

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 446aaaa

50th Legislature, 1st Session, 2011

Tracking Number: .183146.4

Short Title: Charter School Contracts

Sponsor(s): Senator John M. Sapien and Representative Rhonda S. King and
Senator Cynthia Nava

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AS AMENDED

The House Education Committee amendment deletes the second of two indications in the original bill that multiple charter schools might operate under a single charter contract (the first of two indications having been deleted by one of the Senate Education Committee amendments noted below).

The Senate Floor Amendment 1:

- removes date-specific deadlines in the process of renewing a charter and restores the language in current law, which refers to a certain number of days prior to the expiration of the charter; and
- delays the effective date of the provisions of the bill until July 1, 2012, rather than July 1, 2011.

The Senate Judiciary Committee (SJC) amendments make several changes in the wording of Section 7 of the bill, “Governing Body Conflicts of Interest” (pp. 24-26). Specifically, the SJC amendments:

- strike the reference to an employee of a for-profit or nonprofit entity that has contracted with a charter school and insert the phrase “or otherwise has a financial interest in” in reference to involvement with such entities;
- clarify that any liability to the charter school for damages caused must stem from knowing violations and that the damages must be financial in nature;
- clarify that violations will render the contract “voidable,” as opposed to “void”; and
- replace the list of specific family relationships to which the section applies with a narrative containing fewer specific relationships but ending with the same phrase, “any other relative who is financially supported.”

Finally, the SJC amendments also make a technical correction on page 13.

The Senate Education Committee amendments:

- **prohibit a member of a local school board from being a member of a governing body of a charter school and from working for a locally chartered school located in the board member's district;**
- **allow either the charter school or the chartering authority to appeal to the Secretary of Public Education to finalize, rather than to assist in negotiating, the terms of the contract in the event that the two parties cannot agree;**
- **delete from the components of the contract an agreement regarding the governing body's desire to open and operate another charter school under an existing charter contract;**
- **allow either party to appeal to the Secretary of Public Education if the two cannot agree on the process for revision or amendment to the terms of the contract;**
- **require the chartering authority to review the data provided by the charter school, rather than collect and analyze data from the charter school; and**
- **delete the exemption of teachers of a charter school from the conflict-of-interest provisions.**

Original Bill Summary:

Effective July 1, 2011, SB 446 amends and adds new sections to the *Charter Schools Act*:

- to provide for contracts between a charter school and the chartering authority;
- to establish procedures regarding conflicts of interest for a charter school governing body and administration; and
- to provide an annual evaluation process for charter schools.

As its initial provisions, SB 446:

- requires the two parties to enter into the contract within 30 days of the approval of the charter application;
- requires the contract to be part of the charter;
- provides an appeal to the Secretary of Public Education if the two parties fail to agree on the terms or enter into a contract; and
- provides that failure to enter into a charter contract or make an appeal to the secretary "precludes the chartering authority from chartering the school."

SB 446 prescribes the contents of the contract, among them:

- all agreements concerning release of the charter school from rules and policies of the Public Education Department (PED) and of a local school board, including discretionary waivers and waivers already provided law¹;
- the mission statement of the charter school, including an explanation of how the school will implement its mission;
- the chartering authority's duties and liabilities (enumerated below);
- signed assurances signed by governing body members regarding compliance with all applicable federal and state laws;
- the criteria, processes, and procedures that the chartering authority will use for ongoing oversight of operational, financial, and academic performance of the charter school;
- a detailed description of how the chartering authority will use the 2.0 percent of the school-generated program cost to which it is entitled;
- the process and criteria that the chartering authority will use in its annual monitoring and evaluating the fiscal, overall governance, and student performance of the charter school;
- the dispute resolution processes that the parties have agreed to use, for which the bill prescribes minimum components;
- the criteria, procedures, and timelines that the parties have agreed upon to address charter revocation and deficiencies found in the annual status report;
- the criteria and procedures that the chartering authority will use to review any charter school's contract with a third-party provider;
- for a state-chartered charter school, a process to qualify as its own board of finance and provisions to assure that the school has satisfied any conditions imposed by the Public Education Commission;
- an agreement that, if the governing body wants to open and operate another charter school under an existing charter contract, the governing body must obtain the approval of the chartering authority and amend the terms of the contract accordingly (with provisions for an appeal to the secretary); and
- any other information "reasonably required by either party to the contract."

