

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2484 (Mia Bonta) – As Amended April 18, 2022

SUBJECT: Charter schools: school closures: apportionments: facility ownership

SUMMARY: Makes changes to the grant amounts awarded to charter schools as part of the Charter School Facility Grant program (CSFGP) when the facilities used by charter schools are owned by related parties, and makes changes to the procedures for any remaining net assets after a charter school closes. Specifically, **this bill:**

- 1) Requires, upon a charter school notifying its chartering authority of the closing of the charter school and dissolving of the nonprofit public benefit corporation, the school district in which the charter school was geographically located to become the designated entity for the disposal of any remaining net assets of the charter school, including assets that are maintained by limited liability corporations.
- 2) Requires a charter school, before closing a school, to update all pupil records in the California Longitudinal Pupil Achievement Data System (CALPADS) and report the number of displaced pupils to the California Department of Education (CDE).
- 3) Requires the California School Finance Authority (CSFA) in its administration of the CSFGP, to notify the chartering authority and the school district in which the charter school is geographically located of a charter school's application for funding.
- 4) Requires, as part of the CSFGP, the following to apply to charter schools owned by related parties:
 - a) A charter school facility owned by related parties shall not, over the lifetime of the grant program, receive grant funding for any facility that exceeds 100% of the cost of the facility. The CSFA shall track lifetime grant program funding received by charter schools owned by related parties. States that this provision shall not restrict a charter school applicants' ability to seek grant program funds to reimburse costs associated with the facility improvements as described in the CSFGP;
 - b) Upon receipt by a charter school facility owned by a related party of grant program funds from the CSFA exceeding 50% of the costs of the applicable facility, the charter school applicant shall, as a condition of receiving any additional grant funding, certify that a deed restriction by the owner of the facility requiring the facility be used for public, nonsectarian educational purposes has been filed with the applicable county recorder; and
 - c) The following conditions shall apply to charter school facilities owned by related parties that are no longer occupied by the charter school due to voluntarily closure or due to revocation or nonrenewal of its school's charter:
 - i. If the owner of the charter school facility sells or leases the facility for any purpose other than that of public, nonsectarian education within 10 years after receiving grant

program funds, that owner shall reimburse the CSFGP, after honoring other financial obligations, for all grant funds received since January 1, 2023; and

- ii. The reimbursement due to the CSFGP shall be on a schedule to be determined by the CSFA, but not beyond 30 years from the date of the facility sale or lease.
- 5) Defines “Charter school facility owned by related parties” to mean a charter school whose facilities are held by a party or parties related to, or solely owned by, the charter school or its management organization, including a corporate entity formed exclusively for the purpose of managing or providing support to the charter school or group of related charter schools and any direct or indirect wholly owned subsidiary of any such corporate entity. Related parties may be identified in a charter school’s audited financial statements according to generally accepted accounting principles recognized in the United States.
 - 6) Defines “Cost of the facility” to mean the purchase price of the facility at the time that the facility was purchased by its current, related party owner.

EXISTING LAW:

- 1) Establishes the CSFGP (SB 740 Program), which provides assistance with facilities rent and lease costs for pupils in charter schools. (Education Code (EC) 47614.5)
- 2) Implements the CSFA’s administration of the CSFGP intended to provide assistance with facilities rent and lease costs for pupils in charter schools. (CCR Title 4, Division 15, Article 1.5, Sections 10170.1 – 10170.15)
- 3) Specifies that, subject to the annual Budget Act, commencing with the 2017-18 fiscal year, eligible charter schools shall receive an amount equivalent to one of the following, whichever is less:
 - a) Seventy-five percent of annual facilities rent and lease costs for the charter school; or
 - b) For the 2017-19 fiscal year, an amount equal to \$1,117 per unit of average daily attendance (ADA). Beginning in the 2018-19 fiscal year, the amount of funding provided per ADA in the preceding fiscal year, adjusted by the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.
- 4) Specifies that in any fiscal year in which there are insufficient funds to fully fund the approved amounts, the CSFA shall apportion the available funds on a pro rata basis. (EC 47614.5)
- 5) Specifies that eligibility is based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced price meals, and a preference in admissions, as appropriate. Specifies that charter schoolsites are eligible for funding if the charter schoolsite meets either of the following conditions:

