

1 SENATE BILL 331

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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 SUSPEND A GOVERNING BODY;
14 CLARIFYING THE PUBLIC SCHOOL CODE PROHIBITION AGAINST NEPOTISM.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "22-8B-5.2. GOVERNING BODY CONFLICTS OF INTEREST--
20 NEPOTISM PROHIBITED.--

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

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

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

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

24 D. A head administrator or governing body shall not
25 initially employ or approve the initial employment in any

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1 capacity of a person who is an immediate family member of the
2 head administrator or a member of the governing body or a
3 charter school employee who would be a direct supervisor of the
4 immediate family member. This provision shall not be waived
5 for employments after the effective date of this 2019 act. A
6 charter school that has employed an immediate family member of
7 the head administrator, member of the governing body or a
8 direct supervisor shall notify the chartering authority of
9 those employees and their relationship with the head
10 administrator, member of the governing body or supervisor. The
11 chartering authority shall work with the charter school to
12 alleviate or mitigate the effects of the nepotism.

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

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

20 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--
21 LIABILITY.--A chartering authority shall:

- 22 A. evaluate charter applications;
23 B. actively pursue the ~~[utilization]~~ use of charter
24 schools to satisfy identified education needs and promote a
25 diversity of educational choices;

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1 C. approve charter applications that meet the
2 requirements of the Charter Schools Act;

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

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

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

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

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

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

23 (1) organizational capacity and
24 infrastructure;

25 (2) evaluating charter applications;

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

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

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

9 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
10 school application shall include:

11 A. the mission statement of the charter school;

12 B. the goals, objectives and student performance
13 outcomes to be achieved by the charter school;

14 C. a description of the charter school's
15 educational program, student performance standards and
16 curriculum that must meet or exceed the department's
17 educational standards and must be designed to enable each
18 student to achieve those standards;

19 D. a description of the way a charter school's
20 educational program will meet the individual needs of the
21 students, including those students determined to be at risk;

22 E. a description of the charter school's plan for
23 evaluating student performance, the types of assessments that
24 will be used to measure student progress toward achievement of
25 the state's standards and the school's student performance

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1 outcomes, the time line for achievement of the outcomes and the
2 procedures for taking corrective action in the event that
3 student performance falls below the standards;

4 F. evidence that the plan for the charter school is
5 economically sound, including a proposed budget for the term of
6 the charter and a description of the manner in which the annual
7 audit of the financial and administrative operations of the
8 charter school is to be conducted;

9 G. evidence that the fiscal management of the
10 charter school complies with all applicable federal and state
11 laws and rules relative to fiscal procedures;

12 H. evidence of a plan for the displacement of
13 students, teachers and other employees who will not attend or
14 be employed in the conversion school;

15 I. a description of the governing body and
16 operation of the charter school, including:

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

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

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

24 (4) actions the chartering authority may take
25 when a governing body fails to do its duty or fails to act in

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1 the best interest of the charter school;

2 J. an explanation of the relationship that will
3 exist between the proposed charter school and its employees,
4 including evidence that the terms and conditions of employment
5 will be addressed with affected employees and their recognized
6 representatives, if any;

7 K. the employment and student discipline policies
8 of the proposed charter school;

9 L. an agreement between the charter school and the
10 chartering authority regarding their respective legal liability
11 and applicable insurance coverage;

12 M. a description of how the charter school plans to
13 meet the transportation and food service needs of its students;

14 N. a description of both the discretionary waivers
15 and the waivers provided for in Section 22-8B-5 NMSA 1978 that
16 the charter school is requesting or that will be provided from
17 the local school board or the department and the charter
18 school's plan for addressing and using these waiver requests;
19 and

20 O. a description of the facilities the charter
21 school plans to use."

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

24 "22-8B-9. CHARTER SCHOOL CONTRACT--CONTENTS--RULES.--

25 A. The chartering authority shall enter into a

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1 contract with the governing body of the applicant charter
2 school within thirty days of approval of the charter
3 application. The charter contract shall be the final
4 authorization for the charter school and shall be part of the
5 charter. If the chartering authority and the applicant charter
6 school fail to agree upon the terms of or enter into a contract
7 within thirty days of the approval of the charter application,
8 either party may appeal to the secretary to finalize the terms
9 of the contract; provided that such appeal must be provided in
10 writing to the secretary within forty-five days of the approval
11 of the charter application. Failure to enter into a charter
12 contract or appeal to the secretary pursuant to this section
13 precludes the chartering authority from chartering the school.

