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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/21

SPONSOR Stewart LAST UPDATED _____ HB _____

SHORT TITLE Limit Public School Management Contracts SB 406

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 – (\$10,571.0)	\$0.0 – (\$10,571.0)	\$0.0 – (\$21,141.9)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB237.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (NMAG)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 406 defines “management of a public school or school program” in the Public School Code and prohibits 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 IMPLICATIONS

The bill does not make an appropriation but prohibits school districts and charter schools from contracting with nongovernmental entities to manage more than 50 percent of the public school’s or school program’s curricula and any operational and instructional functions. The bill further prohibits contracted nongovernmental entities from receiving more than 50 percent of the state equalization guarantee (SEG) distribution. Aside from a few virtual charter schools, no New Mexico school districts have reported the use of nongovernmental entities to manage the majority of school operations and instruction.

This analysis assumes 50 percent of 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. It may be the case that current contractual costs for the nongovernmental entities managing these schools will be less than 50 percent of SEG distributions and, therefore, have no fiscal impact.

SIGNIFICANT ISSUES

PED notes 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. “Management of a public school or school program” would be defined to mean both receiving compensation from a local school district that is equal to or greater than 50 percent of the 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;
- Supervising employees, contractors, and volunteers, including employment, evaluation, discipline, discharge, termination, recruitment, training, and assignment;
- Developing 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;
- Recruiting students;
- Deciding what information to present to school boards and governing bodies; or
- Developing a budget.

The bill would require publicly elected school boards, established governing bodies of charter schools, and superintendents – in their capacity as chief executive of school districts – maintain the control and supervision of public schools and programs they were elected, entrusted, and hired to exercise as public servants. The bill would also prevent that authority being delegated to private concerns, whose motivations may be profit- or otherwise-oriented, rather than toward public service, and the supervision of which may be difficult despite contractual provisions.

PED notes the inclusion of “school programs” in the definition of management in the bill would also address the issue of control over specific programs housed within schools’ larger organizational structures. School districts are unlikely to contract for managerial control over their own schools but might do so for specific programs housed within those schools. The bill would require that control of those programs, which might address such specific focuses as early college or career and technical programs, for example, likewise be appropriately maintained by public servants managing public

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. A 2017 joint LFC-Legislative Education Study Committee evaluation of virtual schools in New Mexico indicated for-profit companies play large roles at virtual charter schools, while their authorizers struggle to hold them accountable. The New Mexico Virtual Academy (NMVA), a K12, 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 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." This remains the current definition of management in the Charter Schools Act, which the bill proposes to replace with a more comprehensive and specific list of appropriately management-related duties to better address this issue and prevent these sorts of abuses by narrowing any potential loopholes in the law.

RELATIONSHIP

This bill relates to Senate Bill 237, which prohibits nepotism in public school employment.

SL/al