

AMENDED IN SENATE MAY 6, 2009  
AMENDED IN SENATE APRIL 16, 2009

**SENATE BILL**

**No. 592**

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**Introduced by Senator Romero**

February 27, 2009

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An act to amend Sections 17078.57 and 17078.62 of, and to add Section 17078.63 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 592, as amended, Romero. Charter Schools Facilities Program.

Existing law establishes the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils. Existing law requires the California School Finance Authority, in consultation with the State Allocation Board, to adopt regulations establishing uniform terms and conditions that would apply equally to funding for charter school facilities projects, including security provisions that include the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

This bill instead would require that the security provisions include whether title to project facilities will be held by the school district in which the facility is to be physically located or by ~~a local governmental~~ *another entity, including a county board of education, a city, a county, or a city and county as specified*. The bill would require applicants, prior to the release of funds for site acquisition or new construction final apportionments, to provide documentary evidence that ~~either the school district in which the facility is to be physically located or, a local governmental entity, or the charter school~~ holds title to the project

facilities in trust for the benefit of the state public school system and, subject to specified conditions. The bill would require a school district that entered into an agreement to hold title to charter school project facilities prior to January 1, 2010, upon the request of a charter school that has applied for funding, to transfer title to the entity requested by the charter school, except as specified. The bill also would make conforming changes.

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

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

1 SECTION 1. Section 17078.57 of the Education Code is  
2 amended to read:  
3 17078.57. (a) The authority, in consultation with the board,  
4 shall adopt regulations establishing uniform terms and conditions  
5 that shall apply equally to all projects for funding in accordance  
6 with Section 17078.58, including, but not limited to, all of the  
7 following:  
8 (1) The process for determining the manner in which the  
9 applicant will pay its local matching share, including the method  
10 for determining lease payments to be made in lieu of the local  
11 matching share. The regulations shall comply with all of the  
12 following criteria:  
13 (A) The payment process set forth in Section 17199.4 may be  
14 used.  
15 (B) The payment process shall permit lump-sum local matching  
16 payments and shall permit establishment of a schedule for lease  
17 payments to be made in lieu of the local matching share.  
18 (C) The lease payment schedule shall be calculated by  
19 amortizing one-half of the total approved project costs, minus  
20 lump-sum payments, over the entire payment period as set forth  
21 in Section 17078.58.  
22 (D) The payment schedule for payments in lieu of the local  
23 matching funds pursuant to this section shall be based upon  
24 payment, within a reasonable period of time not to exceed a 30-year  
25 period, of one-half of the total eligible project costs, and shall be  
26 calculated in a manner that is designed to result in full payment  
27 of that portion, together with interest thereon at a rate set by the

1 authority. The interest rate shall be set using the lower of the  
2 following:

3 (i) The rate paid on moneys in the Pooled Money Investment  
4 Account as of the date of disbursement of the funding.

5 (ii) A rate equal to 50 percent of the interest rate paid by the  
6 state on the most recent sale of state general obligation bonds, and  
7 the interest rate shall be computed according to the true interest  
8 cost method.

9 (E) Notwithstanding subparagraph (D), the authority shall not  
10 set the interest rate on a loan at a rate lower than 2 percent. Program  
11 participants that have locked in an interest rate before January 1,  
12 2009, may reset their payment schedule based on the interest rate  
13 set pursuant to subparagraph (D) as of January 1, 2009. Program  
14 participants executing an agreement on and after January 1, 2009,  
15 shall have their interest rate set at the time the funding agreement  
16 is executed and shall not renegotiate interest rates without prior  
17 approval of the authority.

18 (2) The method for determining whether a charter school is  
19 financially sound. In the case of a charter school chartered by a  
20 school district that is located outside of the school district that  
21 chartered it, the method developed by the authority shall include,  
22 but shall not be limited to, a site visit to the school facility currently  
23 being used by the charter school during hours when pupils are  
24 present and instruction is being provided.

25 (3) (A) Security provisions, including, but not limited to,  
26 whether title to project facilities shall be held by the school district  
27 in which the facility is to be physically located, in trust, for the  
28 benefit of the state public school system, or by another entity as  
29 authorized pursuant to Section 17078.63.

30 (B) The authority shall adopt a mechanism whereby a person  
31 or entity who provides a substantial contribution that is applied to  
32 the costs of the project in excess of the state share and the local  
33 matching share may be granted a security interest to be satisfied  
34 from the proceeds, if any, realized when the property is ultimately  
35 disposed of as set forth in paragraph (5) of subdivision (b) of  
36 Section 17078.62.

37 (4) The method for integrating funding pursuant to this article  
38 with the general procedures of the authority pursuant to subdivision  
39 (i) of Section 17180 for otherwise funding projects eligible for  
40 funding under this chapter, if appropriate.

(b) The authority may adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations. The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code.

SEC. 2. Section 17078.62 of the Education Code is amended to read:

17078.62. (a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), may not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession of the facility and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3), it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the titleholder shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the respective 2002, 2004, or 2006 Charter School Facilities Account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied. *Funds remaining from the proceeds after any security interest has been satisfied shall be paid to the school district in which the facility is located to be used for capital improvements in the school district.*

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

SEC. 3. Section 17078.63 is added to the Education Code, to read:

17078.63. (a) Prior to the release of funds for an application submitted pursuant to paragraph (2) of subdivision (b) of Section 17078.53 for site acquisition or new construction final apportionments, applicants shall provide one of the following:

(1) Documentary evidence that the school district in which the facility is to be physically located holds title to the project facilities in trust for the benefit of the state public school system.

(2) Documentary evidence that a local governmental entity, including, but not limited to, a county board of education, a city, a county, or a city and county, holds title to the project facilities in trust for the benefit of the state public school system, subject to both of the following conditions:

(A) The local governmental entity shall not exercise any control over the operation of the charter school.

1 (B) The local governmental entity shall comply with the uniform  
2 terms and conditions set forth in Section 17078.57.

3 (3) A request that the charter school be authorized to hold fee  
4 simple title to the subject property, on which a lien shall be  
5 recorded in favor of the board for the total amount of funds  
6 allocated pursuant to this article. The charter school shall include  
7 with the request a statement outlining the reasons why ownership  
8 of the project facilities is not vested with an entity set forth in  
9 paragraph (1) or (2). *Prior to releasing any project funds, the board*  
10 *shall make findings that the applicant has submitted all of the*  
11 *information required by this paragraph.*

12 (b) Upon the request of a charter school that has applied for  
13 funding pursuant to paragraph (2) of subdivision (b) of Section  
14 17078.53, a school district that entered into an agreement to hold  
15 title to charter school project facilities prior to January 1, 2010,  
16 shall transfer title to the entity requested by the charter school  
17 pursuant to this section. A school district is not subject to the  
18 requirement in this subdivision under either of the following  
19 circumstances:

20 (1) The school district has contributed a dollar amount that is  
21 no less than 50 percent of the local matching share based on the  
22 approved preliminary apportionment.

23 (2) The charter school facility project is located on a site  
24 purchased in whole by the school district and ownership is retained  
25 by the school district.

26 (c) The board may adopt regulations to implement this section.