14 B. The charter contract shall include:

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

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

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

24 (4) the chartering authority's duties to the
25 charter school and liabilities of the chartering authority as

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1 provided in Section 22-8B-5.3 NMSA 1978;

2 (5) a statement of admission policies and
3 procedures;

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

8 (7) the criteria, processes and procedures
9 that the chartering authority will use for ongoing oversight of
10 operational, financial and academic performance of the charter
11 school;

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

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

19 (10) the term of the contract;

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

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

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

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

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

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

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

15 (13) the criteria, procedures and time lines,
16 agreed upon by the charter school and the chartering authority,
17 addressing charter revocation and deficiencies found in the
18 annual status report pursuant to the provisions of Section
19 22-8B-12 NMSA 1978;

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

24 (15) all requests for release of the charter
25 school from department rules or the Public School Code. Within

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1 ten days after the contract is approved by the local school
2 board, any request for release from department rules or the
3 Public School Code shall be delivered by the local school board
4 to the department. If the department grants the request, it
5 shall notify the local school board and the charter school of
6 its decision. If the department denies the request, it shall
7 notify the local school board and the charter school that the
8 request is denied and specify the reasons for denial;

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

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

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

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

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

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1 SECTION 5. Section 22-8B-10 NMSA 1978 (being Laws 1999,
2 Chapter 281, Section 10, as amended) is amended to read:

3 "22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

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

9 B. The head administrator of a charter school shall
10 not initially employ or approve the initial employment in any
11 capacity of a person who is the spouse, father, father-in-law,
12 mother, mother-in-law, son, son-in-law, daughter, daughter-in-
13 law, brother, brother-in-law, sister or sister-in-law of a
14 member of the governing body, [~~or~~] the head administrator [~~The~~
15 ~~governing body may waive the nepotism rule for family members~~
16 ~~of a head administrator~~] or would-be direct supervisor.

17 C. Nothing in this section shall prohibit the
18 continued employment of a person employed on or before July 1,
19 2008."

20 SECTION 6. A new section of the Charter Schools Act is
21 enacted to read:

22 "[NEW MATERIAL] CHARTERING AUTHORITY--POWER TO SUSPEND A
23 GOVERNING BODY.--

24 A. The chartering authority shall supervise all
25 charter schools and charter school officials coming under its

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1 jurisdiction, including taking over the control and management
2 of a charter school that has failed to meet requirements of the
3 charter contract, law or department rules or standards and,
4 until such time as requirements of the charter contract, law or
5 department standards or rules have been met and compliance is
6 ensured, the powers and duties of the governing body may be
7 suspended.

8 B. A chartering authority shall consult with the
9 department before moving to suspend a governing body. Upon
10 suspension of a governing body by the commission, the
11 department shall take over the powers and duties of the
12 governing body and may contract with financial or educational
13 experts as needed to keep the school operating while efforts to
14 train or replace the governing body are under way. A local
15 chartering authority may use its own staff and contract for
16 services as well. Nothing in this section affects the
17 department's own power to suspend a governing body and head
18 administrator pursuant to Sections 22-2-14 and 22-8-39 NMSA
19 1978.

20 C. The department, school district or contractor
21 shall report to the chartering authority and may recommend that
22 the chartering authority consider commencing proceedings to
23 suspend, revoke or refuse to renew the charter if the
24 department, school district or contractor finds that the
25 charter school has engaged in serious or repeated

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1 mismanagement, improper recording or improper reporting of
2 public school funds under its control or the school is severely
3 hampering the educational progress of its students."

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