

AMENDED IN ASSEMBLY MARCH 12, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 913

Introduced by Assembly Member Chau

February 22, 2013

An act to add Section 47604.1 to the Education Code, *and to amend Section 1091 of the Government Code*, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 913, as amended, Chau. ~~Charter schools: open meetings: Charter schools.~~

(1) *The Ralph M. Brown Act requires that all meetings of a legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.*

This bill would expressly state that a charter school is subject to the Ralph M. Brown Act, unless it is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act.

(2) *The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.*

This bill would expressly state that a charter school is subject to the California Public Records Act.

(3) *Existing law prohibits certain public officials, including, but not limited to, members of governing boards of school districts and citizens'*

oversight committees, from engaging in specified activities that are inconsistent or incompatible with, or inimical to, their duties as public officials, including, but not limited to, entering into a contract in which the official or the official's family member has a financial interest, as specified.

This bill would expressly state that a charter school is subject to these provisions.

(4) The Political Reform Act of 1974 requires every state agency and local governmental agency to adopt a conflict-of-interest code, formulated at the most decentralized level possible, that requires designated employees of the agency to file statements of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may foreseeably be affected materially by any governmental decision made or participated in by the designated employee by virtue of his or her position.

This bill would expressly state that a charter school is subject to the Political Reform Act of 1974.

(5) This bill would state various exceptions and clarifications regarding the applicability of the acts described above in paragraphs (1) to (4), inclusive.

(6) Existing law requires a member of the governing board of a school district to abstain from voting on personnel matters that uniquely affect a relative of the member.

This bill would provide that an employee of a charter school is not disqualified from serving as a member of the governing body of the charter school because of that employment status. The bill would require a member of the governing body of a charter school to abstain from voting on, or influencing or attempting to influence another member of that body regarding, any matter affecting his or her own employment or any personnel matter that uniquely affects a relative of the member.

The bill would provide that a person who provides a loan to a charter school due to a school fiscal emergency, or who leases, or signs a guarantor agreement relative to the lease of, real property to be occupied by a charter school, is not disqualified because of that loan, lease, or guarantor agreement from also serving as a member of the governing body of the charter school or being an employee of the charter school and would require that person to abstain from voting on, or influencing or attempting to influence another member of that body regarding, all matters affecting the loan agreement or the real property lease agreement, as applicable.

(7) *This bill would make these provisions operative on July 1, 2014.*

~~The Ralph M. Brown Act requires that all meetings of a legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.~~

~~This bill would expressly state that a charter school is subject to the Ralph M. Brown Act, unless it is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act. The bill would also expressly state that councils and schoolsite advisory committees of charter schools are subject to specified open meeting requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature in enacting this*
2 *act to do all of the following:*

3 *(a) Establish conflict-of-interest policies for the governing body*
4 *of charter schools that mirror existing conflict-of-interest policies*
5 *followed by the governing board of school districts.*

6 *(b) Provide transparency in the operations of the many charter*
7 *schools that are providing quality educational options for parents*
8 *and pupils and renew the faith of parents and the community that*
9 *their local charter school is acting in the best interests of pupils.*

10 *(c) Continue to provide greater autonomy to charter schools*
11 *than traditional public schools and provide greater transparency*
12 *to parents and the public with regard to the use of public funds by*
13 *the governing body of charter schools for the educational benefit*
14 *of their pupils.*

15 *(d) Establish standards and procedures consistent with the*
16 *Charter Schools Act of 1992 to avoid conflicts of interest in charter*
17 *schools.*

18 *SEC. 2. Section 47604.1 is added to the Education Code, to*
19 *read:*

20 *47604.1. (a) A charter school is subject to all of the following:*

1 (1) (A) *The Ralph M. Brown Act (Chapter 9 (commencing with*
2 *Section 54950) of Part 1 of Division 2 of Title 5 of the Government*
3 *Code), except that a charter school operated by an entity governed*
4 *by the Bagley-Keene Open Meeting Act (Article 9 (commencing*
5 *with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title*
6 *2 of the Government Code) is subject to the Bagley-Keene Open*
7 *Meeting Act regardless of the authorizing entity.*

