

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 765 (Wiener) – As Amended July 3, 2017

**SENATE VOTE:** 33-1

**SUBJECT:** School facilities: surplus real property: charter schools

**SUMMARY:** Re-establishes 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. Specifically, **this bill:**

- 1) Requires school districts seeking to sell or lease surplus property to first offer that property to a charter school operating as, or operated by, a nonprofit public benefit corporation and is not located outside of the boundaries of the charter school district, unless the property is intended to be used to provide housing for teachers or school district employees.
- 2) Strikes the provision requiring the property to be offered to a charter school to be property “designed to provide direct instruction or instructional support.”
- 3) Requires the charter school to complete school facilities construction, if any, and begin using the real property for direct instruction or instructional support within five years of the date the real property is made available to the charter school pursuant to the sale or lease.
- 4) Strikes the requirement that in no event shall the price be less than 25 percent of the fair market value of the property and instead specifies that in no event shall the price the property is sold be less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property, or less than any of the following:
  - a) For a school district that has requested an emergency apportionment in the past two years or has submitted a negative certification to the California Department of Education (CDE) in the past two years, less than 75 percent of the fair market value of the real property.
  - b) For a school district that has submitted a qualified certification to the CDE in the past two years, less than 50 percent of the fair market value of the real property.
  - c) For a school district not described in a) or b), less than 25 percent of the fair market value of the real property.
- 5) Strikes the July 1, 2016 sunset date of the provisions requiring school districts to first offer surplus property designed to provide direct instruction or instructional support to a charter school.
- 6) Authorizes a school district to deposit the proceeds from the lease or sale of surplus real property, together with any personal property located on the property, leased or purchased by a charter school, into the general fund of the school district, and use the proceeds for any

one-time general fund purpose if the governing board of the school district and the State Allocation Board (SAB) have determined that the school district has no anticipated need for schoolsite construction, building construction, or major deferred maintenance projects for a 10-year period following the sale or lease of the surplus real property.

- 7) Defines “proceeds” as either of the following, as appropriate:
  - a) The amount realized from the lease or sale of property, less reasonable expenses related to the lease or sale.
  - b) For a transaction that does not result in a lump-sum payment of the proceeds of the transaction, the proceeds of the transaction shall be calculated as the net present value of the future cashflow generated by the transaction.
- 8) Authorizes a school district to apply for state bond funds for new construction and modernization projects if both of the following conditions are satisfied:
  - a) Five years have elapsed since the date the sale or lease was executed.
  - b) The SAB determines that the school district has demonstrated enrollment growth or a need for additional schoolsite or building construction that the school district could not have easily anticipated at the time the SAB made its original determination that the school district had no anticipated need for the 10-year period following the sale or lease.
- 9) Requires the governing board of a school district, prior to entering into a joint occupancy lease, to first offer to lease or sell the real property and buildings to a charter school, unless the property is intended to be used to provide housing for teachers or school district employees. Specifies that this provision shall not apply to a lease or agreement that would be used solely to provide instructional programs that benefit pupils.

#### **EXISTING LAW:**

- 1) Expresses the intent of the Legislature to have the community involved before decisions are made about school closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community’s needs and desires. (Education Code (EC) Section 17387)
- 2) Requires the governing board of a school district to, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes. (EC Section 17388)
- 3) Authorizes the governing board of a school district seeking to sell or lease surplus real property to first offer that property to a contracting agency to be used for child care and development services. (EC Section 17458)
- 4) Requires a school district, prior to selling or leasing a schoolsite containing all or a portion of the schoolsite which is used for school playground, playing field, or other outdoor recreational purposes and open space land, to offer to sell or lease the portion of the

schoolsite used for school playground, playing field, or other outdoor recreational purposes to the following entities: 1) any city; 2) any park or recreation district; 3) any regional park authority; and 4) any county within which the land may be situated. (EC Section 17489)

