

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/CS/HB 460

51st Legislature, 1st Session, 2013

Tracking Number: .193536.3

Short Title: School Management Contracts & Charter Boards

Sponsor(s): Representative Mimi Stewart and Senator Timothy M. Keller, and Others

Analyst: Kevin Force

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**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HOUSE BILL 460**

Bill Summary:

CS/CS/HB 460 proposes to amend the *Public School Code* to prohibit private entities from managing public schools through contracts with school boards, the Public Education Department (PED), or charter schools. Specifically, CS/CS/HB 460:

- stipulates that public schools shall remain under the control of local school boards, governing boards of charter schools or PED, when it is acting in the stead of a suspended board;
- prohibits school districts, charter schools, and PED from entering into contracts with private entities to manage public schools or school districts;
- amends the definition of “start-up school” to restrict the development of such schools to New Mexico residents;
- requires governing bodies of charter schools to be composed of only New Mexico residents;
- prohibits charter schools from entering into contracts with private entities for the management or administration of charter schools or their educational program, although not for the use, operation, or maintenance of a facility, nor for other services or activities that a charter school may be required to perform; and
- limits applications for new charters to New Mexico residents, New Mexico public postsecondary educational institutions, or New Mexico nonprofit organizations.

Fiscal Impact:

CS/CS/HB 460 does not contain an appropriation.

Substantive Issues:

PED’s analysis suggests that CS/CS/HB 460 may affect schools throughout the state that use technology-based systems to deliver education services, including the E-Academy of Albuquerque Public Schools and the Rio Rancho Cyber Academy. These schools use computer-based educational systems provided by private companies, which apparently manage the delivery of education programs in conjunction with school districts.

Background:

During the 2012 interim, the Legislative Education Study Committee (LESC) heard testimony regarding charter schools, virtual charter schools, and the memoranda of understanding (MOU) that outline the relationship between charter school governing bodies and providers of curricula and other education services:

- Virtual charter schools rely heavily upon a business relationship with the provider of the virtual education program.
- The first fully virtual charter school in New Mexico, the New Mexico Virtual Academy (NMVA), was chartered by Farmington Municipal Schools.
- One of the conditions that Farmington Municipal Schools placed on its approval of the New Mexico Virtual Academy was a detailed MOU between K12 Virtual Schools LLC (K12) (the provider of the educational program to the Farmington schools) and the NMVA regarding:
 - the services the vendor was to provide;
 - the vendor’s involvement in the school’s decision-making process;
 - the resolution of any disputes between the vendor and the school; and
 - the financial relationship between the vendor and the school.
- The MOU in this case is of particular interest because it provides numerous details about the relationship between a virtual charter school and the provider of its educational program. Among its provisions the MOU between the NMVA and K12:
 - anticipates a “long-term relationship,” with an initial term of 10 years and renewal terms of seven years each¹;
 - requires that K12 have the responsibility to “recommend various policies for the operation of the Program”;
 - requires that K12 be granted a 30-day right of first refusal before the school’s governing board makes any third-party procurements for goods or services not covered by the MOU;
 - assesses an annual administrative services fee to the school of up to 15 percent of the school’s “program revenues,” which include state and local per-pupil basic education funds and federal funds, to cover services enumerated below;²;
 - assesses an annual technology services fee of up to 7.0 percent of the school’s program revenues for the value of technology services provided;
 - provides that K12 will hire administrative personnel – perhaps including a “school operations director” – to deliver the educational services; and that, for the positions of head administrator, business manager, and special education coordinator, K12:

will advertise the position, identify and interview candidates, perform any background checks required by law or requested by the School, and shall present its recommendations and related candidate resume [sic] to the School. . . . In the event that the School intends to hire a candidate not among those recommended

¹ When asked about this provision – given that the term of an initial charter is only six years (including a planning year) and the term of a charter renewal is only five years – K12 responded that the longer term of agreement in the MOU earns better contract terms.

² While these fees are part of this particular MOU, the *Charter Schools Act* allows the chartering authority to withhold 2.0 percent of a charter school’s program cost for its administrative support of the charter school.

by K12, K12 shall first be afforded an opportunity to interview and screen the candidate and to provide its advice and recommendation concerning the candidate to the School;

- provides that the school will hire the teachers and be responsible for all associated costs;
 - requires the school to “use its best efforts” to gain approval for extending the grades served and increasing the student enrollment;
 - specifies that K12’s general services include recruiting students and implementing the program’s admissions policy and student enrollment process; and
 - enumerates K12’s administrative services, among them:
 - preparing forms, manuals, handbooks, guides, policies, and procedures;
 - working with the school’s counsel on legal matters affecting the program;
 - preparing a proposed annual program budget, “including projected revenues, expenses and capital expenditures”;
 - recommending discipline policies and procedures;
 - developing teacher training; and
 - seeking competitive pricing and centralized purchasing of computers, monitors, and other peripherals.
- The *Charter Schools Act* contains this prohibition: “the governing body [of a charter school] shall not contract with a for-profit entity for the management of the charter school.”³
 - While this prohibition seems clear in theory, it may be difficult to apply in practice as the term “management” is not defined:
 - As noted above, the MOU between K12 and the NMVA enumerates a large number of administrative tasks that the private company will perform.
 - The only service that K12 is not performing, the company says, is managing instruction.
 - According to K12, however, these tasks do not constitute management of the school because the company does not have the authority to *determine* policy for the school, only to *recommend* policy.

Committee Referrals:

HEC/HJC/SEC

Related Bills:

HB 392a *Public Education Commission as Independent* (Identical to SB 476a)

HB 453a *School Chartering Authority to State*

HB 622 *Charter Schools as Local Agencies*

*CS/SB 338 *Define Virtual Charter School & Moratorium*

SB 358 *School Districts Governing Charter Schools*

SB 476a *Public Education Commission as Independent* (Identical to SB 392a)

³ Section 22-8B-4(R) NMSA 1978 (It should be noted that this prohibition does not differentiate between traditional and virtual charter schools.)