8 (B) *A council or schoolsite advisory committee, as referenced*
9 *in subdivision (b) of Section 25147, of a charter school is subject*
10 *to the requirements of subdivisions (c) and (d) of Section 35147.*

11 (2) *The California Public Records Act (Chapter 3.5*
12 *(commencing with Section 6250) of Division 7 of Title 1 of the*
13 *Government Code).*

14 (3) *Article 4 (commencing with Section 1090) of Chapter 1 of*
15 *Division 4 of Title 1 of the Government Code.*

16 (4) *The Political Reform Act of 1974 (Title 9 (commencing with*
17 *Section 81000) of the Government Code). For purposes of Section*
18 *87300 of the Government Code, a charter school shall be*
19 *considered an agency.*

20 (b) (1) *Notwithstanding Article 4 (commencing with Section*
21 *1090) of Chapter 1 of Division 4 of Title 1 of the Government*
22 *Code, an employee of a charter school is not disqualified because*
23 *of that employment status from also serving as a member of the*
24 *governing body of the charter school. A member of the governing*
25 *body of a charter school shall abstain from voting on, or*
26 *influencing or attempting to influence another member of the*
27 *governing body regarding, all matters uniquely affecting his or*
28 *her own employment.*

29 (2) *Notwithstanding Article 4 (commencing with Section 1090)*
30 *of Chapter 1 of Division 4 of Title 1 of the Government Code, a*
31 *person who provides a loan to a charter school due to a school*
32 *fiscal emergency is not disqualified, because of that loan*
33 *agreement, from also serving as a member of the governing body*
34 *of the charter school or from being an employee of the charter*
35 *school. A member of the governing body of a charter school who*
36 *provides a loan as described in this paragraph shall abstain from*
37 *voting on, or influencing or attempting to influence another*
38 *member of the governing body regarding, all matters affecting the*
39 *loan agreement. The loan agreement shall not disqualify the*
40 *member from serving on the governing body of the charter school*

1 *or the person from being an employee of the charter school if the*
2 *governing body of the charter school, before entering into the loan*
3 *agreement, declares the existence of and describes the fiscal*
4 *emergency by adopting a resolution at a public meeting of the*
5 *governing body. The governing body of the charter school shall*
6 *disclose and approve the loan agreement, including the terms of*
7 *the loan, during a public meeting. This paragraph shall apply to*
8 *a member of the governing body or an employee of the charter*
9 *school who signs a guarantor agreement relative to a line of credit,*
10 *provided that the funds from the line of credit shall not be accessed*
11 *until a fiscal emergency is declared and described as required*
12 *pursuant to this paragraph.*

13 *(3) Notwithstanding Article 4 (commencing with Section 1090)*
14 *of Chapter 1 of Division 4 of Title 1 of the Government Code, a*
15 *person who leases real property to be occupied by a charter school*
16 *or signs a guarantor agreement relative to the lease of real*
17 *property to be occupied by a charter school is not disqualified,*
18 *because of that agreement, from also serving as a member of the*
19 *governing body of the charter school or from being an employee*
20 *of the charter school. A member of the governing body of a charter*
21 *school who is a lessor or guarantor as described in this paragraph*
22 *shall abstain from voting on, or influencing or attempting to*
23 *influence another member of the governing body regarding, all*
24 *matters affecting the real property lease agreement. The governing*
25 *body of the charter school shall disclose and approve the real*
26 *property lease agreement, including the terms of the lease and*
27 *guarantee, during a public meeting.*

