

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 148aa

52nd Legislature, 1st Session, 2015

Tracking Number: .197716.3

Short Title: Charter School Responsibilities

Sponsor(s): Senator Mimi Stewart

Analyst: Kevin Force

Date: March 5, 2015

**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE
AS AMENDED**

The Senate Finance Committee amendments:

- **direct state-chartered charter schools to submit their budgets first to the Charter Schools Division of the Public Education Department for approval or amendment, and thereafter to the Public Education Commission for their review; and**
- **remove nondiscretionary waivers from those agreements that are to be included in the charter contract and instead include just a listing of those waivers in the contract.**

The Senate Education Committee amendments strike an outdated reference to “minimal educational standards” and replace it with “standards of excellence.”

Original Bill Summary:

SB 148 is an omnibus bill proposing multiple amendments to several sections and acts in the *Public School Code* to reconcile inconsistencies, resolve ambiguities, and address internal and external conflicts arising out of provisions dealing with charter schools. A section-by-section synopsis of the bill follows.

Sections 1 and 2 amend general provisions of the *Public School Code*:

- Section 1:¹
 - adds a definition for “charter schools,” which means a school authorized by a chartering authority to operate as a public school; and
 - amends the definition for “school administrator” to include charter school head administrator.

¹ Section 22-2-1 NMSA 1978, “Definitions”

- Section 2, in addition to local school boards, requires governing bodies of charter schools to:²
 - promulgate bullying and cyberbullying prevention policies; and
 - make any revisions to its disciplinary policies needed in order to carry out the provisions of the bill.

Section 3 amends the *A-B-C-D-F Schools Rating Act* to clarify that the Public Education Department (PED) shall ensure that both local school boards and governing bodies of charter schools are appropriately prioritizing resources of schools rated ‘D’ or ‘F’ toward proven programs linked to improved student performance until the pertinent school receives a ‘C’ or better for two consecutive years.³

Sections 4 through 7 amend the *Public School Finance Act*:

- Section 4:⁴
 - makes parallel the provisions for the submission of charter school budgets for both locally chartered and state-chartered charter schools, so that:
 - state-chartered schools submit school-based budgets to the Public Education Commission (PEC) for approval, as locally chartered schools submit their budgets to their district authorizers;
 - the approval and amendment authority of the commission regarding the budget is limited to ensuring the implementation of sound fiscal practices, within allotted resources;
 - the PEC’s veto authority over the budget is limited to the budget in its entirety, disallowing line-item vetoes; and
 - the budget is submitted by PEC to the PED for final approval and amendment; and
 - strikes an outdated provision for graduated requirements for charter schools’ training and experience index from FY 09 through the beginning of FY 12.
- Section 5 requires that all budget submissions, by either school districts or charter schools, be done in a manner specified by PED.⁵
- Section 6:⁶
 - requires PED to approve and certify operating budgets for local school boards and all charter schools;
 - requires PED to make necessary amendments to submitted operating budgets so that they conform with the department’s rules and procedures;

² Section 22-2-21 NMSA 1978, “Bullying and Cyberbullying Prevention Programs”

³ Section 22-2E-4 NMSA 1978, “Annual Ratings – Letter Grades – Ratings Based on Standards-Based Assessments – Right of School Choice – Distance Learning – Responsibility for Cost – Use of Funds – Additional Remedy”

⁴ Section 22-8-6.1 NMSA 1978, “Charter School Budgets”

⁵ Section 22-8-7 NMSA 1978, “Manner of Budget Submission”

⁶ Section 22-8-11 NMSA 1978, “Budgets – Approval of Operating Budget”

- prohibits districts and charters from incurring any obligation or expend any funds not in accordance with the PED-approved budget; and
 - prohibits PED from approving an operating budget of a district or charter school that fails to demonstrate the solicitation of parental involvement in the budget process.
- Section 7:⁷
 - consistent with other, preceding proposed amendments to the *Public School Finance Act*, clarifies that it is the responsibility of both local school boards and governing bodies of charter schools to determine priorities in terms of the needs of their served communities; and
 - consistent with proposed amendments to the *A-B-C-D-F Schools Rating Act*, PED is to ensure that local school boards and governing bodies of charter schools that are rated “D” or “F” are prioritizing their resources toward proven programs linked to improved student achievement, until the school receives a “C” or better for at least two consecutive years.

Sections 8 through 12 amend the *Charter Schools Act*:

- Section 8 adds definitions, specific to the *Charter Schools Act* including:⁸
 - “enrollment preference,” which means filling a charter school’s openings with students or their siblings, who have already been admitted to the charter school or are continuing through subsequent grades;
 - “governing body training,” which means the training required for governing body members, under the provisions of the *Charter Schools Act*, that can be obtained from any source that has been approved by PED;
 - “management,” which means authority over decisions regarding the hiring and termination of staff, as well as the day-to-day direction of a school’s employees and contractors;
 - “material violation,” which means the act of failing to accomplish a requirement of law, rule, contract, or charter school’s bylaws that substantially affects a charter school’s employees’ or students’ rights or privileges;
 - “nondiscretionary waiver,” which means a waiver of requirements or rules and provisions of the *Public School Code*, which PED shall grant as a matter of law, under Section 22-8B-5, without requiring separate approval from the department;
 - “performance indicator,” which means a measurement tool allowing selected conditions to be monitored over time to evaluate progress toward a desired direction;
 - “performance target,” which means the rating to which a school’s performance indicators is to be compared in order to determine a school’s progress toward a specific goal; and
 - “siblings,” which means students living in the same residence at least half of the time in a permanent or semi-permanent situation, such as foster care, or students related by blood, cohabitation, or marriage.

