
THIRD READING

Bill No: SB 765
Author: Wiener (D)
Amended: 5/26/17
Vote: 21

SENATE EDUCATION COMMITTEE: 5-1, 4/26/17
AYES: Allen, Wilk, Galgiani, Pan, Vidak
NOES: Leyva
NO VOTE RECORDED: Mendoza

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/25/17
AYES: Lara, Bates, Beall, Bradford, Hill, Nielsen, Wiener

SUBJECT: School facilities: surplus real property: charter schools

SOURCE: Author

DIGEST: This bill requires school districts seeking to sell, lease, or jointly occupy property for non-educational purposes to first offer the property to a charter school, except property intended to be used for teacher housing. Further, the bill specifies that proceeds from the sale or lease of surplus property to a charter school may be used by the school district for any one-time general fund purpose.

ANALYSIS:

Existing law:

- 1) Establishes a mandatory process for school districts seeking to sell or lease surplus property. Specifically, school districts must:
 - a) Identify surplus property and convene an advisory committee to develop a district-wide policy and hold hearings on the use of surplus property.

- b) Declare publically their intent to sell or lease surplus property, with the governing board considering the advisory committee's recommendation that the property be declared surplus and declaring its intent to dispose of the property in a resolution.
 - c) Until June 30, 2016, offer to sell or lease real property to any charter school that has submitted a written request to the school district to be notified of surplus property offered for sale or lease by the school district and that meets certain other criteria.
 - d) For property subject to the Naylor Act (property that has been used entirely or partially for outdoor recreational or playground purposes), offer the property to various specified entities.
 - e) For sale or lease with option to purchase, offer the property to various specified entities.
- 2) Requires, generally, school district proceeds from the sale of property to be used for capital outlay costs and proceeds from the lease of property with option to purchase to be used for routine restricted maintenance. In addition, proceeds from the sale or lease with option to purchase may be used for one-time general fund purposes if the school district governing board and the State Allocation Board determines that the district has no anticipated need for additional sites or building construction for the next ten years, and the district has no major deferred maintenance.
 - 3) Establishes the School Facility Program under which the state provides general obligation bond funding for various school construction projects.
 - 4) Authorizes the State Allocation Board to establish a program that requires a local educational agency that sells real property to return any state funds that were provided to purchase or improve the property if the real property was purchased or improved within 10 years before the real property is sold, and if the property is not sold to a charter school, school district, county office of education, or an agency that will use the property exclusively for the delivery of child care and development services.
 - 5) Authorized, until January 1, 2016, school districts to deposit the proceeds from the sale of surplus property purchased entirely with local funds into the general

fund of the school district and authorized the school district to use the proceeds for any one-time general fund purpose.

This bill:

- 1) Requires school districts seeking to sell or lease surplus property or enter into a lease or agreement to jointly occupy real property, except joint occupancy agreements to provide instructional programs that benefit pupils, to first offer the property to a requesting charter school with at least 80 units of average daily attendance, except if the property is intended to be used for affordable teacher housing under the Teacher Housing Act of 2016.
- 2) Requires a charter school that purchases or leases property under the bill to use the property exclusively to provide direct instruction or instructional support. If the charter school fails to do so, it is required to follow the existing process that applies to school districts seeking to sell or lease property.
- 3) Caps the price at which property can be sold by a school district to a charter school at the district's cost of acquisition, with cost-of-living adjustments, plus the cost of any construction undertaken, with construction cost adjustments. In no event can the price be less than 25 percent of the property's fair market value or 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.
- 4) Caps the annual rate for a school district leasing land to a charter school at five percent of the maximum sales price, with cost-of-living adjustments.
- 5) Specifies that the requirement of school districts to first offer property to charter schools only applies to real property identified by a school district as surplus after July 1, 2012.
- 6) Authorizes a school district to deposit the proceeds from the lease or sale of surplus real property leased or purchased by a charter school into the general fund of the school district, and may use the proceeds for any one-time general fund purpose if the district governing board and the State Allocation Board have determined that the district has no anticipated need for school sites or building construction or major deferred maintenance projects for a ten-year period following the sale or lease of surplus real property

- 7) Specifies that a school district may apply for new construction or modernization funding pursuant to this chapter if both of the following conditions are satisfied:
- a) Five years have elapsed since the date upon which the sale or lease was executed.
 - b) The State Allocation Board determines that the district has demonstrated enrollment growth or a need for additional sites or building construction that the district could not have anticipated at the time the board made its original determination that the district had no need for the ten-year period following the sale or lease.

Comments

- 1) *Need for the bill.* According to the author, “One of the biggest impediments to the deployment of charter schools is the difficulty of acquiring appropriate property without 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.

Two previous budget acts had granted charter schools the right of first refusal in acquiring school districts’ surplus facilities. Without incentives to surplus their unused property, however, school districts generally refused to make facilities available, and the acts were allowed to expire in 2016 due to disuse.

Due to enrollment reductions and the corresponding underutilization of facilities, many school districts across California own surplus property. Some school districts have worked to sell or lease their surplus to for-profit real estate developers before offering it to charter schools for educational purposes. In other cases, often despite mounting financial challenges, school districts simply let property sit empty.

Because school districts are limited in their use of sale or lease proceeds (revenues can only be used for capital outlay or non-recurring maintenance projects), there is frequently little incentive for districts to surplus property at all. As a result, charter schools are often refused use of surplus facilities even when offering market value or above. One recent example of misaligned

incentives involved the Ross Valley Charter School in Fairfax, which had to delay opening for a year after the local school district rejected their market-rate offer to lease surplus property despite receiving no other bids. The unused facilities remain empty.”

- 2) *Charter school facility funding.* The state’s school facility funding system is a partnership, with the state providing school districts with dollar-for-dollar matching funds for school construction and modernization projects through the School Facility Program. Within that system, charter schools can face unique challenges, because: (1) unlike school districts, they cannot independently issue local general obligation bonds to finance their facility needs, (2) many are start-ups lacking access to public school facilities, resulting in the charter school leasing space in office buildings and other commercial sites, and (3) lending institutions tend to view charter schools as high-risk investments, making it difficult to obtain the loans necessary to finance school facilities. A number of statutory measures have aimed to address these challenges. After the passage of Proposition 39 in 2000, it became the legal responsibility of school districts to make all reasonable efforts to house charter school students in facilities equivalent to those used to house district students. The state has also implemented several programs designed to increase funding for charter school facilities, including the Charter School Facilities Program, financed with state bond funds, the Charter School Revolving Loan Fund, the Charter School Facility Grant Program, and the federal Charter School Facilities Incentive Grants Program. Despite these funding mechanisms, charter advocates claim that an inadequate supply of school facilities may be the single largest stumbling block to the growth of charter schools.
- 3) *Affordable teacher housing.* The Teacher Housing Act of 2016 authorizes school districts to establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing. School districts can utilize these programs as an additional incentive for teachers to enter and stay in their schools.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, “This bill is not expected to result in significant costs to the state.”

SUPPORT: (Verified 5/25/17)

California Charter School Association

Charter Schools Development Center
EdVoice

OPPOSITION: (Verified 5/25/17)

California School Boards Association
California Teachers Association

Prepared by: Ian Johnson / ED. /
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