

1 SENATE BILL 237

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO CHARTER SCHOOLS; CLARIFYING THE POWERS AND DUTIES
12 OF CHARTERING AUTHORITIES IN MONITORING CHARTER SCHOOLS;
13 ALLOWING A CHARTERING AUTHORITY TO SANCTION A GOVERNING BODY,
14 WHICH MAY INCLUDE CORRECTIVE ACTION AND SUSPENSION; CLARIFYING
15 THE PUBLIC SCHOOL CODE PROHIBITION AGAINST NEPOTISM.

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

18 SECTION 1. Section 22-8B-5.2 NMSA 1978 (being Laws 2011,
19 Chapter 14, Section 7) is amended to read:

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

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

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1 for-profit or nonprofit entity with which the charter school
2 contracts directly, for professional services, goods or
3 facilities. A violation of this subsection renders the
4 contract between the person or the person's immediate family
5 member and the charter school voidable at the option of the
6 chartering authority, the department or the governing body. A
7 person who knowingly violates this subsection may be
8 individually liable to the charter school for any financial
9 damage caused by the violation.

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

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

25 D. A head administrator or governing body shall not

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1 initially employ or approve the initial employment in any
2 capacity of a person who is an immediate family member of the
3 head administrator or a member of the governing body or a
4 charter school employee who would be a direct supervisor of the
5 immediate family member. This provision shall not be waived
6 for employments after the effective date of this 2021 act. A
7 charter school that has employed an immediate family member of
8 the head administrator, member of the governing body or a
9 direct supervisor shall notify the chartering authority of
10 those employees and their relationship with the head
11 administrator, member of the governing body or supervisor. The
12 chartering authority shall work with the charter school to
13 alleviate or mitigate the effects of the nepotism, including
14 identifying who the supervisor of record will be.

15 ~~[D.]~~ E. As used in this section, "immediate family
16 member" means spouse, father, father-in-law, mother, mother-in-
17 law, son, son-in-law, daughter, daughter-in-law, brother,
18 brother-in-law, sister, sister-in-law or any other relative who
19 is financially supported."

20 SECTION 2. Section 22-8B-5.3 NMSA 1978 (being Laws 2011,
21 Chapter 14, Section 8) is amended to read:

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

- 24 A. evaluate charter applications;
25 B. actively pursue the [~~utilization~~] use of charter

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1 schools to satisfy identified education needs and promote a
2 diversity of educational choices;

3 C. approve charter applications that meet the
4 requirements of the Charter Schools Act;

5 D. decline to approve charter applications that
6 fail to meet the requirements of the Charter Schools Act or are
7 otherwise inadequate;

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

11 F. monitor, in accordance with the requirements of
12 the Charter Schools Act and the terms of the charter contract,
13 the performance and legal compliance of charter schools under
14 their authority;

15 G. oversee the governing body's compliance with
16 federal and state laws and, if necessary, take action following
17 the appropriate steps when the governing body is not operating
18 pursuant to law or is violating policies and procedures in the
19 charter;

20 [~~G.~~] H. determine whether a charter school merits
21 suspension, revocation or nonrenewal; and

22 [~~H.~~] I. develop and maintain chartering policies
23 and practices consistent with nationally recognized principles
24 and standards for quality charter authorizing in all major
25 areas of authorizing, including:

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1 (1) organizational capacity and
2 infrastructure;
3 (2) evaluating charter applications;
4 (3) performance contracting;
5 (4) charter school oversight and evaluation;
6 (5) governing body monitoring and intercession
7 with a governing body, as necessary; and
8 ~~(5)~~ (6) charter school suspension,
9 revocation and renewal processes."