- a) The charter schoolsite is physically located in the attendance area of a public elementary school in which 55% or more of the pupil enrollment is eligible for free or reduced price meals and the schoolsite gives preference in admissions to pupils who are currently enrolled in or reside in the attendance area where the charter schoolsite is located.
 - b) 55% or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced price meals. (EC 47614.5)
- 6) Prohibits grant funds to be apportioned for any of the following:
- a) Units of ADA generated through nonclassroom-based instruction, except as specified;
 - b) Charter schools occupying existing school district or county office of education (COE) facilities; or
 - c) Charter schools receiving reasonably equivalent facilities from their chartering authority. (EC 47614.5)
- 7) Specifies that grant funds shall be used for costs associated with facilities rents and leases and may also be used for costs associated with remodeling of a building, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites. (EC 47614.5)
- 8) Authorizes the State Allocation Board (SAB) to establish a program that requires a school district, COEs, or charter school that sells real property that was purchased with or modernized with, or on which improvements were constructed that were funded with, any moneys from state bond funds, to return to the SAB the moneys received for the purchase, modernization or construction, if the property is sold within 10 years of receipt of those funds and the proceeds from the sale are not used for capital outlay, education or child care purposes. (EC 17462.3)
- 9) Establishes, under the Charter Schools Facilities Program, a process for disposal of a charter school facility when a charter school ceases to utilize the facility for charter school purposes. (EC Section 17078.62)
- 10) States that charter schools and an “entity managing a charter school” are subject to Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code as well as the Political Reform Act of 1974. (EC 47604.1)
- 11) Establishes the procedures for charter school closure including, but not limited to, transfer of student and employee records, completion of final audit, and the disposal of net assets. (CCR Title 5, Section 11962)
- 12) Requires the following information to be transmitted to CDE when a charter school closes:
- a) The effective date of the closure;
 - b) The name(s) of and contact information for the person(s) to whom reasonable inquiries may be made regarding the closure;

- c) The pupils' school districts of residence; and
- d) The manner in which parents (guardians) may obtain copies of pupil records, including specific information on completed courses and credits that meet graduation requirements. (CCR Title 5, Section 11962)

13) Requires specified charter school closure information be transmitted to CDE. (CCR Title 5, 11962.1)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “In recent years, the Legislature has worked hard to raise standards for charter schools so that students can learn in safe environments under the oversight of a local authorizer. However, additional reforms are needed to guarantee accountability in the event that a charter school closes. Each year, on average 2.7 charter schools close between the months of October and April. Mid-year closures negatively impact not only students but also neighboring schools, who must accommodate the influx of students by finding classroom space, hiring teachers and classified staff, purchasing instructional materials, and transferring records. Furthermore, charter closures mean substantial taxpayer investments in school facilities may be lost or inaccessible to future generations of students if those facilities are privately held.”

The author also states, “AB 2484 will enhance charter school closure procedures by requiring all charters to uniformly report pupil information to CALPADS prior to closure, so that the educators accommodating transferring students have all the information they need to help those students succeed, and by requiring charters to report the number of displaced students to the California Department of Education. Additionally, this bill will ensure that taxpayer dollars follow students, not private corporations, by transferring any net remaining assets after a charter school closes to the local school district in which a charter school was located. Finally, AB 2484 establishes guardrails to ensure that Charter School Facilities Grant (SB 740) Program dollars are used for public, nonsectarian educational purposes, not the systematic acquisition of real estate by large charter school chains. These guardrails include capping repayments for Charter Management Organization-owned properties, requiring grant-deed restrictions to preserve land for public educational use, and ensuring repayment of taxpayer funds if a charter school closes within 10 years of receiving a grant.”

