

AGENDA**ASSEMBLY BUDGET SUBCOMMITTEE NO. 2
ON EDUCATION FINANCE****Assemblymember Susan Bonilla, Chair****TUESDAY, APRIL 16, 2013****9:00 AM - STATE CAPITOL ROOM 444**

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ITEMS TO BE HEARD

6110 DEPARTMENT OF EDUCATION

ISSUE 1: CHARTER SCHOOLS BACKGROUND (INFORMATION ONLY)

This issue provides background and context for the following issues related to charter schools. The Legislative Analyst’s Office will also provide the Subcommittee with an overview of charter school funding.

BACKGROUND

A charter school is a public school that may provide instruction in any of grades K-12. It is usually created or organized by a group of teachers, parents, and or community leaders. For-profit and non-profit corporations may also establish charter schools. A charter school may be authorized by an existing local public school board, County Board of Education, or the State Board of Education. Specific goals and operating procedures for the charter school are detailed in an agreement (charter) between the sponsoring board and charter organizers. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law.

According to California Department of Education (CDE), there are currently about 1,054 charter schools and 8 all-charter districts operating in California. As reflected by the following table, charter schools have been growing by about 100 schools annually over the last couple of years. Nearly 470,718 pupils now attend charter schools, which equates to about 7.57 percent of the public school pupil population statewide.

	2010-11		2011-12		2012-13	
	Number	Funded ADA**	Number	Funded ADA**	Numbers	Funded ADA**
Charter Schools	902	343,070	975	393,732	1,054	448,937
Charter Districts*	8	6,992	8	7,032	8	7,173
TOTAL, Charters	910	350,062	983	400,754	1,062	456,110

*Charter district average daily attendance (ADA) included both block grant and revenue limit ADA.
 **Numbers are from principal apportionment system and may not exactly match other sources.

As last reported, CDE identifies the following characteristics for individual charter schools statewide:

- Approximately 82.5 percent are start-up schools, and the remainders are conversions of pre-existing public schools.
- Approximately 77.4 percent are classroom-based or site-based, and the remainders are either partially or exclusively non-classroom based (independent study).
- Approximately 70 percent are directly funded (i.e., have a separate account in the county treasury), and the remaining 30 percent are locally funded (i.e., are included in the budget of the chartering authority).

ISSUE 2: CHARTER SCHOOLS: MODIFY FUNDING DETERMINATION FOR CHARTER SCHOOL NON-CLASSROOM BASED INSTRUCTION

The issue for the Subcommittee to consider is the Governor's proposed trailer bill language to change the current funding determination process for charter schools offering non-classroom based instruction.

BACKGROUND

Both traditional schools and charter schools can offer non-classroom based instruction. Non-classroom based instruction encompasses homeschooling and various forms of independent study, including computer-based instruction using software modules and teacher-directed distance learning. Non-classroom based schools tend to serve somewhat different students from those found in other schools—that is, students seeking personalized instruction and a pace tailored to their needs.

Funding Determinations. In 2001, the state passed SB 740, Chapter 892, Statutes of 2001 due to concerns over profiteering and misuse of funds in charter schools offering non-classroom based instruction. One of the primary goals of the legislation was to strengthen oversight of these schools.

The legislation required the State Board of Education (SBE) to establish a system for determining the appropriate funding level for non-classroom based charter schools. In order for a charter school to receive 100 percent average daily attendance (ADA), the charter school must meet the following conditions:

- Ensure the charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils.
- Provide at least 80 percent of the instructional time at the school site.
- The charter school-site must be a facility that is used principally for classroom instruction.
- The charter school requires its pupils to be in attendance at the school site at least 80 percent of the minimum instructional time required for pupils.

Under current law and regulations, most non-classroom based charter schools are required to submit funding determinations to the SBE every two years. (Non-classroom based charter schools with an Academic Performance Index rank of 6 or higher are required to submit funding determinations every five years.)

According to CDE, a total of 210 charter schools are operating under funding determinations in 2012-13. Of the 210 non-classroom based charter schools, only 11 schools receive less than full funding.

