

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: Date 2/11/19  
**Original**     **Amendment**        **Bill No:** SB331  
**Correction**     **Substitute**   

**Sponsor:** Sen. Linda M. Lopez    **Agency Code:** 924  
**Short**    CHARTER SCHOOL    **Person Writing**    Daniel Manzano  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SJR 9, SB 429, SB 1  
Duplicates/Relates to Appropriation in the General Appropriation Act

### SECTION III: NARRATIVE

#### **BILL SUMMARY**

Synopsis: SB331 proposes to clarify powers and duties of chartering authorities in monitoring charter schools, allowing a chartering authority to suspend a governing body, and clarifying the prohibition of nepotism.

#### **FISCAL IMPLICATIONS**

Section 6B (p. 13-14) of the proposed bill requires the chartering authority of charter school to consult with the Department before moving to suspend a governing body. See the *Technical Issues* section for concerns regarding the implications of the bill language on the Department if all faltering charter schools (both local- and state-authorized) that end up suspended become the responsibility of the Department. In either case, the Department may require additional capacity and resources to comply with this part of the new Charter Schools Act as written. Specifically, it may be necessary for the Department to contract externally for the financial or educational experts that would be necessary to provide the level of support that struggling charter governing bodies and school personnel may need in the event that the chartering authority suspends a governing body and the department must take over the powers and duties of the governing body.

#### **SIGNIFICANT ISSUES**

**Inconsistent prohibitions against nepotism.** While SB 331 tightens up language pertaining to conflicts of interest and nepotism within the Charter School Act, 22-8B-5.2 and 22-8B-10 NMSA 1978, it does not propose the same changes to nepotism statutes that apply to local school boards such as in 22-5-6 NMSA 1978, which also prohibits nepotism and states the following:

- A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the local school board or the local superintendent. **The local school board may waive the nepotism rule for family members of a local superintendent [emphasis added].**
- B. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.

It is inconsistent for the proposed bill to delete the nepotism waiver option for charter schools (p. 12, lines 15-16) but not to require apply the same level of scrutiny to local school boards, which are not immune to conflicts of interest or nepotism concerns. The Sponsor may wish to amend

the bill to also propose consistent changes to nepotism statute elsewhere in the Public School Code to apply the level of care with uniformity across all school governance structures.

**Proposed remedies unclear.** In cases where there are employees related to the charter school's head administrator, direct supervisor, or member of the governing body, the new proposed language does not provide clear guidance to address the concern which presumably precipitated the changes proposed in this bill. The proposed statute would read: "The chartering authority shall work with the charter school to alleviate or mitigate the effects of nepotism" (p.3, lines 11-12). However, it is not clear that notifying the chartering authority of the conflict of interest—especially if a nepotism waiver was previously approved by the governing body—would "alleviate or mitigate" the effects of nepotism, which include *appearance* of impropriety and its related potentially damaging effects on either school administration (school leader) or governance (governing body). The Sponsor may to further elaborate reasonable expectations regarding what reasonable actions may "alleviate or mitigate" against the effects of nepotism such that the Department can take appropriate action on the license of personnel and/or the governing body, as allowed by statute and department rule.

The Sponsor may wish to review and adapt more stringent language as proposed in SB 429 which apply to charter governing bodies to apply more generally as is proposed in SB 331 (see Section 5 of new material proposed in SB 429, p. 11, lines 14-20). SB 429 adds language that make voidable contracts made which violate new provisions of against conflicts of interest or nepotism, further making persons who knowingly violate these provisions liable.

## **PERFORMANCE IMPLICATIONS**

See concerns over proposed remedies to alleviate or mitigate the effects of nepotism in the previous section.

**Monitoring implications.** In addition to concerns over addressing nepotism in charter schools, the proposed bill also amends statute to increase demands on chartering authorities by making explicit their duty to oversee charter governing bodies (p. 4, lines 13-16) and to monitor and intercede with a governing body (p.5, lines 3-4). Such oversight is consistent with requirements for the Department to provide oversight of local school boards pursuant to 22-2-1.4 NMSA 1978 and 22-5 NMSA 1978, respectively. Furthermore, while statute is generally broad, departmental rule or policy made need to be updated to better define what is meant by "best interest of the charter school" (p.4, line 16) as there may be conflict between the charter governing body and charter authorizer in that respect.

Also, the changes proposed in the bill are consistent with the PED's CSD current practice in providing evaluative feedback to state-authorized charter schools related to charter governance, including the observation of a school's governing body meetings to review for compliance with the Open Meetings Act (10-15 NMSA 1978). The PED significantly amended rule (6.80.5 NMAC) related to charter school governing body training requirements in July 2017 to address various areas of demonstrated need and wide concern over charter governance across the board. Thus, these changes support current practice. Lastly, the Department in working collaboratively with stakeholders across the state to develop uniform statewide principle of charter authorizing that will further institute more rigorous oversight and monitoring across chartering authorities.