SB 446 further requires that the contract be based upon a performance framework "that clearly sets forth the academic and operations performance indicators, measures and metrics that will

¹ The *Charter Schools Act* requires the Public Education Department to waive requirements or rules and provisions of the *Public School Code* pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, and driver education.

guide the chartering authority’s evaluation of each charter school.” This performance framework must include such measures as:

- student academic performance and growth;
- achievement gaps;
- attendance;
- recurrent enrollment;
- postsecondary readiness and graduation rates for high schools;
- financial performance and sustainability; and
- the performance of the governing body, including compliance with laws, rules, and the terms of the charter contract.

The performance framework must also:

- allow for additional “rigorous, valid and reliable indicators” that a charter school might propose to augment external performance evaluations, with approval of the chartering authority; and
- require the disaggregation of all student performance data.

SB 446 assigns several additional duties to the chartering authority. In brief, the chartering authority:

- must set annual performance targets in consultation with its charter schools;
- must collect, analyze, and report state assessment data from each charter school that it oversees;
- may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities, among them conducting “appropriate inquiries and investigations,” as long as the chartering authority “does not unduly inhibit the autonomy granted to the charter schools that it governs”;
- must visit each charter school at least once annually to provide technical assistance and to determine the status of the charter school and its progress toward achieving its performance framework goals;
- must promptly notify the governing body if its review finds that a charter school’s fiscal, overall governance, or student performance or legal compliance unsatisfactory; and provide a reasonable opportunity for the governing body to remedy the problem;
- may take appropriate corrective actions or impose sanctions, other than revocation;

- if revocation is warranted, must follow the procedures prescribed in the bill (explained below); and
- submit an annual report the Charter Schools Division of PED for each charter school that it oversees.

As noted above, SB 446 requires the chartering authority to develop processes for suspension, revocation, or nonrenewal of a charter that:

- provide the charter school with timely notification and the reasons for the intended action;
- allow the charter school “a reasonable amount of time to prepare and submit a response to the chartering authority’s action”; and
- require the chartering authority’s final determination to be submitted to PED.

The bill also assigns additional duties to PED:

- reviewing the annual reports submitted by chartering authorities; and
- using those reports in its annual report to the Governor, the Legislative Finance Committee (LFC), and the Legislative Education Study Committee (LESC). SB 446 further requires that these annual reports:
 - compare the performance of charter school students with the performance of “academically, ethnically and economically comparable groups of students in noncharter public schools”; and
 - include an assessment of the successes, challenges, and areas of improvement in meeting the purposes of the *Charter Schools Act*, including the funding of charter schools.

One of the sections that SB 446 adds to the *Charter Schools Act* specifies procedures for closing a charter school.

- Before it decides to close a charter school, the chartering authority must develop a closure protocol to ensure timely notification to parents, orderly transition of students and their records to new schools, and proper disposition of school funds, property, and other assets.
- When a charter school is closed, its assets must be distributed first to satisfy outstanding payroll obligations to employees, then to creditors of the school, and then to the State Treasury to the credit of the Current School Fund.
- In case the school’s assets are insufficient to pay all parties entitled to compensation, a court decree may determine priorities for distributing the assets.

To address conflicts of interest among members of a charter school’s governing body or employees, SB 446:

- prohibits anyone who owns, works for, or represents a for-profit or nonprofit entity doing business with the charter school – and such a person’s immediate family members – from serving as member of the governing body of that charter school;
- prohibits employees, agents, and governing body members from participating in the awarding of contracts with a charter school if there is a conflict of interest as described in the bill;
- prohibits anyone involved in the initial review, approval, oversight, evaluation, or renewal of a charter school from serving on that school’s governing body; and
- specifies that these conflict-of-interest provisions do not apply to compensation paid to a teacher employed by the charter school who is also a member of the governing body.

Another new section that SB 446 adds to the *Charter Schools Act* specifies still more new duties of the chartering authority, among them:

- actively pursuing the use of charter schools to satisfy educational needs and promote a diversity in educational choices; and
- developing and maintaining chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing.

Finally, SB 446 contains several other amendments to the *Charter Schools Act*. To illustrate, the bill:

- specifies that charter schools may not discriminate on the basis of physical or mental handicap, serious medical condition, sex, gender identity, sexual orientation, or spousal affiliation, in addition to the other conditions already in law;
- amends the schedule for renewing a charter by specifying dates for the school’s submitting a renewal application and the chartering authority’s ruling on the application; and
- requires a charter application to address student performance “outcomes” rather than the student performance “standards” in current law.