28 *(c) A member of the governing body of a charter school shall*
29 *abstain from voting on, or influencing or attempting to influence*
30 *another member of the governing body regarding, personnel*
31 *matters that uniquely affect a relative of the member but may vote*
32 *on collective bargaining agreements and personnel matters that*
33 *affect a class of employees to which the relative belongs. For*
34 *purposes of this section, "relative" means an adult who is related*
35 *to the person by blood or affinity within the third degree, as*
36 *determined by the common law, or an individual in an adoptive*
37 *relationship within the third degree.*

38 *(d) A person who is disqualified by the California Constitution*
39 *or laws of the state from holding a civil office shall not serve on*
40 *the governing body of a charter school.*

1 (e) *To the extent that the governing body of a charter school*
2 *engages in activities that are not related to the operation of the*
3 *charter school, this section does not make those unrelated activities*
4 *subject to Section 1090 of the Government Code, the Ralph M.*
5 *Brown Act, the Bagley-Keene Open Meeting Act, or the California*
6 *Public Records Act. A meeting of the governing body of a charter*
7 *school to discuss items related to the operation of the charter*
8 *school shall not include discussion of any item regarding an*
9 *activity of the governing body that is not related to the operation*
10 *of the charter school.*

11 (f) *The governing body of a charter school may meet within the*
12 *physical boundaries of the county or counties in which one or more*
13 *of the school's facilities are located provided that proper notices*
14 *pursuant to the Ralph M. Brown Act or the Bagley-Keene Open*
15 *Meeting Act are posted within the physical boundaries of each of*
16 *the counties in which any of the school's facilities is located. A*
17 *charter school also may meet in a county contiguous to the county*
18 *where one or more of the school's facilities are located if at least*
19 *10 percent of the pupils who are enrolled in the school reside in*
20 *that contiguous county. A nonclassroom-based charter school that*
21 *does not have a facility may meet within the boundaries of the*
22 *county in which the greatest number of pupils who are enrolled*
23 *in the school reside. This subdivision does not limit the authority*
24 *of the governing body to meet outside these boundaries to the*
25 *extent authorized by Section 54954 of the Government Code,*
26 *provided that the meeting place is in compliance with Section*
27 *54961 of the Government Code.*

28 (g) *The governing body of a charter school may hold closed*
29 *sessions to consider a matter regarding pupil discipline as*
30 *described in Section 48912.*

31 (h) *A statement of economic interest that is filed by a designated*
32 *person at a charter school after the required deadline pursuant to*
33 *the Political Reform Act of 1974 shall not be the sole basis for*
34 *revocation of a charter pursuant to Section 47607.*

35 (i) *For purposes of this section, "facility" means a charter*
36 *school campus, resource center, meeting space, or satellite facility.*

37 (j) *Notwithstanding any other law, this section does not apply*
38 *to actions taken before the operative date of this section.*

39 (k) *This section shall become operative on July 1, 2014.*

1 *SEC. 3. Section 1091 of the Government Code is amended to*
2 *read:*

3 1091. (a) An officer shall not be deemed to be interested in a
4 contract entered into by a body or board of which the officer is a
5 member within the meaning of this article if the officer has only
6 a remote interest in the contract and if the fact of that interest is
7 disclosed to the body or board of which the officer is a member
8 and noted in its official records, and thereafter the body or board
9 authorizes, approves, or ratifies the contract in good faith by a vote
10 of its membership sufficient for the purpose without counting the
11 vote or votes of the officer or member with the remote interest.

12 (b) As used in this article, “remote interest” means any of the
13 following:

14 (1) That of an officer or employee of a nonprofit entity exempt
15 from taxation pursuant to Section 501(c)(3) of the Internal Revenue
16 Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except
17 as provided in paragraph (8) of subdivision (a) of Section 1091.5.

18 (2) (A) That of an employee or agent of the contracting party,
19 if the contracting party has 10 or more other employees and if the
20 officer was an employee or agent of that contracting party for at
21 least three years ~~prior to~~ *before* the officer initially ~~accepting~~
22 *accepted* his or her office and the officer owns less than 3 percent
23 of the shares of stock of the contracting party; and the employee
24 or agent is not an officer or director of the contracting party and
25 did not directly participate in formulating the bid of the contracting
26 party.

