AMENDED IN SENATE JUNE 27, 2011

AMENDED IN SENATE JUNE 15, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

california legislature—2011–12 regular session

ASSEMBLY BILL No. 360

Introduced by Assembly Member Brownley
(Principal coauthor: Senator Simitian)

February 14, 2011

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 360, as amended, Brownley. 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 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 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.

(7) The bill would make these provisions operative on July 1, 2012.

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

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

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

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

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

(c) Continue to provide greater autonomy to charter schools than traditional public schools and provide greater transparency to parents and the public with regard to the use of public funds by the governing board of charter schools for the educational benefit of their pupils.

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

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

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

(1) The Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) is subject to the Bagley-Keene Open Meeting Act regardless of the authorizing entity. A charter school is also subject to Section 35147.

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

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

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

(b) *(1)* Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, an employee of a charter school is not disqualified because of that employment status from also serving as a member of the governing body of the charter school. A member of the governing body of a charter school shall abstain from voting on all matters uniquely affecting his or her own employment.

(2) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, a person who provides a loan to a charter school due to a school fiscal emergency is not disqualified, because of that loan agreement, from also serving as a member of the governing body of the charter school or from being an employee of the charter school. A member of the governing body of a charter school who provides a loan as described in this paragraph shall abstain from voting on all matters affecting the loan agreement. The loan agreement shall not disqualify the member from serving on the governing body of the charter school or the person from being an employee of the charter school if the governing body of the charter school, before entering into the loan agreement, declares the existence of and describes the fiscal emergency by adopting a resolution at a public meeting of the governing body. The governing body of the charter school shall disclose and approve the loan agreement, including the terms of the loan, during a public meeting. This paragraph shall apply to a member of the governing body or an employee of the charter school who signs a guarantor agreement relative to a line of credit, provided that the funds from the line of credit shall not be accessed until a fiscal emergency is declared and described as required pursuant to this paragraph.

(3) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, a person who leases real property to be occupied by a charter school 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 agreement, from also serving as a member of the governing body of the charter school or from being an employee

of the charter school. A member of the governing body of a charter school who is a lessor or guarantor as described in this paragraph shall abstain from voting on all matters affecting the real property lease agreement. The governing body of the charter school shall disclose and approve the real property lease agreement, including the terms of the lease and guarantee, during a public meeting.

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

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

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

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

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

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

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

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

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(k) This section shall become operative on July 1, 2012.

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

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

(b) As used in this article, "remote interest" means any of the following:

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

(2) *(A)* That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years ~~prior to~~ *before* the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not

an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

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

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership

interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years ~~prior to~~ *before* his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965 *(Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5)*.

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

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

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

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

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that

the ownership of the shares derived from the person's employment with that corporation.

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

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

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

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

(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

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

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

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

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

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

school if the conditions in paragraph (3) of subdivision (b) of Section 47604.1 of the Education Code are met.

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

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

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