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## FISCAL IMPACT REPORT

SPONSOR	<u>HGEIC</u>	LAST UPDATED	<u>3/6/23</u>
		ORIGINAL DATE	<u>3/6/23</u>
SHORT TITLE	<u>School Board Governance Changes</u>	BILL NUMBER	<u>CS/House Bill 325/HGEICS</u>
		ANALYST	<u>Liu</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 - \$45.7	\$0.0 - \$45.7	\$0.0 - \$91.4	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to HB85, HB396, SB422, SB438

### Sources of Information

LFC Files

Legislative Education Study Committee (LESC) Files

#### Responses Received From

Public Education Department (PED)

Attorney General (NMAG)

Public School Insurance Authority (NMPSIA)

## SUMMARY

### Synopsis of HGEIC Substitute for House Bill 325

The House Government, Elections and Indian Affairs Committee substitute for House Bill 325 amends the Public School Code, requiring all school board candidates to disclose campaign contributions, establishes penalties for nepotism and waivers for nepotism, maintains specific governing board member trainings, and requiring schools to webcast, record, and archive board meetings for at least five years. This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The bill does not include an appropriation but may create additional operating costs for extra board member training time, board meeting webcasts, and administrative costs for schools. The fiscal impact of this bill may include an additional two hours of training for 457 board members (an estimated \$45.7 thousand).

The HAFC Substitute for House Bill 2 includes \$2 million for evaluation systems and \$5 million for administrator professional development for PED. The department and schools also have nearly \$1 billion in available federal funding to support implementation of this bill, and many schools already have online webcasting capabilities as a result of school closures during the Covid-19 pandemic.

## SIGNIFICANT ISSUES

***Nepotism Penalties.*** Provisions of this bill remove local school board members if the local superintendent hires a school employee that has a nepotistic relationship with a board member. NMAG notes the proposed nepotism penalty provision may trigger constitutional concerns. Article 12, Section 14 of the New Mexico Constitution provides for the removal of elected school board members through a recall process. However, it is unclear based on case law regarding whether the removal of school board members is limited to recalls, or if the Legislature through the passage of laws may provide for additional means of removal of an elected official.

Likewise, provisions of this bill also discharge the school employee for nepotism violations. NMAG notes the proposed termination of an employee for nepotism may run afoul of negotiated labor contracts, and the Legislature should consider whether a due process should be afforded to employees where a property interest is implicated. Both the New Mexico Constitution and U.S. Constitution prohibit the taking of life, liberty or property without due process of law. In New Mexico, public employment with a legitimate expectation of continued employment, such as continued employment for which termination must be made “for cause,” may be considered to have a property right triggering the right to due process. As a general principle of due process law, public employees with a legitimate expectation of continued employment are protected from termination without just cause, notice, and opportunity to be heard.

The bill allows a school district with less than 500 students to request a waiver of the nepotism provision to PED if the district is unable to recruit another qualified applicant for the position and must provide proof of the candidate’s qualifications for the job.

***Board Member Training.*** Provisions of this bill would require board members to receive additional training on evaluating and improving student academic achievement, using data to set school goals, providing safe learning environments, legal concepts (such as the Open Meetings Act and Inspection of Public Records Act), and effective governance practices and methods. Currently, boards must attend trainings on department rules, board powers and duties, legal concepts, and financial issues.

PED rule requires school district board members to attend five hours of training annually, provided by the New Mexico School Boards Association (NMSBA), while charter school governing body members must attend 10 hours of training in their first year and eight hours of training in subsequent years. Experienced charter school governing members can be exempted from fiscal training based on school fiscal performance. However, PED does not track compliance or report information on board members meeting training requirements. According to NMSBA, in FY22, 94 of the 457 school board members across the state did not meet training requirements.

Since 2018, New Mexico has lacked guardrails to ensure school board members attend required trainings. The Center for School Turnaround and Improvement recommends coupling school

board training requirements with clear accountability structures to ensure meaningful implementation, including tracking and publishing board training participation. New Mexico statute and administrative code require a school district's accountability report to include the names of local school board members who fail to attend annual mandatory training. Prior to 2018, school district report cards in New Mexico met this requirement by including school board member training attendance. In 2018, district report cards were discontinued and the state now meets federal accountability reporting requirements through the New Mexico Vistas website. However, while NMSBA continues to provide training attendance data to PED, this information is not published, making it difficult to determine compliance.

## PERFORMANCE IMPLICATIONS

The National School Board Association finds effective school boards focus on eight practices, related to setting and monitoring goals, data-driven decision-making, and fostering collaborative relations between the board and superintendent and the community. When boards frequently engage in these practices, there is evidence that districts show higher student performance.

A 2023 LFC evaluation on western school districts found both the Central and Grants school district boards could more frequently engage in these eight practices. Since 2016, Central has been without a strategic plan and both districts have had superintendent turnover above the national average. An analysis of board meeting minutes indicates more time is spent on administrative rather than strategic decisions. A court found Central was not meaningfully consulting the Navajo Nation regarding the decision to return to in-person learning, pointing to a lack of collaboration with community. Effective training can help improve school board performance, as found by a growing body of research.

A 2020 study from Northern Arizona University and the University of Central Florida analyzed training data from the Arizona School Boards Association and found a statistically significant correlation between higher training attendance among school board members and higher district rankings. Texas administrative code outlines 11 content areas of training for school board members with a minimum of 29 hours of training in the first year in office; thereafter, 11 hours are required annually and an additional six hours biannually.

## ADMINISTRATIVE IMPLICATIONS

Provisions of this bill will increase board member training offerings. PED and NMSBA may need to develop more trainings to meet provisions of this bill. Additionally, the bill will require schools to webcast, record, and archive board meetings over a five-year period. Most, if not all, schools shifted to online and publicly recorded board meetings during the Covid-19 pandemic and currently have capacity to meet webcasting requirements in the bill.

PED notes employees discharged due to nepotism penalties may initiate procedures for discharge hearings, appeals, and other legal proceedings, which may involve an independent arbiter and other administrative processes provided under the School Personnel Act.

## RELATIONSHIP

This bill relates to House Bill 85, which limits school districts to 40 thousand students; House

Bill 396, which increases school board member term lengths; Senate Bill 422, which limits the number of students in charter schools within a district; and Senate Bill 438, which sets limits on administrative expenditures within schools.

## **ALTERNATIVES**

PED notes an alternative approach to automatically removing board members from office due to nepotism may be to make a nepotism violation grounds for a recall election as provided under the Recall Act. The New Mexico Constitution provides for removal from office of school board members via recall election.

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