27 ~~For~~

28 (B) *For* purposes of this paragraph, time of employment with
29 the contracting party by the officer shall be counted in computing
30 the three-year period specified in this paragraph even though the
31 contracting party has been converted from one form of business
32 organization to a different form of business organization within
33 three years of the initial taking of office by the officer. Time of
34 employment in that case shall be counted only if, after the transfer
35 or change in organization, the real or ultimate ownership of the
36 contracting party is the same or substantially similar to that which
37 existed before the transfer or change in organization. For purposes
38 of this paragraph, stockholders, bondholders, partners, or other
39 persons holding an interest in the contracting party are regarded
40 as having the “real or ultimate ownership” of the contracting party.

- 1 (3) That of an employee or agent of the contracting party, if all
 2 of the following conditions are met:
 3 (A) The agency of which the person is an officer is a local public
 4 agency located in a county with a population of less than 4,000,000.
 5 (B) The contract is competitively bid and is not for personal
 6 services.
 7 (C) The employee or agent is not in a primary management
 8 capacity with the contracting party, is not an officer or director of
 9 the contracting party, and holds no ownership interest in the
 10 contracting party.
 11 (D) The contracting party has 10 or more other employees.
 12 (E) The employee or agent did not directly participate in
 13 formulating the bid of the contracting party.
 14 (F) The contracting party is the lowest responsible bidder.
 15 (4) That of a parent in the earnings of his or her minor child for
 16 personal services.
 17 (5) That of a landlord or tenant of the contracting party.
 18 (6) That of an attorney of the contracting party or that of an
 19 owner, officer, employee, or agent of a firm that renders, or has
 20 rendered, service to the contracting party in the capacity of
 21 stockbroker, insurance agent, insurance broker, real estate agent,
 22 or real estate broker, if these individuals have not received and
 23 will not receive remuneration, consideration, or a commission as
 24 a result of the contract and if these individuals have an ownership
 25 interest of 10 percent or more in the law practice or firm, stock
 26 brokerage firm, insurance firm, or real estate firm.
 27 (7) That of a member of a nonprofit corporation formed under
 28 the Food and Agricultural Code or a nonprofit corporation formed
 29 under the Corporations Code for the sole purpose of engaging in
 30 the merchandising of agricultural products or the supplying of
 31 water.
 32 (8) That of a supplier of goods or services when those goods or
 33 services have been supplied to the contracting party by the officer
 34 for at least five years ~~prior to~~ *before* his or her election or
 35 appointment to office.
 36 (9) That of a person subject to the provisions of Section 1090
 37 in any contract or agreement entered into pursuant to the provisions
 38 of the California Land Conservation Act of ~~1965~~ *1965 (Chapter*
 39 *7 (commencing with Section 51200) of Part 1 of Division 1 of Title*
 40 *5).*

1 (10) Except as provided in subdivision (b) of Section 1091.5,
2 that of a director of, or a person having an ownership interest of,
3 10 percent or more in a bank, bank holding company, or savings
4 and loan association with which a party to the contract has a
5 relationship of borrower or depositor, debtor or creditor.

6 (11) That of an engineer, geologist, or architect employed by a
7 consulting engineering or architectural firm. This paragraph applies
8 only to an employee of a consulting firm who does not serve in a
9 primary management capacity, and does not apply to an officer or
10 director of a consulting firm.

11 (12) That of an elected officer otherwise subject to Section 1090,
12 in any housing assistance payment contract entered into pursuant
13 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
14 Sec. 1437f) as amended, provided that the housing assistance
15 payment contract was in existence before Section 1090 became
16 applicable to the officer and will be renewed or extended only as
17 to the existing tenant, or, in a jurisdiction in which the rental
18 vacancy rate is less than 5 percent, as to new tenants in a unit
19 previously under a Section 8 contract. This section applies to any
20 person who became a public official on or after November 1, 1986.

