

By: Bailes

H.B. No. 1746

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the management and operation of open-enrollment charter
3 schools, including certain contracts involving management and
4 operation.

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

6 SECTION 1. Section 12.1012, Education Code, is amended by
7 adding Subdivision (5-a) to read as follows:

8 (5-a) "Nonresident management company" means a
9 management company whose:

10 (A) principal place of business is in another
11 state; or

12 (B) parent company, governing entity, or
13 majority owner has its principal place of business in another
14 state.

15 SECTION 2. Section 12.1053(b), Education Code, is amended
16 to read as follows:

17 (b) An open-enrollment charter school is considered to be:

18 (1) a governmental entity for purposes of:

19 (A) Subchapters A and [Subchapter] D, Chapter
20 2252, Government Code; and

21 (B) Subchapter B, Chapter 271, Local Government
22 Code;

23 (2) a political subdivision for purposes of Subchapter
24 A, Chapter 2254, Government Code; and

1 (3) a local government for purposes of Sections
2 2256.009-2256.016, Government Code.

3 SECTION 3. Section 12.107, Education Code, is amended to
4 read as follows:

5 Sec. 12.107. STATUS AND USE OF FUNDS; DEPOSITORY. (a)
6 Funds received under Section 12.106 after September 1, 2001, by a
7 charter holder:

8 (1) are considered to be public funds for all purposes
9 under state law;

10 (2) are held in trust by the charter holder for the
11 benefit of the students of the open-enrollment charter school;

12 (3) may be used only for a purpose for which a school
13 may use local funds under Section 45.105(c);

14 (4) pending their use, must be deposited into the
15 charter holder's depository, selected under Subsection (a-1) [a
16 bank, as defined by Section 45.201, with which the charter holder
17 has entered into a depository contract]; and

18 (5) may not:

19 (A) be pledged or used to secure loans or bonds
20 for any other organization, including a non-charter operation or
21 out-of-state operation conducted by the charter holder or a related
22 party, as defined by commissioner rule adopted under Section
23 12.1166; or

24 (B) be used to support an operation or activity
25 not related to the educational activities of the charter holder.

26 (a-1) A charter holder may select as the charter holder's
27 depository for the deposit of state funds received under Section

1 12.106 only a bank, as defined by Section 45.201, that is located in
2 this state.

3 (b) A charter holder shall deliver to the agency a copy of
4 the depository contract between the charter holder and the
5 depository selected under Subsection (a-1) [~~any bank~~] into which
6 state funds are to be deposited.

7 SECTION 4. Section 12.1168(b), Education Code, is amended
8 to read as follows:

9 (b) A financial report filed under Section 44.008 by an
10 open-enrollment charter school must separately disclose:

11 (1) all financial transactions between the
12 open-enrollment charter school and any related party, as defined by
13 commissioner rule adopted under Section 12.1166, separately
14 stating the principal, interest, and lease payments; [~~and~~]

15 (2) the total compensation and benefits provided by
16 the school and any related party, as defined by commissioner rule
17 adopted under Section 12.1166, for each member of the governing
18 body and each officer and administrator of the school and the
19 related party;

20 (3) the total amount of financial transactions:

21 (A) between the school and a management company;

22 and

23 (B) between the school and any related party of a
24 management company, as defined by commissioner rule adopted under
25 Section 12.1169; and

26 (4) the total compensation and benefits provided by
27 the school or a related party of a management company described by

1 Subdivision (3)(B) for each nonresident person who provides
2 management services through a management company under a contract
3 with the school.

4 SECTION 5. Subchapter D, Chapter 12, Education Code, is
5 amended by adding Section 12.1169 to read as follows:

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

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

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

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

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

25 (3) any board members, administrators, or officers of
26 a management company that provides services for an open-enrollment
27 charter school, including a person related to a board member,

1 administrator, or officer of the management company within the
2 third degree of consanguinity or affinity, as determined under
3 Chapter 573, Government Code; and

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

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

11 SECTION 6. Sections 12.120(a) and (b), Education Code, are
12 amended to read as follows:

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

17 (1) has been convicted of:

18 (A) a felony; or

19 (B) a misdemeanor involving moral turpitude;

20 (2) has been convicted of:

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

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

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

1 (3) [~~(4)~~] has a substantial interest in a management
2 company.

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

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

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

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

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

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

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

19 (7) is an employee of the management company;

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

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

25 SECTION 7. Section 12.1202, Education Code, is amended to
26 read as follows:

27 Sec. 12.1202. REQUIREMENT FOR [~~MAJORITY OF~~] MEMBERS OF

1 GOVERNING BODY. (a) In this section, "qualified voter" has the
2 meaning assigned by Section 11.002, Election Code.

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

7 SECTION 8. Section 12.125, Education Code, is amended to
8 read as follows:

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

16 (b) A contract for management services is public
17 information under Chapter 552, Government Code, and may not be
18 excepted from required disclosure under Subchapter C of that
19 chapter.

20 SECTION 9. Subchapter D, Chapter 12, Education Code, is
21 amended by adding Section 12.1251 to read as follows:

22 Sec. 12.1251. REQUIRED REPORTING ON CONTRACTS FOR
23 MANAGEMENT SERVICES WITH NONRESIDENT MANAGEMENT COMPANIES. (a) An
24 open-enrollment charter school that contracts with a nonresident
25 management company for management services in an amount that
26 exceeds the lesser of \$1 million per year or five percent of the
27 school's entitlement under Section 12.106 shall, not later than

1 October 1 of each year, post on the school's Internet website and
2 submit to the agency and the Legislative Budget Board:

3 (1) the total amount the school spent during the
4 preceding year for management services provided by a nonresident
5 management company;

6 (2) a copy of each contract for management services
7 provided by a nonresident management company and information
8 regarding any amendment, modification, renewal, or extension of
9 that contract; and

10 (3) any contract between the school and a nonresident
11 related party of a management company, as defined by commissioner
12 rule adopted under Section 12.1169, that provides management
13 services to the school.

14 (b) Not later than December 1 of each year, the agency shall
15 submit to the legislature a report on the total amount of state
16 money spent by an open-enrollment charter school on:

17 (1) management services provided by a nonresident
18 management company; and

19 (2) any services provided by a nonresident related
20 party of a management company, as defined by commissioner rule
21 adopted under Section 12.1169, that provides management services to
22 the school.

23 SECTION 10. Section [12.1168\(a\)](#), Education Code, is
24 repealed.

25 SECTION 11. (a) Except as provided by Subsection (b) of
26 this section, this Act applies beginning with the 2021-2022 school
27 year.

1 (b) Sections 12.1053 and 12.107, Education Code, as amended
2 by this Act, apply only to a contract entered into or renewed on or
3 after September 1, 2021.

4 SECTION 12. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2021.