

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 273a

52nd Legislature, 1st Session, 2015

Tracking Number: .197801.3

Short Title: Charter School Governance

Sponsor(s): Senator Craig W. Brandt

Analyst: Kevin Force

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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The Senate Education Committee amendments:

- **clarify that:**
 - **only the governing body of a state-chartered charter school shall be required to qualify as a board of finance for the charter school; and**
 - **rewards paid by the governing body for information leading to the conviction of thieves and vandals of school property are to be paid from the charter school's funds; and**
- **strike the provision noting that a person appointed to fill a vacancy in the governing body's membership shall hold that office until the member chooses to leave or is voted out by a majority of the other members of the governing body (see "Technical Issues," below).**

Original Bill Summary:

SB 273 addresses the roles and responsibilities of charter governing bodies and head administrators of charter schools. To that end, SB 273:

- creates several new sections of the *Charter Schools Act*;
- amends Section 22-8B-4 by deleting several subsections, the provisions of which have been addressed in new sections; and
- repeals Section 22-8B-10, the provisions of which have been addressed in new sections of the bill.

A section-by-section synopsis of the bill follows.

Section 1 creates a new section of the *Charter Schools Act*, addressing issues and provisions currently found in Section 22-8B-4. Specifically, Section 1 provides for basic requirements of governing bodies,¹ including:

¹ For comparison, please see §22-8B-4(B), Charter schools' rights and responsibilities; operation.

- a requirement that charter schools be governed by governing bodies in the manner described in the charter contract;
- a requirement that charter school governing boards have at least five members; and
- a prohibition against any members of local school boards serving on a charter governing body, or being employed by a locally chartered charter school located within the local school board's school district.

Section 2 creates a new section that provides for the powers and duties of charter school governing bodies,² including:

- development of educational policies for the charter school, subject to approval by the Public Education Department (PED);
- employment of a head administrator;
- review and approval of the school's annual budget;
- acquisition, lease, and disposition of property;
- the ability to enter into contracts, sue and be sued, with the provision that local school boards shall not be liable for any acts of the charter school; and
- the duty to qualify as a board of finance.

Section 3 creates a new section that provides for discipline policies,³ including:

- requirements to establish discipline policies, with the involvement of school personnel, parents, and students, and to file them with PED;
- the enumeration of possible disciplinary sanctions, including suspension, expulsion, in-school suspension, and school service;
- the prohibition of corporal punishment;
- a requirement that all charter school discipline policies allow student to carry and self-administer emergency medication for asthma and anaphylaxis;
- provisions that absolve charter school personnel of liability for civil damages if they, in good faith, report any known or suspected violation of the school discipline policy or attempt to enforce the policy; or if they, in good faith, provide a person with backup medication as provided in the bill; and
- a requirement that governing bodies adopt policies providing for expulsion of students who knowingly bring a weapon to the school, defining "weapons" as firearms or explosive devices.⁴

Section 4 creates a new section, providing for the internal operation of governing boards,⁵ including:

- a requirement to elect a president, vice president, and secretary from among its members; and
- requirements that the president and secretary of the governing body, and the head administrator of the school, obtain surety bonds of at least \$5,000 against the faithful performance of their duties, payable to the school, with the understanding that:

² Please cf. §22-5-4, Local school boards; powers; duties, and §22-8B-4(O) and (P).

³ Please cf. §22-5-4.3, School discipline policies; students may self-administer certain medications.

⁴ Please cf. §22-5-4.7, Additional student discipline policies; weapon-free schools.

⁵ Please cf. §22-5-7, Officers; surety bonds.

- blanket bonds, covering all officers and administrators, for any period up to four years, are permissible;
- the cost of the bonds is to be paid from the operating fund of the school; and
- the bonds must be approved by the Secretary of Public Education and filed with the Secretary of Finance and Administration.

Section 5 creates a new section to provide for the disposition of vacancies on charter school governing boards,⁶ including:

- vacancies occurring before the end of a term of office, which shall be filled, for the remainder of the term, by appointment by a majority vote of the remaining members at a public meeting where a quorum of the board is present, provided that:
 - a person so appointed shall serve until he or she decides to step down or is replaced by majority vote of the other members; and
 - failure to fill the vacancy after 45 days shall result in the vacancy being filled by appointment by the Secretary of Public Education; and
- vacancies occurring in a majority or the full membership of a governing board, which shall be filled by appointment by the Secretary of Public Education until a majority is reached, whereupon that majority shall appoint members to the remaining vacancies.

Section 6 creates a new section providing for the powers and duties of charter school head administrators, designated as the chief executive officers⁷ of charter schools, including:

- the execution of the educational policies and rules of PED and the school’s governing body;
- general administration and supervision of the charter school;
- the employment, establishment of salaries, assignment, termination, and discharge of employees, pursuant to the *School Personnel Act*;
- prohibition against hiring family members of the head administrator or governing body, with the understanding that this prohibition may be waived by the governing body with respect only to the family of the head administrator; and
- the preparation of the charter school’s budget.

