

Date of Hearing: February 26, 2019

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
SB 126 (Leyva) – As Amended February 14, 2019

**SENATE VOTE:** 34-2

**SUBJECT:** Charter schools

**SUMMARY:** Requires a charter school and an entity managing a charter school to comply with the same conflict of interest requirements as school districts. Specifically, **this bill:**

- 1) Requires a charter school and an entity managing a charter school to be subject to all of the following:
  - a) The Ralph M. Brown Act, except that a charter school operated by an entity pursuant to Chapter 5 (commencing with Section 47620) shall be subject to the Bagley-Keene Open Meeting Act, regardless of the authorizing entity.
  - b) The California Public Records Act.
  - c) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.
  - d) The Political Reform Act of 1974.
- 2) Requires the chartering authority of a charter school to be the custodian of records with regard to any request for information submitted to the charter school if either of the following apply:
  - a) The charter school is located on a federally recognized California Indian reservation or rancheria.
  - b) The charter school is operated by a nonprofit public benefit corporation that was formed on or before May 31, 2002, and is currently operated by a federally recognized California Indian tribe.
- 2) Requires a charter school and an entity managing a charter school to be considered an agency and the most decentralized level for purposes of adopting a conflict-of-interest code.
- 3) Requires the following regarding the location of governing body meetings:
  - a) 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 schoolsite.
  - b) The governing body of one nonclassroom-based charter school that does not have a facility or operates one or more resource centers shall meet within the physical boundaries of the county in which the greatest number of pupils who are enrolled in that

charter school reside. A two-way teleconference location shall be established at each resource center.

- c) For a governing body of an entity managing one or more charter schools located within the same county, the governing body of the entity managing a charter school shall meet within the physical boundaries of the county in which that charter school or schools are located. A two-way teleconference location shall be established at each schoolsite and each resource center.
  - d) For a governing body of an entity that manages two or more charter schools that are not located in the same county, the governing body of the entity managing the charter schools shall meet within the physical boundaries of the county in which the greatest number of pupils enrolled in those charter schools managed by that entity reside. A two-way teleconference location shall be established at each schoolsite and each resource center. The governing body of the entity managing the charter schools shall audio record, video record, or both, all the governing board meetings and post the recordings on each charter school's website.
- 4) Specifies that an employee of a charter school shall not be disqualified from serving as a member of the governing body of the charter school because of that employee's employment status. Specifies that a member of the governing body of a charter school who is also an employee of the charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body, regarding all matters uniquely affecting that member's employment.
  - 5) Specifies that, to the extent a governing body of a charter school or an entity managing a charter school engages in activities that are unrelated to a charter school, Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, the Ralph M. Brown Act, the Bagley-Keene Open Meeting Act, the California Public Records Act, and the Political Reform Act of 1974 shall not apply with regard to those unrelated activities unless otherwise required by law.
  - 6) Prohibits a meeting of the governing body of a charter school to discuss items related to the operation of the charter school, including the discussion of any item regarding an activity of the governing body that is unrelated to the operation of the charter school.
  - 7) Defines an "entity managing a charter school" as a nonprofit public benefit corporation that operates a charter school consistent with Section 47604. Specifies that an entity that is not authorized to operate a charter school pursuant to 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 governing body of the charter school and for which the governing body retains ultimate decision-making authority.

**EXISTING LAW** pertaining to charter schools:

- 1) Provides no specific requirement for charter school governing board conflict of interest policies.

- 2) Deems charter schools to be 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 the individual 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 by the Office of Legislative Counsel.

**COMMENTS:** This bill requires charter school governing body members and the governing body of the entity that manages a charter school 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 annual statements of economic interest, which make public any potential conflicts of interest that individuals may have in their official capacities. 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. The authors' intent is that 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 and the governing bodies of the entities managing charter schools to file statements of economic interest according to the Political Reform Act; specifies that charter school governing body members and the governing bodies of the entities managing charter schools may *not* be financially interested in any decision made by the governing body; requires charter schools and entities managing charter schools to comply with the California Public Records Act; and, requires charter school governing bodies and the governing bodies of the entities managing charter schools 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. Further, the bill specifies the geographic location where the governing body of a charter school and the governing body of an entity managing a charter school may meet.

***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 affirming the principle that the greater and more unfettered a 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 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. This bill specifies that non-profit corporation charter schools must comply with Government Code 1090, which prohibits any member of the governing body from having a financial interest in the decisions made by the body.