Charter School Facility Grant Program (CSFGP). The CSFGP was established by SB 740 (O’Connell), Chapter 892, Statutes of 2001, to provide charter schools serving low-income areas with assistance in rent and lease payments. Eligible charter schools may receive up to \$1,117 per unit of ADA (adjusted annually), but may not receive more than 75% of the school’s annual rent or lease costs. If the program is oversubscribed, the funds would be distributed on a pro-rata basis. Eligibility is limited to:

- 1) A charter school physically located in the attendance area of a public school with at least 55% of its students eligible for free or reduced price meals, and the school gives preference in admissions to pupils who are currently enrolled in that public elementary school and to

pupils who reside in the attendance area where the charter school is located (called the Expanded Eligibility criterion); or

- 2) A charter school in which 55% or more of its pupil enrollment is eligible for free or reduced price meals. Funds may be used for costs associated with facilities rents and leases, but may also include remodeling, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites.

Charter schools are eligible for the CSFGP if they are located in a community with 55% or more of the students eligible for free or reduced price meals, with the intent that these charter schools would enroll a representative proportion of students from the community. However, the student population at some charter schools located in these communities is not representative of the community. Therefore, they receive the benefit of the CSFGP by locating in a lower income community, without serving the students in that community. *The Committee may wish to consider* whether the eligibility for the CSFGP should instead be based solely on the charter school's enrollment of free and reduced priced eligible students rather than the community where the school is located.

The enacting legislation stated the Legislature's intent to appropriate \$10 million for the program for the 2001-02, 2002-03, and 2003-04 fiscal years (FY). Funds for this program have increased substantially over time, with the bulk of the funding coming from the transfer of funds from the phase out of the Year-Round Operational Grant Program. SB 658 (Romero), Chapter 271, Statutes of 2008, required all funds appropriated for the Year-Round School Grant Program at the FY 2007-08 level, which, at the time, was \$97 million, to be transferred to the CSFGP at a rate of 20% each year. The FY 2009-10 budget reduced allocations to categorical programs, including this program, by approximately 35%. The program received \$92 million in FY 2012-13. Up until FY 2010-11, the CSFGP was a reimbursement-based program. The FY 2010-11 budget contained language authorizing charters to receive grants at the beginning of the fiscal year based on prior year ADA and estimated costs. The program was administered by CDE until 2013 and is now administered by the CSFA under the California State Treasurer. Beginning with the 2018-29 fiscal year, the funding provided per ADA is adjusted by a cost inflator index. Funding for this program in FY 2021-22 is \$152 million. The Governor's 2022-23 budget proposes to provide an additional \$30 million ongoing increase to the program for remodeling, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and facility modifications to mitigate the spread of COVID-19.

CSFGP funds are used to pay for buildings owned by related parties. According to the author, the CSFGP does not cap lifetime payments for a given charter school facility. This means that over time, charter school facilities purchased by related-party LLCs have been funded at sometimes 2-3 times their purchase price. In other words, the facility's mortgage has been fully paid off with CSFGP funds and it continues to receive additional funds at market rate, in perpetuity. This poses a problem for other applicants. The program is oversubscribed, meaning there is not enough funding for all applicants that submit a qualifying application. If charter management organizations (CMOs) without a need continue to receive CSFGP funding, it is at the expense of those small charters without the resources to take advantage of such legally

dubious arrangements.¹ Below is a series of examples provided by the sponsor of the bill, the California School Employees Association, where CSFGP funding has broached or exceeded the purchase price of a given facility:

| LLC | CMO | SB 740 Program Funds | School | Assessor / Parcel Identification Number | Property Purchase Record | Percent Funded through SB 740 |
|---|------------|----------------------|---|---|----------------------------------|-------------------------------|
| 10704 Wilmington LLC | Alliance | \$3,428,490.97 | Alliance Cindy and Bill Simon Technology Academy High | 6068-001-040 | Purchased (2010): \$1,000,010 | 343% |
| SoLa School 1, LLC | KIPP SoCal | \$3,037,954.19 | KIPP Empower Academy | 6032-035-045 | Purchased (2013): \$1,312,513 | 231% |
| 4610 S. Main Street Charter Facilities LLC | Alliance | \$3,865,884.56 | Alliance Patti And Peter Neuwirth Leadership Academy | 5109-002-051 | Purchased (2012): \$1,900,000 | 203% |
| Curiosity RE, LLC c/o Marcia Aaron | KIPP SoCal | \$3,699,623.86 | KIPP Comienza Community Prep | 6025-028-038 | Purchased (2017): \$4,165,041 | 89% |
| 2023 Union LLC | Alliance | \$4,642,094.31 | Alliance Gertz-Ressler Richard Merkin 6-12 Complex | 5124-002-021 | Purchased (2006): \$5,750,057 | 81% |
| College for Certain, LLC | Aspire | \$3,309,451.02 | Aspire Golden State College Preparatory Academy | 41-4056-3 | Purchased (2008): \$4,660,000 | 71% |
| 7907 Santa Fe Avenue Charter Facilities LLC | Alliance | \$1,343,060.17 | Alliance Margaret M. Bloomfield Technology Academy High | 6202-038-054 | Purchased (2012): \$2,030,020 | 66% |
| ChaMed LLC | KIPP SoCal | \$2,648,180.47 | KIPP Iluminar Academy | 5251-009-002 | Purchased (2014): \$4,700,047 | 56% |
| 1552 Rockwood Street Charter Facilities LLC | Alliance | \$992,656.79 | Alliance Ted K. Tajima High | 5159-013-016 | Purchased (2014): \$1,945,019 | 51% |
| 12628 S. Avalon LLC | Green Dot | \$2,795,506.76 | Animo Watts College Preparatory Academy | 6086-031-016 | Purchased (2018): \$8,532,085 | 33% |

¹ According to *Spending Blind* (36), "While CMO chains account for just 28.5% of all charter schools in California, they have received nearly half of all funding under SB 740."

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|--|--------------|----------------|--|--------------|----------------------------------|-----|
| 111 th Place LLC 810 East 111 th LLC | Green Dot | \$1,656,731.16 | Animo James B. Taylor Charter Middle | 6071-022-012 | Purchased (2019): \$6,900,069 | 24% |
|--|--------------|----------------|--|--------------|----------------------------------|-----|

This bill, beginning January 1, 2023, prohibits funding for a charter school facility owned by related parties to exceed 100% of the cost of the facility, but does not prohibit a charter school from receiving additional grant funds for facility improvements.

What happens when charter school facilities receiving CSFGP funds cease operations? Under the School Facility Program, which administers state bond funds, the SAB is authorized to establish a program to require a school district, COE, or charter school to pay back bond funds received if the property is sold within 10 years of receipt of funds and the proceeds from the sale of the property are not used for capital outlay, education, or child care purposes. This bill establishes a comparable process by requiring the owner of a charter school facility that sells or leases the facility for any other purpose other than for public, nonsectarian education, within 10 years after receiving CSFGP funds, to return grant funds to the program, after honoring other financial obligations. The bill requires the reimbursement of funds to be on a schedule determined by the CSFA, by not more than 30 years from the date of the sale or lease of the facility.

Conduit bonds and CSFGP. Under existing law, the Treasurer’s office is authorized to issue conduit revenue bonds for K-12 schools, including charter schools. Conduit bond financing is a mechanism of borrowing whereby a conduit issuer, typically a governmental agency, acts as a bridge between investors and the borrower. Interest received by investors that provide the funds for a project enjoy higher yields than general obligation bonds and are tax free. In return, the borrower benefits by paying lower interest rates. According to the 2020 report by the Treasurer’s Office, between 2010 and 2020, almost \$2 billion in authority was issued, predominantly on behalf of charter schools.

