
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 709
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Urgency: No
Consultant: Lenin Del Castillo
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Fiscal: No

Subject: Charter schools

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

SUMMARY

This bill requires that charter schools be subject to a variety of the same open meeting, conflict-of-interest and disclosure laws as traditional school districts, including the Ralph M. Brown Act (Brown Act), the California Public Records Act, the Political Reform Act of 1974, and the state's primary conflict-of-interest provisions—Government Code § 1090.

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. (Education Code § 47601 et seq.)

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. (Government Code § 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.)

ANALYSIS

This bill:

- 1) Provides that a charter school is subject to all of the following:
 - a) The Ralph M. Brown Act, except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act is subject to that Act regardless of the authorizing entity.
 - b) The California Public Records Act.
 - c) Provisions of the Government Code that prohibit government officers or employees from being financially interested in contracts or purchases made by them in their official capacity.
 - d) The Political Reform Act of 1974. For purposes of Government Code § 81000, a charter school shall be considered an agency.

Provides that an employee of a charter school is not disqualified because of that employment status from also serving as a member of the governing body of the charter school and that such a member shall abstain from voting on, or influencing or attempting to influence another member of the governing body concerning, all matters uniquely affecting his or her own employment.

- 2) Specifies the intent of the Legislature to do both of the following:
 - a) Ensure that charter school governance is transparent.
 - b) Ensure that monitoring and oversight of charter schools is conducted to protect the public interest.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, though charter schools are publicly funded, they were established with the intent to operate separately from the current school structure as a way of allowing for more creativity in developing solutions to historic challenges in typical educational settings. However, there are several provisions of law that specifically relate to good governance and transparency where charter schools should be required to comply. The bill is intended to require charter schools to be more transparent and accountable to the public.

- 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. Under the provisions of this bill, charter schools would need to respond to requests for information that is not private in nature.

 - c) ***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 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. This bill would result in charter school board members and designated employees having to disclose their financial interests in annual statements filed with the FPPC.

 - d) ***Government Code § 1090*** 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.” In addition to prohibiting public officials from having personal financial interest in a contract made in an official capacity, this Act specifies that such contracts are void and cannot be enforced. Opponents of the bill have 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, supporters of the bill argue that since charter schools are considered to be 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.

- 3) ***No substantive changes from previous similar legislation.*** As referenced below under Comment No. 5, the Governor vetoed a nearly identical measure in 2014—AB 913 (Chau). This measure does not include any substantive changes that seek to address the Governor’s veto message which the Committee may wish to consider as part of its review.
- 4) ***Fiscal impact.*** Staff notes that Legislative Counsel has identified this bill as non-fiscal. However, the Senate Rules Committee has referred the bill to the Senate Appropriations Committee, at their request, as well as to the Judiciary Committee.
- 5) ***Related and prior legislation.***

SB 1317 (Huff, 2014) proposed to require that charter schools be subject to a variety of the same open meeting, conflict-of-interest and disclosure laws as school districts, including the Ralph M. Brown Act (Brown Act), the California Public Records Act, and the Political Reform Act of 1974. This bill failed passage in the Senate Appropriations Committee.

AB 913 (Chau, 2014) was substantially similar to this bill and proposed to subject charter schools to a variety of the same open meetings, conflict-of-interest, and disclosure laws. AB 913 was vetoed by the Governor with the following message:

“Starting a charter school requires the strong commitment of dedicated individuals willing to serve on a governing board. While I support transparency, this bill goes further than simply addressing issues of potential conflicts-of-interest and goes too far in prescribing how these boards must operate.”

AB 360 (Brownley, 2011), similar to this bill, required charter schools to comply with the same conflict-of-interest requirements as school district governing board members. AB 360 died on the Assembly inactive file on concurrence.

AB 572 (Brownley, 2010), also similar to this bill, would have required charter schools to comply with the Brown Act, the California Public Records Act, and the

Political Reform Act. AB 572 was vetoed by Governor Schwarzenegger with the following message:

“Charter school educators have proven that poverty is not destiny for students that attend public schools in California. Repeatedly, charter schools with high proportions of disadvantaged students are among the highest performing public schools in California. Any attempt to regulate charter schools with incoherent and inconsistent cross-references to other statutes is simply misguided. Parents do not need renewed faith in charter schools as suggested in this bill. On the contrary, tens of thousands of parents in California have children on waiting lists to attend a public charter school. Legislation expressing findings and intent to provide “greater autonomy to charter schools” may be well intended at first glance. A careful reading of the bill reveals that the proposed changes apply new and contradictory requirements, which would put hundreds of schools immediately out of compliance, making it obvious that it is simply another veiled attempt to discourage competition and stifle efforts to aid the expansion of charter schools.”

SUPPORT

Association of California School Administrators
California Association of School Business Officials
California Federation of Teachers
California Labor Federation
California School Boards Association
California School Employees Association (co-sponsor)
California State PTA
California Teachers Association (co-sponsor)
Charter Schools Development Center
LIUNA Local 777
Public Advocates
San Francisco Unified School District
School Employers Association of California

OPPOSITION

California Charter Schools Association
Charter Schools Development Center
EdVoice
KIPP LA Schools
Letters from individuals

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