21 (13) That of a person receiving salary, per diem, or
22 reimbursement for expenses from a government entity.

23 (14) That of a person owning less than 3 percent of the shares
24 of a contracting party that is a for-profit corporation, provided that
25 the ownership of the shares derived from the person's employment
26 with that corporation.

27 (15) That of a party to litigation involving the body or board of
28 which the officer is a member in connection with an agreement in
29 which all of the following apply:

30 (A) The agreement is entered into as part of a settlement of
31 litigation in which the body or board is represented by legal
32 counsel.

33 (B) After a review of the merits of the agreement and other
34 relevant facts and circumstances, a court of competent jurisdiction
35 finds that the agreement serves the public interest.

36 (C) The interested member has recused himself or herself from
37 all participation, direct or indirect, in the making of the agreement
38 on behalf of the body or board.

39 (16) That of a person who is an officer or employee of an
40 investor-owned utility that is regulated by the Public Utilities

1 Commission with respect to a contract between the investor-owned
 2 utility and a state, county, district, judicial district, or city body or
 3 board of which the person is a member, if the contract requires the
 4 investor-owned utility to provide energy efficiency rebates or other
 5 type of program to encourage energy efficiency that benefits the
 6 public when all of the following apply:

7 (A) The contract is funded by utility consumers pursuant to
 8 regulations of the Public Utilities Commission.

9 (B) The contract provides no individual benefit to the person
 10 that is not also provided to the public, and the investor-owned
 11 utility receives no direct financial profit from the contract.

12 (C) The person has recused himself or herself from all
 13 participation in making the contract on behalf of the state, county,
 14 district, judicial district, or city body or board of which he or she
 15 is a member.

16 (D) The contract implements a program authorized by the Public
 17 Utilities Commission.

18 *(17) That of an employee, or member of the governing body, of*
 19 *a charter school operating pursuant to Part 26.8 (commencing*
 20 *with Section 47600) of Division 4 of Title 2 of the Education Code*
 21 *in a loan agreement with the charter school if the conditions in*
 22 *paragraph (2) of subdivision (b) of Section 47604.1 of the*
 23 *Education Code are met, or in a lease or guarantor agreement*
 24 *relative to the lease of real property to be occupied by the charter*
 25 *school if the conditions in paragraph (3) of subdivision (b) of*
 26 *Section 47604.1 of the Education Code are met.*

27 (c) This section is not applicable to any officer interested in a
 28 contract who influences or attempts to influence another member
 29 of the body or board of which he or she is a member to enter into
 30 the contract.

31 (d) The willful failure of an officer to disclose the fact of his or
 32 her interest in a contract pursuant to this section is punishable as
 33 provided in Section 1097. That violation does not void the contract
 34 unless the contracting party had knowledge of the fact of the remote
 35 interest of the officer at the time the contract was executed.

36 ~~SECTION 1. Section 47604.1 is added to the Education Code,~~
 37 ~~to read:~~

38 ~~47604.1. (a) A charter school is subject to the Ralph M. Brown~~
 39 ~~Act (Chapter 9 (commencing with Section 54950) of Part 1 of~~
 40 ~~Division 2 of Title 5 of the Government Code), except that a charter~~

1 ~~school operated by an entity governed by the Bagley-Keene Open~~
2 ~~Meeting Act (Article 9 (commencing with Section 11120) of~~
3 ~~Chapter 1 of Part 1 of Division 3 of Title 2 of the Government~~
4 ~~Code) is subject to the Bagley-Keene Open Meeting Act regardless~~
5 ~~of the authorizing entity.~~

6 ~~(b) A council or schoolsite advisory committee, as referenced~~
7 ~~in subdivision (b) of Section 35147, of a charter school is subject~~
8 ~~to the requirements of subdivisions (c) and (d) of Section 35147.~~

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