
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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Subject: Charter schools: petitions: chartering authority duties: oversight costs: Legislative Analyst Report

SUMMARY

This bill (1) expands the existing oversight requirements of, and increases the oversight fees that can be charged by, charter school authorizers, (2) changes the charter petition review process for school district and county office of education governing boards, (3) adds special education and fiscal and business operations content to the information that must be included in a charter petition, (4) expands the authority of a governing board to deny charter petitions, and (5) requires the Legislative Analyst to submit a report to the Legislature on special education services by charter schools.

BACKGROUND

Existing law:

- 1) Establishes the Charter Schools Act of 1992, providing 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.
- 2) Authorizes anyone to develop, circulate, and submit a petition to establish a charter school, and requires charter developers to collect certain signatures in support of the petition, as specified. A governing board must grant a charter if it is satisfied that the charter is consistent with sound educational practice. A governing board is precluded from denying a petition unless it makes written factual findings that the petition fails to meet one or more of the following:
 - a) The charter school presents an unsound educational program.
 - b) The petitioners are demonstrably unlikely to successfully implement the program described in the petition.
 - c) The petition does not contain the number of required signatures.
 - d) The petition does not contain an affirmation it will be nonsectarian, nondiscriminatory, shall not charge tuition, and other affirmations, as specified.

- e) The petition does not contain reasonably comprehensive descriptions of the 16 required elements of a charter petition.
- 3) Authorizes a petitioner to submit a petition directly to a county board of education to establish a charter school that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services.
- 4) Authorizes a county board of education to approve a petition for the establishment of a countywide charter school that operates at one or more sites within the geographic boundaries of the county that provides instructional services that are not provided by a county office of education.
- 5) Establishes an appeals process for charter schools. Under current law, if a school district governing board denies a petition, a petitioner may appeal to the county board of education. If the county board of education also denies the petition, the petitioner is authorized to submit the petition to the State Board of Education (SBE) for approval.
- 6) Authorizes the SBE to approve petitions for state charter schools that operate at multiple sites throughout the state.
- 7) Allows a chartering authority to charge for the actual costs of supervisorial oversight of a charter school, not to exceed one percent of the revenue of the charter school, except that chartering authorities providing rent-free facilities may charge up to three percent of the revenue of the charter school. These caps do not prevent the charter school from separately purchasing administrative or other services from the chartering authority or any other source.

ANALYSIS

This bill (1) expands the existing oversight requirements of, and increases the oversight fees that can be charged by, charter school authorizers, (2) changes the charter petition review process for school district and county office of education governing boards, (3) adds special education and fiscal and business operations content to the information that must be included in a charter petition, (4) expands the authority of a governing board to deny charter petitions, and (5) requires the Legislative Analyst to submit a report to the Legislature on special education services by charter schools.

Specifically, this bill:

- 1) Expands the existing requirements of a charter school authorizer as follows:
 - a) Clarifies that monitoring the fiscal condition of each charter school includes monitoring each of the following fiscal and business operations:
 - i) Pupil attendance, including verifying that the projections of enrollment and attendance of the charter school are realistic.

- ii) Cash receipts and cashflow, including verifying that regular projections are done to ensure sufficient funds are available to meet the charter school's financial obligations.
 - iii) Verifying the charter school has established policies and procedures regarding the budget, short- and long-term debt, and accounting and financial reporting.
 - iv) Verifying that the charter school maintains prudent reserves for economic uncertainties.
 - b) Requires charter school authorizers to monitor the academic performance of each charter school under its authority, including, but not limited to, performance of pupils on state assessments and the results from the California School Dashboard.
 - c) Requires charter school authorizers to monitor the governance of each charter school under its authority.
- 2) Extends the maximum duration of a charter petition review from 60 days to 90 schooldays. Further, the bill requires a public hearing be conducted on the provisions of the charter within 30 schooldays after an authorizer receives a petition, requires a capacity interview of the petitioner within 30 schooldays of the public hearing, and requires the board to either grant or deny the charter within 30 schooldays of the capacity interview.
- 3) Requires all charter petitions to include a reasonably comprehensive description of how the charter school will (1) achieve a balance of pupils receiving special education services that is reflective of the school district's jurisdiction, and (2) soundly manage its business and financial operations.
- 4) Adds the following to the list of findings that a school district or county office of education governing board can make as the basis for denying a charter petition:
- a) The charter school is unlikely to meet its financial obligations, maintain a positive fund balance, and maintain a prudent level of reserves for the duration of the charter agreement.
 - b) The governing board determines, based on justification, that approving the charter school would not be in the best interests of the pupils of the community.
- 5) Increases the maximum fee that a chartering authority can charge for the actual costs of supervisory oversight of a charter school as follows:
- a) From one percent to three percent of the revenue of the charter school.
 - b) From three percent to six percent of the revenue of the charter school if the chartering authority is providing the charter school with rent-free facilities.

