

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~~

1 ~~the employees do not constitute a quorum of the governing body or~~
2 ~~any committee of the governing body; however, all members shall~~
3 ~~comply with the requirements of Sections 171.003-171.007, Local~~
4 ~~Government Code].~~

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

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

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

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

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

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

26 (3) any board members, administrators, or officers of
27 a management company that provides services for an open-enrollment

1 charter school, including a person related to a board member,
2 administrator, or officer of the management company within the
3 third degree of consanguinity or affinity, as determined under
4 Chapter 573, Government Code; and

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

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

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

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

18 (1) has been convicted of:

19 (A) a felony; or

20 (B) a misdemeanor involving moral turpitude;

21 (2) has been convicted of:

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

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

25 (B) an offense under the laws of another state or

26 federal law that contains elements that are substantially similar

27 to the elements of an offense listed in Section 37.007(a) or in

1 Article 62.001(5), Code of Criminal Procedure; or
2 (3) is being paid directly or indirectly by or [~~(4)~~]
3 has a substantial interest in a management company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) A contract for management services must include a

1 provision affirming that the management company is not making any
2 direct or indirect payments to a member of the governing body of the
3 charter holder, a member of the governing body of the
4 open-enrollment charter school, or an officer or employee of the
5 open-enrollment charter school.

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

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

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

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

26 (2) "Governmental entity" means a municipality,
27 county, public school district, open-enrollment charter school

1 established under Subchapter D, Chapter 12, Education Code, or
2 special-purpose district or authority.

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

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

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