10 **SECTION 3.** Section 22-8B-9 NMSA 1978 (being Laws 1999,
11 Chapter 281, Section 9, as amended) is amended to read:

12 "22-8B-9. CHARTER SCHOOL CONTRACT--CONTENTS--RULES.--

13 A. The chartering authority shall enter into a
14 contract with the governing body of the applicant charter
15 school within thirty days of approval of the charter
16 application. The charter contract shall be the final
17 authorization for the charter school and shall be part of the
18 charter. If the chartering authority and the applicant charter
19 school fail to agree upon the terms of or enter into a contract
20 within thirty days of the approval of the charter application,
21 either party may appeal to the secretary to finalize the terms
22 of the contract; provided that such appeal must be provided in
23 writing to the secretary within forty-five days of the approval
24 of the charter application. Failure to enter into a charter
25 contract or appeal to the secretary pursuant to this section

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1 precludes the chartering authority from chartering the school.

2 B. The charter contract shall include:

3 (1) all agreements regarding the release of
4 the charter school from department and local school board rules
5 and policies, including discretionary waivers provided for in
6 Section 22-8B-5 NMSA 1978;

7 (2) any material term of the charter
8 application as determined by the parties to the contract;

9 (3) the mission statement of the charter
10 school and how the charter school will report on implementation
11 of its mission;

12 (4) the chartering authority's duties to the
13 charter school and liabilities of the chartering authority as
14 provided in Section 22-8B-5.3 NMSA 1978;

15 (5) a statement of admission policies and
16 procedures;

17 (6) signed assurances from the charter
18 school's governing body members regarding compliance with all
19 federal and state laws governing organizational, programmatic
20 and financial requirements applicable to charter schools;

21 (7) the criteria, processes and procedures
22 that the chartering authority will use for ongoing oversight of
23 operational, financial and academic performance of the charter
24 school;

25 (8) a detailed description of how the

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1 chartering authority will use the withheld two percent of the
2 school-generated program cost as provided in Section 22-8B-13
3 NMSA 1978 to monitor and oversee the charter school and the
4 governing body;

5 (9) the types and amounts of insurance
6 liability coverage to be obtained by the charter school;

7 (10) the term of the contract;

8 (11) the process and criteria that the
9 chartering authority intends to use to annually monitor and
10 evaluate the fiscal, overall governance and student performance
11 of the charter school, including the method that the chartering
12 authority intends to use to conduct the evaluation as required
13 by Section 22-8B-12 NMSA 1978;

14 (12) the dispute resolution processes agreed
15 upon by the chartering authority and the charter school,
16 provided that the processes shall, at a minimum, include:

17 (a) written notice of the intent to
18 invoke the dispute resolution process, which notice shall
19 include a description of the matter in dispute;

20 (b) a time limit for response to the
21 notice and cure of the matter in dispute;

22 (c) a procedure for selection of a
23 neutral third party to assist in resolving the dispute;

24 (d) a process for apportionment of all
25 costs related to the dispute resolution process; and

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1 (e) a process for final resolution of
2 the issue reviewed under the dispute resolution process;

3 (13) the criteria, procedures and time lines,
4 agreed upon by the charter school and the chartering authority,
5 addressing charter revocation and deficiencies found in the
6 annual status report pursuant to the provisions of Section
7 22-8B-12 NMSA 1978;

8 (14) if the charter school contracts with a
9 third-party provider, the criteria and procedures for the
10 chartering authority to review the provider's contract and the
11 charter school's financial independence from the provider;

12 (15) all requests for release of the charter
13 school from department rules or the Public School Code. Within
14 ten days after the contract is approved by the local school
15 board, any request for release from department rules or the
16 Public School Code shall be delivered by the local school board
17 to the department. If the department grants the request, it
18 shall notify the local school board and the charter school of
19 its decision. If the department denies the request, it shall
20 notify the local school board and the charter school that the
21 request is denied and specify the reasons for denial;

22 (16) an agreement that the charter school will
23 participate in the public school insurance authority;

24 (17) if the charter school is a state-
25 chartered charter school, a process for qualification of and

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1 review of the school as a qualified board of finance and
2 provisions for assurance that the school has satisfied any
3 conditions imposed by the commission;

4 (18) a listing of the charter school's
5 nondiscretionary waivers; and

6 (19) any other information reasonably required
7 by either party to the contract.

