty-one million dollars (\$41,000,000) in 2003, the funds do not directly support bilingual multicultural education program instruction;

B. the state's bilingual multicultural education program goals are for all students, including English language learners, to:

(1) become bilingual and biliterate in English and a second language, including Spanish, a Native American language, where a written form exists and there is tribal approval, or another language; and

(2) meet state academic content standards and benchmarks in all subject areas;

C. districts do not fully understand how to properly assess, place and monitor students in bilingual multicultural education programs so that the students may become academically successful;

D. because inaccurate reporting on student participation in bilingual multicultural education programs has a direct impact on state and federal funding, accountability measures are necessary to track bilingual multicultural education program funds;

E. the federal No Child Left Behind Act of 2001 does not preclude using state funds for bilingual multicultural education programs;

F. Article 12, Section 8 of the constitution of New Mexico recognizes the value of bilingualism as an educational tool;

G. professional development is needed for district employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

(1) research-based bilingual multicultural education programs and implications for instruction;

(2) best practices of English as a second language, English language development and bilingual multicultural education programs; and

(3) classroom assessments that support academic and language development;

H. parents in conjunction with teachers and other district employees shall be empowered to decide what type of bilingual multicultural education program works best for their children and their community. Districts shall also provide parents with appropriate training in English or in the home or heritage language to help their children succeed in school;

I. because research has shown that it takes five to seven years to acquire academic proficiency in a second language, priority should be given to programs that



adequately support a child's linguistic development. The state shall, therefore, fund bilingual multicultural education programs for students in grades kindergarten through three before funding bilingual multicultural education programs at higher grade levels;

J. a standardized curriculum, including instructional materials with scope and sequence, is necessary to ensure that the bilingual multicultural education program is consistent and building on the language skills the students have previously learned. The instructional materials for Native American bilingual multicultural education programs shall be written, when permitted by the Indian nation, tribe or pueblo, and if written materials are not available, an oral standardized curriculum shall be implemented;

K. equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for all students participating in the program. For Native American students enrolled in public schools, equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials are required to satisfy a goal of the Indian Education Act [22-23A-1 NMSA 1978]; and

L. the Bilingual Multicultural Education Act [22-23-1 NMSA 1978] will ensure equal education opportunities for students in New Mexico. Cognitive and affective development of the students is encouraged by:

(1) using the cultural and linguistic backgrounds of the students in a bilingual multicultural education program;

(2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and

(3) teaching students to appreciate the value and beauty of different languages and cultures.

History: Laws 2004, ch. 32, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 31 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## **ANNOTATIONS**

### **22-23-2. Definitions.**

As used in the Bilingual Multicultural Education Act [22-23-1 NMSA 1978]:

A. "bilingual multicultural education program" means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

B. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;

C. "department" means the public education department;

D. "district" means a public school or any combination of public schools in a district;

E. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade level English proficient peers and native English speakers;

F. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;

G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community;

H. "school board" means a local school board; and

I. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

History: 1953 Comp., § 77-23-2, enacted by Laws 1973, ch. 285, § 2; 2004, ch. 32, § 3.

## ANNOTATIONS

**Chief of public school finance.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance. Laws 1980, ch. 151, § 58, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and

administration and designates the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education.

**2004 repeal and reenactment.** — This section was repealed and reenacted effective May 19, 2004. Pursuant to Section 12-2A-14 NMSA 1978, it has been considered as an amendment rather than as a repeal. The 2004 amendments amended Subsection A to revise the definition of "bilingual multicultural education", deleted Subsection B, redesignated Subsection C as Subsection B and changed the definition of "culturally and linguistically different", changed the definition of "department" to the public education department, revised the definition of "district", and added new Subsections E through G and I.

### **22-23-3. Repealed.**

History: 1953 Comp., § 77-23-3, enacted by Laws 1973, ch. 285, § 3; 2004, ch. 32, § 7.

#### **ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 31, § 7 repeals Section 22-23-3 NMSA 1978, relating to purpose of act, effective May 19, 2004.

### **22-23-4. Department; powers; duties.**

A. The department shall issue rules for the development and implementation of bilingual multicultural education programs.

B. The department shall administer and enforce the provisions of the Bilingual Multicultural Education Act [22-23-1 NMSA 1978].

C. The department shall assist school boards in developing and evaluating bilingual multicultural education programs.

D. In the development, implementation and administration of the bilingual multicultural education programs, the department shall give preference to New Mexico residents who have received specialized training in bilingual education when hiring personnel.

History: 1953 Comp., § 77-23-4, enacted by Laws 1973, ch. 285, § 4; 2004, ch. 32, § 4.

#### **ANNOTATIONS**

**The 2004 amendment**, effective May 19, 2004, revised Subsection A to change "state board" to "departmen" and inserted "bilingual multicultural education" in Subsections A, C and D.

## **22-23-5. Bilingual multicultural education program plan; evaluation.**

A. The school board may prepare and submit to the department a bilingual multicultural education program plan in accordance with rules issued by the department.

B. At regular intervals, the school board and a parent advisory committee from the district shall review the goals and priorities of the plan and make appropriate recommendations to the department.

C. Bilingual multicultural education programs shall be located in the district and delivered as part of the regular academic program. Involvement of students in a bilingual multicultural education program shall not have the effect of segregating students by ethnic group, color or national origin.

D. Each district shall maintain academic achievement and language proficiency data and update the data annually to evaluate bilingual multicultural education program effectiveness and use of funds. The department shall annually compile and report this data to the appropriate interim legislative committee.

E. Districts shall provide professional development to district employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

(1) research-based bilingual multicultural education programs and implications for instruction;

(2) best practices of English as a second language, English language development and bilingual multicultural education programs; and

(3) classroom assessments that support academic and language development.

F. Bilingual multicultural education programs shall be part of the district's professional development plan. Bilingual educators, including teachers, teacher assistants, instructional support personnel, principals and program administrators, shall participate in professional development and training.

History: 1953 Comp., § 77-23-5, enacted by Laws 1973, ch. 285, § 5; 1988, ch. 64, § 42; 2004, ch. 32, § 5.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, deleted "the state superintendent of public instruction or his representative and the chief" following "to the department" in Subsection A.

**The 2004 amendment**, effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and C, changed "state board" to "department" and added new Subsections D through F.

## **22-23-6. Bilingual multicultural education programs; eligibility for state financial support.**

A. To be eligible for state financial support, each bilingual multicultural education program shall:

(1) provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in a district;

(2) fund programs for culturally and linguistically different students in the state in grades kindergarten through three for which there is an identifiable need to improve the language capabilities of both English and the home language of these students before funding programs at higher grade levels;

(3) use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

(4) use teachers who have specialized in elementary or secondary education and who have received specialized training in bilingual education conducted through the use of two languages. These teachers or other trained personnel shall administer language proficiency assessments in both English and in the home language until proficiency in each language is achieved;

(5) emphasize the history and cultures associated with the students' home or heritage language;

(6) establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation and evaluation of the bilingual multicultural education program; and

(7) provide procedures to ensure that parental notification is given annually prior to bilingual multicultural education program placement.

B. Each bilingual multicultural education program shall meet each requirement of Subsection A of this section and be approved by the department to be eligible for state financial support.

History: 1953 Comp., § 77-23-6, enacted by Laws 1973, ch. 285, § 6; 1987, ch. 211, § 1; 2004, ch. 32, § 6.

## ANNOTATIONS

**The 2004 amendment**, effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and B, added "both English and the home language" to Paragraph (2) of Subsection A, added to Subsection A the last sentence of Paragraph (4), "home or heritage language" to Paragraph (5) and added new Subparagraphs (6) and (7) and made other minor amendments.

**School district would not be justified in failing to take affirmative steps to rectify language deficiencies because the state did not provide additional funding** for bilingual multicultural programs at each grade level. Neither *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974); nor *Serna v. Portales Mun. Schools*, 499 F.2d 1147 (10th Cir. 1974) even suggests that the state is responsible for providing any such additional funds. 1976 Op. Att'y Gen. No. 76-3.

**Law reviews.** — For note, "Bilingual Education: *Serna v. Portales Municipal Schools*," see 5 N.M.L. Rev. 321 (1975).

## ARTICLE 23A Indian Education

### 22-23A-1. Short title.

Chapter 22, Article 23A NMSA 1978 may be cited as the "Indian Education Act".

**History:** Laws 2003, ch. 151, § 1; 2005, ch. 299, § 1.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, adds the statutory reference to the act.

### 22-23A-2. Purpose of act.

The purpose of the Indian Education Act [22-23A-1 to 22-23A-8 NMSA 1978] is to:

- A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;
- B. ensure maintenance of native languages;
- C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;

D. ensure that the department of education partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;

E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;

F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;

G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;

H. ensure that parents; tribal departments of education; community-based organizations; the department of education; universities; and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;

I. ensure that tribes are notified of all curricula development for their approval and support;

J. encourage an agreement regarding the alignment of the bureau of Indian affairs and state assessment programs so that comparable information is provided to parents and tribes; and

K. encourage and foster parental involvement in the education of Indian students.

**History:** Laws 2003, ch. 151, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-23A-3. Definition.**

As used in the Indian Education Act [22-23A-1 to 22-23A-8 NMSA 1978], "tribe" means an Indian nation, tribe or pueblo located within New Mexico.

**History:** Laws 2003, ch. 151, § 3.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-23A-4. State board; tribes; rulemaking.**

The state board, in consultation with tribes, may adopt and promulgate rules to implement the provisions of the Indian Education Act [22-23A-1 to 22-23A-8 NMSA 1978].

**History:** Laws 2003, ch. 151, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-23A-5. Indian education division; created; assistant superintendent; duties.**

A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division.

B. The Indian education division shall:

(1) provide assistance to school districts and tribes to meet the educational needs of American Indian students;

(2) provide assistance to school districts and tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for American Indian students;

(3) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to American Indian students in kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through twelve;

(4) provide assistance to school districts and tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by



contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(5) establish an Indian education advisory council;

(6) by January 2006, enter into agreements with each tribe or authorized tribal educational entity to share programmatic information and to coordinate technical assistance for public schools that serve American Indian students;

(7) seek funds to establish an Indian education office in the northwest corner of the state to implement agreements with each tribe or authorized tribal educational entity, monitor the progress of American Indian students and coordinate technical assistance at the public schools that serve American Indian students;

(8) require school districts to obtain a signature of approval by the tribal governments or tribal government designees residing within school district boundaries, verifying that the tribes agree to Indian education policies and procedures pursuant to federal requirements;

(9) seek funds to establish, develop and implement the following support services for the purposes of increasing the number of American Indian teachers and principals and providing continued professional development for educational assistants, teachers and principals serving American Indian students, in conjunction with the Indian education advisory council:

(a) recruitment and retention;

(b) academic transition programs;

(c) academic financial support;

(d) teacher preparation;

(e) teacher induction; and

(f) professional development;

(10) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(11) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978; and

(12) develop a plan to establish a post-secondary investment system for Indian students to which parents, tribes and the state may contribute.

