
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 406 **Hearing Date:** June 28, 2017
Author: McCarty
Version: May 17, 2017
Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: Charter schools: operation

SUMMARY

This bill prohibits a charter school from operating as, or by, a for-profit corporation after January 1, 2019.

BACKGROUND

Existing law:

- 1) Establishes the Charter Schools Act of 1992 which provides for the establishment of charter schools in California for the purpose, among other things, to improve student learning and expand learning experiences for pupils who are identified as academically low achieving. A charter school may be authorized by a school district, a county board of education, or the State Board of Education, as specified. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to schools and school districts.
- 2) 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.
- 3) Specifies that 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.
- 4) Specifies that 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.

ANALYSIS

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.

STAFF COMMENTS

- 1) ***Need for the bill.*** 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 and Charter Management Organizations, 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.
- 2) ***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 the state. California Virtual Academies (CAVA) is California's largest provider of online public K-12 education and a public charter school network that may exist entirely online, serving approximately 15,000 students. Students take classes from home, primarily communicating with teachers via computer. CAVA's primary vendor and manager is K-12, Inc., a for-profit corporation that operates virtual schools nationwide.

Is it an appropriate use of state taxpayer dollars for-profit corporations to operate public schools? Specifically, does this model provide a perverse incentive for these charter schools to limit services for students in order to increase profits?

- 3) ***Impact on students.*** Notwithstanding the issues regarding the appropriateness of using taxpayer dollars for charter schools operating as for-profit corporations, the Committee may wish to consider whether the bill contemplates what would happen to students attending these schools if the bill were to become law. Presumably, the operating entities could restructure or reorganize themselves as nonprofit corporations to comply. If not, would a charter school need to shut down its operations? The bill may also be interpreted to extend to nonprofit charter schools that contract with for-profit entities for instructional and instructional support services. To the extent that these entities are unable to enter into new contracts exclusively with nonprofit entities, similarly, would these

charter schools be required to close? Additionally, as the bill would become operative commencing with the 2018-19 school year, it is not clear if this allows for a sufficient transition period for students that are displaced to find placement in a new school, particularly students that are disabled or have unique learning needs.

- 4) **Similar bill vetoed in 2015.** This bill is substantially similar to AB 787 (Hernandez, 2015) which would have prohibited a charter school from operating as, or being operated by, a for-profit corporation. AB 787 passed this Committee but was eventually 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.

- 5) **Clarification is necessary.** The concerns previously raised in the Governor's veto message about the potential impact on non-profit charter schools remain under this bill. Can the bill's prohibition on charters operating as, or being operated by, for-profit corporations be interpreted to limit their ability to contract for day-to-day operations such as payroll, human resources or janitorial services? Would this prohibition extend to contracts for other instructionally-related operations, such as assessments, instructional materials, classroom learning tools, professional development, or special education? Given the emphasis on for-profit management organizations, this does not appear to be the intent of the author.

Further, while the bill's prohibition on charter schools operating under a for-profit tax status is clear, instances of nonprofit charter schools entering into "sweep" contracts—under which anywhere from 95 to 100 percent of the school's public dollars are "swept" into a for-profit corporation—are not uncommon. Can the bill's prohibition on charters operating as, or being operated by, for-profit corporations or management groups be interpreted to deem these types of contracts illegal? In which instances would nonprofit charter schools be determined to be "operated by" for-profit corporations?

The Committee should consider whether prohibiting specified activities being performed by for-profit corporations on behalf of charter schools would more effectively curb instances of for-profit corporations making money by controlling public charter schools. If it is the desire of the Committee to pass this bill, **staff recommends** that the bill be amended to specify that for-profit entities shall not: (1) be involved in any way in the selection of governing board members of a charter school, (2) supervise or direct the certificated employees of a charter school, (3) have the authority to approve or deny the budget or any expenditures of a charter school, and (4) contract with a charter school before the charter

school has approved the contract at a publicly noticed meeting of its governing board.

6) ***Related legislation.***

SB 806 (Glazer) would have prohibited the operation of for-profit charter schools, prohibited for-profit entities from engaging in certain activities related to charter school governance and instructional services, and subjected charter schools to a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school districts. SB 806 passed this Committee on April 19, 2017, but failed passage in the Senate Judiciary Committee.

SUPPORT

California Federation of Teachers (co-sponsor)
California Teachers Association (co-sponsor)
American Federation of State, County and Municipal Employees
Association of California School Administrators
California Labor Federation
California School Boards Association
California School Employees Association
California State PTA
Public Advocates

OPPOSITION

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

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