The Treasurer’s Office has expressed concerns that limiting the amount of funds to charter school facilities owned by a related party may lead to defaults on debt associated with these facilities. CSFGP funds have apparently been used to help charter schools pay for conduit bond financing. The CSFGP was established to help charter schools with leases, not to purchase facilities. When CSFGP is used to pay for conduit bond financing, the State is paying to purchase a facility that is wholly owned by a related party that owns the facilities used by the charter school, which is a private entity, and therefore it could be considered a gift of public funds. There is another program through state bonds funds for the acquisition and construction of charter school facilities. Purchase and paying debt service should remain with state bond funds. Allowing the CSFGP, funded by state general funds, to pay for the purchase and debt service of charter school facilities raises issues of concerns. Under the bond program, a charter is reviewed to ensure that it is "financially sound" and to ensure it has the ability to incur such debt. Facilities must meet state building regulations, including seismic standards under the Field Act. **The Committee may wish to consider** whether allowing CSFGP funds to be used to pay the debt associated with conduit revenue bonds that lead to ownership of a facility is an appropriate use of funds and should be prohibited.

Data reporting prior to charter school closure. This bill requires a charter school to update pupil information in CALPADS and report the number of displaced students to CDE, prior to closure. Existing law requires the following information to be transmitted to CDE when a charter school closes:

- a) The effective date of the closure;
- b) The name(s) of and contact information for the person(s) to whom reasonable inquiries may be made regarding the closure;
- c) The pupils' school districts of residence; and
- d) The manner in which parents (guardians) may obtain copies of pupil records, including specific information on completed courses and credits that meet graduation requirements.

In addition to reporting the pupil's school districts of residence to CDE, this bill would require charter schools to report the number of students who will be displaced due to the closure, which is equivalent to the charter school's final enrollment numbers.

Disposal of net remaining assets. When a charter school closes, the remaining assets are used to pay outstanding payroll, PERS or STRS contributions, and contracts, among other things. If there is remaining funding left over after all debts are paid, they are held in an account by the charter school's authorizer. Currently, charter school authorizers are not allowed to spend those remaining funds, and they are not automatically returned to the state.

This bill would require that any remaining net assets of a charter school be transferred to the local school district where the charter school is physically located for disposal of any remaining assets. Currently, there are a number of charter schools that are physically located outside the jurisdiction of their authorizer, however, after the passage of AB 1507 (Smith) in 2019, this practice is now prohibited. Existing schools may continue to locate outside their authorizer's jurisdiction only with the approval of the local district where the school is physically located.

There are several policy questions to consider in proposing such a change. First, the bill creates ambiguity about which entity should receive the net assets. Many areas of the state have school districts with overlapping boundaries. This is especially the case with areas with elementary districts and high school districts. If a charter school that serves students in grades K-12 closes, should the net assets go to the elementary school district or the high school district? Additionally, if a county wide charter school closes and it has facilities in multiple school districts, which school district should receive the remaining net assets? Would it be split between the school districts?

Second, charter school authorizers are the entities that do oversight over the charter school, and work closely with all parties when a charter school closes. This work is largely covered by the oversight fees that a charter school pays their authorizer, however, many authorizers spend far more on oversight than the oversight fees that charter schools pay. In this instance, one could argue that authorizers are the most logical entity to receive any remaining net assets when a charter school closes.

Third, this bill lacks specificity regarding the logistics of the reallocation of remaining net assets. Some authorizers currently have accounts with the remaining net assets of previously closed charter schools. It is unclear what will happen to these existing accounts, as there is not currently a process for these funds to be returned to the state, or sent to other school districts.