**History:** Laws 2003, ch. 151, § 5; 2005, ch. 299, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**The 2005 amendment,** effective June 17, 2005, adds Subsection B(3) to provide that the division shall develop or select for implementation a curriculum to provide instruction to American Indian students in kindergarten through the sixth grade to prepare them for per-advanced placement and advanced placement in grades seven through twelve and changes the statutory reference in Subsection B(11) from Section 22-2-2 NMSA 1978 to Section 22-10A-19.1 NMSA 1978.

### **22-23A-6. Advisory council.**

A. The "Indian education advisory council" shall consist of fourteen members as follows:

- (1) four representatives from the Navajo Nation;
- (2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;
- (3) four representatives, two from the southern pueblos and two from the northern pueblos; and
- (4) four members representing urban areas, the bureau of Indian affairs, head start organizations and the general public, at least one of whom shall be non-Indian, but all of whom shall have knowledge of and involvement in the education of Indian students.

B. On a semiannual basis, representatives from all tribes, members of the state board, the governor's office, the New Mexico office of Indian affairs, the legislature, the state superintendent and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of American Indian students.

C. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2003, ch. 151, § 6.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

### **22-23A-7. Report.**

A. The Indian education division in collaboration with the education division of the bureau of Indian affairs and other entities that serve American Indian students shall submit an annual statewide American Indian education status report to all tribes.

B. A school district with tribal lands located within its boundaries shall provide a districtwide American Indian education status report to all tribes represented within the school district boundaries.

C. The status reports shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the tribes:

(1) student achievement as measured by a statewide test approved by the state board, with results disaggregated by ethnicity;

(2) school safety;

(3) the dropout rate;

(4) attendance;

(5) parent and community involvement;

(6) educational programs targeting American Indian students;

(7) financial reports;

(8) current status of federal Indian education policies and procedures;

(9) school district initiatives to decrease the number of student dropouts and increase attendance;

(10) public school use of variable school calendars; and

(11) school district consultations with parent advisory committees.

**History:** Laws 2003, ch. 151, § 7.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

#### **22-23A-8. Fund created.**

A. The "Indian education fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education, and money in the fund is appropriated to the department to distribute awards to support the Indian Education Act [22-23A-1 to 22-23A-8 NMSA 1978].

B. The department of education shall develop procedures and rules for the award of money from the fund. Disbursement of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the state superintendent.

**History:** Laws 2003, ch. 151, § 8.

### ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 151 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

## **ARTICLE 24**

### **Public School Capital Outlay**

#### **22-24-1. Short title.**

Chapter 22, Article 24 NMSA 1978 may be cited as the "Public School Capital Outlay Act".

**History:** 1953 Comp., § 77-24-9, enacted by Laws 1975, ch. 235, § 1; 1978, ch. 152, § 1; 2000 (2nd S.S.), ch. 19, § 1.

### ANNOTATIONS

**Cross references.** — As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2000 amendment**, effective April 12, 2000, substituted "Chapter 22, Article 24 NMSA 1978" for "Sections 22-24-1 through 22-24-6 NMSA 1978".

### **22-24-2. Purpose of act.**

The purpose of the Public School Capital Outlay Act [22-24-1 NMSA 1978] is to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and maximize safe, functional and durable learning environments in order for the state to meet its educational responsibilities and for New Mexico's students to have the opportunity to achieve success.

History: 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2; 1994, ch. 88, § 1; 2004, ch. 125, § 6.

### **ANNOTATIONS**

**The 1994 amendment**, effective May 18, 1994 deleted "all" preceding "available" near the end of the section.

**The 2004 amendment**, effective May 19, 2004, replaced the previous purpose to "meet critical school district capital outlay which cannot be met by the school district after it has exhausted available resources" with the purpose that follows "is to" at the beginning of the section.

### **22-24-3. Definitions.**

As used in the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978]:

- A. "council" means the public school capital outlay council; and
- B. "fund" means the public school capital outlay fund.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3.

### **22-24-4. Fund created; use.**

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

B. Except as provided in Subsections G through K of this section, money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program.

C. The council may authorize the purchase by the public school facilities authority of portable classrooms to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the portable classrooms shall rest in the public school facilities authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the public school facilities authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. The council shall require as a condition of application that a school district have a current five-year facilities plan, which shall include a current preventive maintenance plan to which the school adheres for each public school in the school district.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that meet the criteria of the Public School Capital Outlay Act [22-24-1 NMSA 1978].

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

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

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

G. Balances in the fund may be annually appropriated for the core administrative functions of the public school facilities authority pursuant to the Public School Capital Outlay Act and, in addition, balances in the fund may be expended by the public school facilities authority, upon approval of the council, for project management expenses; provided that:

(1) the total annual expenditures from the fund pursuant to this subsection shall not exceed five percent of the average annual grant assistance authorized from the fund during the three previous fiscal years; and

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

H. Up to one million two hundred fifty thousand dollars (\$1,250,000) of the balances of the fund may be expended in fiscal years 2003 and 2004 by the council for the purpose of updating and refining the statewide assessment study required by Section 22-24-5 NMSA 1978 and for the training of state and local officials on the use of the database and other data-management-related issues identified by the council.

I. Up to thirty million dollars (\$30,000,000) of the fund may be allocated annually by the council in fiscal years 2006 and 2007 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that all money allocated pursuant to this subsection shall be expended prior to September 1, 2008.

J. Up to four million dollars (\$4,000,000) from the fund may be expended annually by the council in fiscal years 2005 through 2009 for grants to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council, provided that, an application on behalf of a charter school shall be made by the school district but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

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

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

(b) three hundred dollars (\$300) for fiscal year 2005 and six hundred dollars (\$600) for fiscal years 2006 through 2009 multiplied by the number of MEM using the leased classroom facilities; provided that, if the total grants awarded pursuant to this paragraph would exceed the total annual amount available, the rate specified in this subparagraph shall be reduced proportionately;

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

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

(4) as used in this subsection, "MEM" means:

(a) the average full-time-equivalent enrollment using leased classroom facilities on the fortieth, eightieth and one hundred twentieth days of the prior school year; or

(b) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased classroom facilities in the first year of instruction, as shown in the approved charter school application, provided that, after the fortieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date.

K. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the public school facilities authority to reimburse the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority shall enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection.

History: 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70; 1993, ch. 226, § 50; 1994, ch. 88, § 2; 2001, ch. 338, § 5; 2001, ch. 339, § 1; 2002, ch. 65, § 1; 2003, ch. 147, § 3; 2004, ch. 125, § 7; 2005, ch. 274, § 5.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

**The 1994 amendment**, effective May 18, 1994, deleted "and the capital expenditures are limited to the purchase or construction of temporary or permanent classrooms" following "educational program" in Subsection B, and deleted "public" preceding "school" near the end of the fifth sentence of Subsection C.

**2001 amendments.** — Laws 2001, ch. 339, § 1, effective July 1, 2001, adding the last sentence of Subsection D; deleting "that cannot be financed by the school district from other sources and" following "capital outlay projects" in Subsection E; and adding Subsection F, was approved April 5, 2001. This section was also amended by Laws 2001, ch. 338, § 5, effective April 5, 2001. This section is set out as amended by Laws 2001, ch. 339, § 1. See 12-1-8 NMSA 1978.

**The 2002 amendment**, effective May 15, 2002, inserted the exception clause in Subsection B; and added Subsections G and H.



**The 2003 amendment**, effective April 4, 2003, in Subsection F, inserted the second sentence and added Paragraphs F(1) and (2); rewrote Subsections G and H pertaining to distribution of money for projects; and added Subsections I and J.

**The 2004 amendment**, effective May 19, 2004, amended Subsection B to substitute "through K" for "and H", Subsection C to substitute in three places "public school facilities authority" for "property control division of the general services department" and to change in three places "property" to "portable classrooms", Subsection F to insert after "approved" "or an expenditure has been ordered by a court pursuant to Section 22-24-5.5 NMSA 1978" and Paragraph (2) to change "make" to "authorize", Subsection G to delete the present subsection and add new Subsection G, amended Subsection I to change "fiscal year 2004" to "fiscal years 2004 through 2007", and added new Subsection K.

**Supplemental severance tax bonds.** — Laws 2004, ch. 125, § 15, effective May 19, 2004, authorizes supplemental severance tax bonds to be issued by the state board of finance when the capital outlay council certifies the need for the bonds in the amount of fifty-seven million dollars (\$57,000,000) for completing projects that have been partially funded by the public school capital outlay council in September 2003 and for making awards of grant assistance for correcting deficiencies pursuant to the Public School Capital Outlay Act. The proceeds of the bonds are to be deposited in the public school capital outlay fund.

**Appropriations.** — The following acts have appropriated funds to the public school capital outlay fund in the specified amounts from the specified sources: Laws 1975, ch. 235, § 7, \$1,800,000 (general fund); Laws 1976, ch. 24, § 1, \$2,500,000 (general fund); Laws 1977, ch. 91, § 1C(19), \$4,000,000 (general fund); Laws 1978, ch. 152, § 7, \$4,000,000 (general fund); Laws 1979, ch. 248, § 1, \$9,000,000 (general fund); Laws 1980, ch. 29, § 1, \$10,000,000 (general fund); Laws 1981, ch. 164, § 1, \$10,000,000 (general fund); Laws 1982, ch. 46, § 1, \$15,000,000 (general fund); Laws 1983, ch. 287, § 1O, \$18,000,000 (proceeds from sev. tax bonds); Laws 1984, ch. 10, § 1O, \$14,000,000 (proceeds from sev. tax bonds); Laws 1985 (S.S.), ch. 15, § 2G, \$14,000,000 (general fund); Laws 1986, ch. 115, § 1L, \$6,000,000 (proceeds from sev. tax bonds); Laws 1987, ch. 354, § 1D(2), \$5,000,000 (proceeds from sev. tax bonds); Laws 1988 (S.S.), § 10A, \$5,000,000 (proceeds from gen. obl. bonds); Laws 1989, ch. 315, § 2S, \$4,750,000 (capital projects fund); Laws 1989, ch. 315, § 9E, \$1,800,000 (proceeds from sev. tax bonds); Laws 1990, ch. 133, § 10A(2), \$12,000,000 (proceeds from gen. obl. bonds); Laws 1991, ch. 261, § 8, \$9,000,000 (proceeds from sev. tax bonds); Laws 1992, ch. 103, § 11B(19), \$11,000,000 (proceeds from gen. obl. bonds); Laws 1993, ch. 367, § 37, \$8,000,000 (proceeds from sev. tax bonds); Laws 1994, ch. 142, § 10B(1), \$8,200,000 (proceeds from gen. obl. bonds); Laws 1994, ch. 147, § 3HH, \$10,000,000 (general fund); Laws 1995, ch. 2, § 1, \$5,000,000 (general fund); Laws 1996 (1st S.S.), ch. 5, § 1, \$5,500,000 (general fund); Laws 1998 (1st S.S.), ch. 5, § 1, \$5,000,000 (general fund).

