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SENATE BILL 273

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Craig W. Brandt

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE PUBLIC SCHOOL CODE RELATING TO GOVERNANCE OF
CHARTER SCHOOLS.

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

SECTION 1. A new section of the Charter Schools Act is
enacted to read:

"[NEW MATERIAL] CHARTER SCHOOL GOVERNING BODIES--
MEMBERS.--A charter school shall be governed by a governing
body in the manner set forth in the charter contract; provided
that a governing body shall have at least five members; and
provided further that no member of a governing body for a
charter school that is initially approved on or after July 1,
2005 or whose charter is renewed on or after July 1, 2005 shall
serve on the governing body of another charter school. No

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1 member of a local school board shall be a member of a governing
2 body for a charter school or employed in any capacity by a
3 locally chartered charter school located within the local
4 school board's school district during the term of office for
5 which the member was elected or appointed."

6 SECTION 2. A new section of the Charter Schools Act is
7 enacted to read:

8 "[NEW MATERIAL] CHARTER SCHOOL GOVERNING BODIES--POWERS
9 AND DUTIES.--A governing body:

- 10 A. subject to rules of the department, shall
11 develop educational policies for the charter school;
- 12 B. shall employ a head administrator of the charter
13 school and establish the head administrator's salary;
- 14 C. shall review and approve the charter school's
15 annual budget;
- 16 D. may acquire, lease and dispose of property;
- 17 E. may contract and sue and be sued. A local
18 school board shall not be liable for any acts or omissions of
19 the charter school;
- 20 F. shall provide for the repair of and maintain all
21 property belonging to the charter school;
- 22 G. except for expenditures for salaries, shall
23 contract for the expenditure of money according to the
24 provisions of the Procurement Code;
- 25 H. shall adopt policies pertaining to the

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1 administration of all powers or duties of the governing body;

2 I. shall become qualified as a board of finance for
3 the charter school as required by Section 22-8-38 NMSA 1978;

4 J. may accept or reject any charitable gift, grant,
5 devise or bequest; provided that no such gift, grant, devise or
6 bequest shall be accepted if it is subject to any condition
7 contrary to law or to the terms of the charter contract. The
8 particular gift, grant, devise or bequest accepted shall be
9 considered an asset of the charter school to which it is given;

10 K. shall establish and maintain a publicly
11 available web site, which shall include the policies of the
12 charter school and names and current contact information for
13 the members of the charter school's governing body and
14 administration; and

15 L. may offer and, upon compliance with the
16 conditions of such offer, pay rewards for information leading
17 to the arrest and conviction or other appropriate disciplinary
18 disposition by the courts or juvenile authorities of offenders
19 in case of theft, defacement or destruction of charter school
20 property. All such awards shall be paid from school district
21 funds in accordance with rules promulgated by the department."

22 SECTION 3. A new section of the Charter Schools Act is
23 enacted to read:

24 "[NEW MATERIAL] CHARTER SCHOOL DISCIPLINE POLICIES--
25 STUDENT SELF-ADMINISTRATION OF CERTAIN MEDICATIONS--WEAPON-FREE

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1 SCHOOLS.--

2 A. Governing bodies shall establish student
3 discipline policies and shall file them with the department.
4 The governing body shall involve parents, school personnel and
5 students in the development of these policies.

6 B. Each charter school discipline policy shall
7 establish rules of conduct governing areas of student and
8 school activity; detail specific prohibited acts and
9 activities; and enumerate possible disciplinary sanctions that
10 may include in-school suspension, school service, suspension or
11 expulsion. Corporal punishment shall be prohibited.

12 C. No school employee who in good faith reports any
13 known or suspected violation of the school discipline policy or
14 in good faith attempts to enforce the policy shall be held
15 liable for any civil damages as a result of such report or of
16 the employee's efforts to enforce any part of the policy.

