
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No:	AB 276	Hearing Date:	June 20, 2018
Author:	Medina and Quirk-Silva		
Version:	April 10, 2018		
Urgency:	No	Fiscal:	No
Consultant:	Ian Johnson		

Subject: Charter schools.

NOTE: This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill subjects charter schools to a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school districts.

BACKGROUND

Existing law, the Charter Schools Act of 1992, provides for the establishment of charter schools in California for the purpose, among other things, of improving student learning and expanding learning experiences for pupils who are identified as academically low achieving. Existing law declares that charter schools are part of the public school system as defined in Article IX of the California Constitution and are "under the exclusive control of the officers of the public schools." A charter school is required to comply with statutes governing charter schools and all of the provisions set forth in its charter, but is otherwise exempt from most laws governing school districts except where specifically noted.

Existing law:

- 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) 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.
- 3) 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, including, but not limited to, those required by Education Code Sections 47604.32 and 47605(m). (EC § 47604)

Existing law requires state and local agencies to conduct business in meetings that are open to the public:

- 1) The Brown Act requires meetings of a local agency's board of directors to be open to the public. (Government Code § 54950 et seq.)
- 2) The Bagley-Keene Open Meeting Act requires meetings of state bodies to be open to the public. (GC § 11120)

The California Public Records Act declares that the public has a right to access information that concerns the people's business and provides that public records shall be available for inspection, except as provided by an express provision of law. (GC § 6250 and § 6253)

Existing law prohibits members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. (GC § 1090 et seq.)

The Political Reform Act of 1974, established by the voters through Proposition 9 in June 1974, requires public officials to carry out their duties in an unbiased manner, free from influence by outside interests, and to follow regulations during elections, as defined. The Political Reform Act also requires government agencies to adopt a conflict-of-interest code that requires designated employees of the agency to file an annual statement of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may be affected materially by a decision made, or participated in, by the designated employee by virtue of his or her position. (GC § 81000 et seq.)

The codes governing state corporations (including charter schools operated by non-profit or for-profit corporations) require no more than 49 percent of persons serving on the board of any corporation to be "interested persons." "Interested persons" is defined as either of the following: (a) any person currently compensated by the corporation for services rendered to it within the previous 12 months (excluding any reasonable compensation paid to a director); or, (b) any relative, as specified, of any such person. (Corporations Code § 5110 et seq.)

Existing law provides no specific requirement for charter school governing board conflict of interest policies.

ANALYSIS

This bill subjects charter schools to a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school districts. Specifically this bill subjects charter schools to the following:

- 1) The Brown Act, except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act is subject to the Bagley-Keene Open Meeting Act regardless of the authorizing entity.

- 2) The California Public Records Act.
- 3) The conflict-of-interest provisions commencing with Government Code Section 1090, except that an employee of a charter school may also serve as a member of the governing board. Such a member may not vote on, or influence other members regarding, matters affecting his or her employment.
- 4) The Political Reform Act.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The creation of charter schools was intended to catalyze locally-driven experimentation, with a structure that could produce better academic results for all children.

While charter schools are unique, they are publicly funded, yet they lack the same transparency and accountability requirements that govern other publicly funded educational institutions, outlined in California’s Education Code.

Furthermore, under the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act all meetings of a legislative or state body of a local agency must be open and public, all persons be permitted to attend, unless a closed session is authorized. The California Public Records Act requires state and local agencies to make their records publicly available. Existing law prohibits public officials from being financially interested in a contract made by them or by an

- 2) ***Public accountability laws.*** County boards of education and school district governing boards are required to conduct public meetings and make information available to the public, upon request. Members of these boards are also subject to conflict-of-interest statutes contained in Government Code 1090 and the Political Reform Act of 1974.
 - a) *Open meeting laws*—entitles the public to have access to meetings of multi-member public bodies. The Brown Act and the Bagley-Keene Act recognize the need to balance the public’s right to open government with the need for boards, on occasion, to have closed session discussions in certain matters such as personnel or litigation. By making charter schools subject to open meeting laws, charter school boards would need to provide advance notice of meetings and conduct their meetings in public.
 - b) *Public records*—the purpose of the California Public Records Act (CPRA) is to give the public an opportunity to monitor the functioning of their local and state government. The fundamental precept of CPRA is that governmental records are to be disclosed to the public when requested, unless there is a specific reason not to do so. The CPRA allows for certain exemptions, such as matters relating to individual privacy. Under CPRA, agencies must segregate or redact exempt information and disclose the remainder of the record.