Laws 2001, ch. 338, § 15, effective April 5, 2001, appropriates from the general fund to the state department of public education, \$2,300,000 for statewide needs and cost assessment for capital outlay projects; \$200,000 to assist the public school capital outlay council; \$1,100,000 to the deficiencies correction unit of the public school capital outlay council; and \$50,000,000 to the public school capital outlay fund to correct outstanding deficiencies.

Laws 2004, ch. 125, § 19, effective May 19, 2004, reauthorizes the balance of the general fund appropriation made by Laws 2001, ch. 338, § 15 for expenditure through fiscal year 2007. Unexpended or unencumbered balances remaining at the end of fiscal year 2007 do not revert.

Laws 2005, ch. 274, § 19, effective April 6, 2005, provides that:

A. \$1,562,000 is appropriated from the public school capital outlay fund to the public school facilities authority for expenditure in fiscal years 2005 through 2007 for the purpose of developing and implementing a uniform, statewide web-based facility information management system pursuant to the provisions of Section 22-24-5.3 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the public school capital outlay fund; and

B. \$284,400 is appropriated from the public school capital outlay fund to the public school capital outlay council to make grants in fiscal year 2005 for the purpose of reimbursing charter schools that are in their first year of operation in the 2004-2005 school year for lease payments. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the public school capital outlay fund. The amount of a grant to a charter school shall be determined pursuant to Paragraph (1) of Subsection J of Section 22-24-4 NMSA 1978, provided that:

(1) the amount per MEM used in Subparagraph (b) of Paragraph (1) of subsection J of Section 22-24-4 NMSA 1978 shall be three hundred dollars (\$300); and

(2) the MEM shall be calculated on the enrollment in the charter school on the fortieth, eightieth and one hundred twentieth days of the 2004-2005 school year.

**The 2005 amendment**, effective April 6, 2005, changes the statutory reference in Subsection F from Section 22-24-5.5 NMSA 1978 to Section 22-24-5.4 NMSA 1978; deletes former Subsection I which provided an appropriation to the council for core administrative functions of the deficiencies corrections program; deletes former Subsection J which provided for the expenditures by the council for the core administrative functions of the public school facilities authority; provides in Subsection I for the allocation of funds for a roof repair and replacement initiative; provides in Subsection J that an application on behalf of a charter school shall be made by the school district, but if the school district fails to make an application, the charter school may submit its own application; provides in Subsection J(1)(b) that the amount of the grant shall not exceed \$300 for fiscal year 2005 and \$600 for fiscal years 2006 through

2009; changes "total" to "average" and "final funded prior school year" to "fortieth, eightieth and one hundred twentieth days of the prior school year" in Subsection J(4)(a); adds Subsection J(4)(b) to define "MEM" in the case of a charter school that has not commenced classroom instruction; and adds Subsection K to provide for the reimbursement of the state fire marshal, the construction industries division and local jurisdiction of costs incurred to permit and inspect projects.

**Disposal of portable classrooms not limited to sale.** — The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-5.

**When gratis transfer of classrooms proper.** — A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-5.

**Veto power over gratis transfer.** — Section 13-6-2C NMSA 1978 gives the secretary of finance and administration or the state board of finance veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-5.

#### **22-24-4.1. Outstanding deficiencies; assessment; correction.**

A. No later than September 1, 2001, the council shall define and develop guidelines, consistent with the codes adopted by the construction industries commission pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978], for school districts to use to identify outstanding serious deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel.

B. A school district shall use these guidelines to complete a self-assessment of the outstanding health or safety deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The council shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code, enter into construction contracts with contractors to correct the deficiencies.

E. In entering into construction contracts to correct deficiencies pursuant to this section, the council shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible and consistent with the original purpose.

F. Any deficiency that may adversely affect the health or safety of students or school personnel may be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district.

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2005, and that funds be expended no later than June 30, 2007.

History: 1978 Comp., § 22-24-4.1, enacted by Laws 2001, ch. 338, § 6; 2003, ch. 147, § 4; 2004, ch. 125, § 8.

### ANNOTATIONS

**The 2003 amendment**, effective April 4, 2003, deleted "local" preceding "school district" in Subsection B; in Subsection G, substituted "awards made" for "funded" and added "and that funds be expended no later than June 30, 2006" at the end of the sentence.

**The 2004 amendment**, effective May 19, 2004, amended Subsection B to add "school" before "district" and amended Subsection G to change "June 30, 2004" to "June 30, 2005" and "June 30, 2005" to "June 30, 2007".

### 22-24-4.2. Repealed.

### ANNOTATIONS

**Temporary provisions.** — Laws 2003, ch. 147, § 13, effective July 1, 2003, provides that all personnel of the deficiencies correction unit of the public school capital outlay council and up to four full-time employees of the capital outlay unit of the state department of public education are transferred to the public school facilities authority.

**Repeals.** — Laws 2003, ch. 147, § 14, effective July 1, 2003, repeals 22-24-4.2 NMSA 1978, as enacted by Laws 2001, ch. 338, § 7, regarding the deficiencies correction unit. For provisions of former section, see 2001 Replacement Pamphlet.

### 22-24-4.3. Roof repair and replacement initiative.

A. The council shall develop guidelines for a roof repair and replacement initiative pursuant to the provisions of this section.

B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council. The application shall include an assessment of the roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.

C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve roof repair or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act [22-25-1 NMSA 1978] or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.

E. The state share of the cost of an approved project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district prior to September 1, 2008.

History: Laws 2005, ch. 274, § 6.

## **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20, makes the act effective April 6, 2005.

### **22-24-4.4. Serious roof deficiencies; correction.**

A. To complete the program to correct outstanding deficiencies, those serious deficiencies in the roofs of public school facilities identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act [22-25-1 NMSA 1978], the cost of correcting the deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

B. It is the intent of the legislature that all awards for correcting outstanding deficiencies in public school roofs that may adversely affect the health and safety of students and school personnel be made pursuant to this section no later than September 30, 2005 and that funds be expended no later than September 30, 2007.

History: Laws 2005, ch. 274, § 7.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 274, § 20, makes the act effective April 6, 2005.

### **22-24-5. Public school capital outlay projects; application; grant assistance**

A. Applications for grant assistance, the approval of applications, the prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section; provided, however, that the order of priority in the two years beginning July 1, 2004 shall first reflect those specific projects that were partially funded by the council in September 2003 but are not as yet completed, excluding any expansion of the scope of those projects and contingent upon maintenance of the required local support. In that transition period, such projects shall be funded regardless of any deviation from the statewide adequacy standards; provided that the amount of the award received shall not exceed the amount necessary to meet the statewide adequacy standards, including projected enrollment growth.

B. Except as provided in Subsection A of this section and in Sections 22-24-4.3 and 22-24-5.4 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978:

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools; and

(b) in an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978]. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs; and

(c) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) except as provided in Paragraph (6) or (8) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph. No later than May 1 of each calendar year, a value shall be calculated for each school district in accordance with the following procedure:

(a) the final prior year net taxable value for a school district divided by the MEM for that school district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

(d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;

(e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

(f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;

(g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act [22-25-1 NMSA 1978], the Public

School Buildings Act [22-26-1 NMSA 1978], the Education Technology Equipment Act [6-15A-1 NMSA 1978] and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;

(h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;

(i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;

(j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;

(k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

(l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;

(m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;

(n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the value for the subject school district;

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the value for the subject school district;

(p) except as reduced pursuant to Paragraph (6) of this subsection, the amount to be distributed from the fund for an approved project: 1) in calendar year 2005, shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in 2005 plus the value calculated for that district in 2004 and the denominator of which is two; and 2) in calendar year 2006 and each subsequent calendar year, shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in



the current year plus the value calculated for that school district in each of the two preceding years and the denominator of which is three; and

(q) as used in this paragraph: 1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the fortieth, eightieth and one hundred twentieth days of the prior school year; and 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, but excluding educational technology appropriations made prior to January 1, 2005 and reauthorizations of appropriations previously made to the subject school district, is calculated; provided that an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation; provided further that the total shall be increased by an amount, certified to the council by the department, equal to the educational technology appropriations made to the subject school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act;

(b) the applicable fraction used for the subject school district and the current calendar year for the calculation in Subparagraph (p) of Paragraph (5) of this subsection is subtracted from one;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (b) of this paragraph for that school district;

(d) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(7) as used in Paragraphs (5) and (6) of this subsection, "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located;

(8) the council may adjust the amount of local share otherwise required if it determines that a school district has used all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the fortieth, eightieth and one hundred twentieth days of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district has: 1) an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; and

(9) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been

approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (5), (6) or (8) of this subsection, is not funded with grant assistance from the fund; provided that school district funds used for a project that was initiated after September 1, 2002 when the statewide adequacy standards were adopted, but before September 1, 2004 when the standards were first used as the basis for determining the state and school district share of a project, may be applied to the school district portion required for that project;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

C. After consulting with the public school capital outlay task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act [22-24-1 NMSA 1978] or the development of standards pursuant to that act prohibits a school district from using local funds to exceed the statewide adequacy standards.

E. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

F. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

G. Upon the recommendation of the public school facilities authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

H. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature.

History: 1953 Comp., § 77-24-13, enacted by Laws 1975, ch. 235, § 5; 1977, ch. 247, § 205; 1978, ch. 152, § 5; 1987, ch. 326, § 1; 1994, ch. 88, § 3; 2000 (2nd S.S.), ch. 19, § 2; 2001, ch. 338, § 8; 2003, ch. 147, § 10; 2004, ch. 125, § 9; 2005, ch. 274, § 8.

## ANNOTATIONS

**The 1994 amendment**, effective May 18, 1994, deleted "all" preceding "available resources" in Paragraph A(2) and added Paragraphs A(6) and A(7), making related stylistic changes.

**The 2000 amendment**, effective April 12, 2000, inserted "school" at the beginning of Subsection A(4) and in the second sentence of Subsection B; in Subsection A(6), added "unless a determination and certification have been made pursuant to Subsection D of this section" to the preliminary language, designated the existing provisions of the subsection as Subparagraph (a) and added Subparagraph (b); in Subsection B, added Subsection B(1) and designated part of former Subsection B as Paragraph (2); and added Subsections D and E.

**The 2001 amendment**, effective April 5, 2001, rewrote the section.

**The 2003 amendment**, effective April 4, 2003, inserted Paragraph B(2) and redesignated former Paragraph B(2) as B(3); rewrote Paragraph C(5); inserted present Paragraphs C(6) and C(7), and redesignated the remaining paragraphs accordingly; substituted "that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by" for "to which the school adheres for" in Subparagraph C(9)(d); substituted "(6) or (8) of this subsection" for "established by law" in Subparagraph C(9)(e); and in Subsection D, deleted "no later than September 1, 2002"; inserted "and regularly review and update" preceding "statewide adequacy standards" in the first sentence and substituted "December 15" for "December 1" in Subsection I.

