

ASSEMBLY THIRD READING

AB 1478 (Jones-Sawyer)

As Amended May 1, 2017

Majority vote

Committee	Votes	Ayes	Noes
Education	5-2	O'Donnell, Gloria, McCarty, Thurmond, Weber	Chávez, Kiley
Judiciary	8-3	Mark Stone, Chau, Chiu, Cristina Garcia, Holden, Kalra, Reyes, Ting	Cunningham, Kiley, Maienschein

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

- 1) Declares charter schools and an entity managing a charter school are subject to all of the following:
 - a) The Ralph M. Brown Act (Brown Act), except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act (BKOMA) is subject to that Act;
 - b) The California Public Records Act (CPRA);
 - c) Government Code Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1; and,
 - d) The Political Reform Act of 1974 (PRA). Specifies that a charter school shall be considered an agency for purposes of creating a conflict of interest code.
- 2) Specifies this measure does not prohibit an employee of a charter school from serving as a member of the governing body of that charter school; and, specifies such a member of the governing body of a charter school shall abstain from voting on all matters affecting his or her own employment.
- 3) Specifies that it is the intent of the Legislature to ensure that charter school governance is transparent and that monitoring and oversight of charter schools are conducted to protect the public interest.

EXISTING LAW pertaining to charter schools:

- 1) Provides no specific requirement for charter school governing board conflict of interest policies.
- 2) Deems charter schools as 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 Section 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 he/she resigns as an employee. (Education Code Section 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 Section 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 Section 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 Legislative Counsel.

COMMENTS: This bill requires charter school governing body members and entities that manage charter schools 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 an annual statement of economic interest, which makes public any potential conflicts of interest that individual may have in their official capacity. 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. 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 to file statements of economic interest according to the Political Reform Act; specifies that charter school governing body members may *not* be financially interested in any decision made by the governing body; requires charter schools to comply with the California Public Records Act; and, requires charter school governing bodies to abide by the Brown Act or the Bagley-Keene Open Meetings Act. This bill also expressly authorizes charter school employees to serve on a charter school governing body.

According to the author, "Although Legislative Counsel interprets this proposal to represent current law, many charter schools are small operations without legal representation and are unaware of their need to comply with these laws. The result has been serious and routine cases of fiscal mismanagement in the charter school environment, much of which could have been prevented through increased transparency, accountability, and public scrutiny. More than \$80 million of waste, fraud, and abuse of tax dollars has been documented in California's charter school environment to date. This bill requires charter school governing boards to comply with laws promoting transparency and accountability to parents and the public in the operation of public schools and expenditure of public funds; it does not ask more from charter schools than of traditional public schools."

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. The greater and more unfettered the 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 Section 1090. Government Code Section 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 or for-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. Advocates of charter schools contend they should abide by conflict of interest provisions related to corporations not local education agencies due to

the fact that some charter schools are operated by non-profit corporations. The committee should consider whether it is appropriate to have public taxpayer funded charter schools abide by the corporations code rather than the government code with regard to conflict of interest policies.

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, must file a statement of economic interest, annually.

Charter Management Organizations: This measure requires entities managing charter schools to comply with the conflict of interest code sections mentioned above. The author's intent is that entities known as charter management organizations that function in the same way as a school district be subject to these laws. Charter management organizations operate charter schools in the following ways: administration of the school, the governing body of the school, selecting curriculum, hiring teachers, providing budget and payroll services, etc. Since these organizations operate the school in the same way that school districts operate traditional public schools, the author argues these organizations should be subject to the same conflict of interest policies as school districts. It is unclear, however, if all charter management organizations operate in this same way, or if some management organizations play a smaller role in managing a charter school.

Similar Measures in Recent Years: Measures similar to this have been introduced a few times in recent years. Recent measures contained more exemptions and specific requirements for charter schools. For example, previous measures allowed board members to provide emergency loans, lease property to the school and sign as a guarantor to a lease agreement, in specified instances. Previous measures also specified where charter school governing body meetings could physically take place in relation to the school and authorized a charter school governing board to hold closed sessions to consider pupil discipline. Further, previous measures specified that a late statement of economic interest filed by a governing body member could not be the sole basis for revocation of a charter. The committee should consider whether this bill should contain this same level of specificity.