

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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:
Original **Amendment**
Correction **Substitute**

Date 2/27/2021
Bill No: SB406

Sponsor: Mimi Stewart
Short LIMIT PUBLIC SCHOOL
Title: MANAGEMENT CONTRACTS

Agency Name and Code PED-924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Senate Bill 237, Charter School Duties

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB406 proposes to prohibit local school boards, charter school governing bodies, and superintendents from contracting with a nongovernmental entity for the management of a public school, and defines “management” in the Public School Code to include a wide variety of potentially managerial activities.

FISCAL IMPLICATIONS

SB406 does not contain an appropriation. The bill would prevent funds being paid to nongovernmental entities for the management of schools, and may therefore prevent some state public moneys from leaving the state revenue stream by being paid to out-of-state corporations and contractors.

SIGNIFICANT ISSUES

SB406 would amend statute in Chapter 22, Article 5 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. SB406 strikes the current definition of “management” in the Charter Schools Act, so that all three entities addressed in the bill would be subject to the newly 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.

“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 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 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 prevent that authority being delegated to private concerns, whose motivations may be profit- or otherwise oriented, rather than towards public service, and the supervision of which may be difficult despite contractual provisions.

For example, 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 evaluation of virtual schools in New Mexico, conducted by the Legislative Education Study Committee and the Legislative Finance Committee, 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 be reconciled with receipts.

The state's history with private, for-profit management companies, therefore, suggests their primary concern appears to remain one of profit, rather than proper execution of public policy, education of the state's students, and control of public dollars. 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 SB406 proposes to replace with a more comprehensive and specific list of appropriately management-related duties, in order to better address this issue and prevent these sorts of abuses by narrowing any potential loopholes in the law.

The inclusion of "school programs" in the definition of management in SB406 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 resources, rather than delegated to private or for-profit contractors.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB237, which would expand prohibitions on nepotism in public school employment.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS