

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 418a

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .197829.1

**Short Title:** Charter School Governing Body Elections

**Sponsor(s):** Senator Michael S. Sanchez

**Analyst:** Kevin Force

**Date:** February 20, 2015

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**AS AMENDED**

**Senate Rules Committee Amendments:**

- **clarify that charter school governing body elections are to be at-large within the boundaries of the school district in which the charter school is located; and**
- **require all charter schools to comply with the provisions of the bill by the date for declarations of candidacy for the regular school district elections in 2017.**

**Original Bill Summary:**

SB 418 establishes procedures and requirements for the initial selection and subsequent election of charter school governing body members, according to the *School Election Law*. Specifically, SB 418:

- amends the *Charter Schools Act* to:
  - stipulate that charter schools are to be governed by a body that is appointed or elected pursuant to the act;<sup>1</sup> and
  - require the charter school contract to include a description of the governing body and matters pertaining to the selection of members, as provided in Section 2 of the bill;<sup>2</sup>
- creates a new section of the *Charter Schools Act* to:
  - require a proposed charter school to include in its charter provision for:
    - the number of members of a governing body;
    - the manner of selection and appointment of the initial governing body, who shall serve until the election of members at the next regular school election;
    - the terms of elected members, which shall be four years, except that initially elected members shall determine staggered terms by lot, if the charter allows for such staggered terms; and
    - the manner of selection and appointment of members to fill vacancies of unexpired terms;

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<sup>1</sup> Section 22-8B-4 NMSA 1978

<sup>2</sup> Section 22-8B-8 NMSA 1978

- stipulate that governing body elections shall be at-large within the boundaries of the school district in which the charter school is located;
- require that, if a state-chartered charter school draws or intends to draw at least 25 percent of its students from a district other than the one in which it is located, the governing body shall provide for member districts, to meet applicable state and federal laws, with the assistance of the Charter Schools Division (CSD) in the Public Education Department (PED);
- stipulate that elections for charter school governing body members shall be called, conducted, and canvassed according to the *School Election Law*;<sup>3</sup>
- require compliance with the provisions of SB 418:
  - before new charter schools, as well as those in their planning or application period, are chartered;
  - before their charters are renewed or before they are granted a new chartering authority, for schools seeking renewal or new chartering authorities by July 1, 2015; and
  - for all other charter schools, before the date for declarations of candidacy for the regular school district elections of 2017;
- require charter schools and their chartering authorities to cooperate in amending their charters to comply with SB 418 in a timely manner; and
- provide that members of a governing body may be:
  - removed, according to the provisions of Chapter 10, Article 4 NMSA 1978;<sup>4</sup> and
  - recalled, according to the provisions of the *Local School Board Member Recall Act*.<sup>5</sup>

**Fiscal Impact:**

SB 418 does not contain an appropriation.

**Fiscal Issues:**

According to the Fiscal Impact Report (FIR) offered by the Legislative Finance Committee (LFC), in FY 16, there will be at least 97 charter schools authorized for operation in New Mexico, each with at least five governing board members, necessitating at least 485 individual governing board member elections during the 2017 regular school district elections, the cost of which is as yet indeterminate.

The Administrative Office of the Courts (AOC) notes that:

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- any additional fiscal impact on the judiciary will be proportional to:

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<sup>3</sup> §§ 1-22-1 through 1-22-19 NMSA 1978.

<sup>4</sup> "Removal of Local Officers"

<sup>5</sup> §§ 22-7-1 through 22-7-16 NMSA 1978

- the enforcement of SB 418;
  - commenced prosecutions for any violations of the *Local School Board Member Recall Act*; and
  - the potential involvement of the district court and the supreme court in the removal or recall of a governing body member; and
- new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

PED indicates that the requirement that CSD assist those charter schools that have at least 25 percent of its students residing in a district other than the one where the school is located to establish “member district” and boundaries may result in significant fiscal impact, because CSD:

- lacks the tools and expertise for such an undertaking; and
- may need to hire new employees or post a request for proposals from parties who do have the necessary experience and capacity.

