
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No:	SB 949	Hearing Date:	April 4, 2018
Author:	Allen		
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Urgency:	No	Fiscal:	Yes
Consultant:	Ian Johnson		

Subject: Conflicts of interest: public officers and employees: charter schools

NOTE: The Rules Committee has requested that this bill be returned if approved by the Committee on Education. A "do pass" motion should include referral to the Committee on Rules.

SUMMARY

This bill amends certain conflict-of-interest requirements mandated by Government Code Section 1090 and specifies that charter school governing boards are subject to the same requirements and exceptions as school district governing boards.

BACKGROUND

Existing law prohibits officers, board members, and employees of a school district from having a financial interest in any contract made by the officer, board member, or employee, in an official capacity on behalf of the school district. Government Code Section 1090 prohibits an officer or employee of the enumerated entities from being financially interested in a contract made by the officer or employee in his or her official capacity or by a body or board of which the officer or employee is a member. Section 1090 also prohibits an officer or employee of the enumerated entities from making, in their official capacity, either a purchase from the entity or a sale to the entity. As used here, the term "financially interested" refers to any financial interest that might interfere with the officer or employee's unqualified devotion to their public duty. However, an officer is not deemed to be interested in a contract entered into by a board or school district in which the officer, board member, or employee is a member if that individual has only a remote interest in the contract and that interest is disclosed to the board or district of which the individual is a member, as specified. Under existing law, a contract in which a public officer is interested is void, not merely voidable.

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.

ANALYSIS

This bill amends certain conflict-of-interest requirements mandated by Government Code Section 1090 and specifies that charter school governing boards are subject to the same requirements and exceptions as school district governing boards.

Specifically, this bill:

- 1) Specifies that the prohibitions contained in GC 1090, except Section 1099, apply to the members of the governing bodies of charter schools solely with respect to the operations of a charter school.
- 2) Includes the following within the definition of a remote interest, the peripheral interests that an officer is not prohibited from:
 - a) A person receiving a salary, per diem, or expenditure reimbursement from a charter school.
 - b) An owner or partner of a firm serving as an appointed member of an unelected board of a nonprofit corporation or nonprofit limited liability company that governs a charter school, if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.
 - c) A member of the governing body regarding collective bargaining agreements and personnel matters that affect a class of employees to which the member's relative belongs, provided that personnel matters that uniquely affect a relative of the member may not be voted upon.
- 3) Specifies that the failure of an officer to disclose his or her interest in a contract is only punishable, and only voids the contract, if it is knowing and willful.
- 4) Clarifies that the services that an officer or employee may receive from the public body or board of which he or she is a member include educational services, and that the public body or board includes charter school boards in addition to school district governing boards.
- 5) Specifies that an officer or employee is not to be deemed interested in a contract if they are a landlord or tenant of the contracting party, including a charter school.
- 6) Specifies that the existing exception for an officer or employee whose spouse has worked for the public agency for at least one year also applies to the governing body of a charter school.
- 7) Clarifies that a director, in addition to a member, of a nonprofit corporation or nonprofit limited liability company is also deemed uninterested, provided that the interest is disclosed to the body or board at the time of the first consideration of the contract and noted in official records.

- 8) Allows a person who serves as a member of the governing body or as an employee of a public school, including a charter school, to provide the school with a loan or line of credit due to a fiscal emergency, subject to the following requirements:
 - a) The person providing the loan or line of credit shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters affecting the loan or line of credit.
 - b) The governing body, before entering into the agreement, declares the existence of and describes the fiscal emergency by adopting a resolution at a public meeting.
 - c) The governing body discloses and approves the agreement, including the terms of the loan or line of credit, during a public meeting.
 - d) The interest rate for the loan or line of credit is not be more than 50 percent of the fair market rate.
- 9) Allows a person who serves as a member of the governing board or as an employee of a public school, including a charter school, to lease real property or sign a guarantor agreement relative to the lease of real property to be used for public school purposes, subject to the following requirements:
 - a) The agreement is arranged by a licensed real estate broker solely on behalf of the charter school or the governing body reasonably determines that the agreement will permit the charter school to meet its ongoing financial obligations and there is no available alternative to meet the needs of the school.
 - b) The member of a governing body who is a lessor or guarantor abstains from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters affecting the real property lease agreement.
 - c) The governing body discloses and approves the real property lease agreement or guarantee, including the terms of the lease or guarantee, during a public meeting.
- 10) Requires any interested person to make a written demand to cure or correct an alleged violation within 30 days before commencing a penal action.
- 11) Prohibits any action seeking penal sanction, including removal or disqualification from holding public office, except for a knowing and willful violation.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Government Code Section 1090 is the state's central conflict-of-interest act. It ensures that public officials do not have a financial interest in contracts made in their official capacity. While charter

schools are operated differently than traditional public schools, they are public schools and receive public funds. There has been a longstanding debate within the education community about whether charter school board members should be subject to the same conflict-of-interest requirements that school district board members already comply with under state law.

SB 949 ends that debate by specifying that charter school boards are subject to GC Section 1090, except in limited, specified circumstances. The bill permits a school district or charter board member to provide a loan or line-of-credit to a public school if there is a fiscal emergency and the interest rate for the loan is no more than 50% of the fair market rate. This provides schools flexibility during fiscal emergencies, but prevents profiteering or other inappropriate financial relationships. The bill also permits a school district or charter board member to lease property to public schools if the agreement is arranged by a licensed real estate broker and the governing body has determined that this lease is the only available alternative to meet ongoing financial obligations. The board member is required to abstain from voting on matters related to the loan, line-of-credit or lease. Finding appropriate physical space continues to be a challenge for some schools, so this will help solve that ongoing problem, while requiring the board member to recuse him or herself from voting on or influencing these decisions.

SB 949 also specifies that violations of GC Section 1090 must be both knowing and willful, and permits the ability to cure or correct an alleged violation within 30 days.”

- 2) **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 and nonprofit limited liability companies are subject to Government Code 1090.
- 3) **Longstanding debate about applying Government Code 1090 to charter schools.** Charter school advocates have previously expressed concern with subjecting charter school governing boards 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, others 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 district governing boards.

Several measures have attempted to apply GC 1090 to charter school governing boards, including AB 709 (Gipson, 2015), which was vetoed by the Governor. In his veto message, the Governor wrote the following:

“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.”

- 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 have long contended that 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. While this committee has passed measures previously that would apply the corporations code to charter school governing boards, rather than Government Code 1090, requiring school district and charter school governing boards to abide by the same conflict-of-interest requirements is reasonable.
- 5) ***This bill addresses concerns that have been raised from all sides.*** This bill amends GC 1090 in ways that (1) address far-reaching concerns by board members from every level of government related to potentially facing criminal penalties for approving contracts that they were not knowing and willfully interested in without the right to cure, (2) address potential concerns by school board members related to collective bargaining, and (3) address several concerns from charter school advocates related to loans and lines of credit, leases, and ensuring that the existing exceptions for school districts also apply to charter schools.

SUPPORT

None received

OPPOSITION

Charter Schools Development Center

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