- 5) Requires the sale or lease with an option to purchase of real property by a school district to be offered based on the following priorities:
  - a) Park or recreational purposes.
  - b) At fair market value to the following:
    - i) In writing, to the Director of the Department of General Services, the Regents of the University of California, the Trustees of the California State University, the county and city in which the property is situated, any public housing authority in the county.
    - ii) By public notice to any public district, public authority, public agency, public corporation, or any other political subdivision in the state, the federal government, and nonprofit charitable corporations. (EC Section 17464)
- 6) Requires funds from the sale of surplus property to be used for capital outlay or for costs of maintenance of school district property that the local governing board determines will not recur within a five-year period. (EC Section 17462)
- 7) Authorizes proceeds from the lease of a school district property with an option to purchase to be deposited into a restricted fund for the routine repair of district facilities for up to five-years. (EC Section 17462)
- 8) Provides that proceeds from the sale or lease with the option to purchase may be deposited in the general fund if the school district governing board and the SAB have determined that the district has no anticipated need for additional sites or building construction for the ten-year period following the sale or lease with option to purchase, and the district has no major deferred maintenance requirements. Authorizes proceeds from the sale or lease with option to purchase of school district property to be used for one-time expenditures, and may not be used for ongoing expenditures including, but not limited to, salaries and other general operating expenses. (EC Section 17462)
- 9) Establishes the Teacher Housing Act of 2016 to facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing for teachers and school district employees to allow teachers or school district employees to access and maintain housing stability. (Health and Safety Code Sections 53570-53574)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, this bill is not expected to result in significant costs to the state.

**COMMENTS:** *Background on surplus property.* Under current law, prior to selling surplus property, a school district is required to appoint an advisory committee comprised of community members, school-based representatives, and individuals with expertise in construction, land use, legal contracts or environmental impact in order to garner community input about uses for district owned surplus property. Under current law, property deemed as “surplus” by a school district must be offered to specified entities, including park or recreation districts, local governmental agencies, and to other state or federal agencies or nonprofit organizations at fair

market value. In 2012, to assist charter schools in accessing school facilities during the state's budget crisis, SB 1016 (Budget Committee), Chapter 38, Statutes of 2012, until June 30, 2013, required school districts 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 (Budget Committee), Chapter 48, Statutes of 2013, extended the sunset to July 1, 2016, specified that the charter must have a projected 80 units of in-district average daily attendance the following year, and established a process for disposal of the property if the charter school does not use the property for instructional purposes or no longer needs the property.

This process requires interested charter schools to notify a school district of their interest to purchase surplus property and requires a school district to first offer the surplus property to charter schools, which are required to use the facilities for instructional purposes. The price sold to a charter school may not exceed the cost paid by the school district adjusted by a cost of living factor and the cost of any construction since the acquisition of the land, and in no event may be less than 25 percent of the fair market value of the property or less than the amount necessary to retire any local bonded indebtedness plus any amount the district may have received from the state for the facility.

*This bill* removes the July 1, 2016 sunset and makes permanent the requirement to first offer surplus property to a charter school. The bill also makes the following changes:

- 1) Strikes the requirement that the property to be offered to a charter school be property designed to provide direct instruction or instructional support. Under this bill, a school district is required to offer any district owned property determined to be surplus to a charter school, not just property designed to provide direct instruction or instructional support.
- 2) Specifies that the charter school offered the surplus property must be operated by or as a nonprofit public benefit corporation and be located in the chartering school district.
- 3) Allows the sale price to be higher if the school district was in negative certification or had requested an emergency apportionment within the last two years (75 percent of the fair market value) or if the school district reported qualified certification within the last two years (50 percent of the fair market value). Over the last two years, there have been a maximum of three districts in negative certification and a maximum of 40 school districts with qualified certifications out of a 1,000 school districts.

***The need.*** According to the author, "One of the biggest impediments to the deployment of charter schools is the difficulty of acquiring appropriate property without powers of eminent domain, exemptions from zoning laws, or general obligation bonds. While Proposition 39 requires school districts to make facilities available to charter schools in some cases, eligibility is limited and such arrangements are often subject to prolonged litigation and delays. For charter schools lacking the resources to build or purchase an appropriate facility, options are limited and rarely result in a permanent location."