- 6) Requires the Legislative Analyst, by July 1, 2020, to submit a report to the Legislature on special education services for pupils with disabilities in charter schools. The report must include policy recommendations and consider how the demographics and total population of pupils with disabilities at charter schools compare to the demographics and total population of pupils with disabilities at neighborhood public schools, including a comparison of pupils in each of the 13 disability categories identified under federal law, and how the differences in demographics of pupils with disabilities at charter schools and neighborhood public schools impact special education provided to California pupils.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “First established in 1992, the charter school act originally set a cap of 100 locally-driven experiment schools. Today, the charter school industry in California has grown to more than 1,200 charter schools. The system seems to be shifting into one that prioritizes growth opportunities for charter school operators over the educational opportunities for all students.”

“Current law ties school board member’s hands and forces them to approve schools without providing the time or resources to fully examine the petition.”

“Increasing fiscal transparency in petitions and empowering local school boards to make the best decision for their districts will lead to better outcomes for students. Additionally, providing meaningful oversight will lead to meaningful feedback and lead to continuous improvement.”

“The state’s priority must be to ensure the needs of all children are met, and more information is needed on the current differences in services for students with special education needs between neighborhood public schools and charter schools.”

- 2) ***Charter school overview.*** Charter schools are public schools that provide instruction in any combination of grades kindergarten through 12. In 1992, the state enacted legislation allowing charter schools in California to offer parents an alternative to traditional public schools and encourage local leaders to experiment with new educational programs. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to school districts. Generally, all charter schools must (1) provide nonsectarian instruction, (2) charge no tuition, and (3) admit all interested students up to school capacity. To both open and continue operating, a charter school must have an approved charter setting forth a comprehensive vision for the school.

Over the last decade, charter school enrollment has grown steadily. In 2006, 560 charter schools served about 200,000 students (3.5 percent of the state’s K-12 enrollment). By 2016, over 1,200 charter schools served about 580,000 students (almost 10 percent of the state’s K-12 enrollment). Most charter schools are small, compared to traditional public schools, and located in urban areas. The

median charter school enrolls about 250 students, whereas the median traditional public school enrolls about 525 students. Together, nine Bay Area counties, Los Angeles County, and San Diego County account for more than 60 percent of all charter schools and charter school enrollment in the state.

Charter schools can be conversions of existing public schools or new startup schools. About 15 percent of charter schools are conversions, with the remaining 85 percent being startups. Of these, about 80 percent offer traditional, classroom-based instruction and 20 percent offer some form of independent study, such as distance learning or home study.

- 3) ***Charter school authorization.*** Groups that are interested in creating a charter school must adhere to a state prescribed application process. A charter petition must be signed by a sufficient number of interested teachers or parents and must set forth a comprehensive vision for the school, including its educational program, student outcome measurements, student discipline policy, employee policies, governance structure, and fiscal plans. Petitions must be submitted to an authorizer, which in most cases is the school district in which the charter school will be located. Groups can also submit petitions to the county office of education or the state for charter schools that will serve multiple districts or multiple counties.