**The 2004 amendment**, effective May 19, 2004, amends section to: effectively replace present Subsections A and B with new Subsection A; to designate former Subsection C as the last sentence of new Subsection A and to add prior to Paragraph (1) of former Subsection C, "B. Except as provided in Subsection A of this section and in Section 22-

24-5.5 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978"; added to Subsection B new Subparagraph (b) and to delete from Paragraph (3) of Subsection B, "after consulting with the staff architect of the property control division of the general services department", added to former Subparagraph (k) of Paragraph (5) of Subsection C, "school" preceding "district"; amended Subparagraph (q) of Paragraph (5) of Subsection C (now Subsection C) a definition of "total project cost" as a new item "2"; amended Subparagraph (a) of Paragraph (6) of former Subsection B (now Subsection C) "provided that an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to July 15 of the fiscal year following the appropriation, the district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation"; redesignated former Subsection D as Subsection C and deleted "develop and" preceding "regularly", "minimum" preceding "acceptable level", and to add at the beginning of the last sentence "Except as otherwise provided in the Public School Capital Outlay Act," and to delete "after September 1, 2003" following "council" in the last sentence; redesignated former Subsections E through I as Subsections D through H; and amended Subsection G to add at the beginning of the subsection "Upon the recommendation of the public school facilities authority, the council shall develop building standards for public school facilities and" preceding "shall promulgate" and "other" after "promulgate"; amended Subsection H to change "state board" to "public education commission" and to delete "each member of" preceding "the legislature".

**The 2005 amendment**, effective April 6, 2005, changes "three years" to "two years" and changes "projects" to "specific projects" in Subsection A; provides in Subsection A that the order of projects that were partially funded shall exclude any expansion of the scope of the projects; changes the statutory reference in Subsection B from Section 22-24-5.5 NMSA 1978 to Sections 22-024-4.3 and 22-24-5.4 NMSA 1978; provides in Subsection B(5) that no later than May 1 of each year, a value shall be calculated for each school district in accordance with the specified procedure; deletes the former provision of Subsection B(5)(k) which provided that the value calculated for a school district equals the portion of the approved project to be funded; provides in Subsection B(5)(k) that the value for a school equals the value calculated pursuant to Subparagraph B(5)(f); deletes the former provision in Subsection B(5)(m) which provided that the sum equals the portion of the approved project to be funded; provides in Subparagraph B(5)(m) that the sum equals the value for that school district; deletes the former provision in Subsection B(5)(n) which provided that one-tenth shall be used as the portion of the approved project to be funded; provides in Subsection B(5)(n) that one-tenth shall be used as the value of for the subject school district; deletes the former provision in Subsection B(5)(o) which provided that one shall be used as the portion of the approved project to be funded; provides in Subsection B(5)(o) that one shall be used as the value for the subject school district; deletes the former provision in Subsection B(5)(p) which provided that the amount to be distributed shall equal the value derived from Subparagraphs B(5)(k), (m), (n), and (o); provides in Subsection B(5)(p) that the amount to be distributed shall equal the amounts specified in Subsection B(5)(p)1 and 2); changes "total" to "average" and "final funded prior school year" to "fortieth, eightieth

and one hundred twentieth days of the prior school year" in Subsection B(5)(q); provides in Subsection B(6)(a) that amounts shall be reduced by appropriations made either directly to a school district or to another governmental entity for passing the money directly to a school district and not rejected by the school district, but excluding educational technology appropriations made prior to January 1, 2005; changes the date in Subsection B(6)(a) when an appropriation is deemed to be accepted from July 15 of the fiscal year following the appropriation to June 1 of that fiscal year; provides in Subsection B(6)(a) that the total shall be increased by an amount equal to the educational technology appropriations made to the school district on or after January 1, 2003 and prior to January 1, 2005 and not previously used to offset distributions pursuant to the Technology for Education Act; deletes the former provision in Subsection B(6)(b) that the amount shall be the applicable amount calculated from Subparagraph B(6)(k), (m), (n) and (o); provides in Subsection B(6)(b) that the amount shall be the applicable fraction used for the school district and the current year for the calculation in Subsection B(5)(p); deletes the former provision in Subsection B(8) that where a school district has used all local resources, the council may fund the total amount of the project; provides in Subsection B(8) that the council may adjust the amount of the local share if the school district has used its local resources; adds Subsections B(8)(a) through (c) to provide that before the council makes adjustments it shall consider the factors set for the in Subsections B(8)(a) through (c); provides in Subsection B(9)(d) that the five year plan shall include the capital needs of charter schools located in the school district; provides in Subsection B(9)(e) that the funds used for a project that was initiated after September 1, 2003, but before September 1, 2004 may be applied to the school district portion required for that project; and provides in Subsection B(9)(f) that the application may show that the facilities of the charter school has a smaller deviation from the statewide adequacy standards than other district facilities included in the application.

**Applicability.** — Laws 2004, ch. 125, § 18, effective May 19, 2004, provides that "Notwithstanding the provisions of Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978, no reduction calculated pursuant to that paragraph shall take into account any appropriation in the 2004 Capital Projects General Obligation Bond Act to a school district for full-day kindergarten projects."

**P.L. 874 funds.** — "PL 874 funds", mentioned in B.(1), refers to funds provided to states and localities by the federal government to assist in areas impacted by federal activities under P.L. 81-874, which was codified as 20 USCS § 236 et seq. 20 USCS § 236 et seq., were repealed in 1984. See 20 USCS § 7701 et seq., for present comparable provisions.

### **22-24-5.1. Council assistance and oversight.**

In providing grant assistance pursuant to Section 22-24-5 NMSA 1978, the council shall:

A. assist school districts in identifying critical capital outlay needs and in preparing grant applications;

B. take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation;

C. take such actions as are necessary to ensure cost savings and efficiencies for those school districts that are not large enough to maintain their own construction management staff; and

D. include such reporting requirements and conditions and take such actions as are necessary to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made. In order to ensure compliance with the intent of this subsection, the council may:

(1) access the premises of a project and review any documentation relating to a project;

(2) withhold all or part of the amount of grant assistance available for a project for grounds established by rule of the council; and

(3) if it determines that a project is repeatedly in substantial noncompliance with any reporting requirement or condition, take over the direct administration of the project until the project is completed.

**History:** 1978 Comp., § 22-24-5.1, enacted by Laws 2001, ch. 338, § 9.

## **22-24-5.2. Repealed.**

History: Laws 2001, ch. 328, § 3; 2004, ch. 125, § 20.

### **ANNOTATIONS**

**Repeal.** — Laws 2004, ch. 125, § 20 repeals Section 22-24-5.2 NMSA 1978, relating to effect upon school district indebtedness requirement, effective May 19, 2004. For provisions of former section, see 2003 Replacement Pamphlet.

## **22-24-5.3. Preventive maintenance plans; guidelines; approval.**

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and
- (4) evaluation and auditing.

B. The council shall develop, implement and maintain a uniform web-based facility information management system. Within available appropriations, the council shall develop a schedule and procedure for phasing all school districts into the system, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978]. The facility information management system shall:

- (1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;
- (2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and
- (3) facilitate training of facilities maintenance and management personnel.

C. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

D. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

- (1) the school district has a preventive maintenance plan that has been approved by the council; and
- (2) if applicable, the school district is participating in the implementation of the facility information management system.

E. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment.

**History:** 1978 Comp., § 22-24-5.3, enacted by Laws 2003, ch. 147, § 5; 2005, ch. 274, § 9.

## ANNOTATIONS



**Emergency clauses.** — Laws 2003, ch. 147, § 16 makes this section effective immediately. Approved April 4, 2003.

**The 2005 amendment,** effective April 6, 2005, adds Subsections B(1) through (3) to provide that the council shall develop, implement and maintain a uniform web-based facility information management system and adds Subsection D(2) to provide that a school district shall not be eligible for funding unless, if applicable, the school district is participating in the implementation of the facility information management system.

#### **22-24-5.4. Recalcitrant school districts; court action to enforce constitutional compliance; imposition of property tax.**

A. The council may bring an action against a school district pursuant to the provisions of this section if, based upon information submitted to the council by the public school facilities authority, the council determines that:

(1) the physical condition of a public school facility in the school district is so inadequate that the facility or the education received by students attending the facility is below the minimum required by the constitution of New Mexico;

(2) the school district is not taking the necessary steps to bring the facility up to the constitutionally required minimum; and

(3) either:

(a) the school district has not applied for the grant assistance necessary to bring the facility up to minimum constitutional standards; or

(b) the school district is unwilling to meet all of the requirements for the approval of an application for grant assistance pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978.

B. An action brought pursuant to this section shall be brought by the council in the name of the state against the school district in the district court for Santa Fe county.

C. After a hearing and consideration of the evidence, if the court finds that the council's determination pursuant to Subsection A of this section was correct, the court shall:

(1) order the council to expend sufficient resources necessary to bring the facility up to the minimum level required by the constitution of New Mexico;

(2) order the school district to comply with Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978 and to take all other actions necessary to facilitate the completion of the project ordered pursuant to Paragraph (1) of this subsection; and

(3) enter a judgment against the school district for court costs and attorney fees and the necessary amount to satisfy the school district share, as determined by the formula prescribed by Subsection B of Section 22-24-5 NMSA 1978, for the project ordered pursuant to Paragraph (1) of this subsection.

D. The amount of a judgment entered against a school district pursuant to Paragraph (3) of Subsection C of this section is a public debt of the school district. If the court finds that the debt cannot be satisfied with available school district funds, other than funds needed for the operation of the public schools and other existing obligations, the court shall order the imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court. After paying court costs and attorney fees, amounts received pursuant to this subsection shall be deposited by the council into the fund.

History: Laws 2004, ch. 125, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 125, § 10, effective May 19, 2004 enacted a new Section 22-24-5.5 NMSA 1978. It has been compiled as 22-24-5.4 NMSA 1978, the next available section in the NMSA 1978, to be consistent with the style of the NMSA 1978.

#### **22-24-5.5. Preventive maintenance plans; participation in facility information management system.**

A. develop and implement a preventive maintenance plan following guidelines adopted by the public school capital outlay council pursuant to Section 22-24-5.3 NMSA 1978; and

B. participate in the facility information management system pursuant to the schedule adopted by the public school capital outlay council.

History: Laws 2005, ch. 274, § 16.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

#### **22-24-6. Council created; organization; duties.**

A. There is created the "public school capital outlay council", consisting of the:

(1) secretary of finance and administration or his designee;

- (2) state superintendent or his designee;
- (3) the governor or his designee;
- (4) president of the New Mexico school boards association or his designee;
- (5) the director of the construction industries division of the regulation and licensing department or his designee;
- (6) the president of the state board or his designee;
- (7) the director of the legislative education study committee or his designee;
- (8) the director of the legislative finance committee or his designee; and
- (9) the director of the legislative council service or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee.

