

SENATE BILL 331

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Lopez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CHARTER SCHOOLS; CLARIFYING THE POWERS AND DUTIES OF CHARTERING AUTHORITIES IN MONITORING CHARTER SCHOOLS; ALLOWING A CHARTERING AUTHORITY TO SJC → ~~SUSPEND~~ SANCTION ← SJC A GOVERNING BODY SJC →, WHICH MAY INCLUDE CORRECTIVE ACTION AND SUSPENSION ← SJC; CLARIFYING THE PUBLIC SCHOOL CODE PROHIBITION AGAINST NEPOTISM.

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

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

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

NEPOTISM PROHIBITED.--

A. A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member of the person is an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods or facilities. A violation of this subsection renders the contract between the person or the person's immediate family member and the charter school voidable at the option of the chartering authority, the department or the governing body. A person who knowingly violates this subsection may be individually liable to the charter school for any financial damage caused by the violation.

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

C. Any employee, agent or board member of the

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chartering authority who participates in the initial review, approval, ongoing oversight, evaluation or charter renewal process of a charter school is ineligible to serve on the governing body of the charter school chartered by the chartering authority.

D. A head administrator or governing body shall not initially employ or approve the initial employment in any capacity of a person who is an immediate family member of the head administrator or a member of the governing body or a charter school employee who would be a direct supervisor of the immediate family member. This provision shall not be waived for employments after the effective date of this 2019 act. A charter school that has employed an immediate family member of the head administrator, member of the governing body or a direct supervisor shall notify the chartering authority of those employees and their relationship with the head administrator, member of the governing body or supervisor. The chartering authority shall work with the charter school to alleviate or mitigate the effects of the nepotism SJC→, including identifying who the supervisor of record will be←SJC.

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

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

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

- A. evaluate charter applications;
- B. actively pursue the ~~[utilization]~~ use of charter schools to satisfy identified education needs and promote a diversity of educational choices;
- C. approve charter applications that meet the requirements of the Charter Schools Act;
- D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;
- F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;

SJC→~~G. oversee the governing body and, if necessary, take action when the governing body is not operating pursuant to law or charter or is not carrying out its powers and duties for the best interest of the charter school;~~←SJC

SJC→G. oversee the governing body's compliance with

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federal and state laws and, if necessary, take action following the appropriate steps when the governing body is not operating pursuant to law or is violating policies and procedures in the charter;←SJC

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

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

- (1) organizational capacity and infrastructure;
- (2) evaluating charter applications;
- (3) performance contracting;
- (4) charter school oversight and evaluation;
- (5) governing body monitoring and intercession with a governing body, as necessary; and

[(-5)] (6) charter school suspension, revocation and renewal processes."

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

~~"22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter school application shall include:~~

~~A. the mission statement of the charter school;~~

~~B. the goals, objectives and student performance~~

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~~outcomes to be achieved by the charter school;~~

~~G. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department'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 outcomes, the time line for achievement of the outcomes 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 rules relative to fiscal procedures;~~

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~~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:~~

~~(1) how the governing body will be selected;~~

~~(2) qualification and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; [and]~~

~~(3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school; and~~

~~(4) actions the chartering authority may take when a governing body fails to do its duty or fails to act in the best interest of the charter school;~~

~~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 chartering authority regarding their respective legal liability~~

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~~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 both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and~~

~~O. a description of the facilities the charter school plans to use."~~←SJC

SJC→~~SECTION 4.~~ SECTION 3.←SJC Section 22-8B-9 NMSA 1978 (being Laws 1999, Chapter 281, Section 9, as amended) is amended to read:

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

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in

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writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

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

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

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

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

(5) a statement of admission policies and procedures;

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

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of

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operational, financial and academic performance of the charter school;

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978 to monitor and oversee the charter school and the governing body;

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

(10) the term of the contract;

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

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

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

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

(c) a procedure for selection of a

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neutral third party to assist in resolving the dispute;

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

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

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

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

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department 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;

(16) an agreement that the charter school will

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participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission;

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

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

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

SJC→~~SECTION 5.~~ SECTION 4.←SJC Section 22-8B-10 NMSA 1978 (being Laws 1999, Chapter 281, Section 10, as amended) is amended to read:

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

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

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B. The head administrator of a charter school 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, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body, [or] the head administrator [~~The governing body may waive the nepotism rule for family members of a head administrator~~] or would-be direct supervisor.

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

SJC→~~SECTION 6.~~ SECTION 5.←SJC A new section of the Charter Schools Act is enacted to read:

"[NEW MATERIAL] CHARTERING AUTHORITY--POWER TO

SJC→~~SUSPEND~~ SANCTION←SJC A GOVERNING BODY.--

A. The chartering authority shall supervise all charter schools and charter school officials SJC→~~coming~~←SJC under its jurisdiction SJC→. ~~, including taking over the control and management of a charter school that has failed to meet requirements of the charter contract, law or department rules or standards and, until such time as requirements of the charter contract, law or department standards or rules have been met and compliance is ensured, the powers and duties of the governing body may be suspended.~~

~~B. A chartering authority shall consult with the~~

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~~department before moving to suspend a governing body. Upon suspension of a governing body by the commission, the department shall take over the powers and duties of the governing body and may contract with financial or educational experts as needed to keep the school operating while efforts to train or replace the governing body are under way. A local chartering authority may use its own staff and contract for services as well. Nothing in this section affects the department's own power to suspend a governing body and head administrator pursuant to Sections 22-2-14 and 22-8-39 NMSA 1978.~~

~~C. The department, school district or contractor shall report to the chartering authority and may recommend that the chartering authority consider commencing proceedings to suspend, revoke or refuse to renew the charter if the department, school district or contractor finds that the charter school has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control or the school is severely hampering the educational progress of its students."~~←SJC

SJC→If a charter school's performance or legal compliance is unsatisfactory, the chartering authority shall promptly notify the charter school of the perceived problem and provide a reasonable opportunity for the school to remedy the problem,

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unless the problem warrants revocation, in which case
revocation procedures shall be followed. Every chartering
authority may exercise sanctions short of revocation in
response to deficiencies in charter school performance or legal
compliance. Such actions or sanctions may include, if
warranted, requiring a school to develop and execute a
corrective action plan within a specified time. The chartering
authority shall follow its own policy on suspension, revocation
or nonrenewal."←SJC