8 C. The process for revision or amendment to the
9 terms of the charter contract shall be made only with the
10 approval of the chartering authority and the governing body of
11 the charter school. If they cannot agree, either party may
12 appeal to the secretary as provided in Subsection A of this
13 section."

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

16 "22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

17 A. A charter school shall hire its own employees.
18 The provisions of the School Personnel Act shall apply to such
19 employees. The head administrator of the charter school shall
20 employ, fix the salaries of, assign, terminate and discharge
21 all employees of the charter school.

22 B. The head administrator of a charter school shall
23 not initially employ or approve the initial employment in any
24 capacity of a person who is the spouse, father, father-in-law,
25 mother, mother-in-law, son, son-in-law, daughter, daughter-in-

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1 law, brother, brother-in-law, sister or sister-in-law of a
2 member of the governing body, [~~or~~] the head administrator [~~The~~
3 ~~governing body may waive the nepotism rule for family members~~
4 ~~of a head administrator~~] or would-be direct supervisor.

5 C. Nothing in this section shall prohibit the
6 continued employment of a person employed on or before July 1,
7 2008."

8 SECTION 5. Section 22-8B-12 NMSA 1978 (being Laws 1999,
9 Chapter 281, Section 12, as amended) is amended to read:

10 "22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND
11 CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS
12 FOR NONRENEWAL OR REVOCATION.--

13 A. A charter school may be approved for an initial
14 term of six years; provided that the first year shall be used
15 exclusively for planning and not for completing the
16 application. A charter may be renewed for successive periods
17 of five years each. Approvals of less than five years may be
18 agreed to between the charter school and the chartering
19 authority.

20 B. During the planning year, the charter school
21 shall file a minimum of three status reports with the
22 chartering authority and the department for the purpose of
23 demonstrating that the charter school's implementation progress
24 is consistent with the conditions, standards and procedures of
25 its approved charter. The report content, format and schedule

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1 for submission shall be agreed to by the chartering authority
2 and the charter school and become part of the charter contract.

3 C. Prior to the end of the planning year, the
4 charter school shall demonstrate that its facilities meet the
5 requirements of Section 22-8B-4.2 NMSA 1978.

6 D. A chartering authority shall monitor the fiscal,
7 overall governance and student performance and legal compliance
8 of the charter schools that it oversees, including reviewing
9 the data provided by the charter school to support ongoing
10 evaluation according to the charter contract. Every chartering
11 authority may conduct or require oversight activities that
12 allow the chartering authority to fulfill its responsibilities
13 under the Charter Schools Act, including conducting appropriate
14 inquiries and investigations; provided that the chartering
15 authority complies with the provisions of the Charter Schools
16 Act and the terms of the charter contract and does not unduly
17 inhibit the autonomy granted to the charter schools that it
18 governs.

19 E. As part of its performance review of a charter
20 school, a chartering authority shall visit a charter school
21 under its authority at least once annually to provide technical
22 assistance to the charter school and to determine the status of
23 the charter school and the progress of the charter school
24 toward the performance framework goals in its charter contract.

25 F. If, based on the performance review conducted by

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1 the chartering authority pursuant to Subsection D of this
2 section, a charter school's fiscal, overall governance or
3 student performance or legal compliance appears unsatisfactory,
4 the chartering authority shall promptly notify the governing
5 body of the charter school of the unsatisfactory review and the
6 perceived problem and provide reasonable opportunity for the
7 governing body to remedy the problem; provided that if the
8 unsatisfactory review warrants revocation, the revocation
9 procedures set forth in this section shall apply. A chartering
10 authority may take appropriate corrective actions or exercise
11 sanctions, as long as such sanctions do not constitute
12 revocation, in response to the unsatisfactory review. Such
13 actions or sanctions by the chartering authority may include
14 requiring a governing body to develop and execute a corrective
15 action plan with the chartering authority that sets forth time
16 frames for compliance. The chartering authority shall follow
17 its own policy on suspension, revocation or nonrenewal.