**History:** 1953 Comp., § 77-24-14, enacted by Laws 1975, ch. 235, § 6; 1977, ch. 247, § 206; 1978, ch. 152, § 6; 1980, ch. 151, § 51; 1988, ch. 64, § 43; 1993, ch. 226, § 51; 1994, ch. 88, § 4.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "the governor or his designee" for "director of the public school finance division" in Subsection A(3); made a minor stylistic change in Subsection A(4); substituted "regulation and licensing department" for "commerce and industry department" in Subsection A(5); added Subsections A(6) and (7); inserted "shall" in Subsection B; and substituted "department of education" for "council shall employ a staff director who" in Subsection D.

**The 1993 amendment**, effective July 1, 1993, in Subsection A, added "or his designee" at the end of Paragraphs (1), (2) and (5) and deleted "state" preceding "superintendent" at the beginning of Paragraph (2).

**The 1994 amendment**, effective May 18, 1994, substituted "state superintendent" for "superintendent of public instruction" in Paragraph A(2), deleted "of education" following "state board" in Paragraph A(6), and added Paragraphs A(8) and (9), making related stylistic changes.

## **22-24-7. Public school capital outlay oversight task force; creation; staff.**

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-four members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the state investment officer or the state investment officer's designee;
- (4) the speaker of the house of representatives or the speaker's designee;
- (5) the president pro tempore of the senate or the president pro tempore's designee;
- (6) the chairmen of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (7) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (8) two minority party members of the senate, appointed by the New Mexico legislative council;
- (9) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal

activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and

(13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

History: Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10.

## ANNOTATIONS

**Delayed repeals.** — Laws 2001, ch. 338, § 18 repeals 22-24-7 NMSA 1978, as enacted by Laws 2001, ch. 338, § 13, effective January 1, 2004.

**Effective dates.** — Laws 2004, ch. 125 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

**The 2005 amendment**, effective April 6, 2005, changes the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deletes the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; adds in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provides in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deletes the former requirement in Subsection A(10) that three members be public

members who have expertise in education and finance; provides in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provides in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provides in Subsection B that the task force shall meet no more than four times per calendar year; deletes the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provides in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

## **22-24-8. Public school capital outlay oversight task force; duties.**

The public school capital outlay oversight task force shall:

A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978];

B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [22-25-1 NMSA 1978];

C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;

E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

### **ANNOTATIONS**

**Delayed repeals.** — Laws 2001, ch. 338, § 18 repeals 22-24-8 NMSA 1978, as enacted by Laws 2001, ch. 338, § 13, effective January 1, 2004.

**Effective dates.** — Laws 2004, ch. 125 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

**Bracketed material.** — The bracketed word "recommend" was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**The 2005 amendment,** effective April 6, 2005, adds Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deletes the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provides in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provides in Subsection D that the task force oversee the work of the council and the authority; adds Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

## **22-24-9. Public school facilities authority; creation; powers and duties.**

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director and deputies shall be exempt from the provisions of the Personnel Act [10-9-1 NMSA 1978]; after July 1, 2006, all other employees of the authority shall be subject to the provisions of the Personnel Act.

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:
  - (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
  - (b) procurement of architectural and engineering services;
  - (c) management and oversight of construction activities; and

(d) training programs;

(4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;

(5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;

(6) ensure that public school capital outlay projects are in compliance with applicable building codes;

(7) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;

(8) require the use of standardized construction documents and the use of a standardized process for change orders;

(9) have access to the premises of a project and any documentation relating to the project;

(10) after consulting with the department, recommend building standards for public school facilities to the council and ensure compliance with building standards adopted by the council;

(11) notwithstanding the provisions of Subsection D of Section 22-24-6 NMSA 1978, account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee and the legislature;

(12) maintain a database of the condition of school facilities and maintenance schedules; and

(13) ensure that outstanding deficiencies are corrected pursuant to Section 22-24-4.1 NMSA 1978. In the performance of this duty, the authority:

(a) shall work with school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;

(b) shall work with school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;

(c) shall oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;



(d) may conduct on-site inspections while the deficiencies correction work is being done to ensure that the construction specifications are being met and may periodically inspect all of the documents relating to the projects;

(e) may require the use of standardized construction documents and the use of a standardized process for change orders;

(f) may access the premises of a project and any documentation relating to the project; and

(g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978].

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code [22-1-1 NMSA 1978]. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

D. A school district, aggrieved by a decision or recommendation of the authority, may appeal the matter to the council by filing a notice of appeal with the council within thirty days of the authority's decision or recommendation. Upon filing of the notice:

(1) the decision or recommendation of the authority shall be suspended until the matter is decided by the council;

(2) the council shall hear the matter at its next regularly scheduled hearing or at a special hearing called by the chair for that purpose;

(3) at the hearing, the school district, the authority and other interested parties may make informal presentations to the council; and

(4) the council shall finally decide the matter within ten days after the hearing.

History: Laws 2003, ch. 147, § 1; 2004, ch. 125, § 11; 2005, ch. 274, § 12.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 147, § 15, makes this section effective on July 1, 2003.

**Temporary provisions.** — Laws 2003, ch. 147, § 13, effective July 1, 2003, provides that all personnel of the deficiencies correction unit of the public school capital outlay council and up to four full-time employees of the capital outlay unit of the state department of public education are transferred to the public school facilities authority.

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to delete "public school capital outlay" preceding "council", amended Subsection B to add new Paragraph (5), redesignated former Paragraphs (6) through (11) of Subsection B as Paragraphs (7) through (12), amended Paragraph (8) to delete "where appropriate" before "require" and amended Paragraph (10) to delete "of education, develop" following "education" and insert in its place "recommend", to add "to the council" after "facilities", to replace "those" with "building" preceding "standards" and to insert "adopted by the council at the end of the paragraph, amended Subsection C to substitute "secretary of public education" for "state superintendent", and added Subsection D.

**The 2005 amendment**, effective April 6, 2005, provides in Subsection A that the hiring of deputies is subject to the budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978 and that after July 1, 2006, all other employees shall be subject to the Personnel Act; adds Subsection B(11) to provide that the authority shall account for all distributions of grant assistance from the fund awarded after July 1, 2004 and make annual reports to the specified agencies or officers.

## **22-24-10. Public facilities to be used by charter schools; assessment.**

A. Prior to the occupancy of a public facility by a charter school, the charter school shall notify the council of the intended use, together with such other information as required by rule of the council.

B. Within sixty days of the notification to the council, the public school facilities authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

C. Once assessed pursuant to Subsection B of this section, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978] in the same manner as all other public schools in the state.

D. As used in this section, "public facility" means a building owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or a tribal government.

History: Laws 2005, ch. 274, § 13.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

# ARTICLE 25

## Public School Capital Improvements

### 22-25-1. Short title.

This act [22-25-1 to 22-25-10 NMSA 1978] may be cited as the "Public School Capital Improvements Act".

**History:** 1953 Comp., § 77-25-1, enacted by Laws 1975 (S.S.), ch. 5, § 1.

### ANNOTATIONS

**Cross references.** — As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

**Revenues not to be used for teacher housing.** — Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-1.

### 22-25-2. Definitions.

As used in the Public School Capital Improvements Act [22-25-1 NMSA 1978]:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act [6-15A-1 NMSA 1978] but excluding any other debt service expenses, for:

(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

(2) purchasing or improving public school grounds;

(3) maintenance of public school buildings or public school grounds, including expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;

(4) purchasing activity vehicles for transporting students to extracurricular school activities; and

(5) purchasing computer software and hardware for student use in public school classrooms.

History: 1953 Comp., § 77-25-2, enacted by Laws 1975 (S.S.), ch. 5, § 2; 1981, ch. 314, § 1; 1989, ch. 159, § 1; 1996, ch. 67, § 2; 1999, ch. 89, § 2; 2004, ch. 125, § 12.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added Subsection B(4).

**The 1996 amendment**, added Paragraph B(5). Laws 1996, ch. 67 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

**The 1999 amendment**, effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in Subsection B.

**The 2004 amendment**, effective May 19, 2004, amended Paragraph (3) of Subsection B to delete "exclusive of" preceding "salary expenses" and to add in its place: "including expenditures for technical training and certification for maintenance and facilities management personnel, but excluding".

### **22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.**

A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

- A. identify the capital improvements for which the revenue proposed to be produced will be used;
- B. specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978];
- C. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and
- D. limit the imposition of the proposed tax to no more than six property tax years.

**History:** 1953 Comp., § 77-25-3, enacted by Laws 1975 (S.S.), ch. 5, § 3; 1986, ch. 32, § 21; 1997, ch. 138, § 1; 2003, ch. 147, § 6.

## **ANNOTATIONS**

**The 1997 amendment** substituted "four" for "three" in Subsection D. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**The 2003 amendment**, effective April 4, 2003, substituted "six property tax years" for "four property tax years" at the end of Subsection D.

### **22-25-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 3 [22-25-3 NMSA 1978] of the Public School Capital Improvements Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** 1953 Comp., § 77-25-4, enacted by Laws 1975 (S.S.), ch. 5, § 4.

### **22-25-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law [1-22-1 to 1-22-19 NMSA 1978] for regular and special school district elections.

B. The proclamation required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for the capital improvements specified in the authorizing resolution.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school capital improvements tax" or "against the public school capital improvements tax".

**History:** 1953 Comp., § 77-25-5, enacted by Laws 1975 (S.S.), ch. 5, § 5; 1986, ch. 32, § 22; 1997, ch. 138, § 2; 2003, ch. 147, § 7.

## **ANNOTATIONS**

**The 1997 amendment** substituted "four years" for "three years" in Subsection B. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**The 2003 amendment**, effective April 4, 2003, substituted "proclamation" for "resolution" and "six years" for "four years" in Subsection B.

## **22-25-6. Election results; certification.**

The certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be made in accordance with Section 22-6-16 NMSA 1978 and a copy of the certificate of results shall be mailed immediately to the director.

**History:** 1953 Comp., § 77-25-6, enacted by Laws 1975 (S.S.), ch. 5, § 6; 1977, ch. 246, § 66.

### **ANNOTATIONS**

**Compiler's notes.** — Section 22-6-16 NMSA 1978, referred to in this section, was repealed by Laws 1985, ch. 168, § 22.

## **22-25-7. Imposition of tax; limitation on expenditures.**

If as a result of an election held in accordance with the Public School Capital Improvements Act [22-25-1 NMSA 1978] a majority of the qualified electors voting on the question vote in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a rate be discontinued, by the department of finance and administration at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution and be imposed at the rate certified in accordance with the provisions of the Property Tax Code. The revenue produced by the tax and, except as provided in Subsection F of Section 22-25-9 NMSA 1978, any state distribution resulting to the district under the Public School Capital Improvements Act shall be expended only for the capital improvements specified in the authorizing resolution.