Existing law requires an authorizer to approve a charter application, unless it makes a written finding that: (1) the proposed educational program is unsound, (2) the petitioners are unlikely to successfully implement their program, (3) there are insufficient signatures, (4) the proposed school violates one of the three basic requirements for all charter schools, or (5) the petition does not include a reasonably comprehensive vision for the school. A charter school that is rejected by its district may appeal to its county office of education, and if rejected there, may appeal to the state.

- 4) ***Charter school oversight.*** A charter school must promptly respond to all reasonable inquiries 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. Each chartering authority is also required to: (1) identify at least one staff member as a contact person for the charter school, (2) visit each charter school annually, (3) ensure that each charter school complies with reporting requirements, (4) monitor the fiscal condition of each charter school under its authority, and (5) provide timely notification to the State Department of Education if an existing charter is renewed, revoked, or ceased. Charter schools must annually submit reports to its chartering authority and county superintendent of schools including budget information, interim financial reports, and audits. The chartering authority is tasked with using any financial information it obtains from the charter school to assess the fiscal condition of the charter school.
- 5) ***Findings and recommendations from recent informational hearing.*** On October 23, 2017, this Committee held an informational hearing on charter school authorization in California. The hearing covered the authorization process, with perspectives shared by charter school practitioners, charter

authorizers, the Legislative Analyst, and the state's Fiscal Crisis Management and Assistance Team.

Notable findings and recommendations from the panelists were as follows:

- a) *California has many authorizers each overseeing few charter schools, making it difficult to develop systemic authorizer expertise.* California represents 1/3 of all authorizers and 18 percent of all charter schools in the nation. Of the state's authorizers, 90 percent are school districts, with 85 percent overseeing five or fewer charter schools (half oversee only one charter school).
- b) *Charter schools usually close for fiscal reasons.* More than 80 percent of charter school closures are due to financial mismanagement.
- c) *Current oversight fee levels do not support meaningful oversight.* For most authorizers, the oversight fees paid by charter schools do not provide substantial resources, because most authorizers oversee fewer than five charter schools that tend to be small. This prohibits most authorizers from staffing full-time charter offices, resulting in oversight engagement that is sporadic, distracted, and a contributor to staff turnover for the authorizer.
- d) *Charter schools have changed over time, but the approval process has not.* The growth of the charter school sector has brought multi-school networks operated by charter management organizations and more blended learning models. Yet, the charter petition and the approval process has not changed. The content found in petitions has become "boilerplate", undermining the purpose and value of the approval process. Further, petitions lack sufficient financial, operational, and governance information for authorizers to effectively determine which petitioners are "demonstrably unlikely to successfully implement the program".
- e) *Meaningful upfront charter evaluations are critical because schools that do not start strong rarely improve.* Research shows that charter schools that begin with unclear plans and insufficient resources almost never improve. However, the schools may not be forced to close for two or three years, exacerbating the negative impact on students, parents, and taxpayers. This makes the quality of the information in petitions and the capacity of authorizers to do meaningful evaluations on the front end even more important.
- f) *Charter authorizers can face timeline challenges.* To evaluate a petition effectively, authorizers need staff with knowledge about education, assessments, special education, English-learners, school finance, human resources, and governance. With no control of when petitions will be submitted, meeting the current review timelines can be challenging for authorizers. For example, a petition that is submitted in early November gives an authorizer roughly 20 working days to arrange its multi-disciplinary team, review the petition, and present a report to its board.

