

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1652 (Medina) – As Amended March 28, 2022

SUBJECT: County boards of education: school district governing boards: members: charter school employees

SUMMARY: Prohibits the eligibility of any executive director or employee of a charter school in the county where the employing school is authorized from being a member of the county board of education, and prohibits the eligibility of any executive director or employee of a charter school where the employing school is authorized from being a member of the school district's governing board. Specifically, **this bill:**

- 1) Authorizes that any registered voter is eligible to be a member of the county board of education except:
 - a) Any executive director of a charter school or resource center in the county where the executive director's employing school is authorized; or
 - b) Any charter school employee in the county where the charter school employee's employing school or resource center is authorized.
- 2) States that an executive director of a charter school or resource center in the county where the executive director's employing school is authorized, or an charter school employee in the county where the charter school employee's employing school or resource center is authorized that was elected or appointed to the county board of education before January 1, 2023 may complete their term as a member of the county board of education.
- 3) Prohibits a member of a county board of education that is either an executive director of a charter school or resource center in the county where the executive director's employing school is authorized, or a charter school employee in the county where the charter school employee's employing school or resource center is authorized from voting on issues related to their employing charter school.
- 4) Prohibits an executive director of a charter school or resource center from being sworn into office as an elected or appointed member of the school district's governing board if the charter school or resource center was authorized by the school district, unless and until they resign as an executive director.
- 5) Prohibits an employee of a charter school or resource center from being sworn into office as an elected or appointed member of the school district's governing board if the charter school or resource center was authorized by the school district, unless and until they resign as an employee.
- 6) States that a member of the governing board of a school board that is also an executive director of a charter school or resource center authorized by the school district, or an employee of a charter school or resource center authorized by the school district that was

elected or appointed to the school district governing board before January 1, 2023 may complete their term as a school district governing board member.

EXISTING LAW:

- 1) Permits any registered voter eligible to be a member of the county board of education except the county superintendent of schools or any member of his or her staff, or any employee of a school district that is within the jurisdiction of the county board of education. (Education Code (EC) 1006)
- 2) Prohibits an employee of a school district from being an elected or appointed member of that school district's governing board unless and until they resign as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office. (EC 35107)
- 3) Prohibits a local agency officer (defined to include governing board members) from engaging in any employment that is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer. (Government Code (GC) 1126)
- 4) Prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, from simultaneously holding two public offices that are incompatible. (GC 1099)

FISCAL EFFECT: This bill has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Key provisions of the bill. This bill seeks to codify the recent Attorney General's (AG's) legal opinion that an executive director or employee of a charter school may not serve as a member of the county board of education in the county where their employing school is located. This bill also applies the same limitation to any executive director or charter school employee from serving on the charter school's authorizing school district governing board, and provides a process for the impacted sitting board members to finish their respective terms of office.

Need for the bill. According to the author, "AB 1652 is a commonsense solution to ensure fair and diverse representation for parents, teachers, and our students on local school boards. Previously, the AG issued an opinion on local school boards of education, determining that charter school employees cannot serve on local boards without a conflict of interest. Given the lack of enforcement or codification of this opinion, AB 1652 rightly fixes this loophole and addresses the unfair representation of charter school interests on our public school boards."

County boards of education and county superintendents of schools. County boards of education and county superintendents of schools have various oversight responsibilities over schools within their jurisdiction, including:

- 1) Serving as appellant bodies for decisions made by school district governing boards regarding pupil suspensions and expulsions.
- 2) Reviewing school district budgets and certifying them as positive, qualified, or negative.

- 3) Exercising increased authority over the adoption of the district budget for districts that have a qualified or negative budget certification or that have an outstanding emergency loan from the state.
- 4) Monitoring school district compliance with the settlement in the case of *Williams v. California* with respect to equal access to: instructional materials, safe and decent school facilities, and qualified teachers.
- 5) Authorizing countywide charter schools, exercising general oversight of the schools they authorized under their jurisdiction, and serving as an appellate body for petitions that are denied by a school district within their jurisdiction.
- 6) Helping districts and charter schools use their Local Control and Accountability Plans (LCAPs) to improve student performance.
- 7) Providing technical assistance to support strategic planning at districts and charter schools, and working with districts and charter schools that fail to meet state performance expectations as a part of Differentiated Assistance.

