87R5895 BDP-F

By:  Canales H.B. No. 2451

A BILL TO BE ENTITLED

AN ACT

relating to the management, operation, and contract authority of open-enrollment charter schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 12.1054(a), Education Code, is amended to read as follows:

(a)  A member of the governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of Chapter 171, Local Government Code. For purposes of that chapter,[~~:~~

[~~(1)~~]  a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school is considered to have a substantial interest in a business entity if a person related to the member or officer in the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity under Section 171.002, Local Government Code[~~;~~

[~~(2)  notwithstanding any provision of Section 12.1054(1), an employee of an open-enrollment charter school rated acceptable or higher under Section 39.054 for at least two of the preceding three school years may serve as a member of the governing body of the charter holder of the governing body of the school if the employees do not constitute a quorum of the governing body or any committee of the governing body; however, all members shall comply with the requirements of Sections 171.003-171.007, Local Government Code~~].

SECTION 2.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1169 to read as follows:

Sec. 12.1169.  TRANSACTIONS INVOLVING RELATED PARTY OF MANAGEMENT COMPANY. (a) The commissioner shall adopt a rule defining "related party of a management company" for purposes of this subchapter. The definition of "related party of a management company" must include:

(1)  a party with a current or former board member, administrator, or officer who is:

(A)  a board member, administrator, or officer of a management company that provides management services for an open-enrollment charter school; or

(B)  related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to a board member, administrator, or officer of a management company that provides management services for an open-enrollment charter school;

(2)  any organizations, joint ventures, and jointly governed organizations related to a management company that provides management services for an open-enrollment charter school;

(3)  any board members, administrators, or officers of a management company that provides services for an open-enrollment charter school, including a person related to a board member, administrator, or officer of the management company within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code; and

(4)  any other disqualified person, as that term is defined by 26 U.S.C. Section 4958(f).

(b)  For purposes of Subsection (a)(1), a person is a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between a management company and a related party of a management company occurred.

SECTION 3.  Sections 12.120(a) and (b), Education Code, are amended to read as follows:

(a)  A person may not serve as a member of the governing body of a charter holder, as a member of the governing body of an open-enrollment charter school, or as an officer or employee of an open-enrollment charter school if the person:

(1)  has been convicted of:

(A)  a felony; or

(B)  a misdemeanor involving moral turpitude;

(2)  has been convicted of:

(A)  an offense listed in Section 37.007(a) or[~~;~~

[~~(3)  has been convicted of an offense listed~~] in Article 62.001(5), Code of Criminal Procedure; or

(B)  an offense under the laws of another state or federal law that contains elements that are substantially similar to the elements of an offense listed in Section 37.007(a) or in Article 62.001(5), Code of Criminal Procedure; or

(3)  is being paid directly or indirectly by or [~~(4)~~] has a substantial interest in a management company.

(b)  For purposes of Subsection (a)(3) [~~(a)(4)~~], a person has a substantial interest in a management company if the person:

(1)  has a controlling interest in the management company;

(2)  owns more than 10 percent of the voting interest in the management company;

(3)  owns more than $25,000 of the fair market value of the management company;

(4)  has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the management company;

(5)  is a member of the board of directors or other governing body of the management company;

(6)  serves as an [~~elected~~] officer of the management company; [~~or~~]

(7)  is an employee of the management company;

(8)  is an officer or employee of a contractor of the management company; or

(9)  is an officer or employee of a related party of a management company, as defined by commissioner rule adopted under Section 12.1169.

SECTION 4.  Section 12.1202, Education Code, is amended to read as follows:

Sec. 12.1202.  REQUIREMENT FOR [~~MAJORITY OF~~] MEMBERS OF GOVERNING BODY. (a) In this section, "qualified voter" has the meaning assigned by Section 11.002, Election Code.

(b)  A person must be a qualified voter to serve as a member [~~majority of the members~~] of the governing body of an open-enrollment charter school or the governing body of a charter holder [~~must be qualified voters~~].

SECTION 5.  Section 12.125, Education Code, is amended to read as follows:

Sec. 12.125.  CONTRACT FOR MANAGEMENT SERVICES; PUBLIC INFORMATION. (a) Any contract, including a contract renewal, between an open-enrollment charter school and a management company proposing to provide management services to the school must require the management company to maintain all records related to the management services separately from any other records of the management company.

(b)  A contract or proposed contract for management services and any record related to the management services is public information under Chapter 552, Government Code, and may not be excepted from required disclosure under Subchapter C of that chapter.

(c)  A member of the governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer or employee of an open-enrolment charter school may not accept a direct or indirect payment from a management company under any contract or arrangement.

(d)  A contract for management services must include a provision affirming that the management company is not making any direct or indirect payments to a member of the governing body of the charter holder, a member of the governing body of the open-enrollment charter school, or an officer or employee of the open-enrollment charter school.

(e)  A contract entered into or an arrangement made in violation of Subsection (c) is void as against public policy and subject to applicable commissioner action under Section 12.126, and no fees may be paid to any person under the contract or under any theory of recovery for work performed in connection with a void contract.

SECTION 6.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1252 to read as follows:

Sec. 12.1252.  FINANCIAL BENEFIT FROM MANAGEMENT COMPANY PROHIBITED. A superintendent or administrator serving as educational leader or chief executive officer of an open-enrollment charter school may not receive any financial benefit for personal services performed by the superintendent or administrator serving as educational leader or chief executive officer for a management company or business entity that conducts or solicits business with the school. For purposes of this section, the receipt of reimbursement for a reasonable expense is not considered a financial benefit.

SECTION 7.  Section 2252.908(a)(2), Government Code, is amended to read as follows:

(2)  "Governmental entity" means a municipality, county, public school district, open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, or special-purpose district or authority.

SECTION 8.  (a) Except as provided by Subsection (b) of this section, this Act applies beginning with the 2021-2022 school year.

(b)  Section 2252.908, Government Code, as amended by this Act, applies only to a contract subject to that section that is entered into, amended, or renewed on or after the effective date of this Act.

SECTION 9.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.