Section 7 amends Section 22-8B-4 NMSA 1978⁸, by striking:

- current subsection (B), the provisions of which were moved to Section 1 of the bill, and renumbering accordingly; and
- current subsections (O) and (P), the provisions of both of which were moved to Section 2 of the bill, and renumbering accordingly.

Finally, Section 8 repeals Section 22-8B-10,⁹ the provisions of which were moved to Section 6 of the bill.

⁶ Please cf. §22-5-9, Local school board vacancies.

⁷ Please cf. §22-5-14, Local superintendent; powers and duties, and §22-8B-10 (A) and (B).

⁸ “Charter School Rights and Responsibilities – Operation”

⁹ “Charter Schools – Employees”

Fiscal Impact:

SB 273 does not contain an appropriation.

Technical Issues:

Section 5 of SB 273 addresses the issue of vacancies among charter school governing body members. Subsection (A) notes that a vacancy occurring before the end of a member's term shall be filled for the remainder of that term. Subsection (B), on the other hand, indicates that the member filling that vacancy shall serve "until the member chooses to vacate the office, or the member is replaced by a majority vote of the other governing body members," without any reference to the duration of the original term. The sponsor may wish to consider amending the bill to reconcile the apparent discrepancy between these two subsections.

PED notes that:

- Section 2, Subsection (I) provides that governing boards are to qualify as boards of finance for charter schools, but also makes note of the fact that local school boards act as boards of finance for locally chartered charter schools. PED suggests amending the bill to clarify that this provision applies to governing boards of state-chartered charter schools.
- Section 2, Subsection (L), which allows for governing boards to offer and pay rewards for information leading to the arrest and conviction of thieves and vandals of school property, indicates that all such awards are to be paid from school district funds, in accordance with PED rule, thus implicating the authority of both charter school governing boards and local school districts. The department suggests changing this reference to "school board funds" to one referring to "charter school funds."

Substantive Issues:

SB 273 proposes to create several new sections of law in the *Charter Schools Act* both to clarify the respective roles of charter school governing bodies and head administrators, and to make the operations of charter school governing bodies more parallel to those of local school boards. Thus, much of the language in the proposed sections, while adjusted to reflect the differing circumstances of charter schools, is imported directly from that portion of the *Public School Code* that deals with the administration of local school boards.¹⁰

There are, however, instances where differences between the two sorts of bodies are unavoidable. Many of these instances arise out of the status of school boards as independently elected officials, including:

- elections to fill vacancies;
- the power of eminent domain;
- the issuance of obligation bonds; and
- the ability, upon order of the court, to subpoena witnesses and documents.

Yet where possible, SB 273 assigns responsibilities and powers to governing bodies that are parallel to those of school boards. A good example is the method of filling vacancies on the

¹⁰ §§22-5-1 through 22-5-17 NMSA 1978

governing board: whereas local school board members are elected by popular vote, members of a charter school's governing board are selected according to provisions of the charter school contract. Despite these differences, the bill creates similar processes for the filling of vacancies outside the election process for both sorts of bodies, with:

- vacancies to be filled at an open meeting by a majority vote of remaining members; and
- vacancies that are not so filled to be resolved by appointment of the Secretary of Public Education.

Finally, another feature of SB 273 is that bill incorporates into one piece of legislation a number of provisions that over the years have been applied piecemeal to both the *Charter Schools Act* and to Article 5 of the *Public School Code*.

Background:

Since the enactment of the original legislation in 1993, the Legislative Education Study Committee (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 of a subcommittee on charter schools, which heard extensive testimony on a range of issues and concerns.

Committee discussion soon turned to a potential review of the *Charter Schools Act* as a whole, with an eye toward correcting certain internal and external inconsistencies and toward addressing a number of other issues that had come to the committee's attention in the past. To examine these issues, the committee formed the LESC Charter Schools Subcommittee. Charter school governance was one of the primary areas on which the subcommittee focused its attention, particularly noting the lack of parallel structure between governance requirements for local school boards versus those for their charter school counterparts, governing boards.

The subcommittee met at least once per month during most of the 2104 interim, and it entertained participation and testimony from representatives of numerous entities with an interest in public education in general and charter schools in particular, including:

- the Public Education Department;
- the Public Education Commission;
- the Legislative Finance Committee;
- the Legislative Council Service;
- the New Mexico Coalition for Charter Schools;
- the New Mexico Coalition of Educational Leaders;
- the New Mexico Attorney General's Office;
- the New Mexico Office of the State Auditor;
- the National Association of Charter School Authorizers; and
- diverse New Mexico school boards and charter schools.

Committee Referrals:

SEC/SJC

Related Bills:

SB 130a *Public School Lease Purchase Act Definitions*
SB 148 *Charter School Responsibilities*
SB 236 *Charter School Lease Approval*
SB 257a *Charter Schools & Public Audit Changes*
SB 418a *Charter School Governing Body Elections*
HB 74 *Public Education Commission as Independent*
HJR 4 *Board of Education & Superintendent, CA*