Background on charter schools. According to the California Department of Education (CDE), in the 2019-20 academic year there were 1,303 charter schools in California, with an enrollment of over 690,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization. Charter schools are authorized by school district boards, county boards of education or the SBE. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the sponsoring board and charter organizers.

Responsibilities of charter school authorizers. The governing board that authorizes a charter school, including school district and COE governing boards, has several responsibilities. First, when a charter school petition is submitted for consideration, the governing board must review the petition prior to approve to ensure compliance with statutory requirements and feasibility of the proposed operations. Next, the governing board must ensure rigorous oversight of an approved charter school, which includes site visits, academic monitoring and financial monitoring of the charter school. Site visits typically include walking the classrooms, observing conditions, observing instruction, and interviewing staff. Finally, in order to determine whether a charter school petition should be renewed or, if needed, revoked in accordance with law. Given the significant and ongoing responsibilities of a governing board that authorizes charter schools to ensure the authorized school successfully meets both statutory requirements and the needs of the school community, the extension of the AG's opinion to prohibit an executive director or employee of a charter school from serving on the school district governing board that their employing charter school is sensible.

California Attorney General Legal Opinion No. 20-102. On November 2, 2021, the Office of the AG responded to the request for an opinion to the question, "May an executive director or other employee of a charter school serve as a member of the county board of education in the

county where their employing school is located?” The answer was no. An executive director or other charter school employee—like employees of a traditional public school—may not serve as a member of the county board of education in the county where their employing school is located.

According to the AG’s opinion, a charter school employee who served as a member of the county board of education in the same county as their school would face a potential clash of duties or loyalties in several ways. As a county board of education member, they might be called upon to revoke or renew their school’s charter; to make litigation decisions regarding the school’s charter; to oversee the school and ensure its compliance with reporting requirements; to investigate the school; or to act as a member of an appellate body with respect to the charter approval and continuation process. “*The potential for conflict is manifest* [emphasis added].” Further, the AG opined, “Charter schools are part of our state governance structure; they receive state funding and participate in the essential public function of providing mandatory free education. Thus, with respect to service on government boards with jurisdiction over their employing schools, charter school employees are analogous to traditional public school district employees.”

As of this writing, there are at least five county board of education members employed by charter schools in the county where their employing school is located: Los Angeles, Riverside, Sacramento, San Bernardino, and Solano.

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 AG 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.” This bill would authorize current governing board members employed by a charter school to finish their term, or resign from the employing charter school, in order to establish a process for removing the impacted governing board members from office. Given the potential for conflicts of interest to arise while the impacted governing board members remain on their respective governing boards, this bill prohibits these governing board members from voting on issues related to their employing charter school.

Arguments in support. The California School Employees Association writes, “In opinion No. 20-102, Attorney General Rob Bonta concluded that an executive director or other charter school employee—just like employees of a traditional public school—may not serve as a member of the county board of education in the county where their employing school is located. Nonetheless, in at least six counties, charter employees continue to make important decisions affecting the schools they are charged with overseeing. The statutory changes proposed in AB 1652 would codify language that makes clear that such arrangements are unlawful. This good-government legislation will prevent conflicts of interest and establish parity between charter school employees and traditional public-school employees.”

Related legislation. SB 126 (Leyva), Chapter 3, Statutes of 2019, requires a charter school and an entity managing a charter school to comply with the same conflict of interest requirements as school districts.

AB 1662 (Fong), Chapter 499, Statutes of 2012, permits an employee of a school district that is not within the jurisdiction of the county board of education eligible to be a member of a county board of education.

AB 1212 (Thompson) of the 1999-2000 Session would have allowed a school district employee within that particular county to be eligible to be a member of a county board of education. This bill was vetoed by then Governor Davis, with the following message:

This bill would violate the common law rule against the holding of incompatible offices. The purpose of this rule is to disallow a person from holding two or more offices in which he or she is in a position in one office to review and approve his or her actions in the other office, and to disallow the holding of offices wherein his or her duties and loyalties are incompatible. County boards of education have jurisdiction over several areas which would present such a conflict, such as fiscal oversight, budgeting, and student discipline and transfer. Moreover, I note that current law prohibits school district employees from being elected or appointed members of their school district governing boards. For this reason, I cannot support this measure.

REGISTERED SUPPORT / OPPOSITION:

Support

California School Employees Association

Opposition

None on file

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087