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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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<b>Bill No:</b>	SB 806	<b>Hearing Date:</b>	April 19, 2017
<b>Author:</b>	Glazer		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Ian Johnson		

**Subject:** Charter schools: operation: nonprofit public benefit corporations

**NOTE:** This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

### SUMMARY

This bill prohibits the operation of for-profit charter schools, prohibits for-profit entities from engaging in certain activities related to charter school governance and instructional services, and subjects charter schools to a variety of the same open meeting, conflict-of-interest, and disclosure laws as traditional school districts. The bill also allows charter school authorizers to correct violations of current self-dealing laws through court, as prescribed by the corporations code. Lastly, the bill authorizes charter schools to seek reimbursement for state-mandated activities and waivers from the State Board of Education from various provisions of the Education Code.

### BACKGROUND

Existing law, the Charter Schools Act of 1992, provides for the establishment of charter schools in California for the purpose, among other things, of improving student learning and expanding learning experiences for pupils who are identified as academically low achieving. Existing law declares that charter schools are part of the public school system as defined in Article IX of the California Constitution and are "under the exclusive control of the officers of the public schools." A charter school is required to comply with statutes governing charter schools and all of the provisions set forth in its charter, but is otherwise exempt from most laws governing school districts except where specifically noted. (Education Code § 47601 et seq.)

Existing law:

- 1) Authorizes a charter school to elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law.
- 2) Specifies that the governing board of a school district that grants a charter for the establishment of a charter school shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.
- 3) Specifies that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of

acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law, including, but not limited to, those required by Education Code Sections 47604.32 and 47605(m). (EC § 47604)

Existing law requires state and local agencies to conduct business in meetings that are open to the public:

- 1) The Brown Act requires meetings of a local agency's board of directors to be open to the public. (Government Code § 54950 et seq.)
- 2) The Bagley-Keene Open Meeting Act requires meetings of state bodies to be open to the public. (GC § 11120)

The California Public Records Act declares that the public has a right to access information that concerns the people's business and provides that public records shall be available for inspection, except as provided by an express provision of law. (GC § 6250 and § 6253)

Existing law prohibits members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. (GC § 1090 et seq.)

The Political Reform Act of 1974, established by the voters through Proposition 9 in June 1974, requires public officials to carry out their duties in an unbiased manner, free from influence by outside interests, and to follow regulations during elections, as defined. The Political Reform Act also requires government agencies to adopt a conflict-of-interest code that requires designated employees of the agency to file an annual statement of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may be affected materially by a decision made, or participated in, by the designated employee by virtue of his or her position. (GC § 81000 et seq.)

The codes governing state corporations (including charter schools operated by non-profit or for-profit corporations) require no more than 49 percent 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. (Corporations Code § 5110 et seq.)

Existing law provides no specific requirement for charter school governing board conflict of interest policies.

## **ANALYSIS**

This bill:

- 1) Requires charter schools to operate as, or be operated by, a nonprofit public benefit corporation, a school district, or a county office of education, and prohibits a charter school from operating as a for-profit entity.
- 2) Prohibits a for-profit entity from: (1) participating in the appointment or selection of members of the board of directors of a nonprofit charter school; (2) supervising a nonprofit charter school's employees; (3) servicing more than 50 percent of a nonprofit charter school's pupil-serving employees with employees of the for-profit entity; and (4) approving, validating, denying, or vetoing the annual budget of a charter school.
- 3) Beginning July 1, 2018, and subject to limitation, subjects the governing body of a charter school to all of the following:
  - a) The Ralph M. Brown Act, except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act is subject to the Bagley-Keene Open Meeting Act regardless of the authorizing entity.
  - b) The California Public Records Act.
  - c) Provisions of Government Code 1090 prohibiting government officers or employees from being financially interested in contracts or purchases made by them in their official capacity, unless the charter school is operated as, or is operated by, a nonprofit public benefit corporation.
  - d) The Political Reform Act of 1974. For purposes of Government Code § 81000, the bill provides that a charter school is considered an agency and is the most decentralized level for purposes of adopting a conflict of interest code.
  - e) The Nonprofit Public Benefit Corporation Law, if the charter school is operated by or as a nonprofit public benefit corporation.
  - f) Prohibits a member of the governing body of a charter school from providing a loan to the charter school or sign a guarantor agreement relative to a line of credit for the charter school unless all of the following are satisfied:
    - i) The governing body of the charter school adopts a resolution at a public meeting declaring and describing the need for the loan or the line of credit.
    - ii) The governing body of the charter school discloses and approves the loan agreement or line of credit, including the terms of the loan or the line of credit, during a public meeting.
    - iii) The member of the governing body of the charter school abstains from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters affecting the loan agreement or the line of credit.