The Committee may wish to consider whether the school district where the charter school is physically located is the best choice to receive the remaining net assets, or whether the authorizer is the best choice to receive such assets.

Arguments in support. The California Labor Federation states, “For too long, gaps in the law have enabled charter schools and their affiliates to grow private real estate holdings at the taxpayer’s expense. Taxpayer dollars have funded the acquisition and maintenance of charter school facilities, which are ultimately held privately by Charter Management Organizations. AB 2484 requires that upon closure of a charter school the facilities’ title must be transferred to the school district in which the facility is located *or* the charter school must reimburse the California School Finance Authority in the amount of grants received. This will close loopholes in existing law to ensure that the public’s investments in educational facilities continue to benefit California’s public education system. The bill also clarifies that should a charter school close mid-academic year, any unspent dollars must be reallocated proportionally to the public schools that admit displaced students.”

Arguments in opposition. The Charter Schools Development Center states, “This bill would unnecessarily impose ambiguous and impractical mandates on the process of closing a charter school. It also unnecessarily adds an additional cap on lease aid a charter school may receive based on the purchase price of a facility, without regard to many other legitimate and necessary costs.”

Recommended Committee Amendments. Staff recommends the bill be amended to:

- 1) Prohibit CSFGP funds to be used to pay the debt associated with conduit revenue bonds.
- 2) Authorize eligibility for the CSFGP only based on the charter school’s enrollment of FRPM students.

Related legislation. SB 645 (Simitian) of the 2011-12 Session would have created charter school academic accountability measures for renewal; expanded eligibility for Charter School Facility Grant Program; and, authorized the CSFA to refinance working capital for charter schools. This bill was held in the Assembly Appropriations Committee.

AB 2047 (Huff) of the 2005-06 Session would have deleted the provision of law stating the intent of the Legislature to appropriate \$10 million for the CSFGP for the 2001-02, 2002-03, and 2003-04 fiscal years, and specified that for the 2006-07 fiscal year and each fiscal year thereafter, the program shall be funded at the level appropriate in the annual Budget Act, or other statute. This bill was held in the Assembly Appropriations Committee.

AB 2323 (Huff) of the 2005-06 Session would have expanded eligibility to charter schools located in attendance areas of public schools where 50% or more but less than 70% pupils are eligible for free and reduced-price meals and the charter school gives preference to students enrolled in the public school or the charter school enrolls 50% or more but less than 70 percent

of pupils enrolled at the charter school are eligible for free and reduced-price meals. This bill was held in the Assembly Appropriations Committee.

SB 765 (Weiner) of the 2017-18 Session would have re-established provisions requiring the governing board of a school district seeking to sell or lease surplus property to first offer that property to a charter school and authorizes a school district to use the proceeds from the lease or sale of surplus real property for any one-time general fund purpose. The author gut and amended the bill and used the vehicle for another topic.

SB 1016 (Budget Committee), Chapter 38, Statutes of 2012, required school districts, until June 30, 2013, seeking to sell surplus property used for instructional purposes to first offer the property to a charter school to be used for direct instruction or instructional support.

AB 86 (Committee on Budget), Chapter 48, Statutes of 2013, extended the SB 1016 sunset to July 1, 2016, specified that the charter must have a projected 80 units of in-district ADA the following year, and established a process for disposal of the property if the charter school did not use the property for instructional purposes or no longer needed the property.

AB 948 (Olsen), Chapter 871, Statutes of 2014, required the CSFA to expand eligibility under the CSFGP by reducing the free and reduced-price meals threshold one percentage point at a time, but in no case below 60%, for charter schools that meet eligibility based on the school's enrollment of pupils that are eligible for free and reduced-price meals, in any year in which additional funds remain after state and federal funds have been allocated to applicants. This bill also requires a charter school that receives CSFGP funds to be subject to audits conducted pursuant to the audit guide.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO

Opposition

California Charter Schools Association
Charter Schools Development Center

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