***Report on charter school facilities.*** An April 2017 report titled "Spending Blind" by In the Public Interest, reports that charter schools in California have received over \$2.5 billion in state and federal tax dollars or taxpayer subsidized funds to lease, build or buy school facilities over the last 15 years. The report states that "450 charter schools have opened in places that already had enough classroom space for all students – and this overproduction of schools was made possible by generous public support, including \$111 million in rent, lease, or mortgage payments picked up by taxpayers, \$135 million in general obligation bonds, and \$425 million in private

investments subsidized with tax credits or tax exemptions. Moreover, since this data was available for only a portion of the state's charter schools, the real amounts of funding devoted to schools in communities that had no need for more classrooms is almost twice as great.”

The funds referenced in the report include the Charter School Facility Grant Program (also called the SB 740 program which received \$120 million State General Fund in FY 16-17), the Charter School Facilities Program (state bond funds totaling \$1.4 billion since 2002), Charter School Revolving Loan Fund (\$8 million in FY 16-17), federal Charter School Facilities Incentive Grants, school district local bonds, and conduit bonds issued by state agencies.

***Should school districts be required to sell surplus property at below fair market value?*** When the provisions to require school districts to first offer sale or lease of surplus property to charters were enacted, it was done through the budget process during the years in which the state experienced budget crises. The requirement was put in place to assist charter schools. Simultaneously, school districts were allowed to use the proceeds from the sale of surplus property for one-time general fund purposes while allowed to participate in the state bond program. Both of the provisions have sunset and have not been extended.

Should school districts continue to be required to sell surplus property at below fair market value when the state budget crisis is over? Under the Naylor Act, school districts are required to sell land used for playground, playing field or other outdoor recreational purposes to cities, counties, or other park or recreation districts at no more than 25 percent of the fair market value. This was done to ensure that land used for outdoor activities are continued to be used for outdoor space benefiting the same communities as the school district. The entities required to be offered the land are other public agencies. Nonprofit charter schools are private organizations. Under current law, in EC Section 17464, school districts are required to offer surplus property to nonprofit corporations at fair market value. The Committee may wish to consider whether charter schools should receive a financial benefit at the expense of school districts, which would otherwise use the proceeds from the sale of the property for other school district facility needs, including maintenance or modernization of schools. If the Committee chooses to pass this bill, **staff recommends** authorizing rather than requiring school districts to sell surplus property to charter schools at below fair market value.

***Should school districts be required to provide charter schools first priority for any district property?*** This bill strikes the requirement that property offered to charter schools be direct instructional or instructional support facilities. Since charter schools are required to use the property for educational purposes, **staff recommends** restoring this requirement.

***Background on use of proceeds from the sale of surplus property.*** Existing law requires districts to establish routine facilities accounts and deferred maintenance accounts, and requires proceeds from the sale of surplus property to stay in capital facilities or maintenance funds to ensure that districts protect and maintain their facilities. SB 1415 (Scott), Chapter 810, Statutes of 2006, authorizes the proceeds from the sale of surplus property to be deposited into the general fund for one-time expenditures and prohibits the use for ongoing expenditures. As a condition for using funds for one-time general fund purposes, a district must show that it has no need for additional sites or building construction for a ten-year period following the sale of the property and may not apply for state bond funds during the ten-year period. The district may apply for funds after five years if the SAB determines that the district demonstrates enrollment growth or a need for additional sites it could not have anticipated.

The 2009-10 budget established a number of flexibility provisions to provide school districts with tools to balance their budgets during the state's budget crisis, including the authority to use the funds for 39 categorical program funds for any educational purpose, relaxing the penalties for violating class size reduction student to teacher ratios and the authority to use proceeds from the sale of surplus property for any one-time general fund purposes (AB 2 (Evans), Chapter 2, Statutes of 2009-10 Fourth Extraordinary Session). The authority was initially provided until January 1, 2012. SB 70, Chapter 7, Statutes of 2011, and AB 86, Chapter 48, Statutes of 2013, extended this authority along with other flexibility provisions until January 1, 2014 and January 1, 2016, respectively. This authority does not prohibit school districts from applying for state bond funds.

