



485 governing body members would need to be elected during the 2017 regular school district election. However, it is likely that this number is more than 500 as a number of charter schools provide for more than five governing body members. At this time it is unclear what costs, if any, the state would incur in the election of these individuals.

PED notes the Charter School Division does not have the tools or expertise to outline member districts, and would likely need to hire employees or post a request for proposal to contract with a firm with this specific expertise and capacity. PED notes there may be significant fiscal impacts to the Secretary of State's office and/or county clerks.

AOC notes minimal administrative costs for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions for any violations of the Local School Board Member Recall Act, as well as the potential involvement of the district court and the supreme court in the removal of a governing body member pursuant to Chapter 10, Article 4 NMSA 1978, or the recall of a governing body member pursuant to Chapter 22, Article 7 NMSA 1978. 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.

## **SIGNIFICANT ISSUES**

Charter school founders (individuals submitting charter school applications) are generally responsible for establishing initial board members, who often times select the founder to serve as the head administrator of the charter school. In instances, selection of board members to fill vacancies is done by the head administrator or vetted through the head administrator. These board members set the head administrator's salary, evaluate the head administrator's performance, and make decisions with regard to continued employment of the head administrator. For example, the governing boards of three charter schools in Albuquerque paid a single head administrator almost \$215 thousand to oversee three charter schools that served less than 500 students (or \$430 per student), while the superintendent of APS was receiving an annual salary of \$250 thousand to oversee the state's largest school district with 86 thousand students (or \$2.90 per student). Additional concerns exist related to the independence of board members who are handpicked to serve in the position.

The bill provides a solution to existing conflicts of interest and limited independence by requiring all board members to be elected at a regular school board election.

The bill requires all governing body members of charter schools to be elected as provided in the School Election Law. The charter of a proposed charter school will establish the number of governing body members as well as provisions for selection and appointment of initial governing body members (who will serve until the election and qualification of new members at the next regular school district election), including the requirement that terms for elected members are four-years except for initial members if the charter establishes staggered terms which will be determined by lot and procedures for selection and appointment of vacancies. The Legislature may wish to consider requiring staggered terms established in Paragraph 2 of Subsection A on page 7 (lines 20 through 23) to ensure an entire governing board is not replaced at the same time.

The bill establishes that elections for governing body members will be at-large within the boundaries of the school district in which the charter school is located. State chartered charter

schools that with 25 percent of their students residing outside of the geographical boundaries of the school district will be required to provide for member districts that comply with state and federal law.

PED notes the following concerns around jurisdiction and voter information:

- The bill does not amend pertinent provisions of the Election Code although it requires an election for charter board members and provides for changes governed by the Election Code.
- Physical territory governs the relationship between voters and their representatives in school districts. School board members must reside within the district that elects them. See Section 1-22-3 NMSA 1978 (stating that no person can become a candidate for a school board unless the person “physically resides in the school district in which he is a candidate and physically resided in the district on the date of the school board's proclamation.” Community colleges likewise tie representation to residency within a district.
- The Election code requires county commissions to draw school district election boundaries, among others, yet the bill is not clear as to 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.

Additionally, PED notes school elections generally have very low voter turnout and voters may not be informed about their voting choices regarding charter school governing board members. For example, East Mountain High School, located in Sandia Park would likely largely have their governing board selected by voters in Albuquerque, who may not have information or investment in the outcome of the school. An election boundary that takes into account where students come to the school from, or conducted at the school site and voted on by parents would ensure voters with the most at stake are voting in these elections.

## **ADMINISTRATIVE IMPLICATIONS**

The next regular school board election in 2017 would include significantly more candidates. Additionally, PED’s Charter Schools Division would be required to assist charter schools that have at least 25 percent of their students from a school district other than the one that they reside in with establishing boundaries of member districts. PED notes they do not have the expertise or staff to do this.

## **RELATIONSHIP**

HB166, SB236 and dSB273 all amend Section 22-78B-4, though many of the changes in these bills can be reconciled.

## **TECHNICAL ISSUES**

Line 3 on page 8 uses the term “it”. As “it” is used, it and appears to reference a charter school, however, charter school never appears in the sentence. Staff recommends “it” be change to “the charter school”. This was addressed by SRC Amendment #1.

Language included in Subsection D appears to conflict specifically with regard to existing charter schools. The first sentence requires an existing charter schools to comply with the law

upon renewal; however the second sentence requires all other charter schools to comply with the law before the date for declarations of candidacy for the 2017 school district election. If the intent is to have all charter schools comply by the 2017 deadline, the first sentence should be eliminated. This was addressed by SRC Amendment #2.

Line 19 through 22 on page 8 requires all charter schools to amend the charter school's charter in a timely manner; however, if the charter school is a new charter school they should not need to amend their charter.

Lines 14 through 16 on page 10 require the charter school application to include "matters pertaining to the selection of members of the governing body." The Legislature may wish to make this broader to include the proposed terms of members, the number of members, etc.

### **OTHER SUBSTANTIVE ISSUES**

The National Alliance for Public Charter Schools ranks New Mexico 8<sup>th</sup> in the nation in terms of the state's charter school laws; however, their ranking system does not include a measure related to selection, appointment, or governing body establishment.

### **ALTERNATIVES**

Require governing body members be appointed by a number of different entities – i.e. the Public Education Department, local school board, or Public Education Commission – to ensure independence from the head administrator. Alternatively, you could require governing board members to be vetted by these entities or appointed with the consent of these entities.

Consider establish requirements that board members must meet. For example, require a specific number of board members in each of the following categories: a parent of an enrolled student, individuals that have knowledge and experience in accounting, financial services, law, and human resources, and individuals that hold a valid teacher or administrator license.

Both of these options would ensure more independent charter school governance and potentially better governance because of required expertise.

RSG/aml/bb