
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: SB 765 **Hearing Date:** April 26, 2017
Author: Wiener
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Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: School facilities: surplus real property: charter schools

SUMMARY

This bill requires school districts seeking to sell, lease, exchange, or jointly occupy property to first offer the property to a charter school, except property intended to be used for teacher housing in the least affordable counties of the state, as prescribed. Further, the bill specifies that proceeds from the sale or lease of surplus property to a charter school may be used by the school district for any one-time general fund purpose.

BACKGROUND

Existing law:

- 1) Establishes a mandatory process for school districts seeking to sell or lease surplus property. Specifically, school districts must:
 - a. Identify surplus property and convene an advisory committee to develop a district-wide policy and hold hearings on the use of surplus property. (Education Code § 17387 et seq.)
 - b. Declare publically their intent to sell or lease surplus property, with the governing board considering the advisory committee's recommendation that the property be declared surplus and declaring its intent to dispose of the property in a resolution. (EC § 17466)
 - c. Until June 30, 2016, offer to sell or lease real property to any charter school that has submitted a written request to the school district to be notified of surplus property offered for sale or lease by the school district and that meets certain other criteria. (EC § 17457.5)
 - d. For property subject to the Naylor Act (property that has been used entirely or partially for outdoor recreational or playground purposes), offer the property to the following entities in order of priority (EC § 17489):
 - i. Until June 30, 2016, a requesting charter school.
 - ii. Any city within which the land is located.
 - iii. Any park or recreation district within which the land is located.

- iv. Any regional park authority in the area where the land is located.
 - v. Any county within which the land may be situated.
- e. For sale or lease with option to purchase, offer the property to the following entities in order of priority (EC § 17464):
- i. Until June 30, 2016, a requesting charter school.
 - ii. To any park or recreation department of the city or county, any regional park authority having jurisdiction within the area, and to the State Resources Agency or any agency that may succeed to its powers.
 - iii. In writing, to the Director of General Services, the Regents of the University of California, the Trustees of the California State University, the county and city in which the property is situated.
 - iv. By public notice, to any public housing authority in the county in which the property is situated, and to any public district, public authority, public agency, public corporation, or any other political subdivision in the state, to the federal government, and to nonprofit charitable corporations, as specified.
- 2) Generally requires school district proceeds from the sale of property to be used for capital outlay costs and proceeds from the lease of property with option to purchase to be used for routine restricted maintenance. In addition, proceeds from the sale or lease with option to purchase may be used for one-time general fund purposes if the school district governing board and the State Allocation Board determines that the district has no anticipated need for additional sites or building construction for the next ten years, and the district has no major deferred maintenance.
- 3) Establishes the School Facility Program under which the state provides general obligation bond funding for various school construction projects.
- 4) Authorizes the State Allocation Board to establish a program that requires a local educational agency that sells real property to return any state funds that were provided to purchase or improve the property if the real property was purchased or improved within 10 years before the real property is sold, and if the property is not sold to a charter school, school district, county office of education, or an agency that will use the property exclusively for the delivery of child care and development services. (EC § 17462.3)
- 5) Until January 1, 2016, authorized school districts to deposit the proceeds from the sale of surplus property purchased entirely with local funds into the general fund of the school district and authorized the school district to use the proceeds for any one-time general fund purpose. (EC § 17463.7 (repealed))

- 6) Establishes the Field Act, requiring the Department of General Services under the police power of the state to supervise the design and construction of any school building or the reconstruction or alteration of, or addition to, any school building. (EC §17280)
- 7) Establishes Title 24 of the California Code of Regulations, the California Building Standards Code, containing general building design and construction requirements relating to fire and life safety, structural safety, and access compliance. These provisions provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures and certain equipment.

ANALYSIS

This bill:

- 1) Requires school districts seeking to sell or lease surplus property, enter into a lease or agreement to jointly occupy real property, or exchange real property with another person or private business, to first offer the property to a requesting charter school with at least 80 units of average daily attendance, except if the property is intended to be used for affordable teacher housing under the Teacher Housing Act of 2016 in a county with a Traditional Housing Affordability Index of 20 percent or less.
- 2) Requires a charter school that purchases or leases property under the bill to use the property exclusively to provide direct instruction or instructional support. If the charter school fails to do so, it is required to follow the existing process that applies to school districts seeking to sell or lease property.
- 3) Caps the price at which property can be sold by a school district to a charter school at the district's cost of acquisition, with cost-of-living adjustments, plus the cost of any construction undertaken, with construction cost adjustments. In no event can the price be less than 25 percent of the property's fair market value or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property.
- 4) Caps the annual rate for a school district leasing land to a charter school at five percent of the maximum sales price, with cost-of-living adjustments.
- 5) Specifies that the requirement of school districts to first offer property to charter schools only applies to real property identified by a school district as surplus after July 1, 2012.
- 6) Specifies that the construction, reconstruction, or alteration of, and addition to, a school building located on real property purchased by a charter school under the bill shall comply, at the discretion of the charter school, with either the Field Act or the California Building Standards Code.

- 7) Authorizes a school district to deposit the proceeds from the lease or sale of surplus real property leased or purchased by a charter school into the general fund of the school district, and may use the proceeds for any one-time general fund purpose.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “One of the biggest impediments to the deployment of charter schools is the difficulty of acquiring appropriate property without eminent domain, exemptions from zoning laws, or general obligation bonds. While Proposition 39 requires school districts to make facilities available to charter schools in some cases, eligibility is limited and such arrangements are often subject to prolonged litigation and delays. For charter schools lacking the resources to build or purchase an appropriate facility, options are limited and rarely result in a permanent location.

Two previous budget acts had granted charter schools the right of first refusal in acquiring school districts’ surplus facilities. Without incentives to surplus their unused property, however, school districts generally refused to make facilities available, and the acts were allowed to expire in 2016 due to disuse.

