
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: SB 126 **Hearing Date:** February 19, 2019
Author: Leyva & O'Donnell
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Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: Charter Schools.

SUMMARY

This bill requires charter school governing boards to comply with a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school district governing boards.

BACKGROUND

Existing law:

- 1) Provides, pursuant to the Charter Schools Act of 1992, 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.
- 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, including, but not limited to, those required by Education Code Sections 47604.32 and 47605(m). (Education Code § 47604)
- 5) Requires state and local agencies to conduct business in meetings that are open to the public. The Brown Act requires meetings of a local agency’s board of directors to be open to the public. (Government Code § 54950 et seq.) The

Bagley-Keene Open Meeting Act requires meetings of state bodies to be open to the public. (GC § 11120)

- 6) Declares, pursuant to the California Public Records Act, 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)
- 7) 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.)
- 8) Requires, pursuant to the Political Reform Act of 1974 established by the voters through Proposition 9 in June 1974, 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.)
- 9) Requires, pursuant to the codes governing state corporations (including charter schools operated by non-profit or for-profit corporations), 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.)
- 10) Provides no specific requirement for charter school governing board conflict of interest policies.

ANALYSIS

This bill:

- 1) Subjects charter schools and entities managing charter schools to a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school districts. Specifically, this bill subjects a charter school and an entity managing a charter school to all of the following:
 - a) 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. The governing body of one charter school shall meet within the physical boundaries of the county in which the charter school is located. A two-

way teleconference location shall be established at each school site and each resource center. The governing body of an entity managing one or more charter schools shall meet within the physical boundaries of the county in which the charter school or schools are located. A two-way teleconference location shall be established at each school site and each resource center, with audio and/or video recording posted on the website of each school.

- b) The California Public Records Act, except that the chartering authority of a charter school that is located on a federally recognized California Indian reservation operated by a nonprofit corporation formed on or before May 31, 2002 shall be the custodian of records with regard to any request for information submitted to the charter school.
 - c) The conflict-of-interest provisions commencing with Government Code Section 1090, except for 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. Such a member of the governing body of a charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting his or her own employment.
 - d) The Political Reform Act, with a local educational agency, including a charter school and an entity managing a charter school, considered the most decentralized level for purposes of adopting a conflict-of-interest code.
- 2) Defines, for purposes of the acts enumerated above, an “entity managing a charter school” as any non-profit public benefit corporation that operates a charter school consistent with the definition in Education Code Section 47604. An entity that is not authorized to operate a charter school under Section 47604 is not an “entity managing a charter school” solely because it contracts with a charter school to provide to that charter school goods or task-related services that are performed at the direction of the charter school governing board and for which the charter school governing body retains ultimate decision-making authority.
 - 3) Specifies that, to the extent that a governing body of a charter school, or an entity managing a charter school, engages in activities that are not related to a charter school authorized to operate in California, the acts enumerated above shall not apply to those unrelated activities.
 - 4) Specifies that a meeting of the governing body of a charter school to discuss items related to the operation of the charter school shall not include discussion on any item regarding an activity of the governing body that is not related to the operation of the charter school.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The Charter Schools Act of 1992 was adopted to catalyze locally-driven experimentation, with a structure that could produce better academic results and then be expanded to all California students. 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.

There has been a longstanding debate within the education community about whether charter school board members are subject to the same open meeting, public disclosure, and conflict-of-interest requirements that school district board members already comply with under state law. The state’s Attorney General (AG) recently published an opinion stating “yes” these good government laws apply to charter school governing boards. The AG expressly rejected arguments that charter schools operated as, or by, nonprofit public benefit corporations are entitled to different treatment under these laws.

While the AG opinion greatly influences the debate about whether or not these laws apply to charter school governing boards, it should be noted that the opinion is only advisory and not legally binding on courts, agencies, or individuals. Absent legislation codifying the AG opinion, we will continue to see disputes over how these laws apply to charter schools.”

- 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 to administer its requirements and receive annual conflict-of-interest statements. According to the Fair

Political Practices Commission, the California Public Records Act 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." Violations of Section 1090 carry serious penalties, including the possibility of felony charges. In addition, contracts made in violation of Section 1090 are generally deemed to be null and void.

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) **Recent Attorney General Opinion on Charter Schools.** On December 26, 2018, the state's Attorney General published an opinion on the following questions:
- a) Are a California charter school and its governing body subject to the Ralph M. Brown Act and the California Public Records Act?
 - b) Is a California charter school's governing body subject to Government Code 1090?
 - c) Is a California charter school's governing body subject to the Political Reform Act of 1974?

- d) Are the books and records of a California charter school subject to review and inspection by the grand jury?

These questions have been debated since the adoption of the Charter Schools Act in 1992, and the focus of several failed pieces of legislation in recent years. The Attorney General (AG) answered each question with “yes”—with one narrow exception: that the records of State-approved charter schools are not subject to grand jury review.

Some charter schools are already complying with these laws because of enforcement by their authorizers. However, other charter schools have not agreed to comply with these laws—in particular Government Code 1090. Key to the AG’s analysis is the fact that charter schools are funded by taxpayer dollars and considered “school districts” for funding purposes.

Opinions of the California AG are advisory only and are not legally binding on courts, agencies, or individuals. However, they are afforded great respect and weight by the courts and often indicate how a judge may rule on the issues if presented in court.

6) ***Previous Legislation.***

AB 276 (Medina, 2018) would have subjected 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 on the Senate Floor.

SB 949 (Allen, 2018) would have amended 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, 2018) would have subjected 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

American Federation of State, County and Municipal Employees, Council 57
 Association of California School Administrators
 California County Superintendents Educational Services Association
 California Federation of Teachers
 California School Boards Association
 California Teachers Association
 National Association for the Advancement of Colored People
 Public Advocates
 Riverside County Office of Education

San Diego Unified School District
School for Integrated Academics and Technologies
Small School Districts Association

OPPOSITION

None received

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