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# SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

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**Bill No:** SB 739  
**Author:** Pavley  
**Version:** April 6, 2015  
**Urgency:** No  
**Consultant:** Lenin Del Castillo  
**Hearing Date:** April 15, 2015  
**Fiscal:** Yes

**Subject:** Charter schools: sited outside boundaries: report: prohibition

## SUMMARY

This bill would prohibit a school district from authorizing a new charter school to locate outside of its jurisdiction if it is assigned a negative certification. Additionally, this bill would authorize the Superintendent of Public Instruction (SPI) to perform a study and make recommendations on the number of charter schools that are sited outside the boundaries of their chartering school district.

## BACKGROUND

Under existing law, the Charter Schools Act of 1992 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. Charter schools are public schools that provide instruction in any combination of grades kindergarten through grade 12. A charter school may be authorized by a school district, a county board of education, or the State Board of Education, as specified. Some charter schools are new while others are conversions from existing schools. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to schools and school districts.

According to the State Department of Education, there were over 1,100 charter schools with an enrollment of approximately 514,000 pupils operating in the state in 2013-14.

Parents, teachers, or community members may initiate a charter petition, which is typically presented to and approved by a local school district governing board. The law also allows, under certain circumstances, for county boards of education and the State Board of Education to authorize charter schools. The specific goals for a charter school are detailed in the agreement (charter) between the authorizing entity and the charter developer. The charter petition is also required to include a description of the educational program of the school and several other policies and procedures relating to employees, pupils, and finances. Current law establishes procedures for the renewal of charter schools, not to exceed five years.

Current law requires that charter schools: 1) are nonsectarian in their programs, admission policies, employment practices, and all other operations; 2) not charge tuition; and 3) not discriminate against any pupil on the basis of the characteristics, as specified. Admission to a charter school may not be determined according to the place

of residence of the pupil, or of his or her parent or legal guardian. Additionally, a charter school is required to admit all pupils who wish to attend the school. However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance is determined by a public random drawing. (Education Code § 47605)

## ANALYSIS

This bill:

1. Authorizes the Superintendent of Public Instruction (SPI) to study and report to the Legislature by December 31, 2016, the number of charter schools that are sited outside the boundaries of the chartering school district, as specified.
2. Provides that the report may make findings, including, but not limited to, all of the following:
  - A. The number and location of charter schools sited outside the boundaries of the chartering school district.
  - B. The reason that a charter school is located outside the boundaries of the chartering school district, as specified.
  - C. Whether the superintendent of the school district where the charter school is located was notified in advance of the charter petition approval, as specified.
3. Provides that the report may make recommendations, including, but not limited to, the authority of state or local entities to enforce charter law.
4. Provides that the report be submitted in compliance with Government Code § 9795.
5. Prohibits the governing board of a school district from authorizing a new charter school to locate outside the boundaries of the school district if the school district is assigned a negative certification, as specified.

## STAFF COMMENTS

1. ***Need for the bill.*** Existing law allows a charter school to locate a facility in a school district other than the one it is authorized by under a very limited number of circumstances. However, according to the author's office, when this occurs, school districts and charter schools often have differing interpretations of state law, difficulty in ensuring accountability, and lacking clear lines of communication. The author's office indicates there have been some high-profile cases in which cash-strapped school districts have authorized charter schools outside of the district in order to generate revenue through "oversight fees." While these situations have brought more attention to this issue, there is limited information regarding the number of charter schools located outside the boundaries of their authorizing district. This bill seeks to shed some light on the consequences,

whether intended or unintended, of charter schools locating outside the boundaries of their authorizing school districts.