- g) *Charter renewal process does not reconcile initial promises with results.* When a charter school applies for renewal, it simply updates its original petition, even though what is most important is how well the charter school performed on the promises that were made. This represents a disconnect between the statutory standard for charter renewal and the state's new continuous improvement accountability structure.
 - h) *Conflicts of interest can influence charter petition decisions.* When evaluating charter petitions, district officials can, at times, be motivated by retaining or recapturing student enrollment, even if their district schools are underperforming. This inherent conflict speaks to the value of the current appeal process.
 - i) *Capacity interviews should be required.* While some authorizers already conduct capacity interviews, panelists stated that the increasingly boilerplate nature of charter petitions warrants that these interviews be part of the statutory process. These interviews are now viewed as the only effective way of truly assessing petitioner capacity.
 - j) *The functions of annual oversight should be clarified in law.* Existing law requires authorizers to monitor the fiscal condition of charter schools, but it does not say how. Because the details are left to be determined by each authorizer, there is wide variety in what oversight looks like throughout the state. Some authorizers are quite involved (bordering on intrusive) and others do little more than process paperwork.
- 6) ***Several of the findings and recommendations are reflected in this bill.*** As currently drafted, this bill responds to several of the findings and recommendations summarized above. Specifically, the bill: (1) clarifies the responsibilities of authorizers, (2) requires capacity interviews, (3) extends the petition review timeline, (4) adds fiscal and business operations content to the charter petition, and (5) increases the oversight fees that authorizers can charge. Staff's assessment of each of these components of the bill are as follows:
- a) *Clarifying the responsibilities of authorizers could be helpful.* The bill effectively identifies the functions of oversight by authorizers, including specific fiscal and business operations, academic indicators, and governance. Each of the components listed in the bill are considered best practices by those entities supporting high quality authorization and oversight nationwide.
 - b) *Capacity interviews are needed now more than ever.* Contrary to when the Charter Act was written, we now have research confirming that charter schools are far more likely to succeed when their leadership has broad experience and expertise in curriculum, instruction, business operations, finance, administration, and governance.
 - c) *Changes to the petition review timeline may go too far.* In response to concerns about timeline challenges for authorizers, this bill would extend the petition review timeline from up to 60 calendar days to up to 90

“schooldays”. Providing 30 additional days is intended to accommodate mandatory capacity interviews and give authorizers more time for review. Changing the timeline methodology from calendar days to schooldays is intended to address the unique challenges for authorizers that receive petitions over the summer or during holidays, when personnel may not be available. Opponents of this bill argue that these changes, which would more than double the current timeline, are excessive. To address the concerns on both sides, *staff recommends* that the bill be amended to (1) extend the timeline by only 15 days to accommodate capacity interviews, (2) preserve the current calendar day methodology, and (3) require charter school petitioners to provide notice (e.g. a letter of intent) to the authorizer no less than 30 days before submitting a petition.

- d) *Adding fiscal and business information to the petition is appropriate.* While over 80 percent of charter schools close to due fiscal mismanagement, no elements of the petition address adequate budgets or assumptions to review fiscal solvency. Given that charter petitions serve as both a school application and a contract for performance with the authorizer, it is appropriate for this information to be included.
- e) *More data on oversight fees may be warranted before they are increased.* While authorizers claim that the current fee structure cannot support meaningful oversight, little data justifying this claim is available—some school districts do not track the actual costs of their oversight activities and the fees charged are not audited to ensure compliance with the caps. This lack of data makes it difficult to assess the sufficiency of the funding. Other concerns with the current fee structure are an inappropriate link between facility fees and oversight fees, economies of scale differences among authorizers not being accounted for, and charter school size not being the most appropriate fee basis. Still others claim that the existing oversight fee caps are meaningless because statute states that the caps “do not prevent the charter school from separately purchasing administrative or other services from the chartering authority”. Given these concerns, and the lack of empirical data in this area, *staff recommends* that the increase to oversight fees be deleted.

- 7) ***Charter school balance of students receiving special education services.*** The author states that “Neighborhood schools typically serve a larger and more diverse population of students with special education needs. This often requires more intensive support and puts additional funding strains on neighborhood public schools.”

Statewide data, as reported by special education local plan areas (SELPAs), confirms that charter-only SELPAs tend to serve proportionally fewer students with disabilities than most traditional consortia or single-district SELPAs. It is not clear from the data, however, what causes this trend and what the impacts are on local communities and the state. Some speculate that charter schools engage in admissions or counseling practices that exclude or push out special education students. However, this theory does not always take into account the impact that the state’s regionalized system, and that charter schools may elect to

have their authorizer provide special education services on their behalf, can have on special education data. Conversely, because charter schools tend to be smaller and oftentimes focused on specialized pedagogy, parents of students with disabilities may be deciding that charter schools are not the right place for their kids.