17 D. All charter school discipline policies shall
18 allow students to carry and self-administer asthma medication
19 and emergency anaphylaxis medication that has been legally
20 prescribed to the student by a licensed health care provider
21 under the following conditions:

22 (1) the health care provider has instructed
23 the student in the correct and responsible use of the
24 medication;

25 (2) the student has demonstrated to the health

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1 care provider and the school nurse or other school official the
2 skill level necessary to use the medication and any device that
3 is necessary to administer the medication as prescribed;

4 (3) the health care provider formulates a
5 written treatment plan for managing asthma or anaphylaxis
6 episodes of the student and for medication use by the student
7 during school hours or school-sponsored activities, including
8 transit to or from school or school-sponsored activities; and

9 (4) the student's parent has completed and
10 submitted to the charter school any written documentation
11 required by the charter school's governing body, including the
12 treatment plan required in Paragraph (3) of this subsection and
13 other documents related to liability.

14 E. The parent of a charter school student who is
15 allowed to carry and self-administer asthma medication and
16 emergency anaphylaxis medication may provide the charter school
17 with backup medication, which shall be kept in a location to
18 which the student has immediate access in the event of an
19 asthma or anaphylaxis emergency.

20 F. Authorized charter school personnel who in good
21 faith provide a person with backup medication as provided in
22 this section shall not be held liable for civil damages as a
23 result of providing the medication.

24 G. Each governing body shall:

25 (1) adopt a policy providing for the expulsion

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1 from school, for a period of not less than one year, of any
2 student who is determined to have knowingly brought a weapon to
3 a charter school under the jurisdiction of the governing body.
4 The governing body or head administrator of the charter school
5 may modify the expulsion requirement on a case-by-case basis;
6 and

7 (2) provide for placement in an alternative
8 educational setting, for not more than forty-five days, of any
9 student with a disability who is determined to have knowingly
10 brought a weapon to a school under the jurisdiction of the
11 governing body. If a parent or guardian requests a due process
12 hearing, the student shall remain in the alternative education
13 setting during the pendency of any proceeding, unless the
14 parent or guardian and the governing body or head administrator
15 of the charter school agree otherwise.

16 H. For purposes of this section, "weapon" means:

17 (1) any firearm that is designed to, may
18 readily be converted to or will expel a projectile by the
19 action of an explosion; and

20 (2) any destructive device that is an
21 explosive or incendiary device, bomb, grenade, rocket having
22 propellant charge of more than four ounces, missile having an
23 explosive or incendiary charge of more than one-fourth ounce,
24 mine or similar device."

25 SECTION 4. A new section of the Charter Schools Act is

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1 enacted to read:

2 "[NEW MATERIAL] OFFICERS--SURETY BONDS.--

3 A. From among its members, a governing body shall
4 elect a president, vice president and secretary.

5 B. Before assuming the duties of office, the
6 president and secretary of a governing body and the head
7 administrator of a charter school shall each obtain an official
8 bond payable to the charter school and conditioned upon the
9 faithful performance of their respective duties during their
10 terms of office. The bonds shall be executed by a corporate
11 surety company authorized to do business in this state. The
12 amount of each bond required shall be fixed by the governing
13 body but shall not be less than five thousand dollars (\$5,000).

14 C. A governing body may elect to obtain a schedule
15 or blanket corporate surety bond covering all of the charter
16 school's governing body members, administrators and employees
17 for any period not exceeding four years.

18 D. The cost of bonds obtained pursuant to this
19 section shall be paid from the operation fund of the charter
20 school. The bonds shall be approved by the secretary of public
21 education and filed with the secretary of finance and
22 administration."

23 SECTION 5. A new section of the Charter Schools Act is
24 enacted to read:

25 "[NEW MATERIAL] CHARTER SCHOOL GOVERNING BODY VACANCIES.--

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1 A. A vacancy occurring before the end of a term of
2 office in the membership of a governing body shall be filled at
3 an open meeting at which a quorum of the membership is present
4 by a majority vote of the remaining members appointing a
5 qualified person to fill the vacancy for the remainder of the
6 term.

7 B. A qualified person appointed to fill a vacancy
8 occurring in the membership of a governing body shall hold that
9 office until the member chooses to vacate the office or the
10 member is replaced by a majority vote of the other governing
11 body members.

12 C. If a qualified person is not appointed to fill a
13 vacancy within forty-five days from the date that the vacancy
14 occurred, the secretary shall appoint a qualified person to
15 fill the vacancy.

