

Senate Bill No. 592

Passed the Senate September 8, 2009

Secretary of the Senate

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, in addition, would 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.

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

SECTION 1. Section 17078.57 of the Education Code is amended to read:

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus lump-sum payments, over the entire payment period as set forth in Section 17078.58.

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

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

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

(E) Notwithstanding subparagraph (D), the authority shall not set the interest rate on a loan at a rate lower than 2 percent. Program participants that have locked in an interest rate before January 1,

2009, may reset their payment schedule based on the interest rate set pursuant to subparagraph (D) as of January 1, 2009. Program participants executing an agreement on and after January 1, 2009, shall have their interest rate set at the time the funding agreement is executed and shall not renegotiate interest rates without prior approval of the authority.

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

(3) (A) Security provisions, including, but not limited to, whether title to project facilities shall 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, or by another entity as authorized pursuant to Section 17078.63.

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

(4) The method for integrating funding pursuant to this article with the general procedures of the authority pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for 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, including, but not limited to, assumption of fee simple title to the facility, as described in paragraph (3) of subdivision (a) of Section 17078.63.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession and take title to the facility, if the title is not already held by the district, 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) (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 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 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) Consistent with the prohibition in Section 6 of Article IX of the California Constitution regarding governance of public schools, a city, county, city and county, or other local governmental entity not included within the public school system that holds title pursuant to this paragraph shall not exercise any control over the operation of the charter school.

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

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

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

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

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

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

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

(b) A charter school may request a school district to transfer title to project facilities to an entity authorized by paragraph (2) or (3) of subdivision (a) if the school district entered into an agreement, prior to January 1, 2010, to hold title to those facilities. A school district that receives a request pursuant to this subdivision may 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.

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

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

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

Approved _____, 2009

Governor