- g) Prohibits a member of the governing body of a charter school from leasing real property or signing a guarantor agreement relative to a lease of real property to be occupied by a charter school unless:
  - i) The governing body of the charter school discloses and approves the real property lease agreement, including the terms of the lease and the guaranty, if applicable, during a public meeting.
  - ii) The member of the governing body of the charter school who is a lessor or guarantor of the real property to be occupied by the charter school abstains from voting on, or influencing or attempting to influence another member of the governing body of the charter school regarding, all matters affecting the real property lease agreement.
- h) Requires a member of the governing body of a charter school to abstain from voting on, or influencing or attempting to influence another member of the governing body of the charter school regarding, personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs, as specified.
- i) Specifies that the governing board of a charter school is not subject to open meeting laws or the Public Records Act when conducting activities unrelated to the school's operation and prohibits the discussion of unrelated activities in meetings held to discuss the operation of the charter school.
- j) Authorizes the governing body of a charter school to meet within the physical boundaries of the state if all of the following are specified:
  - i) Proper notices, as specified, are posted at all charter school facilities.
  - ii) A teleconference location is available in at least one charter school facility within the physical boundaries of each county in which any of the charter school's facilities are located.
  - iii) The meeting location complies with the open, public, and accessibility requirements, as specified.
  - iv) For nonclassroom-based charter schools, the meeting occurs within the boundaries of the county in which the greatest number of pupils who are enrolled in the charter reside.
- k) Provides that the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act shall not apply to committees of the charter school, unless a committee is comprised of a majority of the members of the governing body of the charter school.

- l) Authorizes the governing body of a charter school to hold closed sessions to consider matters regarding pupil discipline.
  - m) Provides that a statement of economic interest that is filed by a designated person at a charter school after the required deadline pursuant to the Political Reform Act of 1974 shall not be the sole basis for revocation of a charter.
  - n) Requires a charter school, within 20 days upon a request for a copy of records, as specified, to determine whether the request seeks copies of disclosable public records in possession of the charter school and promptly notify the person making the request of that determination.
  - o) Provides that a charter school may require payment of actual costs from the person making the request before producing the records.
  - p) Provides that the governing board of a school district, county board of education, or the State Board shall not impose any requirements that are inconsistent with, or in addition to, the bill's provisions, as specified.
  - q) Provides that, if a potential violation of the self-dealing provisions has occurred, the charter authorizer may initiate, with relator status, the court process established in the Corporations Code § 5233, as specified. If the court finds a violation has occurred: (1) the charter school shall implement the court's ruling and remove any convicted board member or employee, and (2) the charter authorizer may prohibit any board memberships with a material financial interest in the school for up to five years.
  - r) Specifies that policies adopted by a charter school or its authorizer in accordance with the bill shall not constitute a material revision to the charter and that any requirements between a charter and its authorizer that are beyond the scope of this bill are null and void.
- 4) Provides that a charter school is considered a local government and school district for purposes of state mandate reimbursement and the ability to seek a waiver of provisions of the Education Code from the State Board of Education.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "It is long overdue for the Legislature to pass a robust conflict of interest law for charter schools that effectively serves the best interests of the public, charter schools, and their students—and that can become law.

In addition, current law does not clearly state that charter school cannot be run by for-profit businesses and does not define those functions of a charter school that are off limits to a for-profit entity under contract to the charter school. Even though only 5 out of 1,253 charter schools in the state are for profit, it is critical to declare California off limits to for-profit operators.

While substantial portions of both of these policy objectives have been widely supported for years and a consensus has formed around a comprehensive array of governance and conflict of interest revisions, no legislation has yet become law.

This bill lays out in detail a package of revisions that (1) achieves the right balance between public transparency, conflict of interest controls, and sensitivity to the singular needs of a charter school, and (2) provides limitations on for-profit contractors.”

- 2) **Public accountability laws.** County boards of education and school district governing boards are required to conduct public meetings and make information available to the public, upon request. Members of these boards are also subject to conflict-of-interest statutes contained in Government Code § 1090 and the Political Reform Act of 1974.
  - a) *Open meeting laws* – entitles the public to have access to meetings of multi-member public bodies. The Brown Act and the Bagley-Keene Act recognize the need to balance the public’s right to open government with the need for boards, on occasion, to have closed session discussions in certain matters such as personnel or litigation. By making charter schools subject to open meeting laws, charter school boards would need to provide advance notice of meetings and conduct their meetings in public.
  - b) *Public records* – the purpose of the California Public Records Act (CPRA) is to give the public an opportunity to monitor the functioning of their local and state government. The fundamental precept of CPRA is that governmental records are to be disclosed to the public when requested, unless there is a specific reason not to do so. The CPRA allows for certain exemptions, such as matters relating to individual privacy. Under CPRA, agencies must segregate or redact exempt information and disclose the remainder of the record. Under the provisions of this bill, charter schools would need to respond to requests for information that is not private in nature.
  - c) *The Political Reform Act* – The Political Reform Act of 1974 established the Fair Political Practices Commission (FPPC) to administer its requirements and receive annual conflict-of-interest statements. According to the FPPC, the CPRA is designed to assure that public officials perform their duties impartially without bias because of personal financial interests or the interests of financial supporters; and that public officials disclose income and assets that could be affected by official actions and to assure that public officials disqualify themselves from participating in decisions when they have conflicts-of-interest. This bill would result in charter school board members and designated employees having to disclose their financial interests in annual statements filed with the Fair Political Practices Commission.
- 3) **Government Code § 1090.** This is the state’s central conflict-of-interest act. It applies to public officials from members of the Legislature to local officials and