Due to enrollment reductions and the corresponding underutilization of facilities, many school districts across California own surplus property. Some school districts have worked to sell or lease their surplus to for-profit real estate developers before offering it to charter schools for educational purposes. In other cases, often despite mounting financial challenges, school districts simply let property sit empty.

Because school districts are limited in their use of sale or lease proceeds (revenues can only be used for capital outlay or non-recurring maintenance projects), there is frequently little incentive for districts to surplus property at all. As a result, charter schools are often refused use of surplus facilities even when offering market value or above. One recent example of misaligned incentives involved the Ross Valley Charter School in Fairfax, which had to delay opening for a year after the local school district rejected their market-rate offer to lease surplus property despite receiving no other bids. The unused facilities remain empty.”

- 2) ***Charter school facility funding.*** The state’s school facility funding system is a partnership, with the state providing school districts with dollar-for-dollar matching funds for school construction and modernization projects through the School Facility Program. Within that system, charter schools can face unique challenges, because: (1) unlike school districts, they cannot independently issue local general obligation bonds to finance their facility needs, (2) many are start-ups lacking access to public school facilities, resulting in the charter school leasing space in office buildings and other commercial sites, and (3) lending institutions tend to view charter schools as high-risk investments, making it difficult to obtain the loans necessary to finance school facilities. A number of statutory measures have aimed to address these challenges. After the passage of Proposition 39 in 2000, it became the legal responsibility of school districts to

make all reasonable efforts to house charter school students in facilities equivalent to those used to house district students. The state has also implemented several programs designed to increase funding for charter school facilities, including the Charter School Facilities Program, financed with state bond funds, the Charter School Revolving Loan Fund, the Charter School Facility Grant Program, and the federal Charter School Facilities Incentive Grants Program. Despite these funding mechanisms, charter advocates claim that an inadequate supply of school facilities may be the single largest stumbling block to the growth of charter schools.

- 3) ***Previous attempts to give charter schools first right of refusal more limited.*** While the state has previously required school districts to first offer their surplus property to requesting charter schools at a capped price, the requirement was temporary—first established only for the 2012-13 fiscal year, then extended through 2015-16. Supporters of this bill assert that, because the previous requirement was short-term and lacked financial incentive for school districts, the majority of district governing boards suspended all surplus property declarations. Unlike in the past, this bill would make the requirement permanent, and place fewer restrictions on how proceeds from a sale or lease to a charter school can be used. These changes are designed to address what charter school advocates characterize as stall tactics utilized in the past by school districts.

This bill also extends the charter offering requirement to school districts seeking to enter into a lease or agreement to jointly occupy real property, or exchange real property with another person or private business. These provisions could be problematic. Joint occupancy and property exchange agreements are commonly undertaken by school districts to address the unique needs of their local communities. For example, a school district may pursue a joint occupancy agreement to increase access to before or after school programs, library services, preschool programs, child care centers, or other programs that benefit students. Further, instances of school districts bartering real property with other jurisdictions can be beneficial to both parties, and enhance local communities.

If it is the desire of the Committee to pass this measure, ***staff recommends*** that the bill be amended to: (1) no longer require school districts seeking to exchange real property to first offer the property to a charter school, and (2) no longer apply the requirements of this bill to joint occupancy agreements, if those agreements are based on an assessment of the school district's educational programs and designed to increase access to programs that benefit students.

- 4) ***Are all school buildings covered by the Field Act?*** The Field Act, setting seismic safety standards for schools, has been a central element of the state's earthquake preparedness policy for decades. Plans must be prepared by a qualified person, the design must be checked by the Division of the State Architect, construction must be continuously inspected, the responsible architect or engineer must supervise the work and change the plans as necessary to accommodate field conditions, and reports must be submitted under penalty of perjury. Traditional public schools must comply with the Field Act. Charter schools that receive state funds to obtain or build their facilities must also comply with the Field Act. However, charter schools using their own funds to obtain or

build their facilities, or using funds from the Charter School Facility Grant Program, are exempt from the Field Act.

This bill would allow charter schools buying or leasing surplus property from a school district to comply, at the discretion of the charter school, with either the Field Act or the California Building Standards Code. However, one of the baseline conditions for charter schools obtaining a facility under this bill is that the charter school will use the property exclusively to provide direct instruction or instructional support, with school districts potentially reclaiming the facility if a charter school fails to comply. Given that facilities currently owned by school districts are already Field Act compliant, and that school districts may be in a position to reclaim a facility sold or leased to a charter school depending on its success, **staff recommends** that the bill be amended to delete the authority of a charter school to comply with either the Field Act or the California Building Standards Code.

- 5) **Affordable teacher housing.** The Teacher Housing Act of 2016 authorizes school districts to establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing. School districts can utilize these programs as an additional incentive for teachers to enter and stay in their schools. This bill specifies that school districts intending to use property to address the housing needs of teachers in a county with a Traditional Housing Affordability Index of 20 percent or less are not required to first offer those properties to requesting charter schools. The index referenced in this bill is produced quarterly by the California Association of Realtors, measuring the percentage of households that can afford to purchase a median priced home in the state and in each county. While allowing school districts to utilize their surplus property to address teacher housing may have merit, it is unclear why providing this discretion should be tied to a county-level metric that does not assess teacher availability. If it is the desire of the Committee to pass this measure, **staff recommends** that the bill be amended to allow school districts throughout the entire state to utilize surplus property for teacher housing before offering the property to a requesting charter school.

SUPPORT

California Charter School Association
Charter Schools Development Center
EdVoice
San Mateo Union High School District
West Contra Costa Unified School District School Board

OPPOSITION

California School Boards Association
California Teachers Association