This bill establishes a new provision that is similar but not identical to provisions in SB 1415. It is not clear why this is necessary and will instead create confusion between the two provisions. Current law already gives districts the authority to use the proceeds from the sale of surplus property for any one-time general fund purposes. If the Committee chooses to pass this bill, **staff recommends** striking this provision.

**Joint occupancy.** Under current law, a district may enter into long term leases (up to 66 years) for the use of district-owned real property and buildings by a private person, firm, or local governmental agency. A district may allow a private entity to build on or make alterations of existing property. If the school district will be using the facilities, the buildings must comply with the Field Act (seismic safety). A joint-occupancy agreement must be approved by the State Board of Education.

This bill requires a school district, prior to entering into a joint occupancy lease agreement, to first offer to lease or sell the property to a charter school, unless the property will be used for housing of school or district employees or if the school district intends to enter into a joint occupancy lease that would be solely used to provide instructional programs that benefit pupils.

Joint occupancy is not surplus property; yet this requirement will force a school district to treat a property as surplus while bypassing the process for declaring a district property as surplus. This requirement may also inhibit a school district from entering into partnerships that may not be instructional in nature but that may still benefit students, the school district, or the community. The Compton Unified School District, which opposes the bill, cites that the bill will prohibit the school districts from entering into the following types of partnerships:

- A City or a Library District that plans to build a library, which would also be a resource to District Teachers and Students.
- A University of California, California State University or California Community College that plans to build an extension campus (with the Community College being able to give District students credit for courses pursued there).
- A warehouse site, at which the District could receive discounted space for storage of its equipment and materials.

If the Committee chooses to pass this bill, **staff recommends** striking this provision.

**Prevailing wage.** Current law requires public works projects to comply with prevailing wage laws under the Labor Code. **Staff recommends** clarifying that any construction, alternation,

demolition, installation, repair and maintenance work on real property purchased or leased on surplus property be considered public works projects.

**Sunset.** Staff recommends extending the sunset by five years.

**Arguments in support.** In addition to the reasons stated by the author, supporters state that school districts have vacant properties that could benefit charter schools. Especially with rising property values and increasing cost of land, this bill provides an affordable option for charter schools. Supporters also state that school districts have used joint occupancy agreements to avoid declaring property as surplus.

**Arguments in opposition.** Opposition states that the bill takes away local control of school boards' authority to make land use decisions (joint occupancy) and objects to the requirement to sell property to charter schools at overly generous prices that are at the expense of school districts and the children they serve.

**Previous legislation.** SB 1016 (Budget Committee), Chapter 38, Statutes of 2012, until June 30, 2013, required school districts 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 (Budget Committee), 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 average daily attendance the following year, and established a process for disposal of the property if the charter school does not use the property for instructional purposes or no longer needs the property.

AB 2 (Evans), Chapter 2, Statutes of 2009-10 Fourth Extraordinary Session, authorized, until January 1, 2012, school districts to use proceeds from the sale of surplus property for any one-time general fund purposes without prohibiting school districts from applying for state bond funds.

SB 70 (Budget Committee), Chapter 7, Statutes of 2011, extended the AB 2 authority to January 1, 2014.

AB 86 (Budget Committee), Chapter 48, Statutes of 2013, extended the authority to January 1, 2016.

SB 1415 (Scott), Chapter 810, Statutes of 2006, authorizes the proceeds from the sale of surplus property to be deposited into the general fund for one-time expenditures and prohibits the use for ongoing expenditures.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Charter Schools Association (sponsor)  
EdVoice Board of Directors  
A number of individuals

**Opposition**

Association of California School Administrators  
California Association of School Business Officials  
California Association of Suburban Schools  
California Federation of Teachers  
California Labor Federation  
California Professional Firefighters  
California School Boards Association  
California School Employees Association  
California State PTA  
California Teachers Association  
Coalition for Adequate School Housing  
Compton Unified School District  
San Diego Unified School District  
San Francisco Unified School District  
Small School Districts' Association

**Analysis Prepared by:** Sophia Kwong Kim / ED. / (916) 319-2087