

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 406 (McCarty) – As Amended March 23, 2017

SUBJECT: Charter schools: operation

SUMMARY: Prohibits a charter school from operating as or being operated by a for-profit corporation or a for-profit charter management organization, after January 1, 2019. Specifically, **this bill:**

- 1) Authorizes a charter school to elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law.
- 2) Prohibits, on and after January 1, 2019, a petitioner that submits a charter petition or a charter school that submits a charter renewal or material revision application to operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization; and, specifies that an educational management organization and a charter management organization are for-profit entities that manage or operate a charter school.

EXISTING LAW authorizes charter schools to elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law. Specifies the governing board of a school district that grants a charter for the establishment of a charter school shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation. Specifies an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law, including, but not limited to, those required by Section 47604.32 and subdivision (m) of Section 47605. (Education Code 47604)

FISCAL EFFECT: This bill is keyed non-fiscal.

COMMENTS: This bill prohibits a charter school from being operated as, or operated by a for-profit corporation, including a for-profit charter management organization, as of January 1, 2019.

According to the author, there is a growing movement in the United States to privatize our public schools. Corporations see the public education sector as an untapped market for increasing their profits. A disturbing trend in this effort to privatize our public schools has been in the charter school arena. Corporations and wealthy individuals have established businesses that start and manage charter schools. These businesses, known as Education Management Organizations (EMOs) and Charter Management Organizations (CMOs), establish charter schools across the country and require them to contract with the for-profit company for all their services. These corporations take public taxpayer dollars and use a percentage of those dollars for corporate

profits and excessive salaries for their executives with little or no transparency and accountability – taking public money away from students. AB 406 would prohibit a petitioner that submits a charter petition for the establishment of a charter school or a charter school that submits a charter renewal application from operating as, or being operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization starting on and after January 1, 2019.

Appropriate use of taxpayer dollars? While current law explicitly authorizes a charter school to operate as a nonprofit corporation, statute is silent on whether a charter school is permitted to operate as a for-profit corporation. Because of the permissive nature of the Education Code and absent a clear prohibition, several charter schools are currently operating as for-profit corporations. The California Charter School Association indicates there are six for-profit charter schools in California. California Virtual Academies (CAVA) is California's largest provider of online public K-12 education and a public charter school network that exists entirely online. Students take classes from home, communicating with teachers via computer. CAVAs primary vendor and manager is K12, Inc., a for-profit corporation.

According to the author, recently, there has been an increase in the number of for-profit EMOs and CMOs across the country. According to a report from the National Education Policy Center at the University of Colorado entitled, "*Profiles of For-Profit and Non-Profit Education Management Organizations*," since the 1995-96 school year, the number of for-profit EMOs has increased from 5 to 97, and the number of schools operated by them has increased from 6 to 840. It is estimated that there were approximately 462,926 students enrolled in charter schools managed by for-profit EMOs. In California, there are 34 charter schools run by for-profit EMOs or for-profit CMOs enrolling over 25,000 students. In 2016, the largest for-profit EMO, K-12 Inc., which has received over \$310 million of taxpayer money over the last 12 years, settled a lawsuit filed by the state for \$168.5 million over claims that the corporation manipulated attendance records and overstated students' success. This same for-profit EMO, which is publically traded on Wall Street, had estimated revenue of \$708 million in 2012. The company estimated their profit at \$87 million in the same year. They paid their top 6 executives \$11 million in compensation while their average teacher salary was \$36,000. At the same time, one of the charter schools managed by this for-profit corporation in California had a graduation rate of 36% compared to 78% statewide. In addition, every year since it began, except 2013, this school had more dropouts than graduates.

If the goal of a for-profit corporation is to maximize profit for the corporation's shareholders, then the Committee should consider whether it is an appropriate use of state taxpayer dollars for for-profit corporations to operate public schools. Additionally, does this for-profit model provide a perverse incentive for these charter schools to limit services for students in order to increase profits?

Committee Amendment: Staff recommends the bill be amended to clarify that some educational management organizations are non-profit corporations, and as such, may continue to operate charter schools.

Previous legislation. AB 1084 (Bonilla) from 2016, which died on the Senate Inactive File, would have required that charter schools only operate as, or be operated by, a nonprofit public benefit corporation, school district, county board of education, or University of California.

AB 787 (Hernández) from 2015, would have prohibited a charter school from operating as, or being operated by, a for-profit corporation. This bill was vetoed by the Governor with the following message:

"Under this bill, beginning January 1, 2017, a charter school could not "operate as" or be "operated by" a for-profit corporation. I don't believe the case has been made to eliminate for-profit charter schools in California. Moreover, the somewhat ambiguous terms used in this bill could be interpreted to restrict the ability of non-profit charter schools to continue using for-profit vendors."

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees
California Federation of Teachers
California Labor Federation
California School Boards Association
California School Employees Association
California State PTA
California Teachers Association

Opposition

California Charter Schools Association
California Parents for Public Virtual Education
K-12, Inc.

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