18 G. Every chartering authority shall submit an
19 annual report to the division, including a performance report
20 for each charter school that it oversees, in accordance with
21 the performance framework set forth in the charter contract.

22 H. The department shall review the annual report
23 received from the chartering authority to determine if the
24 department or local school board rules and policies from which
25 the charter school was released pursuant to the provisions of

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1 Section 22-8B-5 NMSA 1978 assisted or impeded the charter
2 school in meeting its stated goals and objectives. The
3 department shall use the annual reports received from the
4 chartering authorities as part of its report to the governor,
5 the legislative finance committee and the legislative education
6 study committee as required by the Charter Schools Act.

7 I. No later than two hundred seventy days prior to
8 the date in which the charter expires, the governing body may
9 submit a renewal application to the chartering authority. A
10 charter school may apply to a different chartering authority
11 for renewal. The chartering authority shall rule in a public
12 hearing on the renewal application no later than one hundred
13 eighty days prior to the expiration of the charter.

14 J. A charter school renewal application submitted
15 to the chartering authority shall contain:

16 (1) a report on the progress of meeting the
17 academic performance, financial compliance and governance
18 responsibilities of the charter school, including achieving the
19 goals, objectives, student performance outcomes, state
20 standards of excellence and other terms of the charter
21 contract, including the accountability requirements set forth
22 in the Assessment and Accountability Act;

23 (2) a financial statement that discloses the
24 costs of administration, instruction and other spending
25 categories for the charter school that is understandable to the

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1 general public, that allows comparison of costs to other
2 schools or comparable organizations and that is in a format
3 required by the department;

4 (3) a copy of the charter contract executed in
5 compliance with the provisions of Section 22-8B-9 NMSA 1978;

6 (4) a petition in support of the charter
7 school renewing its charter status signed by not less than
8 sixty-five percent of the employees in the charter school;

9 (5) a petition in support of the charter
10 school renewing its charter status signed by at least seventy-
11 five percent of the households whose children are enrolled in
12 the charter school;

13 (6) a description of the charter school
14 facilities and assurances that the facilities are in compliance
15 with the requirements of Section 22-8B-4.2 NMSA 1978; and

16 (7) for charter schools located on tribal
17 land, documentation of ongoing consultation pursuant to the
18 Indian Education Act.

19 K. A charter may be suspended, revoked or not
20 renewed by the chartering authority if the chartering authority
21 determines that the charter school did any of the following:

22 (1) committed a material violation of any of
23 the conditions, standards or procedures set forth in the
24 charter contract;

25 (2) failed to meet or make substantial

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1 progress toward achievement of the department's standards of
2 excellence or student performance standards identified in the
3 charter contract;

4 (3) failed to meet generally accepted
5 standards of fiscal management;

6 (4) for a charter school located on tribal
7 land, failed to comply with ongoing consultations pursuant to
8 the Indian Education Act; or

9 (5) violated any provision of law from which
10 the charter school was not specifically exempted.

11 L. The chartering authority shall develop processes
12 for suspension, revocation or nonrenewal of a charter that:

13 (1) provide the charter school with timely
14 notification of the prospect of suspension, revocation or
15 nonrenewal of the charter and the reasons for such action;

16 (2) allow the charter school a reasonable
17 amount of time to prepare and submit a response to the
18 chartering authority's action; and

19 (3) require the final determination made by
20 the chartering authority to be submitted to the department.

21 M. If a chartering authority suspends, revokes or
22 does not renew a charter, the chartering authority shall state
23 in writing its reasons for the suspension, revocation or
24 nonrenewal.

25 N. If a chartering authority suspends, revokes or

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1 does not renew the charter of a charter school located on
2 tribal land, the chartering authority and charter school shall
3 consult with the tribe pursuant to Subsections C and D of
4 Section ~~[3 of this 2019 act]~~ 22-8B-12.2 NMSA 1978.

5 0. A decision to suspend, revoke or not to renew a
6 charter may be appealed by the governing body pursuant to
7 Section 22-8B-7 NMSA 1978."