employees, including those of school districts. 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 capacity." This bill specifies that charter schools operated by nonprofit corporations are not subject to Government Code § 1090. Supporters of the bill have expressed concern with subjecting charter schools to the provisions of Government Code § 1090 because it could make it more difficult for philanthropic board members to provide financial assistance or low-interest loans or make facilities available to charter schools, which may happen during the start-up phase of a charter school. However, opponents of the bill argue that since charter schools are public schools and receive public funds, they have a fiduciary duty to taxpayers with regards to the use of those funds and should be subject to the same conflict-of-interest and disclosure requirements as traditional school districts.

- 4) **Corporations Code.** Statute governing corporations requires not more than 49 percent of persons serving on the board of any corporation to be interested persons. "Interested persons" is defined as either of the following: (1) 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, (2) 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 educational agencies, due to the fact that some charter schools are operated by nonprofit corporations. Notwithstanding the corporations code, this bill allows members of the governing body of a charter school to provide loans or lease real property to a charter school if the terms of the loan or lease are disclosed at a public meeting and the offering board member abstains from voting and does not influence other board members. Even with these additions to the requirements of the corporations code, the committee may wish to consider whether it is appropriate to have public funded charter schools abide by these codes, rather than the government code with regard to conflict of interest policies.
- 5) **Court process for self-dealing transactions.** According to the author's office, these provisions are intended to provide an alternative to charter revocation for charter authorizers seeking remedies for suspected self-dealing transaction violations. The bill gives charter authorizers relator status under corporations code, meaning they can bring an action in the superior court of their county for remedy. If the court finds that a violation has occurred, the charter school must implement the ruling and remove any board member or employee found in violation. Further, the authorizer may prohibit any board memberships with a material financial interest in the school for up to five years. Charter authorizers that utilize this process are prohibited from taking further action against the charter school in response to a violation. Would this mean that charter authorizers that begin this court process, and find pervasive and systemic problems suggesting a high probability of repeated offenses by the charter school or governing board, would be prohibited from revoking the charter as authorized under Education Code § 47607? The author may wish to consider clarifying whether the court process included in this bill, if pursued by an

authorizer, is intended to supersede all other existing charter revocation provisions.

- 6) ***Appropriate use of taxpayer dollars?*** While current law explicitly authorizes a charter school to operate as a nonprofit corporation, statute is silent on whether a charter school is permitted to operate as a for-profit corporation. Because of the permissive nature of the Education Code and absent a clear prohibition, several charter schools are currently operating as for-profit corporations. According to the author's office, "Only a handful of California charter schools are now run for profit and this bill bans those operations". The author continues, "But just like traditional school districts, charter schools sometimes turn to private vendors for the provision of some services when it is not cost-effective to provide those services directly." This bill authorizes nonprofit charter schools to fill up to 50 percent of their positions that serve pupils with employees of for-profit entities. Along with considering whether it is an appropriate use of state taxpayer dollars to allow for-profit corporations to operate public schools, the Committee should consider whether public schools should be staffed (up to 50 percent) with employees of for-profit entities.
- 7) ***Impact on students?*** Notwithstanding the issues regarding the appropriateness of using taxpayer dollars for charter schools operating as a for-profit corporation, it does not appear that the bill contemplates what would happen to students attending these schools if the bill were to become law. Presumably, the operating entities could restructure or reorganize themselves as nonprofit corporations to comply. To the extent that these entities are unable to do so, would the charter schools be required to immediately shut down? Would there be a transition period for them to find placement in a new school? Some students may have unique learning needs which could present logistical challenges in finding the appropriate placement in a new school. To prevent the potential disruption of educational services provided to students, the Committee may wish to consider whether the bill should become operative no earlier than January 1, 2019.
- 8) ***Additional clarification may be needed.*** It is unclear if the bill's prohibition would extend to contracts that charter schools have in place with for-profit corporations for various operations such as testing companies, test publishers, and providers of instructional materials. Or is the bill limited only to the for-profit entity that owns or manages the day-to-day operations of the charter school? To prevent differing practical interpretations, the author may wish to consider clarifying which entities would be subject to the bill's prohibition.
- 9) ***Mandates Block Grant.*** According to the Legislative Analyst Office, as another way to address some of the problems with the traditional mandate reimbursement system, the state created two block grants for education mandates. One block grant is for school districts, county offices of education, and charter schools. The other block grant is for community colleges. Instead of submitting detailed claims on an ongoing basis listing how much time and money was spent on each mandated activity, local educational agencies (LEAs) can choose to receive funding for all mandated activities included in the block grants. Except for new mandates not yet included in the state budget, all active