Fiscal Impact:

SB 446 does not contain an appropriation.

Fiscal Issues:

The comparison of student performance in charter schools with the performance of comparable students in noncharter public schools that is required of PED is likely to involve costs for design and implementation of the study.

Likewise, chartering authorities – local school boards and the Public Education Commission – are likely to incur costs associated with data collection and analysis.

Original Substantive Issues:

Several of the provisions in SB 446 raise questions with regard to implementation and perhaps unintended consequences.

- Although SB 446 requires the chartering authority to submit to PED its final determination regarding the revocation of a charter, the bill does not indicate whether this submission is for review or approval; nor does it indicate what action, if any, PED is required to take.
- Although the bill does not explicitly authorize multiple charter schools under a single contract, it seems to assume that possibility through somewhat indirect references.
 - As already noted, the contract must include an agreement that, if the governing body wants to open and operate another charter school under an existing charter contract, the governing body must obtain the approval of the chartering authority and amend the terms of the contract accordingly.
 - The bill also requires that multiple charter schools operating under a single charter contract report each school's performance as a separate school; and each school is held independently accountable for its performance.
 - If the effect of the bill, whether intended or not, is to allow multiple charter schools under a single contract, one might ask whether a single application will suffice for multiple charter schools as well.
 - Currently, the *Charter Schools Act* allows a single charter school, with the approval of the chartering authority, to maintain separate facilities at two or more locations within the same school district; however, for the sake of calculating program units pursuant to the *Public School Finance Act*, those separate facilities are considered one school.
- Although SB 446 requires the charter contract to include the criteria and procedures that the chartering authority will use to review any charter school's contract with a third-party provider, the bill does not indicate what a third-party provider might be or what services such a provider might render. Already the *Charter Schools Act* allows a charter school to contract with a school district "or other party" for financial management, food services, transportation, facilities, education-related services, or other services. However:
 - the *Charter Schools Act* prohibits the governing body of a charter school from contracting with a for-profit entity for the management of the charter school; and
 - the *Assessment and Accountability Act* prohibits any public school or school district from entering into management contracts with private entities to manage a school or district subject to corrective action.

While conflicts of interest may be more likely to occur among charter school administrators than among teachers, the bill offers no rationale for exempting teachers from the provisions imposed on other charter school personnel and their families.

A final question concerns the timeliness of the annual report from PED to the Governor, the LFC, and the LESC.

- The due date is December 1 for “a report on the state’s charter schools for the school year ending in the preceding calendar year.”
- Therefore, if SB 446 is enacted, the first report will be due December 1, 2011; but it will cover activities from school year 2009-2010, creating a lag of approximately 18 months between the final activities reported and the report of those activities.
- It would seem that a delay of this extent could lessen the value of information contained in the report, especially with regard to suggested changes to state law or policy.

Background:

During the 2010 interim, the LESC heard a series of presentations about charter schools. One of the points discussed was performance contracts between charter schools and their authorizers, raised as a point of information by LESC staff and as a recommendation by the New Mexico Coalition of Charter Schools (NMCCS).

- LESC staff noted that a performance contract is a document separate from the charter application, executed after the charter is approved. Such contracts typically emphasize the goals of the charter as contract terms, clarify the responsibilities of the charter school and the chartering authority, ensure the resolution of disputes, and establish protocols for closing ineffective schools. LESC staff also provided sample performance contracts for the committee’s review and noted the observation of the National Association of Charter School Authorizers: that there is “wide variation” in the terms and provisions of performance contracts according to the laws in the various states and the needs of charter schools and authorizers.
- The NMCCS recommended that the *Charter Schools Act* be amended to incorporate performance contracts as a means of enhancing the relationship between charter schools and their chartering authorities and of holding each party more accountable for performance. New Mexico, this testimony indicated, is one of the few states with charter school laws that do not include performance contracts.

Related Bills:

- *CS/CS/SB 502 *School Teacher & Principal Evaluation*
- *SB 503 *School Personnel Evaluation System*
- HB 98a *Charter School Audit Monitoring*
- HB 113a *Charter School Expenditure Reports*
- HB 252 *District & Charter School Financial Reporting*