## **ADMINISTRATIVE IMPLICATIONS**

The changes proposed in SB 331 support the work of the chartering authorizers and their designated support staff (the PED's CSD in the case of the Public Education Commission), as addressed in the previous section. It is vital that chartering authorities have explicit and enumerated duties that require them to appropriately monitor and intercede when a charter governing body does not operate according to Public School Codes and/or is not performing duties in the best interest of the school and its students. It also requires charter school authorizers to include language in the charter contract that outlines "actions the chartering authority may take when a governing body fails to do its duty or fails to act in the best interest of the charter school." An additional section is proposed to be added to the Charter School Act that allows the chartering authority to suspend the governing body and take over control and management of the charter school.

As discussed in the *Fiscal Implications* section, Section 6B (p. 13-14) of the proposed bill requires the chartering authority of charter school to consult with the Department before moving to suspend a governing body. See the *Technical Issues* section for concerns regarding the implications of the bill language on the Department if all faltering charter schools (both local- and state-authorized) that end up suspended become the responsibility of the Department. In either case, the Department may require additional capacity and resources to comply with this part of the new Charter Schools Act as written. Specifically, it may be necessary for the Department to contract externally for the financial or educational experts that would be necessary to provide the level of support that struggling charter governing bodies and school personnel may need in the event that the chartering authority suspends a governing body and the department must take over the powers and duties of the governing body.

Required consultation with the Department as outlined in the bill would require greater coordination internally and across divisions to ensure that holistic review and input is considered before action is taken by either the chartering authority and/or the Department.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill proposes several changes to the Charter School Act, NMSA 22-8B relating to chartering authority oversight of governing board and introduces prohibitions on nepotism and conflicts of interest. Statute of local board oversight are contained in 22-2-1.4 NMSA and statutes related to nepotism are also in the Public School Codes such as 22-5-6 NMSA 1978. The Sponsor's concern for school governance should uniformly extend to all public schools irrespective of school governance (charter governing bodies or locally-elected school boards) since the effects of nepotism are not limited to the charter sector. Additionally, the Sponsor may wish to consider the potential impact of SJR 9, if enacted, since it would change the scope of the Public Education Commission. Additionally, there may be relevant elements of oversight included in SB 429 (virtual schools) that the Sponsor may also wish to include in this bill.

## **TECHNICAL ISSUES**

**Clarify which chartering authority takes over for a suspended governing body.** Given that Section 6B (p. 13-14) of the proposed bill requires the chartering authority of charter school to consult with the Department before moving to suspend a governing body. Specifically, this section is written with the Public Education Commission in mind (referred to on p. 13, line 10) and appears to address state-authorized charter schools. However, for locally-authorized charter schools, the district—not the Department—should take over the powers and duties of the governing body since a locally-authorized charter school is component unit of the district, not the

state. Thus, the Sponsor may wish to further delineate that for schools whose chartering authority is the PEC, it would be appropriate for the Department to take over for the governing body whereas when the chartering authority is a district, then the district should take over for the governing body the local charter. The Sponsor may wish to clarify this language in an amendment to this bill.

**Charter school application requirements.** Section 3 of the proposed bill (beginning on p.5, line 7) lays out in detail all the section of the application that new charter applicants must provide and address as part of its application to the chartering authority, listing various components of the application as parts A through O in this subsection. However, SB 315 proposes to amend subpart I by requiring the charter authority to describe the “(4) actions the chartering authority may take when a governing board fails to do its duty or fails to act in the best interest of the charter school (p.6, lines 24-25 through p.7, line 1). Given that this section outlines the information that *charter applicants must provide*, it does not make sense for the *charter applicant* to list how its authorizer may take action against it. Instead, it may make more sense for the bill Sponsor to require the chartering authority to include this information as part of required assurances or embedded in the application kit by incorporating this information in different subpart of this section.

## **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

As pointed out in the *Significant Issues* section, more stringent language can be proposed that would clarify the types of actions that can be taken against conflicts of interest and nepotism. The Sponsor may wish to review and adapt more stringent language as proposed in SB 429 which apply to charter governing bodies to apply more generally as is proposed in SB 331 (see Section 5 of new material proposed in SB 429, p. 11, lines 14-20). SB 429 adds language that make voidable contracts made which violate new provisions of against conflicts of interest or nepotism, further making persons who knowingly violate these provisions liable.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

By not enacting this bill, the charter governing bodies may continue to operate in a manner inconsistent with chartering authority expectations yet with less concern for serious consequences for failing to properly carry out their legal and fiduciary duties. At present, the Department’s records indicate a widespread lack of understanding among charter governing body members that do not realize that the school’s charter contract is between them and the chartering authority, not the Head Administrator and the chartering authority. Thus, the changes proposed in this bill would help demonstrate the serious nature of the responsibility placed on the charter governing board and would allow chartering authorities the mechanism to intervene and assist a school before problems become more serious and a recommendation for non-renewal is made.

### **AMENDMENTS**

The Sponsor may wish to also amend 22-5-6 NMSA 1978 to remove the nepotism waiver in order to address concerns over nepotism more widely across the state and in a uniform fashion. See the *Alternatives* section for suggestions for language proposed in SB 429 that may have relevant applicability in SB 331 that would address concerns raised in the *Significant Issues* section.