**History:** 1953 Comp., § 77-25-7, enacted by Laws 1975 (S.S.), ch. 5, § 7; 1986, ch. 32, § 23; 2004, ch. 125, § 13.

### **ANNOTATIONS**

**The 2004 amendment**, effective May 19, 2004, added "except as provided in Subsection F of Section 22-25-9 NMSA 1978," after "The revenue produced by the tax and,".

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with this section which incorporates § 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of § 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

## **22-25-8. Tax to be imposed for a maximum of six years.**

A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] shall be imposed for a specified number of property tax years not exceeding six years commencing with the property tax year in which the election was held. The local school board may discontinue, by resolution, the Public School Capital Improvements Act tax levy at the end of any property tax year. The local school board shall direct that the Public School Capital Improvements Act tax levy be decreased by the amount required for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 77-25-8, enacted by Laws 1975 (S.S.), ch. 5, § 8; 1976 (S.S.), ch. 31, § 1; 1986, ch. 32, § 24; 1997, ch. 138, § 3; 2003, ch. 147, § 8.

### **ANNOTATIONS**

**The 1997 amendment** substituted "four years" for "three years" in the section heading and "two, three or four years" for "two or three years" in the first sentence. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**The 2003 amendment**, effective April 4, substituted "six years" for "four years" in the section heading; substituted "a specified number of property tax years not exceeding six years" for "one, two, three or four years" in the first sentence, and substituted "any property tax year" for "the first or second year of the levy" in the second sentence.

## **22-25-9. State distribution to school district imposing tax under certain circumstances.**

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act [22-25-1 NMSA 1978] an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the school district's first forty days' total program units by the amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate

approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

B. In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:

(1) the amount calculated pursuant to Subsection D of this subsection per program unit; and

(2) for fiscal year 2006 and thereafter, an additional amount certified to the secretary by the public school capital outlay council. No later than June 1, 2005 and each June 1 thereafter, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. For fiscal year 2004 and thereafter, notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, except as provided in Subsection G of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection E of this section, multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate.

D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal fifty dollars (\$50.00) through fiscal year 2005, sixty dollars (\$60.00) in fiscal year 2006 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

E. For purposes of calculating the minimum distribution pursuant to Subsection C of this section, the amount used in that subsection shall equal five dollars (\$5.00) through fiscal year 2005 and in each subsequent fiscal year shall equal the amount for the



previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

F. In expending distributions made pursuant to this section, school districts shall give priority to maintenance projects. In addition, distributions made pursuant to this section may be expended by school districts for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978.

G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.

H. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council.

History: 1953 Comp., § 77-25-9, enacted by Laws 1975 (S.S.), ch. 5, § 9; 1976 (S.S.), ch. 31, § 2; 1977, ch. 246, § 67; 1981, ch. 314, § 2; 1986, ch. 32, § 25; 1988, ch. 64, § 44; 1988, ch. 66, § 2; 2001, ch. 338, § 10; 2003, ch. 147, § 9; 2004, ch. 125, § 14; 2005, ch. 274, § 15.

## ANNOTATIONS

**The 1988 amendments.** — Laws 1988, ch. 64, § 44, effective May 18, 1988, substituting "state superintendent" for "director" in the first sentence and deleting "by December 1 of" preceding "each year" in the next-to-last sentence, was approved on March 8, 1988. However, Laws 1988, ch. 66, § 2, effective March 8, 1988, giving effect to the second change but not the first, and amending this section further by substituting "approved by the qualified electors in the most recent election on the question of imposing a tax" for "imposed in the district" near the end of the first sentence, deleting "by December 1" preceding "of each year" in the second sentence and inserting the proviso at the end of the second sentence was approved later on March 8, 1988. The section is set out as amended by Laws 1988, ch. 66, § 2. See 12-1-8 NMSA 1978.

**The 2001 amendment,** effective April 5, 2001, redesignated the former section as Subsection A; inserted the exception at the beginning of Subsection A; substituted "by the dollar amount specified in Subsection B of this section" for "times thirty-five dollars"; and added Subsections B and D.

**The 2003 amendment**, effective April 4, 2003, inserted Subsection C.

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to substitute "secretary of public education" for "state superintendent", amended Subsection B to substitute in Paragraph (1) "the amount calculated pursuant to Subsection D of this subsection" for "fifty dollars (\$50.00)" and to substitute in Paragraph (2) "secretary of public education" for "state superintendent", amended Subsection C to substitute "an amount equal to five dollars (\$5.00)" for "the amount calculated pursuant to Subsection E of this section", added new Subsections D through F, redesignated former Subsection C as Subsection G and substituted "secretary of public education" for "state superintendent" and "secretary" for "state superintendent".

**The 2005 amendment**, effective April 6, 2005, adds the exception in Subsection G in Subsection A; adds the exception in Subsection G in Subsection C; adds the amount of \$60 for fiscal year 2006 in Subsection D; provides in Subsection F that distributions may be expended by school districts for the school district portion of the total project cost for roof repair or replacement; and adds Subsection G to provide that if a roof deficiency has been corrected and the school district refuses to pay its share of the cost, until the school district reimbursed the capital outlay fund for its share of the cost, the distribution shall not be made to the school district but shall be made to the capital outlay fund.

**Public school capital outlay tax force.** — Sections 22-24-7 and 22-24-8 NMSA 1978, Laws 2004, ch. 125, §§ 16 and 17, effective May 19, 2004, creates the public school capital outlay tax force; provides that the task force shall study and evaluate the progress and effectiveness of the programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act; and provides that the task force shall report prior to the forty-seventh legislature.

**Compiler's notes.** — As vetoed by the governor April 5, 2001, Subsection C read: "Notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, no school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall receive a distribution less than an amount equal to five dollars (\$5.00) multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate."

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with § 22-25-7 which incorporates § 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of § 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

**Administrative charge not to be used to reduce revenue estimate.** — The school district, not the state's public school capital improvements fund, must absorb the two percent administrative charge authorized by § 7-38-38.1 NMSA 1978, and such fee may

not be used to reduce the revenue estimate that his section requires. 1987 Op. Att'y Gen. No. 87-52 (rendered prior to 1988 amendment).

## **22-25-10. Public school capital improvements fund created.**

There is created a "public school capital improvements fund." Balances in the fund remaining at the end of a fiscal year shall not revert.

**History:** 1953 Comp., § 77-25-10, enacted by Laws 1975 (S.S.), ch. 5, § 10; 1976 (S.S.), ch. 31, § 3.

### **ANNOTATIONS**

**Compiler's notes.** — The following acts have appropriated funds to the public school capital improvements fund in the specified amounts from the specified sources: Laws 1977, ch. 91, § 1C(19), \$5,100,000 (proceeds from sev. tax bonds); Laws 1980, ch. 31, § 1, \$8,700,000 (general fund); Laws 1983, ch. 287, § 1I(4), \$12,000,000 (proceeds from sev. tax bonds); Laws 1984, ch. 10, § 1O, \$14,000,000 (proceeds from sev. tax bonds); Laws 1985 (S.S.), ch. 15, § 1I, \$12,000,000 (proceeds from sev. tax bonds); Laws 1986, ch. 115, § 1K, \$10,000,000 (proceeds from sev. tax bonds); Laws 1987, ch. 354, § 1D(1), \$5,000,000 (proceeds from sev. tax bonds); Laws 1988 (S.S.), ch. 2, § 10A, \$15,000,000 (proceeds from gen. obl. bonds); Laws 1988 (S.S.), ch. 3, § 1F, \$3,054,000 (general fund); Laws 1989, ch. 315, § 2R, \$4,900,000 (capital projects fund); Laws 1990, ch. 133, § 10A(1), \$3,500,000 (proceeds from gen. obl. bonds); Laws 1991, ch. 261, § 7, \$6,500,000 (proceeds from sev. tax bonds); Laws 1992, ch. 103, § 11B(18), \$6,000,000 (proceeds from gen. obl. bonds); Laws 1993, ch. 367, § 25, \$6,000,000 (proceeds from sev. tax bonds); Laws 1994, ch. 148, § 22, \$590,000 (proceeds from sev. tax bonds); Laws 1994, ch. 148, § 50C, \$9,600,000 (general fund); Laws 1995, ch. 13, § 5, \$7,000,000 (general fund); Laws 1998, ch. 3, § 1, \$6,100,000 (general fund).

## **ARTICLE 26**

### **Public School Buildings**

#### **22-26-1. Short title.**

This act [22-26-1 to 22-26-8 NMSA 1978] may be cited as the "Public School Buildings Act".

**History:** Laws 1983, ch. 163, § 1.

#### **22-26-2. Definitions.**

As used in the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978], "capital improvements" means expenditures, including payments made with respect to lease-

purchase arrangements as defined in the Education Technology Equipment Act [6-15A-1 to 6-15A-16 NMSA 1978] but excluding any other debt service expenses, for:

- A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings; and
- B. purchasing or improving public school grounds.

**History:** Laws 1983, ch. 163, § 2; 1999, ch. 89, § 3.

### **ANNOTATIONS**

**The 1999 amendment**, effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in the introductory language.

### **22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.**

Any local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the purpose of capital improvements in the school district. The resolution shall:

- A. specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- B. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and
- C. limit the imposition of the proposed tax to no more than five property tax years.

**History:** Laws 1983, ch. 163, § 3; 1986, ch. 32, § 26.

### **22-26-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 3 [22-26-3 NMSA 1978] of the Public School Buildings Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** Laws 1983, ch. 163, § 4.

## **22-26-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law [1-22-1 to 1-22-19 NMSA 1978] for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding five years upon the net taxable value of all property allocated to the school district for capital improvements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school buildings tax" or "against the public school buildings tax".

**History:** Laws 1983, ch. 163, § 5; 1986, ch. 32, § 27.

## **22-26-6. Election results; certification.**

The certification of the results of an election held on the question of imposition of a public school buildings tax shall be made in accordance with the School Election Law [1-22-1 to 1-22-19 NMSA 1978], and a copy of the certificate of results shall be mailed immediately to the state superintendent.

**History:** Laws 1983, ch. 163, § 6; 1993, ch. 226, § 52.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "the School Election Law" for "Section 22-6-16 NMSA 1978" and "state superintendent" for "director of public school finance".

## **22-26-7. Imposition of tax; limitations.**

If as a result of an election held in accordance with the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at any lower rate required by operation of the rate limitation provisions of

Section 7-37-7.1 NMSA 1978 upon the rate specified in the authorizing resolution or at any rate lower than the rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 if directed by the local school board pursuant to Section 22-26-8 NMSA 1978, and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]. If in any tax year the authorized tax rate under the Public School Buildings Act, when added to the tax rates for servicing debt of the school district and for capital improvements pursuant to the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978], exceeds fifteen dollars (\$15.00), or a lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code, the tax rate under the Public School Buildings Act shall be reduced to an amount that, when added to such additional rates, will equal fifteen dollars (\$15.00), or the lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property so allocated to the school district. The revenue produced by the tax and any state distribution resulting to the district under the Public School Buildings Act shall be expended only for capital improvements.