### **Technical Issues:**

The LFC notes that:

- Section 2, Subsection (D) provisions directing the compliance of existing charter schools may be at cross purposes, and recommends removing the second sentence of the subsection, if the intent of the bill is to require compliance by the 2017 school elections, because:
  - the first sentence requires new charter schools, including proposed schools that are still in their planning or application phase, to comply with the provisions of the bill upon renewal of their charter; while
  - another requires “all other charter schools” to comply before the date for declarations of candidacy for the 2017 regular school district elections;
- Subsection (D) of Section 2 requires all charter schools to work with their chartering authorities to renew their charters in a timely manner, without differentiating new and proposed schools, which would not have charters needing amendment under the provisions of the bill; and
- Section 3 requires charter applications to include “matters pertaining to the selection of members of the governing body,” but the Legislature may wish to make additional, specific provision for such related matters as proposed terms, and the number of members, and the like.

### **Substantive Issues:**

SB 418 mandates the inclusion of general elections of charter school governing board members in regular school district elections. While this inclusion appears to have the potential to create greater parity between charter schools and traditional public schools, several factors may serve to complicate this situation:

- During the 2014 legislative interim, the Legislative Education Study Committee (LESC) convened a Charter Schools Subcommittee that examined, among other issues, charter

school governance (see “Background,” below). During the course of its work, the subcommittee heard testimony from representatives of a number of institutions, including the Public Education Commission (PEC), who testified that among the most time-consuming of their tasks are the negotiation of charter school contracts, amendments to those contracts, and their eventual renewal.

- The provision of SB 418 requiring all charter schools and their authorizers to cooperate in the “timely” amendment of their charters, to comply with the provisions of the bill, may tax the current resources of the PEC in their role as the sole authorizer of New Mexico’s state-chartered charter schools. Without more specificity regarding what is “timely,” such as a staggered schedule, or a schedule tied to renewals, charter schools may choose to wait to amend their charters until the 2017 deadline is imminent, thus creating a potential backlog or bottleneck of chartering amendments with which authorizers, particularly the PEC, would be forced to deal with all at once.

The LFC notes that SB 418:

- may help to address the issue of conflicts of interest between charter school head administrators and governing bodies by requiring the independent election of all charter school governing board members because, under current law:
  - often, head administrators select or vet replacements to fill governing board vacancies; yet
  - governing board members set the head administrator’s salary, evaluate his or her performance, and make decisions regarding the administrator’s continued employment; and
- may create a situation where all the members of a governing body will be up for election at the same time, unless the bill requires the staggered terms for all governing boards that it currently only requires of those charter schools whose charter provides for staggered terms, in Section 2, Subsection (B)(2).

According to the AOC, making charter school governing board members subject to the provisions for removal of public officers, as well as the *Local School Board Member Recall Act*, may lead to greater involvement of the courts in the governance of charter schools.

According to PED, SB 418 raises several issues with regard to jurisdiction and voter information:

- SB 418 does not amend the *Election Code*, despite requiring an election that is governed by the code.
- Physical territory determines the relationship between voters and their district and representatives, with school board members, for example, being required to reside within the district that they purport to represent.
- SB 418 specifies that governing body members may be elected at-large, but does not:
  - specify whether the potential member must live in the district from which a charter school draws 25 percent or more of its student body;
  - address whether each district from which a charter draws 25 percent of its students is entitled to its own representative; or

- address the issue of state-chartered charter schools, the jurisdictional bounds of whose authorizer, the PEC, is the entire state, rather than just a single district.
- The *Election Code* requires county commissions to draw school district election boundaries, yet the bill is not clear regarding how such boundaries should be drawn in the event that a charter school draws 25 percent or more of its students from an existing school district.
- While it may be appropriate for all charter schools, not just those that draw 25 percent of their students from a particular district, to establish their own boundaries, the appropriate entity to assist them in this task is the Secretary of State, rather than the CSD, which lacks the personnel and resources necessary to undertake such a task.
- Finally, the provisions of SB 418 may result in lengthy ballots, as, for example, Albuquerque alone has 53 charter schools, requiring at least 53 ballot items for a school election.

**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 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. Ultimately, the subcommittee’s work in this area led to the development, and the LESC’s endorsement, of SB 273, *Charter School Governance*.

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:**

SRC/SEC

**Related Bills:**

SB 148 *Charter School Responsibilities*  
SB 236 *Charter School Lease Approval*  
SB 273a *Charter School Governance*  
HB 151 *Primary Voting for Some 17 Year-Olds*  
HB 166 *Charter School Transportation Agreements*  
HB 187 *Public Education Nepotism Rule Waiver*  
HB 249 *16 Year-Olds Voting in School Elections*  
HB 252 *Post-Secondary School Voter Registration*  
HB 338 *Change Certain Election Dates*