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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>SB406</u>	Sponsor	<u>Stewart</u>
Tracking Number	<u>.219825.2</u>	Committee Referrals	<u>SEC/SJC</u>
Short Title	<u>Limit Public School Management Contracts</u>		
Analyst	<u>Hathaway</u>	Original Date	<u>2/28/2021</u>
		Last Updated	<u>3/02/2021</u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 406 (SB406) amends the Public School Code to add a new definition for “management of a public school or public school program” and adds a new section to prohibit local school boards, superintendents, and charter school governing bodies from contracting with a nongovernmental entity for the management of a public school or school program.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPACT

SB406 does not contain appropriation.

The Legislative Finance Committee (LFC) fiscal impact report (FIR) of SB406 indicates that 50 percent of state equalization guarantee (SEG) distributions for New Mexico’s two largest virtual charter schools, Pecos Connections Academy and New Mexico Connections Academy, are capped and any amounts over 50 percent of SEG distributions paid to any nongovernmental entities managing these schools would be reduced, which could be up to \$10.6 million each year. The LFC FIR also notes it may be the case that current contractual services for the nongovernmental entities managing these schools will be less than 50 percent of SEG distributions and therefore, have no fiscal impact.

SUBSTANTIVE ISSUES

SB406 strikes the current definition of “management” in the Charter Schools Act and adds a new definition for “management of a public school or school program” which is defined to mean both receiving compensation from a local school district that is equal to or greater than 50 percent of the state equalization guarantee (SEG) distribution for a public school or program, *and* any one or more of a wide variety of listed managerial activities, including:

- providing 50 percent or more of school or program curricula;
- authority over extracurricular activities;
- planning, operating, or supervising the evaluation of the education program;
- instructional leadership;
- instructing, evaluating, or disciplining students;
- making decisions regarding operations, finance, or administration;
- supervision of employees, contractors, and volunteers, including employment, evaluation, discipline, discharge, termination, recruitment, training, and assignment;
- development of professional development or improvement plans;
- directing relationships between students’ families and school personnel;
- solely creating improvement and corrective action plans and performance frameworks;
- acting as an official school representative in any legal, administrative, or contractual capacity;
- recruitment of students;
- deciding what information to present to school boards and governing bodies; or
- budget development.

SB406 would also amend statute in Section 22-5-14 NMSA 1978, governing the powers and duties of local school boards, to prohibit both local school boards and superintendents from contracting or otherwise forming agreements with nongovernmental entities to manage public schools or public school programs. The bill would similarly amend the Charter Schools Act to prohibit governing bodies of charter schools from likewise forming agreements with nongovernmental entities for school or school program management. The use of the term “nongovernmental” would encompass all manner of private concerns, whether for- or nonprofit, requiring that the control of public schools and public school resources remain in the hands of public servants.

This would make all three entities mentioned above – local school boards, superintendents, and governing bodies – subject to the proposed definition of “management of a public school or public school program,” in the amended definitions section of the Public School Code, Section 22-1-2 NMSA 1978.

Evaluation of Virtual Charter Schools. A [2017 program evaluation of virtual charter schools by LESC and LFC](#) identified four key findings related to the oversight, financing, assessment, and accountability of such schools:

- Virtual charter schools produce lower academic outcomes than brick-and-mortar-schools despite serving fewer at-risk students.
- The state’s funding formula treats virtual charter schools similarly to brick-and-mortar schools, resulting in financial waste and possibly incentivizing school districts to authorize virtual charter schools.
- For-profit companies play a significant role at virtual charter schools.
- Charter school authorizers struggle to provide proper oversight despite having worked to enhance accountability efforts.

The 2017 evaluation also found the average student in fourth through eighth grade at New Mexico Connections Academy and New Mexico Virtual Academy experienced the equivalent of between 91 and 161 fewer days of learning than the average brick-and-mortar-school student. National research from the Center for Research on Education Outcomes (CREDO) has shown similar findings. In a [2019 report](#), CREDO noted New Mexico virtual charter schools underperform in

student outcomes compared with both traditional public schools and brick-and-mortar charter schools. CREDO reports the substantially weaker growth in both math and reading performance among virtual charter school students translates to notable losses in learning days – 130 fewer days of learning in reading and 118 fewer days of learning in math each year

Management at Virtual Charter Schools. Virtual charter schools in New Mexico can be authorized by a school district or the Public Education Commission. Around 2,200 charter school students in New Mexico, or 8 percent of charter school students, attend one of the two virtual charter schools in the state: New Mexico Connections Academy and Pecos Connections Academy. New Mexico Connections Academy enrolled 1,200 students in fourth through 12th grade in the 2018-2019 school year. Pecos Connections Academy enrolled just over 1,000 students in grades kindergarten through 11th grade in the 2018-2019 school year.

Management issues of virtual charter schools have been documented in New Mexico. One example has been oversight of Pecos Connections Academy by Carlsbad Municipal Schools. The district has struggled to provide adequate oversight of Pecos Connections Academy in terms of receiving needed information from the school and has received little support from PED to assist with this management.

ADMINISTRATIVE IMPLICATIONS

PED notes the bill would prevent the employment of sole-source, out-of-state, for-profit management corporations, such as K-12, Inc., which have had a poor history of academic and operational success and fiscal control in New Mexico. PED notes The New Mexico Virtual Academy (NMVA), a K-12, Inc. school, for instance, was found by the office of the State Auditor in FY16 to have made over \$111 thousand in purchases and contractual obligations without procurement officer approval, as well as a single purchase of over \$60 thousand, and employee travel reimbursement totaling more than could not be reconciled with receipts.

PED also notes NMVA's procurement and management indiscretions occurred despite an existing prohibition, in Section 22-8B-4 NMSA 1978, on charter school governing bodies contracting with for-profit entities for the management of a school, where "management" was defined as, "authority over the hiring, termination and day-to-day direction of a school's employees or contractors, whether they are licensed or not."

The definition noted above is the current definition of management in the Charter Schools Act, which SB406 proposes to replace with a more comprehensive and specific list of appropriately management-related duties.

TECHNICAL ISSUES

SB406 does not use a consistent definition of "management of a public school or public school program." The proposed language in Section 5, page 18, lines 8 through 11, notes "the governing body shall not contract with a nongovernmental entity for the management of the charter school or charter school program." Use of the term "management of a public school or school program" is not consistently applied here.

RELATED BILLS

Relates to SB237, which prohibits nepotism in public school employment.

SOURCES OF INFORMATION

- LESC Files
- New Mexico Attorney General (NMAG)
- Public Education Department (PED)

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