**History:** Laws 1983, ch. 163, § 7; 1986, ch. 32, § 28; 1996, ch. 63, § 1.

#### **ANNOTATIONS**

**The 1996 amendment,** substituted "fifteen dollars (\$15.00)" for "ten dollars (\$10.00)" throughout the section. Laws 1996, ch. 63 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature.

#### **22-26-8. Tax to be imposed for a maximum of five years.**

A tax imposed in a school district as a result of an election under the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] shall be imposed for one, two, three, four or five years commencing with the property tax year in which the election was held. The local school board may direct that such levy be decreased or not made for any year if, in its judgment, the total levy is not necessary for such year and shall direct that the levy be decreased by the amount required if a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1983, ch. 163, § 8; 1986, ch. 32, § 29.

## **ARTICLE 27**

### **Meditation in Public School**

#### **22-27-1. Short title.**

This act [22-27-1 to 22-27-3 NMSA 1978] may be cited as the "Meditation in Public School Act".

**History:** Laws 1995, ch. 72, § 1.

## **22-27-2. Findings; purpose.**

A. The legislature finds that:

(1) the first amendment of the United States constitution protects religious freedom and freedom of speech;

(2) the constitution of New Mexico protects each citizen's rights to worship God according to the dictates of the citizen's conscience; and

(3) the constitution of New Mexico prohibits public schools from requiring attendance or participation by students or teachers in any religious service.

B. The purpose of the Meditation in Public School Act [22-27-1 to 22-27-3 NMSA 1978] is to foster respect for the educational process and environment and to provide for the right of every public school student to exercise his freedom of conscience on public school grounds without pressure from the state, any public school, teacher, school personnel or other student.

**History:** Laws 1995, ch. 72, § 2.

## **22-27-3. Moment of silent meditation.**

Students in the public schools may voluntarily engage in student-initiated moments of silent meditation.

**History:** Laws 1995, ch. 72, § 3.

### **ANNOTATIONS**

**Severability clauses.** — Laws 1995, ch. 72, § 4 provides that if any part or application of the Meditation in Public School Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## **ARTICLE 28**

### **School Bus Advertisements**

#### **22-28-1. Bus advertisements authorized; limitations and restrictions.**

A. The state transportation division of the department of education shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

(1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or

(2) general content that is harmful or inappropriate for school buses as determined by the state board.

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school board, except as required by Section 3 [22-28-1 NMSA 1978] of this act.

D. An officer or employee of a school district or of the department of education who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division.

**History:** Laws 1997, ch. 233, § 3.

## ANNOTATIONS

**Cross references.** — For the state transportation division of the department of education, see 22-16-2 NMSA 1978.

**Compiler's notes.** — The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article and amended 22-1-2 and 22-16-2 NMSA 1978.

### **22-28-2. School bus title; leasing space.**

A. All school bus private owners that have legal title to school buses used and operated pursuant to an existing bus service contract with a school district may lease space on their buses to the school district for the purpose of selling commercial advertisements. In exchange for leasing the space, the school bus private owners shall



receive ten percent of the total value of the amount of the contract between the school district and the commercial advertiser.

B. The amount of space that will be available for commercial advertisements on school buses shall be established by regulations of the department of education consistent with national and state requirements for school bus markings, lights and signs.

C. Space for advertising on school buses owned by the department of education shall be provided to school districts without cost for the purpose of selling advertising space to commercial advertisers.

**History:** Laws 1997, ch. 233, § 4.

### **22-28-3. Solicitation; lease; rent payment.**

A. A school district shall be permitted to solicit offers from commercial advertisers for the use of space on the school buses that service their school district. The school district may enter into a lease agreement with a commercial advertiser for the use of any designated advertising space on a school bus that services the school district.

B. In a lease agreement with a commercial advertiser, the school district shall establish the rental amount, schedule and term. The term of any lease agreement shall not be for a period longer than the time remaining on the school district's bus service contract with a school bus private owner who owns the bus that is the subject of the lease agreement.

C. A school district shall not enter into a lease agreement with a commercial advertiser that seeks to display an advertisement that is prohibited by local school board guidelines.

**History:** Laws 1997, ch. 233, § 5.

### **22-28-4. School bus advertising fund.**

The "school bus advertising fund" is created in the state treasury and shall be administered by the department of education. The fund shall consist of money raised pursuant to this act. Balances in the fund at the end of any fiscal year shall not revert to the general fund. Income from investment of the fund shall be credited to the fund.

**History:** Laws 1997, ch. 233, § 6.

## **ANNOTATIONS**

**Compiler's notes.** — The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article and amended 22-1-2 and 22-16-2 NMSA 1978.

### **22-28-5. Distribution.**

A. Funds raised from commercial advertisement shall be distributed from the school bus advertising fund after the required payment is made to school bus private owners.

B. Sixty percent of the proceeds raised shall be distributed to each school district to use in accordance with the school district's technology plan in amounts proportionate to the amount that each school district contributed to the school bus advertising fund.

C. Forty percent of the proceeds raised shall be distributed on a per membership basis of middle and junior high schools by the state superintendent to school districts for extracurricular activities. If a school district does not expend money from the school bus advertising fund for extracurricular activities, it shall revert back to the fund.

D. School districts shall report to the department of education on how the funds were used in the technology plans and for extracurricular activities.

**History:** Laws 1997, ch. 233, § 7.

### **22-28-6. Accountability.**

Funds raised by a school district from lease agreements relating to the use of advertising space on school buses by commercial advertisers shall be fully accounted for and subject to review and examination by the department of education.

**History:** Laws 1997, ch. 233, § 8.

## **ARTICLE 29**

### **Public School Insurance Authority**

#### **22-29-1. Short title.**

Chapter 22, Article 29 NMSA 1978 may be cited as the "Public School Insurance Authority Act".

**History:** 1978 Comp., § 22-2-6.1, enacted by Laws 1986, ch. 94, § 1; 1978 Comp., § 22-2-6.1, recompiled as 1978 Comp., 22-29-1, by Laws 2003, ch. 153, § 72; 2005, ch. 274, § 17.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1986, ch. 94, § 1 repeals former 22-2-6.1 NMSA 1978, as enacted by Laws 1985, ch. 237, § 1, relating to group insurance for public schools, and enacts the above section. For provisions of former section, see 1985 Cumulative Supplement to Pamphlet 40.

**The 2005 amendment,** effective April 6, 2005, adds the statutory reference to the act.

**The Public School Insurance Authority** is a state agency for purposes of the state budget laws. 1990 Op. Att'y Gen. No. 90-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 C.J.S. Schools and School Districts § 401.

## **22-29-2. Purpose of act.**

The purpose of the Public School Insurance Authority Act [22-29-1 to 22-29-10 NMSA 1978] is to provide comprehensive core insurance programs for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

**History:** 1978 Comp., § 22-2-6.2, enacted by Laws 1986, ch. 94, § 2; 1978 Comp., § 22-2-6.2, recompiled as 1978 Comp., 22-29-2 by Laws 2003, ch. 153, § 72.

## **22-29-3. Definitions.**

As used in the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]:

- A. "authority" means the public school insurance authority;
- B. "board" means the board of directors of the public school insurance authority;
- C. "charter school" means a school organized as a charter school pursuant to the provisions of the 1999 Charter Schools Act [22-8B-1 to 22-8B-15 NMSA 1978];
- D. "director" means the director of the public school insurance authority;
- E. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions and regional education cooperatives;
- F. "fund" means the public school insurance fund;

G. "group health insurance" means coverage that includes life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;

H. "risk-related coverage" means coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and

I. "school district" means a school district as defined in Subsection K[R] of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

**History:** 1978 Comp., § 22-2-6.3, enacted by Laws 1986, ch. 94, § 3; 1991, ch. 142, § 1; 1999, ch. 281, § 17; 2001, ch. 293, § 2; 1978 Comp., § 22-2-6.3, recompiled as 1978 Comp., § 22-29-3 by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**Bracketed material.** — The bracketed reference in subsection I was inserted by the compiler due to the repeal and reenactment of 22-1-2 NMSA by Laws 2003, ch. 153, § 3. It was not enacted by legislature and is not a part of the law.

**The 1991 amendment,** effective June 14, 1991, added present Subsection C; redesignated former Subsections C to G as Subsections D to H; and inserted "state" preceding "diploma" in Subsection D.

**The 1999 amendment,** effective June 18, 1999, added Subsection C, redesignated former Subsections C to H as Subsections D to I, in Subsection H, substituted "workers' compensation" for "workmen's compensation", and substituted "Subsection K" for "Subsection J" in Subsection I.

**The 2001 amendment,** effective June 15, 2001, added "and regional education cooperatives" to the end of Subsection E and made stylistic changes throughout.

### **22-29-4. Authority created.**

There is created the "public school insurance authority" which is established to provide for group health insurance and other risk-related coverage with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act [22-29-1 to 22-29-10 NMSA 1978].

**History:** 1978 Comp., § 22-2-6.4, enacted by Laws 1986, ch. 94, § 4; 1978 Comp., § 22-2-6.4, recompiled as 1978 Comp., § 22-29-4, by Laws 2003, ch. 153, § 72.

### **22-29-5. Board created; membership; duties.**

A. There is created the "board of directors of the public school insurance authority". The board shall be composed of nine members, consisting of the following:

- (1) one member to be selected by the state board of education;
- (2) one school business official to be selected by the New Mexico school administrators;
- (3) one board member of the New Mexico school boards association to be selected by the association;
- (4) one superintendent to be selected by the New Mexico superintendents' association;
- (5) three members to be selected by the New Mexico national education association and the New Mexico federation of teachers with the intent that representation be proportional to their respective membership, provided that each of these three members be currently employed as public school teachers employed by participating entities;
- (6) one member to be selected by the board from lists submitted by the participating educational entities; and three members to be appointed by and serve at the pleasure of the governor; such members shall not be employed by or on behalf of or be contracting with an employer participating in or eligible to participate in the public school insurance authority.

B. Each member of the board shall serve at the pleasure of the party by which he has been appointed for a term not to exceed three years. Any board member who has been appointed and who misses four meetings of the board during a fiscal year shall be replaced and shall forfeit his position on the board, and his replacement shall be made by the organization affected. The board shall set minimum terms of appointment and shall elect from its membership a president, vice president and secretary.

C. The board has the authority to hire a director and appoint such other officers and employees as it may deem necessary and has the authority to contract with consultants or other professional persons or firms as may be necessary to carry out the provisions of the Public School Insurance Authority Act [22-29-1 to 22-29-10 NMSA 1978]. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978].

D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 22-2-6.5, enacted by Laws 1986, ch. 94, § 5; 1988, ch. 64, § 11; 1989, ch. 373, § 1; 1991, ch. 142, § 2; 1978 Comp., 22-2-6.5, recompiled as 1978 Comp., § 22-29-5, by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent or his designee" for "director of the office of education of the department of finance and administration" in Subsection A(1), "educational retirees" for "retired educators" in Subsection A(6), and "state superintendent" for "director of the office of education" in the first sentence in Subsection B.