⁷ Section 22-8-18, “Program Cost Calculation – Local Responsibility”

⁸ Section 22-8B-2 NMSA 1978, “Definitions”

- Section 9:⁹
 - clarifies that local school boards may approve the establishment of a charter school only within the board’s district; and
 - changes the deadline for submittal of charter applications from a month-long period between June 1 and July 1 to a one-day deadline of June 1.
- Section 10 clarifies that the charter contract shall include both discretionary waivers and those nondiscretionary waivers provided for in Section 22-8B-5, and defined in proposed Section 8 of SB 148.¹⁰
- Section 11:¹¹
 - notes that the performance provisions in the charter contract are to be based upon a framework that sets for the performance indicators and targets that will guide the school’s chartering authority in evaluating the school; and
 - states that the performance framework is to be considered a material term of the contract, and shall include the performance indicators and targets defined in proposed Section 8 of SB 148.
- Section 12 changes an outdated reference to PED’s minimum standards to “standards of excellence,” the term currently used in PED rule.¹²

Section 13 amends the *Fine Arts Education Act* to clarify that both school districts and charter schools may submit a fine arts education program to the department for approval.¹³

Sections 14 and 15 amend the *Bilingual Multicultural Education Act*:

- Section 14:¹⁴
 - strikes the definitions for “department” and “school board”; and
 - removes “charter schools” from the definition of “district,” so that the definition for “district” now reads, in its entirety:

“[d]istrict” means a public school or any combination of public schools in a district . . .”

⁹ Section 22-8B-6 NMSA 1978, “Charter School Requirements – Application Process – Authorization – State Board of Finance Designation Required – Public Hearings – Subcommittees”

¹⁰ Section 22-8B-9 NMSA 1978, “Charter School Contract – Contents – Rules”

¹¹ Section 22-8B-9.1 NMSA 1978, “Performance Framework”

¹² Section 22-8B-12 NMSA 1978, “Charter Schools – Term – Oversight and Corrective Action – Site Visits – Renewal of Charter – Grounds for Nonrenewal or Revocation”

¹³ Section 22-15D-5 NMSA 1978, “Program Plan and Evaluation”

¹⁴ Section 22-23-2 NMSA 1978, “Definitions”

- Section 15 notes that both school boards and governing bodies of charter schools:¹⁵
 - may prepare and submit to PED, bilingual multicultural education programs for approval, as well as take part in the regular review of the plans' goals and priorities;
 - shall maintain academic achievement and language proficiency data, to be updated annually, for the evaluation of the programs' effectiveness and use of funds; and
 - shall provide professional development to their employees, in several specific areas, and these programs are to be part of the districts' or charter schools' professional development plan.

Fiscal Impact:

SB 148 does not contain an appropriation.

Substantive Issues:

Although SB 148 may seem to deal with disparate issues related to charter schools, the unifying principle behind them all is that they reflect the variety of concerns or problems that have come to the attention of the Legislative Education Study Committee (LESC) over a number of years. As explained more fully under (“Background,” below), the LESL’s long-standing interest in charter schools, together with the work of a subcommittee during the 2014 interim, led to this bill to clarify and strengthen statutory provisions governing charter schools, including:

- definitions, both in general throughout the *Public School Code* and in particular in the *Charter Schools Act*;
- the charter application and approval process;
- budgets;
- the charter contract and the performance framework; and
- technical corrections and “cleanup.”

The more substantive provisions proposed by SB 148 include:

- shifting the deadline for submission of charter school applications from a one-month period between June 1 and July 1 of a given calendar year to June 1, allowing for additional time to review applications;
- clarification that a charter school’s performance framework is a material term of the charter contract; and
- definitions for:
 - “management,” clarifying that an entity shall be considered to have management power over a school if it has authority over day-to-day direction of a school’s employees, including hiring and firing; and
 - “nondiscretionary waiver,” clarifying that, pursuant to Section 22-8B-5(C) NMSA 1978, those waivers that PED is directed to grant as a matter of law do not require any further or separate approval by PED.