2. ***Locating outside the boundaries of its authorizer.*** A charter school that is unable to locate within the jurisdiction of the authorizing school district may establish one site outside the boundaries of the school district, but within the same county, if the following conditions are satisfied:
  - A. The school district in which the charter school proposes to operate is notified in advance of the charter petition approval;
  - B. The county superintendent of schools and the Superintendent of Public Instruction (SPI) are notified of the location of the charter school before it commences operations; and either of the following circumstances exists:
    - i) The charter school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the charter school chooses to locate.
    - ii) The site is needed for temporary use during a construction or expansion project.
3. ***Negative certification.*** Local education agencies (LEAs) are required to file two reports during the fiscal year (interim reports) on the status of the LEA's fiscal health. The first report is due December 15 and the second report is due March 17. The interim reports must include a certification of whether or not the LEA is able to meet its financial obligations. The certifications are classified as positive, qualified, or negative. A positive certification is assigned when the district will meet its financial obligations for the current and two subsequent fiscal years. A qualified certification is assigned when the district may not meet its financial obligations for the current or two subsequent fiscal years. A negative certification is assigned when a district will be unable to meet its financial obligations for the remainder of the current year or for the subsequent fiscal year. This bill prohibits a school district with a negative certification from authorizing a charter school to be located outside their jurisdiction. This is intended to remove a potential incentive for a school district under financial distress to authorize charter schools as a means to generate revenue.

However, the bill does not apply to county offices of education that have a negative certification. As the bill moves forward, the author may wish to consider whether a county office of education with a negative certification should also be prohibited from authorizing a charter school located outside of its jurisdiction.

4. ***Would the bill affect existing schools?*** This bill's provisions would not apply retroactively (only prospectively) and hence, not affect any existing charter school that was previously authorized by a school district under negative certification. Additionally, the bill would not apply if a district is assigned a negative certification subsequent to authorizing a charter school. Further, the

bill's prohibition would not apply to a charter school operating within a school district's boundaries.

5. ***Current oversight for charter authorizers.*** Existing law requires a charter school to promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and to consult with these entities regarding any inquiries. Each chartering authority is also required to do all of the following with respect to a charter school under its authority:
  - A. Identify at least one staff member as a contact person for the charter school.
  - B. Visit each charter school annually.
  - C. Ensure that each charter school complies with all reports required of charter schools by law.
  - D. Monitor the fiscal condition of each charter school under its authority.
  - E. Provide timely notification to the State Department of Education if any of the following circumstances occur or will occur with regard to a charter school for which it is the chartering authority:
    - i) A renewal of the charter is granted or denied.
    - ii) The charter is revoked.
    - iii) The charter school will cease operation for any reason.

Existing law requires each charter school to annually prepare and submit reports to its chartering authority and county superintendent of schools or only to the county superintendent of schools if the county board of education is the chartering authority. These reports include a preliminary budget, interim financial reports, and audits. Current law also requires the chartering authority to use any financial information it obtains from the charter school, including, but not limited to, the reports required by this section, to assess the fiscal condition of the charter school.

6. ***Related and previous legislation.***

SB 1263 (Pavley, 2014) would have authorized a charter school to locate outside the jurisdiction of the chartering school district with written approval from the school district within the jurisdiction of which the charter school chooses to operate and for purposes of construction. SB 1263 bill passed this Committee but was eventually vetoed by the Governor with the following message:

***This bill seeks to reverse the application of a limited exemption in law that allows a charter school petitioner to locate a single school site outside of its authorizing school district, under specific circumstances. This bill would instead require the charter school to first get permission from the host district where it intends to locate.***

***Unfortunately, it appears that some districts and charter schools have gone against the spirit of the law and the exemption has instead become the rule. This has led to litigation and strained relationships among districts and charter schools.***

***While this bill attempts to solve a real problem, I am not comfortable with the retroactive language that could force existing charter schools to change locations.***

***I have assembled a team to examine this situation and come back with solutions that minimize disruption to students and parents.***

## **SUPPORT**

Castaic Union School District  
Newhall School District  
San Diego Unified School District  
Saugus Union School District  
Sulphur Springs School District  
William S. Hart Union High School District

## **OPPOSITION**

California Charter Schools Association  
Charter Schools Development Center

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