**The 1989 amendment**, effective June 16, 1989, rewrote Subsection A(1), which formerly read "the state superintendent or his designee"; substituted "school business official" for "member" in Subsection A(2); in Subsection B deleted "Except for the state superintendent who serves by virtue of his office," at the beginning of the first sentence, and added the present second sentence; and in Subsection C added the second, third and fourth sentences.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, deleted "public" preceding "education" in Paragraph (1), added the proviso at the end of Paragraph (5); deleted former Paragraph (6) which read "one member to be selected by the New Mexico association of educational retirees", added the language beginning "and three members" at the end of Paragraph (6) and made a related stylistic change; added "for a term not to exceed three years" at the end of the first sentence in Subsection B; and inserted "hire a director and" near the beginning of the first sentence in Subsection C.

### **22-29-6. Fund created; budget review; premiums.**

A. There is created the "public school insurance fund". All income earned on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]. Any money remaining in the fund at the end of each fiscal year shall not revert to the general fund.

B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10 NMSA 1978.

C. All appropriations shall be subject to budget review through the department of education, the state budget division of the department of finance and administration and the legislative finance committee.

D. The authority shall provide that premiums are collected from school districts and charter schools participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.

E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts, charter schools and other participating entities on a pro rata basis.

F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including but not limited to third-party administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant.

**History:** 1978 Comp., § 22-2-6.6, enacted by Laws 1986, ch. 94, § 6; 1989, ch. 373, § 2; 1991, ch. 142, § 3; 1999, ch. 281, § 18; 1978 Comp., § 22-2-6.6, recompiled as 1978 Comp., § 22-29-6, by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, in Subsection B substituted "department of education" for "office of education" and "state budget division" for "budget division"; in Subsection C substituted "fund" for "public school insurance fund" in the second sentence; and substituted all of the present language of Subsection D beginning with "school" for "districts on a pro rata basis".

**The 1991 amendment**, effective June 14, 1991, deleted "deposited in a segregated account and invested in securities eligible for investment by the educational retirement board pursuant to Section 22-11-13 NMSA 1978" at the end of the first sentence in Subsection A; added Subsections B and F; and redesignated former Subsections B to D as Subsections C to E.

**The 1999 amendment**, effective June 18, 1999, substituted "Any money remaining in the fund" for "Any funds remaining" in the last sentence of Subsection A, deleted "of funds" following "All appropriations" in Subsection C, and added the references to charter schools in Subsections D and E.

**"Budget review"** as used in Subsection B means approval of the Public School Insurance Authority's proposed budget. 1990 Op. Att'y Gen. No. 90-23.

## **22-29-7. Authority; duties.**

In order to effectuate the purposes of the Public School Insurance Authority Act [22-29-1 to 22-29-10 NMSA 1978], the authority has the power to:

- A. enter into professional services and consulting contracts or agreements as necessary;
- B. collect money and provide for the investment of the fund;
- C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;
- D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act [22-29-1 to 22-29-10 NMSA 1978];
- E. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to wholly self-insure a particular line of coverage, the authority may do so;
- F. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act [Chapter 13, Article 7 NMSA 1978] and the competitive sealed proposal process of the Procurement Code [13-1-28 NMSA 1978]; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection; and
- G. purchase, renovate, equip and furnish a building for the board.

**History:** 1978 Comp., § 22-2-6.7, enacted by Laws 1986, ch. 94, § 7; 1989, ch. 373, § 3; 1990, ch. 6, § 21; 1991, ch. 142, § 4; 1994, ch. 62, § 21; 1997, ch. 74, § 7; recompiled as 1978 Comp., § 22-29-7 by Laws 2003, ch. 153, § 72; 2003, ch. 273, § 22.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added Subsections H and I.

**The 1990 amendment**, effective February 13, 1990, added "and" at the end of Subsections G and H and, in Subsection I, substituted "seventy-eighth fiscal year" for "seventy-seventh fiscal year" in the first sentence and "seventy-ninth fiscal year" for "seventy-eighth fiscal year" at the end of the second sentence.



**The 1991 amendment**, effective June 14, 1991, added the proviso at the end of Subsection A; rewrote Subsection C which read "collect, invest and disburse funds"; and deleted "the authority is authorized to" at the beginning of Subsection I.

**The 1994 amendment**, effective March 4, 1994, added the language beginning "provided that" in Subsection G.

**The 1997 amendment**, effective July 1, 1997, inserted "provisions of the Health Care Purchasing Act and the" following "procure lines of insurance coverage in compliance with the" in Subsection G and deleted the remainder of the Subsection after "purchase, renovate, equip and furnish a building for the board" in Subsection H.

**The 2003 amendment**, effective July 1, 2003, deleted former Subsection A which read: "employ the services of the state fiscal agent or select its own fiscal agent pursuant to regulations adopted by the board; provided that for the purposes of disbursing all money other than that in the fund, the secretary of finance and administration shall be the fiscal agent for the authority;" and redesignated former Subsections B to H as present Subsections A to G; in present Subsection B, inserted "money and" near the beginning, and deleted "and disburse money in" near the end.

**Contract action not barred by sovereign immunity.** — Receiving a premium, providing insurance coverage, and denying benefits indicated the existence of a valid, written, enforceable insurance contract under the Public School Insurance Authority Act between the New Mexico public schools insurance authority and a school district regarding the authority's first-party insurance obligation; therefore, the school district stated a claim for breach of contract which was not barred by sovereign immunity. *Moriarty Mun. Schs. v. New Mexico Pub. Schs. Ins. Auth.*, 2001-NMCA-096, 131 N.M. 180, 34 P.3d 124.

## **22-29-8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.**

A. All premiums and other money collected by the authority shall be deposited in the fund. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], funds shall be disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor. Except as provided in that subsection, the authority is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise provided by law. The department of finance and administration shall not require the authority to rebid or to disapprove any contractual arrangements determined by the board to be in the best interests of the authority.

B. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], the board shall issue warrants in the name of the authority against funds of the authority in payment of its lawful obligations, issue purchase orders and contract

for goods or services in the name of the authority. The authority shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

**History:** 1978 Comp., § 22-2-6.8, enacted by Laws 1986, ch. 94, § 8; 1991, ch. 142, § 5; 1978 Comp., § 22-2-6.8, recompiled as 1978 Comp., § 22-29-8, by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted the first two sentences for a sentence which read "All premiums and other money collected by the authority shall be received and disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor", added the exception at the beginning of the third sentence and added the final sentence and, in Subsection B, added the exception at the beginning.

**Bracketed material.** — The bracketed reference in subsections A and B was inserted by the compiler due to the recompilation by Laws 2003, ch. 153, § 72 of former Section 22-2-6.6 NMSA 1978 as Section 22-29-6 NMSA 1978, effective April 4, 2003. It was not enacted by the legislature, and is not part of the law.

### **22-29-9. Participation; waivers.**

A. School districts and charter schools shall participate in the authority, unless the school district or charter school is granted a waiver by the board.

B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts and charter schools at the time the request for proposals for the desired line of coverage is issued. Any school district or charter school seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts and charter schools shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district or charter school that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district or charter school shall be granted a waiver for the entire term of the contract.

C. Any school district or charter school granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority

prior to participation in other kinds of group insurance coverage. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district or charter school which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.

D. Any school district or charter school granted a waiver of participation for workers' compensation shall be required to petition for participation in other risk-related coverages and shall be required to meet the requirements established by the authority prior to participation in other kinds of risk-related coverages. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.

E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.

F. A participating school district or charter school may separately provide for coverage additional to that offered by the authority.

G. The local school districts, charter schools or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services.

**History:** 1978 Comp., § 22-2-6.9, enacted by Laws 1986, ch. 94, § 9; 1989, ch. 373, § 4; 1999, ch. 281, § 19; 1978 Comp., § 22-2-6.9, recompiled as 1978 Comp., § 22-29-9, by Laws 2003, ch. 153, § 72.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, in Subsection B substituted "proposals" for "proposal" in the second and third sentences; added the third sentence of Subsection C; and in Subsection G substituted all of the present language preceding "may provide" for "Whenever appropriate, the local school districts", and inserted "or brokers".

**The 1999 amendment**, effective June 18, 1999, added references to charter schools throughout the section, and substituted "workers' compensation" for "workmen's compensation" in the first sentence of Subsection D.

**Duty to defend lawsuit until exclusion proven.** — The authority had the duty to defend a federal lawsuit against a school district until it could establish that the claims for discrimination and civil rights violations were factually supported only by acts connected with sexual misconduct, such acts being excluded from the insurance policy. *Lopez v. New Mexico Pub. Sch. Ins. Auth.*, 117 N.M. 207, 870 P.2d 745 (1994).

## **22-29-10. Group insurance contributions.**

A. Group insurance contributions for school districts, charter schools and participating entities in the authority shall be made as follows:

(1) at least seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);

(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);

(3) at least sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); or

(4) at least sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.

B. Within available revenue, school districts, charter schools and participating entities in the authority may contribute up to eighty percent of the cost of the insurance of all employees.

C. Whenever a school district, charter school or participating entity in the authority offers to its employees alternative health plan benefit options, including health maintenance organizations, preferred provider organizations or panel doctor plans, the school district, charter school or participating entity may pay an amount on behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health maintenance organization plans, preferred provider organization plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act [22-29-1 NMSA 1978]. School districts, charter schools and participating entities in the authority may pay up to one hundred percent of the first fifty thousand dollars (\$50,000) of term life insurance.

History: 1978 Comp., § 22-2-6.10, enacted by Laws 1989, ch. 373, § 5; 1999, ch. 281, § 20; 1978 Comp., 22-2-6.10, recompiled as 1978 Comp., § 22-29-10, by Laws 2003, ch. 153, § 72; 2004, ch. 82, § 2.

## **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, inserted references to charter schools throughout the section, and deleted "public school insurance" or "public schools insurance" preceding "authority" in the introductory language of Subsection A and the first and second sentences of Subsection B.

**The 2004 amendments**, effective May 19, 2004, amended Subsection A to insert "at least" at the beginning of Paragraphs (1) through (4), added Subsection B and redesignated Subsection B as Subsection C.

## **22-29-11. Expenditure of insurance proceeds for public schools.**

Payment for a claim under property insurance coverage for property damage to public school facilities may be paid directly to the school district, or, pursuant to the Procurement Code [13-1-28 NMSA 1978], the insurance proceeds may be expended by the insurer to repair the damage. If the payment is made directly to the school district, without further approval of the authority or any insurance carrier, the proceeds of the insurance payment may be expended by the school district to repair or replace the damaged facility if:

- A. the school district complies with the Procurement Code; and
- B. contracts for the repair or replacement are approved by the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, provided that:
  - (1) the cost of settlement of the insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contracts; and
  - (2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

History: Laws 2005, ch. 274, § 18.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.