¹⁵ Section 22-23-5 NMSA 1978, “Bilingual Multicultural Education Program Plan – Evaluation”

Additionally, some overarching concerns can be found across the many issues the bill attempts to address, most notably making parallel, as much as practicable, provisions that appear to treat charter schools differently from traditional public schools or differently from each other, whether locally chartered or state-chartered. SB 148 addresses these differences between traditional public and charter schools in such areas as:

- definitions, by including charter school head administrators in the definition of school administrator in the *Public School Code*;
- bullying, by requiring both local school boards and governing bodies of charter schools to promulgate anti-bullying policies;
- school grading, by requiring PED to ensure that both local school boards and governing bodies of charter schools are appropriately prioritizing resources for low-performing schools;

- the submission of budgets, by requiring:
 - all charter schools, whether state- or locally chartered, to submit their school-based budgets first to their authorizer for approval, which then submits them to PED; and
 - both school districts and charter schools to submit their budgets in a manner approved by PED; and

- fine arts programs and multicultural and bilingual education programs where the governing body of a charter school, being best acquainted with the needs of their students and communities, may submit their program plans to PED for approval, as do school districts for traditional schools.

The PED analysis of SB 148 indicates that requiring state-chartered charter schools to submit their budgets to the PEC for approval would result in unnecessarily duplicative effort.¹⁶ The PEC, administratively attached to PED, relies on PED staff for expertise in dealing with school budget issues and priorities, so that the requirement of prior submission of budgets to the PEC would result in PED staff reviewing the same budget twice.

Another point from the PED analysis is that the definition of the term “nondiscretionary waiver” would reduce transparency by preventing the listing of such waivers, as well as obscure any innovative practices that charters might be employing to implement these waivers. It should be noted, however, that nothing in the definition prevents PED from requiring a listing of these waivers, as well as any potential innovations that charters might employ instead of the waived requirements. Rather, the definition merely clarifies that charter schools need not take any action to receive these waivers, which PED is directed to grant as a matter of law.

Background:

Since the enactment of the original legislation in 1993, the LESC has maintained an interest in charter schools, with hearings during every interim, frequent participation in work groups, and committee-endorsed legislation in virtually every session. During the 2014 interim, this interest led to the designation of charter schools as a focus area for the 2014 interim and to the creation

¹⁶ Another bill endorsed by the LESC and introduced this session would make the PEC an independent body with its own staff (see HB 74, *Public Education Commission as Independent*).

of a subcommittee on charter schools, which heard extensive testimony on a range of issues and concerns, including:

- definitions of terms;
- audits, and the relationship between “parent” agencies and component units;
- charter school governance;
- transportation;
- fiscal issues, such as:
 - the disposition of the 2.0 percent “set-aside” of program cost for administrative support of charter schools by their authorizers; and
 - the small school size adjustment; and
- the role of the PEC and its relationship with PED.

In general, subcommittee members realized that certain ambiguities or inconsistencies in law result from the inconsistent and sometimes contradictory definitions of terms, whether explicit or implicit. In some cases, the terms are unique to certain contexts, like “management,” “material violation,” “nondiscretionary waiver,” and “minimum educational standards.” In other cases, however, they are basic terms used throughout the *Public School Code*, among them: “chartering authority,” “local school board,” “public education commission,” “charter schools division,” “state-chartered charter school,” “governing body of charter schools,” and “school district.” In some contexts, these terms have distinct meanings; in other contexts, however, some of them seem to be used interchangeably.

Similarly, subcommittee members found that not just the *Charter Schools Act* but also a number of other acts within the *Public School Code* – among them the *Public School Finance Act*, the *Fine Arts Education Act*, and the *Bilingual Multicultural Education Act* – blur the distinction between locally chartered and state-chartered charter schools or between charter schools and school districts when prescribing duties or responsibilities of charter schools. Confusion of terms seems especially problematic in the *Public School Lease Purchase Act*, whose provisions often rely on discreet geographic boundaries – those of school districts, particularly – that do not apply to charter schools, whether locally chartered or state-chartered. LESC staff testimony suggested that most of these problems result from piecemeal amendment to statute and inconsistent application of the terms within programmatic statutes. Resolving these problems became a recurrent theme as the subcommittee members worked throughout the 2014 interim.

As explained under (“Substantive Issues,” above), SB 148 addresses a number of the issues that concerned the LESC. Others are addressed in other LESC-endorsed bills introduced during the 2015 session:

- SB 130a *Public School Lease Purchase Act Definitions*;
- SB 257a *Charter Schools & Public Audit Changes*;
- SB 273a *Charter School Governance*;
- HB 74 *Public Education Commission as Independent*; and
- HB 166 *Charter School Transportation Agreements*.

Committee Referrals:

SEC/SFC

Related Bills:

CS/CS/HB 19 *Charter School Educational Tech Equipment* (Identical to CS/SB 8)

HB 74 *Public Education Commission as Independent*

HB 164a *School Transportation Info Reporting*

HB 166 *Charter School Transportation Agreements*

HB 253a *Charter School Facility 4 Year Plans*

CS/SB 8 *Charter School Education Tech Equipment* (Identical to HB 19)

SB 128 *Public School Capital Outlay Building Needs*

SB 130a *Public School Lease Purchase Act Definitions*

SB 257a *Charter Schools & Public Audit Changes*

SB 273a *Charter School Governance*