- c) *The Political Reform Act*—The Political Reform Act of 1974 established the Fair Political Practices Commission (FPPC) to administer its requirements and receive annual conflict-of-interest statements. According to the FPPC, the California Public Records Act (CPRA) is designed to assure that public officials perform their duties impartially without bias because of personal financial interests or the interests of financial supporters; and that public officials disclose income and assets that could be affected by official actions and to assure that public officials disqualify themselves from participating in decisions when they have conflicts-of-interest.
- 3) **Government Code Section 1090.** This is the state’s central conflict-of-interest act. It applies to public officials from members of the Legislature to local officials and employees, including those of school districts. In a 1983 opinion, the Attorney General stated, “Section 1090 of the Government Code codifies the common law prohibition and the general policy of this state against public officials having a personal interest in contracts they make in their official capacity.” Charter school advocates have consistently expressed concern with subjecting charter schools to the provisions of Government Code 1090 because it could make it more difficult for philanthropic board members to provide financial assistance or low-interest loans or make facilities available to charter schools, which may happen during the start-up phase of a charter school. However, others argue that since charter schools are public schools and receive public funds, they have a fiduciary duty to taxpayers with regards to the use of those funds and should be subject to the same conflict-of-interest and disclosure requirements as traditional school districts.
- 4) **Corporations Code.** Statute governing corporations requires not more than 49 percent of persons serving on the board of any corporation to be interested persons. "Interested persons" is defined as either of the following: (1) any person currently compensated by the corporation for services rendered to it within the previous 12 months (excluding any reasonable compensation paid to a director); or, (2) any relative, as specified, of any such person. Advocates of charter schools contend they should abide by conflict of interest provisions related to corporations, not local educational agencies, due to the fact that some charter schools are operated by nonprofit corporations.
- 5) **Committee amendments.** As currently drafted, this bill would apply to charter schools the open meeting, public records, and political reform laws that currently apply to traditional public schools, without exception. However, this Committee has consistently passed bills that allow exceptions for charter schools, recognizing that (1) charter school campuses are not always located within the boundaries of a single school district for open meeting purposes, and (2) charter school board members are often a needed source of philanthropic support as it relates to existing conflict-of-interest provisions, and (3) certain modifications to the way in which charter schools comply with public records and political reform requirements are reasonable. Therefore, if it is the desire of the Committee to pass this measure, **staff recommends** that the bill be amended as follows:
- a) Amend subdivision (a) of Section 47604.1 to read “*The governing board of a local educational agency is subject to all of the following:*”

- b) Add the following after paragraph (2) of subdivision (a) of Section 47604.1:

“The chartering authority of a charter school that meets the criteria specified in clauses (A) and (B) shall be the custodian of records with regard to any request for information submitted to the charter school. Nothing in this paragraph shall be construed to allow a chartering authority to delay or obstruct access to records otherwise required under the California Public Records Act.

(A) The charter school is located on a federally recognized California Indian reservation or Rancheria.

(B) The charter school is operated by a nonprofit public benefit corporation that was formed on or before May 31, 2002, and is currently operated by a federally recognized California Indian tribe.”

- c) Add the following after subdivision (b) of Section 47604.1:

“(B) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, a board member or local agency executive, as defined in Government Code Section 3511.1, shall not be deemed to be interested in a contract if his or her interest is any of the following:

(A) That of a person who provides a loan to a public school due to a fiscal emergency, and who also serves as a member of the governing body or board of the charter school. A member of a governing body or board who provides a loan as described in this paragraph shall abstain from voting on, or influencing or attempting to influence another member of the governing body or board regarding, all matters affecting the loan agreement. The loan agreement shall not disqualify the member from serving on the governing body or board or from employment by the charter school if the governing body or board, before entering into the loan agreement, declares the existence of and describes the fiscal emergency by adopting a resolution at a public meeting. The governing body or board shall disclose and approve the loan agreement, including the terms of the loan, during a public meeting. This paragraph shall also apply to a member of the governing body or board or a local agency executive of the charter school who signs a guarantor agreement relative to a line of credit, provided that the funds from the line of credit shall not be accessed until a fiscal emergency is declared and described as required pursuant to this paragraph. The interest rate for the loan or line of credit described in this paragraph shall be 0 percent plus the applicable federal rate as set by the Internal Revenue Service. A charter school shall notify its authorizer of the loan within 48 hours of taking action to execute the loan.

(B) That of a person who leases real property to be used for public school purposes or who signs a guarantor agreement relative to the lease of real property to be used for charter school purposes, and who also serves as a

member of the governing body or board or as a local agency executive of the charter school, provided that the charter school is not charged more than \$1 per year plus the applicable federal rate as set by the Internal Revenue Service applied to the value of the lease for as long as the charter school uses the real property. A member of a governing body or board or local agency executive who is a lessor or guarantor as described in this paragraph shall abstain from voting on, or influencing or attempting to influence another member of the governing body or board regarding, all matters affecting the real property lease agreement. The governing body or board shall disclose and approve the real property lease agreement or guarantee, including the terms of the lease or guarantee during a public meeting.”

- d) Add the following after paragraph (4) of subdivision (a) of Section 47604.1:

“(A) A local educational agency shall be considered an agency and is the most decentralized level for purposes of adopting a conflict of interest code.”

6) ***Related legislation.***

AB 1478 (Jones-Sawyer) is identical to this measure and failed passage on the Assembly Floor.

SB 949 (Allen) amends the Government Code Section 1090 conflict-of-interest requirements and specifies that charter school governing boards are subject to the same requirements and exceptions as school district governing boards. This measure was set to be heard in the Senate Judiciary Committee on April 24, 2018, but was pulled at the request of the author.

SB 1216 (Glazer) subjects charter schools and their governing boards to the same open meeting and disclosure laws as traditional school districts, with specified exceptions. This measure was held in the Senate Judiciary Committee.

SUPPORT

California School Boards Association (co-sponsor)
 California Teachers Association (co-sponsor)
 American Civil Liberties Union of California
 American Federation of State, County and Municipal Employees
 Anaheim Secondary Teachers Association
 Association of California School Administrators
 California Association of Clerks and Election Officials
 California Federation of Teachers
 California School Employees Association
 California State Conference of the NAACP
 California State PTA
 Public Counsel
 San Diego Education Association
 School for Integrated Academics and Technologies

United Teachers Los Angeles

OPPOSITION

California Charter Schools Association
EdVoice

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