The bill's requirement for the Legislative Analyst to submit a report to the Legislature on special education services for pupils with disabilities in charter schools is appropriate and may inform future policy changes in this area. However, if it is the will of the Committee to pass this measure, *staff recommends* removing the requirement that charter petitions address how the school will achieve a balance of pupils receiving special education services that is reflective of the local school district.

- 8) ***Should school board members be given more discretion?*** According to the author, "School board members are elected to be responsible stakeholders in determining the public educational programs that will best serve the students in their district. However, local school boards are not given the tools to conduct thorough reviews of a petition and ensure positive outcomes for their students. They are given limited options to deny a petition, and because the way the law is written often must approve schools even if they feel it is not in the best interest of their students."

This bill would allow school boards to deny a charter petition if they determine, based on justification, that approving the charter school would not be in the best interest of the pupils of the community.

Supporters of this bill argue that current charter school law is broken, requiring approval of new schools even when these new schools have a negative fiscal impact on public neighborhood schools or on the community. Supporters also note that, because of the significant investment in time and resources reviewing proposed charter school petitions prior to accepting or rejecting a petition, the local school board is best equipped to make decisions regarding education programs and needs within its jurisdiction.

Opponents of this bill argue that the language included in this bill is extremely vague, would remove any objectivity currently in the law on charter approvals, and appear to allow denial of a charter school based on fiscal impact to the district or other issues unrelated to the quality and viability of the proposed charter. The opponents believe that charter school petitions should be judged on (1) their merit and ability to provide a sound educational program to students, and (2) interest from the community in having this school option—not based on vague and undefined criteria that may have nothing to do with the quality or viability of the proposed program.

SUPPORT

California Federation of Teachers (co-sponsor)
 California Teachers Association (co-sponsor)
 California School Boards Association

California School Employees Association
California State Parent Teacher Association

OPPOSITION

Alliance College-Ready Public Schools
Alpha: Blanca Alvarado Middle School
Alpha: Cindy Avitia High School
Alpha: Cornerstone Academy
Alpha: Jose Hernandez Middle School
APLUS+ Network Association
ASA Charter School
Aspen Public Schools
Audeo Charter School
Ballington Academy for the Arts and Sciences
Bay Area Technology School
Baypoint Preparatory Academy
Bella Mente Montessori Academy
Bright Star Schools
California Charter Schools Association
Charter Community of Silicon Valley
Charter School of Morgan Hill
Charter Schools Development Center
City Charter Schools
Compass Charter Schools
Connecting Waters Charter Schools
Desert Trails Preparatory Academy
EdVoice
Excelsior Charter School
Girls Athletic Leadership School Los Angeles
Granada Hills Charter High School
Great Public Schools Now
Greater San Diego Academy
Green Dot Public Schools California
Grimmway Schools
Highland Academy Charter School
ICEF Public Schools
Innovations Academy
James Jordan Middle School
John Muir Charter Schools
Kairos Public Schools
Kavod Elementary Charter
KIPP Adelante Preparatory Academy
KIPP Bay Area Schools
KIPP LA Public Schools
Lake County International Charter School
Leadership High School
Learn 4 Life
Linscott Charter School
Literacy First Charter Schools

Los Angeles Leadership Academy
Magnolia Public Schools
Navigator Schools
Newman Leadership Academy
Olive Grove Charter School
Opportunities for Learning Public Charter Schools
Options for Youth Public Charter Schools
Orange County Academy of Sciences and Arts
Palisades Charter High School
Parent Revolution
Port of Los Angeles Charter High School
Public Safety Academy of San Bernardino
Reframe Labs
Rocketship Public Schools
San Diego Cooperative Charter School
Santa Rose Academy
Santiago Charter Middle School
Shasta Charter Academy
SOAR Charter Academy
Summit Public Schools
STEM Prep Schools
Sycamore Valley Academy
The Charter School of San Diego
The Classical Academies
The Preuss School UC San Diego
Tree of Life Charter School
Union Street Charter
Ventura Charter School
Vista Springs Charter School
West County Charter School
YPI Charter Schools

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