

AMENDED IN ASSEMBLY AUGUST 24, 2009

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 592

Introduced by Senator Romero

February 27, 2009

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, and declaring the urgency thereof, to take effect immediately.

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, in addition,~~ 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 another entity, as specified~~ *authorize a local governmental entity, as specified, or a charter school to hold title to charter school project facilities.* The

bill would require applicants, prior to the release of funds for site acquisition or new construction final apportionments, to provide documentary evidence that the school district in which the facility is to be physically located, a local governmental entity, *as specified*, or the charter school holds title to the project facilities, subject to specified conditions. The bill would authorize a charter school to request a school district to transfer title to project facilities to an entity authorized by the bill, as specified, if the district entered into an agreement, prior to January 1, 2010, to hold title to the project facilities. The bill would authorize a school district that receives such a request to transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school. The bill also would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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

1 lump-sum payments, over the entire payment period as set forth
2 in Section 17078.58.

3 (D) The payment schedule for payments in lieu of the local
4 matching funds pursuant to this section shall be based upon
5 payment, within a reasonable period of time not to exceed a 30-year
6 period, of one-half of the total eligible project costs, and shall be
7 calculated in a manner that is designed to result in full payment
8 of that portion, together with interest thereon at a rate set by the
9 authority. The interest rate shall be set using the lower of the
10 following:

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

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

17 (E) Notwithstanding subparagraph (D), the authority shall not
18 set the interest rate on a loan at a rate lower than 2 percent. Program
19 participants that have locked in an interest rate before January 1,
20 2009, may reset their payment schedule based on the interest rate
21 set pursuant to subparagraph (D) as of January 1, 2009. Program
22 participants executing an agreement on and after January 1, 2009,
23 shall have their interest rate set at the time the funding agreement
24 is executed and shall not renegotiate interest rates without prior
25 approval of the authority.

26 (2) The method for determining whether a charter school is
27 financially sound. In the case of a charter school chartered by a
28 school district that is located outside of the school district that
29 chartered it, the method developed by the authority shall include,
30 but shall not be limited to, a site visit to the school facility currently
31 being used by the charter school during hours when pupils are
32 present and instruction is being provided.

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

38 (B) The authority shall adopt a mechanism whereby a person
39 or entity who provides a substantial contribution that is applied to
40 the costs of the project in excess of the state share and the local

1 matching share may be granted a security interest to be satisfied
2 from the proceeds, if any, realized when the property is ultimately
3 disposed of as set forth in paragraph (5) of subdivision (b) of
4 Section 17078.62.

5 (4) The method for integrating funding pursuant to this article
6 with the general procedures of the authority pursuant to subdivision
7 (i) of Section 17180 for otherwise funding projects eligible for
8 funding under this chapter, if appropriate.

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

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

17 17078.62. (a) As a first priority, the existing charter school
18 shall be permitted to continue to use the facility until it is no longer
19 needed by the charter school for charter school purposes.

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

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

30 (2) As a second priority, any qualifying successor charter school
31 shall be permitted to meet its facility needs by occupying the
32 facility on equal terms as the prior charter school occupant,
33 *including, but not limited to, assumption of fee simple title to the*
34 *facility, as described in paragraph (3) of subdivision (a) of Section*
35 *17078.63.*

36 (3) As a third priority, the school district in which the charter
37 school is physically located may notify the authority and take
38 possession ~~of the facility and take title to the facility, if the title is~~
39 *not already held by the district*, and make the facility available for
40 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) (A) 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~~ *school district* 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.

(B) *If title to the facility is held by a charter school or a local governmental entity other than the school district, and the school district declines to dispose of the facility, the board shall dispose of the facility in accordance with the provisions that would otherwise apply to the disposal of surplus school property by the school district, including, but not limited to, Chapter 4 (commencing with Section 17385) of Part 10.5. The proceeds of the disposition shall be distributed in accordance with subparagraph (A).*

(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

1 facility, in trust, for the benefit of the state public school system.
2 The school district shall permit continued use of the facility for
3 charter school purposes as long as the facility is needed for those
4 purposes.

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

7 17078.63. (a) Prior to the release of funds for an application
8 submitted pursuant to paragraph (2) of subdivision (b) of Section
9 17078.53 for site acquisition or new construction final
10 apportionments, applicants shall provide one of the following:

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

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

19 ~~(A) The local governmental entity—Consistent with the~~
20 ~~prohibition in Section 6 of Article IX of the California Constitution~~
21 ~~regarding governance of public schools, a city, county, city and~~
22 ~~county, or other local governmental entity not included within the~~
23 ~~public school system that holds title pursuant to this paragraph~~
24 ~~shall not exercise any control over the operation of the charter~~
25 ~~school.~~

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

28 (B) The following shall be recorded in the chain of title for the
29 property:

30 (i) A restrictive covenant specifying that the facility shall be
31 used only for public school purposes as authorized in the California
32 Constitution and statute.

33 (ii) A remainder interest to the school district in which the
34 facility is physically located or, if the school district disclaims the
35 interest to the facility, to the board. The remainder interest shall
36 be triggered when the facility is no longer needed for charter
37 school purposes and shall then be subject to paragraphs (2) to
38 (6), inclusive, of subdivision (b) of Section 17078.62.

39 (3) (A) A request that the charter school be authorized to hold
40 fee simple title to the subject property *in trust for the benefit of*

1 *the state public school system*, on which a lien shall be recorded
2 in favor of the board for the total amount of funds allocated
3 pursuant to this article, *including any loan received in lieu of a*
4 *local matching share pursuant to Section 17078.57*. The charter
5 school shall include with the request a statement outlining the
6 reasons why ownership of the project facilities is not vested with
7 an entity set forth in paragraph (1) or (2). Prior to releasing any
8 project funds, the board shall make findings that the applicant has
9 submitted all of the information required by this paragraph.

10 (B) *The following shall be recorded in the chain of title for the*
11 *property:*

12 (i) *A restrictive covenant specifying that the facility shall be*
13 *used only for public school purposes as authorized in the California*
14 *Constitution and statute.*

15 (ii) *A remainder interest to the school district in which the*
16 *facility is physically located or, if the school district disclaims the*
17 *interest to the facility, to the board. The remainder interest shall*
18 *be triggered when the facility is no longer needed for charter*
19 *school purposes and shall then be subject to paragraphs (2) to*
20 *(6), inclusive, of subdivision (b) of Section 17078.62.*

21 (b) A charter school may request a school district to transfer
22 title to project facilities to an entity authorized by paragraph (2)
23 or (3) of subdivision (a) if the school district entered into an
24 agreement, prior to January 1, 2010, to hold title to those facilities.
25 A school district that receives a request pursuant to this subdivision
26 may transfer the title to the entity designated in the request pursuant
27 to terms and conditions mutually agreed upon by the district and
28 the charter school.

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

30 SEC. 4. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

34 In order to expedite the construction of charter school facilities
35 by facilitating the allocation of state general obligation bond
36 proceeds authorized by the voters to be used for purposes of the
37 Charter Schools Facilities Program at the earliest possible time, it
38 is necessary that this act take effect immediately.

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