***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 doing, must file a statement of economic interest annually.

***Attorney General Opinion.*** On December 26, 2018, the California Attorney General (AG) published an opinion on the following questions:

- 1) Are a California charter school and its governing body subject to the Ralph M. Brown Act and the California Public Records Act?
- 2) Is a California charter school's governing body subject to Government Code 1090?
- 3) Is a California charter school's governing body subject to the Political Reform Act of 1974?
- 4) Are the books and records of a California charter school subject to review and inspection by the grand jury?

The 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. While the AG opinion is useful in determining the intent of existing law, this bill provides further clarification by codifying the requirement that charter schools abide by these provisions of law. Additionally, the AG's opinion does not address whether entities that manage charter schools must abide by these laws, as this bill prescribes.

***Charter Management Organizations.*** This measure requires entities managing charter schools to comply with the conflict of interest code sections described above. The intent of the authors of this measure is that entities known as charter management organizations that function in much the same way as a school district should be subject to these laws. Charter management organizations operate charter schools in many of the following ways: acting as the administrator of the school, appointing the governing body of the school, selecting curriculum, hiring teachers and staff, providing budget and payroll services.

Since these organizations operate schools in the much same way that school districts operate traditional public schools, the authors' intent is that these organizations be subject to the same conflict of interest policies as school districts. It is unclear if all charter management organizations operate in this same way, or if some management organizations play a smaller role in managing charter schools.

***Location of Governing Body Meetings.*** This measure specifies the location where charter school governing bodies and the governing bodies of entities managing charter schools can physically hold meetings. The intent of the authors is to have charter school governing bodies and the

governing bodies of the entities managing a charter school hold meetings in the closest possible location to their community of students and parents, so that those meetings are reasonably accessible. Should this bill be enacted, in most instances, the charter school governing body will be required to meet in the county in which the school is physically located. If the charter school has more than one location across multiple counties, the governing body of the school and the governing body of the entity managing the charter school would be required to meet in the county with the highest number of enrolled students. This bill further requires a charter school with multiple locations across multiple counties to audio and/or videotape the governing body meetings and post the recordings on the website for each school site. Further, this measure requires all charter school governing body meetings to have a two way teleconference, which is a conference call, available at each school site for the public to listen to the meeting and comment to the governing body members via telephone.

***Previous Legislation.*** Measures substantially similar to this have been introduced eight times, and at least once during every Legislative Session since 2008.

AB 276 (Medina) from the 2017-2018 Session, which was held on the Senate Floor, would have required charter schools and entities managing charter schools to comply with the same conflict of interest requirements as school districts.

AB 1478 (Jones Sawyer) from the 2017-2018 Session, which failed passage on the Assembly Floor, would have required charter schools and entities managing charter schools to comply with the same conflict of interest requirements as school districts.

AB 709 (Gibson) of the 2015-2016 Session, would have required charter schools to comply with the same conflict of interest requirements as school districts. The bill was vetoed by Governor Brown, with the following message:

This bill requires charter schools to be subject to the Brown Act, Public Records Act, Political Reform Act and Government Code section 1090. In 2014, I vetoed AB 913, a virtually identical bill. My reasons then were: 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. That's still my view.

AB 913 (Chau), of the 2013-2014 Session, 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 Governor Brown, 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), of the 2011-2012 Session, 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), of the 2009-2010 Session would have 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, Government Code 1090, and the PRA. The bill was vetoed by Governor Schwarzenegger, 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), of the 2007-2008 Session 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 governing board members. The bill was vetoed by Governor Schwarzenegger, 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 1772 (Garcia), of the 2007-2008 Session, which was held in the Assembly Appropriations Committee, would have required a charter school to adopt and comply with a conflict-of-interest policy that included, but was not necessarily limited to, the requirements that charter school governing board members abide Government Code 1090, among other requirements.

AB 1197 (Wiggins), of the 2003-2004 Session, would have required that individuals who govern charter schools file statements of economic interest under the PRA. This bill failed passage on the Senate Floor.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union Of California  
American Federation Of State, County And Municipal Employees, Council 57  
Association Of California School Administrators  
California Association Of School Business Officials  
California County Superintendents Educational Services Association  
California Federation Of Teachers  
California Federation Of Teachers AFL-CIO  
California Labor Federation, AFL-CIO  
California NAACP

California School Boards Association  
California State PTA  
California Teachers Association  
Kern County Superintendent Of Schools  
League of Women Voters of California  
Public Advocates Inc.  
Riverside County Office Of Education  
San Diego Unified School District  
San Francisco Unified School District  
School Employers Association Of California  
Service Employees International Union California  
Small School Districts Association

**Oppose**

Charter Schools Development Center

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