education mandates currently are included in the block grants. Due to concerns regarding the state's constitutional obligation to reimburse LEAs for mandated costs, the state retained the existing mandates claiming process for LEAs not opting into the block grants.

The 2016 Budget Act includes block grant funding of \$219 million for schools and \$32 million for community colleges. Block grant funding is allocated to participating LEAs on a per-student basis, as measured by average daily attendance for schools and full-time equivalent students (FTES) for community colleges. The rate varies by type of LEA and, for schools, by grade span. The difference in rates is because different mandates apply to different LEAs and because one mandate for schools (Graduation Requirements) is exceptionally costly and only applies to high schools. School districts receive \$28 per student in grades K-8 and \$56 per student in grades 9-12 while charter schools receive \$14 per student in grades K-8 and \$42 per student in grades 9-12. Even though charter schools are not eligible to submit mandate claims, the state included them in the block grant given some mandates apply to them. County offices of education (COE) receive \$28 per student in grades K-8 and \$56 per student in grades 9-12 and an extra \$1 per student for all students located within the county, in recognition of the fact that some mandates entail broader oversight responsibilities performed by the COE.

This bill provides that charter schools are considered local governments and school districts for purposes of state mandate reimbursement. As this bill deals with open meetings, conflict of interest, and disclosure policies, the Committee may wish to consider whether it would be more appropriate to have a separate budgetary discussion on this proposal.

- 10) **State Board of Education Waivers.** Under current law, school districts, on behalf of one or more of its schools or programs after a public hearing on the matter, may request the State Board of Education (SBE) to waive all or part of any section of the Education code or any regulation adopted by the SBE that implements a provision of law, with certain exceptions. Charter schools previously had similar waiver authority where they submitted waivers to their charter authorizer, who were then required to hold a public hearing prior to submitting the waivers to the SBE. That waiver authority became inoperative on January 1, 2007. This bill provides charter schools the same ability as school districts to seek waivers before the SBE. Again, as this bill deals with open meetings, conflict of interest, and disclosure policies, the Committee may wish to consider whether this bill should provide this authority to charter schools.
- 11) **Arguments in support.** Supporters of the bill indicate that prohibiting charter schools from being run by for-profit corporations would protect California taxpayers by ensuring their money is not being taken out of the state and away from classrooms. The bill would help charter schools focus on students and not profits or pleasing investors. Further, excluding nonprofit charter schools from Government Code § 1090 ensures that these schools can turn to board members for loans and leases that the charter school cannot access on its own. Lastly, affirming that charter schools are subject to the Corporations Code prevents

board members from engaging in any financial interest that does not benefit the charter school.

- 12) ***Arguments in opposition.*** Opponents of the bill argue that whether or not the school is “for-profit” should not be the driver, and rather, we should be looking at what the program has done to help students attain academic proficiency in an alternative setting. They indicate the bill would prohibit successful arrangements with online programs that have provided students with successful options. Further, the bill would go too far in limiting the scope of what work for-profit corporations assisting charter schools can do. Other opponents argue that, according to a 2015 Legislative Counsel opinion, charter schools are already required to comply with the Brown Act, the Public Records Act, the Political Reform Act, and Government Code 1090. By removing charters from their current Government Code 1090 requirements, this bill would allow nonprofit charter school board members to serve only the interests of the corporation, when in fact charters schools serve an important public service.

- 13) ***Related Legislation.***

AB 406 (McCarty) prohibits charter schools from operating as or being operated by a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization, beginning January 1, 2019. This measure is currently pending before the Assembly Education Committee.

AB 1478 (Jones-Sawyer) requires charter schools and an entity managing a charter school to comply with the same conflict of interest requirements as school districts, including Government Code 1090. This measure is currently pending before the Assembly Judiciary Committee.

## **SUPPORT**

Association of Personalized Learning Schools and Services  
California Charter Schools Association (sponsor)

## **OPPOSITION**

California Parents for Public Virtual Education  
California Teachers Association  
California Virtual Academies  
Charter Schools Development Center  
K-12, Inc.  
Opportunities for Learning Public Charter Schools

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