16 D. In the event that vacancies occur in a majority
17 of the full membership of a governing body, the secretary shall
18 appoint qualified persons to fill the vacancies until a
19 majority has been appointed; at which time, the majority shall
20 appoint additional members until the membership of the board is
21 complete."

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

24 "[NEW MATERIAL] CHARTER SCHOOL HEAD ADMINISTRATOR--POWERS
25 AND DUTIES.--

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1 A. The head administrator is the chief executive
2 officer of a charter school.

3 B. The head administrator shall:

4 (1) carry out the educational policies and
5 rules of the department and the charter school's governing
6 body;

7 (2) administer and supervise the charter
8 school;

9 (3) employ, establish the salaries of, assign,
10 terminate or discharge all employees of the charter school
11 according to the provisions of the School Personnel Act;

12 (4) not initially employ or approve the
13 initial employment in any capacity of a person who is the
14 spouse, father, father-in-law, mother, mother-in-law, son, son-
15 in-law, daughter, daughter-in-law, brother, brother-in-law,
16 sister or sister-in-law of a member of the governing body or
17 head administrator. The governing body may waive the nepotism
18 rule for family members of the head administrator;

19 (5) prepare the charter school budget based
20 upon the governing body's recommendations and review; and

21 (6) perform other duties as required by law,
22 the department and the charter school's governing body."

23 SECTION 7. Section 22-8B-4 NMSA 1978 (being Laws 1999,
24 Chapter 281, Section 4, as amended) is amended to read:

25 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--

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1 OPERATION.--

2 A. A charter school shall be subject to all federal
3 and state laws and constitutional provisions prohibiting
4 discrimination on the basis of disability, physical or mental
5 handicap, serious medical condition, race, creed, color, sex,
6 gender identity, sexual orientation, spousal affiliation,
7 national origin, religion, ancestry or need for special
8 education services.

9 ~~[B. A charter school shall be governed by a~~
10 ~~governing body in the manner set forth in the charter contract;~~
11 ~~provided that a governing body shall have at least five~~
12 ~~members; and provided further that no member of a governing~~
13 ~~body for a charter school that is initially approved on or~~
14 ~~after July 1, 2005 or whose charter is renewed on or after July~~
15 ~~1, 2005 shall serve on the governing body of another charter~~
16 ~~school. No member of a local school board shall be a member of~~
17 ~~a governing body for a charter school or employed in any~~
18 ~~capacity by a locally chartered charter school located within~~
19 ~~the local school board's school district during the term of~~
20 ~~office for which the member was elected or appointed.~~

21 ~~G.]~~ B. A charter school shall be responsible for:
22 (1) its own operation, including preparation
23 of a budget, subject to audits pursuant to the Audit Act; and
24 (2) contracting for services and personnel
25 matters.

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1 ~~[D-]~~ C. A charter school may contract with a school
2 district, a university or college, the state, another political
3 subdivision of the state, the federal government or one of its
4 agencies, a tribal government or any other third party for the
5 use of a facility, its operation and maintenance and the
6 provision of any service or activity that the charter school is
7 required to perform in order to carry out the educational
8 program described in its charter contract. Facilities used by
9 a charter school shall meet the standards required pursuant to
10 Section 22-8B-4.2 NMSA 1978.

11 ~~[E-]~~ D. A conversion school chartered before July
12 1, 2007 may choose to continue using the school district
13 facilities and equipment it had been using prior to conversion,
14 subject to the provisions of Subsection ~~[F]~~ E of this section.

15 ~~[F-]~~ E. The school district in which a charter
16 school is geographically located shall provide a charter school
17 with available facilities for the school's operations unless
18 the facilities are currently used for other educational
19 purposes. An agreement for the use of school district
20 facilities by a charter school may provide for reasonable lease
21 payments; provided that the payments do not exceed the sum of
22 the lease reimbursement rate provided in Subparagraph (b) of
23 Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus
24 any reimbursement for actual direct costs incurred by the
25 school district in providing the facilities; and provided

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1 further that any lease payments received by a school district
2 may be retained by the school district and shall not be
3 considered to be cash balances in any calculation pursuant to
4 Section 22-8-41 NMSA 1978. The available facilities provided
5 by a school district to a charter school shall meet all
6 occupancy standards as specified by the public school capital
7 outlay council. As used in this subsection, "other educational
8 purposes" includes health clinics, daycare centers, teacher
9 training centers, school district administration functions and
10 other ancillary services related to a school district's
11 functions and operations.

