

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 709 (Gipson) – As Introduced February 25, 2015

SUBJECT: Charter schools

SUMMARY: Requires charter schools to comply with the same conflict of interest requirements as school districts. Specifically, **this bill:**

- 1) Declares charter schools are subject to all of the following:
 - a) The Ralph M. Brown Act (Brown Act), except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act (BKOMA) is subject to that Act;
 - b) The California Public Records Act (CPRA);
 - c) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code; and,
 - d) The Political Reform Act of 1974 (PRA). Specifies that a charter school shall be considered an agency as it relates to this Act.
- 2) Specifies this measure does not prohibit an employee of a charter school from serving as a member of the governing body of that charter school; and, specifies such a member of the governing body of a charter school shall abstain from voting on all matters affecting his or her own employment.

EXISTING LAW pertaining to charter schools:

- 1) Provides no specific requirement for charter school governing board conflict of interest policies.
- 2) Deems charter schools as school districts for the purposes of receiving state education funds.

EXISTING LAW pertaining to school districts:

- 1) Specifies that Members of the Legislature, state, county, district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. (Government Code 1090)
- 2) Specifies that an employee of a school district (or local agency) may not be sworn into office as an elected or appointed member of that school district's (or local agency's) governing board unless and until he/she resigns as an employee. (Education Code 35107)
- 3) Requires members of school district governing boards and designated employees of the school district to file statements of financial interest according to the Political Reform Act. (Government Code 87100 et. seq.)

- 4) Requires a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency to comply with the Brown Act. (Government Code 54950 et. seq.)
- 5) Requires a county; city; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or a board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity; or, receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency to comply with the California Public Records Act. (Government Code 6250 et. seq.)

FISCAL EFFECT: This bill is keyed non-fiscal.

COMMENTS: This bill requires charter school governing body members to comply with substantially similar conflict of interest policies by which school district governing board members currently abide. Recent news reports of charter school governing body members engaging in inappropriate financial mismanagement have highlighted the need for charter school conflict of interest laws to be clarified. Currently, these investigations can take many months to resolve partly due to the fact that charter school governing body members and designated employees do not consistently file an annual statement of economic interest, which makes public any potential conflicts of interest that individual may have in their official capacity. While charter schools are given more autonomy than public schools, their governing bodies have authority over public funds to be used for the educational benefit of their students. Charter school governing bodies should be held to the same conflict of interest standards as school district governing boards.

This bill requires charter school governing bodies to file statements of economic interest according to the Political Reform Act; specifies that charter school governing body members may *not* be financially interested in any decision made by the governing body; requires charter schools to comply with the California Public Records Act; and, requires charter school governing bodies to abide by the Brown Act or the Bagley-Keene Open Meetings Act. The bill also expressly authorizes charter school employees to serve on a charter school governing body.

According to the author, AB 709 seeks to clarify current law and explicitly require California's charter schools to be more transparent and accountable to the public. Specifically, this bill will require that charter school meetings are open to the public and allow for public records requests. In addition, this bill seeks to provide that charter schools comply with conflict of interest provisions of the Political Reform Act and prohibits officers or employees from engaging in contracts where they have a financial interest.

The Brown Act. The Brown Act governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils and school boards. The Brown Act represents the Legislature's determination of how the balance should be struck between public access to

meetings of multi-member public bodies and the need for confidential candor, debate, and information gathering. The Brown Act requires meetings of the board to be publicly noticed 72 hours before their meetings, among other requirements.

California Public Records Act (CPRA). The CPRA was enacted in 1968 and according to the Attorney General, in enacting the CRPA, the Legislature stated that access to information concerning the conduct of the public's business is a fundamental and necessary right for every person in the state. Cases interpreting the CRPA also have emphasized that its primary purpose is to give the public an opportunity to monitor the functioning of their government. The greater and more unfettered the public official's power, the greater the public's interest in monitoring the governmental action. The fundamental precept of CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. Several CPRA exemptions are based on a recognition of the individual's right to privacy. If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record.

Government Code 1090. Government Code 1090 states that members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. 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 capacities. Mindful of the ancient adage, that 'no man can serve two masters,' the section was enacted to ensure that public officials 'making' official contracts not be distracted by personal financial gain from exercising absolute loyalty and undivided allegiance to the best interest of the entity which they serve."

Corporations Code. Statute governing corporations (including charter schools operated by non-profit or for-profit corporations) requires not more than 49% 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. Advocates of charter schools contend they should abide by conflict of interest provisions related to corporations not local education agencies due to the fact that some charter schools are operated by non-profit corporations. The committee should consider whether it is appropriate to have public taxpayer funded charter schools abide by the corporations code rather than the government code with regard to conflict of interest policies.

Political Reform Act. The Fair Political Practices Commission (FPPC) was created by the Political Reform Act of 1974, a ballot initiative passed by California voters as Proposition 9. The FPPC provides written and oral advice to public agencies and officials; conducts seminars and training sessions; develops forms, manuals and instructions; and receives and files statements of economic interests from many state and local officials. The FPPC investigates alleged violations of the Political Reform Act, imposes penalties when appropriate, and assists state and local agencies in developing and enforcing conflict-of-interest codes. The FPPC regulates campaign financing and spending; financial conflicts of interest; lobbyist registration and reporting; post-governmental employment; mass mailings at public expense; and, gifts and

honoraria given to public officials and candidates. School board members are required to comply with the PRA, and in so, must file a statement of economic interest, annually.

Similar Measures in Recent Years: Measures similar to this have been introduced a few times in recent years. Recent measures contained more exemptions and specific requirements for charter schools. For example, previous measures allowed board members to provide emergency loans, lease property to the school and sign as a guarantor to a lease agreement, in specified instances. Previous measures also specified where charter school governing body meetings could physically take place in relation to the school and authorized a charter school governing board to hold closed sessions to consider pupil discipline. Further, previous measures specified that a late statement of economic interest filed by a governing body member could not be the sole basis for revocation of a charter. The committee should consider whether this bill should contain this same level of specificity.

Previous Legislation: AB 913 (Chau) from 2014, would have required charter schools to comply with the same conflict of interest requirements as school districts, commencing July 1, 2014. The bill 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) from 2011, which died on the Assembly inactive file on concurrence, would have required charter schools to comply with the same conflict of interest requirements as school districts.

AB 572 (Brownley) from 2010 required, commencing July 1, 2011, charter schools to comply with the same conflict of interest requirements as school districts by specifying that charter schools are subject to the Brown Act, the CPRA; Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code; and, the PRA. The bill was vetoed by the Governor 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."

AB 2115 (Mullin) from 2008 required charter schools to adopt and comply with a conflict of interest policy that requires its governing board members to abide by the same conflict of interest

requirements as local education agency (LEA) governing board members. The bill was vetoed by the Governor with the following message:

"Not only would this bill create state mandated costs for charter schools to comply with its provisions, the measure runs counter to the intent of charter schools, which were created to be free from many of the laws governing schools districts."

AB 1197 (Wiggins) of 2004, specified that individuals who govern charter schools shall file statements of economic interest under the PRA. The bill failed passage on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of School Business Officials
California School Boards Association
California School Employees Association
California State PTA
California Teachers Association
San Francisco Unified School District

Opposition

California Center for Parent Empowerment
California Charter Schools Association Advocates
EdVoice

Analysis Prepared by: Chelsea Kelley / ED. / (916) 319-2087