12 ~~[G.]~~ F. A locally chartered charter school may pay
13 the costs of operation and maintenance of its facilities or may
14 contract with the school district to provide facility operation
15 and maintenance services.

16 ~~[H.]~~ G. Locally chartered charter school facilities
17 are eligible for state and local capital outlay funds and shall
18 be included in the school district's five-year facilities plan.

19 ~~[I.]~~ H. A locally chartered charter school shall
20 negotiate with a school district to provide transportation to
21 students eligible for transportation under the provisions of
22 the Public School Code. The school district, in conjunction
23 with the charter school, may establish a limit for student
24 transportation to and from the charter school site not to
25 extend beyond the school district boundary.

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1 ~~[J.]~~ I. A charter school shall be a nonsectarian,
2 nonreligious and non-home-based public school.

3 ~~[K.]~~ J. Except as otherwise provided in the Public
4 School Code, a charter school shall not charge tuition or have
5 admission requirements.

6 ~~[L.]~~ K. With the approval of the chartering
7 authority, a single charter school may maintain separate
8 facilities at two or more locations within the same school
9 district; but, for purposes of calculating program units
10 pursuant to the Public School Finance Act, the separate
11 facilities shall be treated together as one school.

12 ~~[M.]~~ L. A charter school shall be subject to the
13 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
14 Accountability Act.

15 ~~[N.]~~ M. Within constitutional and statutory limits,
16 a charter school may acquire and dispose of property; provided
17 that, upon termination of the charter, all assets of the
18 locally chartered charter school shall revert to the local
19 school board and all assets of the state-chartered charter
20 school shall revert to the state, except that, if all or any
21 portion of a state-chartered charter school facility is
22 financed with the proceeds of general obligation bonds issued
23 by a local school board, the facility shall revert to the local
24 school board.

25 ~~[O.] The governing body of a charter school may~~

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1 ~~accept or reject any charitable gift, grant, devise or bequest;~~
2 ~~provided that no such gift, grant, devise or bequest shall be~~
3 ~~accepted if subject to any condition contrary to law or to the~~
4 ~~terms of the charter. The particular gift, grant, devise or~~
5 ~~bequest shall be considered an asset of the charter school to~~
6 ~~which it is given.~~

7 ~~P. The governing body may contract and sue and be~~
8 ~~sued. A local school board shall not be liable for any acts or~~
9 ~~omissions of the charter school.~~

10 ~~Q.]~~ N. A charter school shall comply with all state
11 and federal health and safety requirements applicable to public
12 schools, including those health and safety codes relating to
13 educational building occupancy.

14 ~~[R.]~~ O. A charter school is a public school that
15 may contract with a school district or other party for
16 provision of financial management, food services,
17 transportation, facilities, education-related services or other
18 services. The governing body shall not contract with a for-
19 profit entity for the management of the charter school.

20 ~~[S.]~~ P. To enable state-chartered charter schools
21 to submit required data to the department, an accountability
22 data system shall be maintained by the department.

23 ~~[T.]~~ Q. A charter school shall comply with all
24 applicable state and federal laws and rules related to
25 providing special education services. Charter school students

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1 with disabilities and their parents retain all rights under the
2 federal Individuals with Disabilities Education Act and its
3 implementing state and federal rules. Each charter school is
4 responsible for identifying, evaluating and offering a free
5 appropriate public education to all eligible children who are
6 accepted for enrollment in that charter school. The state-
7 chartered charter school, as a local educational agency, shall
8 assume responsibility for determining students' needs for
9 special education and related services. The division may
10 promulgate rules to implement the requirements of this
11 subsection."

12 SECTION 8. REPEAL.--Section 22-8B-10 NMSA 1978 (being
13 Laws 1999, Chapter 281, Section 10, as amended) is repealed.

14 SECTION 9. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2015.