	2010-11	2011-12	2012-13
Non-Classroom Based Charter Schools – Funded & Non-Funded ADA	Student ADA	Student ADA	Student ADA
Reported ADA	--	109,989	114,986
Funded ADA	--	107,090	112,191
ADA Not Funded	2,781	2,899	2,795
<i>Number of non-classroom based charter schools</i>	213	216	210
<i>Charter schools funded at 100 percent</i>	200	205	199
<i>Charter schools funded at less than 100 percent</i>	13	11	11

A non-classroom-based charter school may request the SBE to consider "mitigating circumstances" when making a funding determination. Charter schools typically apply for mitigating circumstances when they are unable to meet the threshold established for certificated staff salaries or instruction-related expenses. The SBE may accept the mitigating circumstances and provide a higher funding level than the school otherwise would receive. Common mitigating factors considered by SBE include one-time facility expenses, extraordinary special education costs, or restricted grants that cannot be spent on certificated staff or instruction and related activities.

Governor's Proposal. The Governor proposes trailer bill language to modify the annual funding determination process for non-classroom-based instruction by limiting it to the first and third years of operation for charter schools that maintain specific minimum standards. Thereafter, charter schools would not be required to submit further funding determinations unless one of the following conditions exists:

- 1) The charter school receives a notice to cure for financial issues.
- 2) The charter school receives an intent to revoke the charter.
- 3) The charter school receives an apportionment significant audit exception.
- 4) The charter school initiates a request for an additional funding determination for the purpose of seeking a change to its current funding level.

According to the Administration, this change will reduce workload for staff at the California Department of Education, State Board of Education, charter schools and charter authorizers. In addition, the Administration believes this change will equalize funding disparities between charter schools that offer non-classroom-based instruction and school districts that offer independent study instruction.

CDE comments. The CDE generally agrees that there is room for improvement in the current process however they have concerns with the Governor's proposal. Specifically, CDE is concerned that they would not be notified when any of the triggers are activated that would require a charter school to submit a funding determination. Further, CDE has concerns around the audit appeals process, which can take years. A funding determination would not be submitted until after the appeal process, which could lead to a charter receiving an inflated funding rate. CDE is open to working with DOF and LAO to develop a process that simplifies current law but addresses issues to maintain oversight and fiscal accountability over non-classroom based charter schools.

LAO recommendations. The LAO has concerns with both the existing funding determination process and the Governor's proposed changes.

LAO believes that the existing teacher payroll and student-teacher ratio requirements seem overly prescriptive. Non-classroom-based charter schools often emphasize individualized learning with fewer hours spent directly interacting with a teacher. Compared with traditional schools, these programs may have a higher need for services, such as technology support and curriculum development, and a lower need for certificated staff. Further, the LAO believes the existing funding determination process limits the ability of non-classroom-based schools to shift spending toward these alternative investments.

The LAO is also concerned that the existing process significantly penalizes schools whose spending falls just short of the required spending thresholds. For example, a school that spends 79 percent of its budget on instruction-related expenses receives only 85 percent of its full funding level, while a school that spends 81 percent on instruction-related expenses receives full funding. This structure allows small changes in spending to trigger much larger changes in funding levels.

With regard to mitigating circumstances for funding determinations, the LAO has found that the regulations do not include guidelines for the types of situations that would be accepted by SBE, nor do they clearly define how these mitigating circumstances are to be incorporated into the final funding decision. Discussions with CDE staff and charter school representatives suggest that this issue is one of the most ambiguous aspects of the existing funding process.

The LAO is also has concerns with the proposed change in the funding determination timeline. The structure of a charter school's program could change significantly but continue to receive funding based on the determination in its third year. Over time, the charter school's spending levels may become increasingly disconnected from the spending levels that were the basis for the funding determination.

The LAO recommends the Legislature continue the funding determination process but with several modifications:

- Eliminate the requirement that at least 40 percent of state and federal revenue be spent on certificated staff salary and benefits as well as the student-teacher ratio requirement.
- Retain the existing requirement for spending on instruction and related services.

- Provide general guidelines for the types of mitigating circumstances that would be accepted by SBE, such as unanticipated non-instructional costs, major one-time costs for technology or infrastructure, and funds set aside to protect the school from possible midyear budget reductions. Specify how those circumstances would affect the calculations used to determine the charter school's funding level.
- Establish graduated funding reductions, such that a charter's funding reduction is proportional to the extent the spending threshold is missed.
- Retain the requirements that schools receive a new funding determination every two to five years.

Given that most aspects of the funding determination process are contained in SBE regulations, the LAO recommends the Legislature change state law and direct SBE to adopt new conforming regulations.

STAFF COMMENTS/QUESTIONS

Legislature rejected the Governor's 2012-13 proposal to eliminate the funding determination process. Last year the Governor's Budget proposed trailer bill language to repeal the funding determination process established under SB 740 and instead provide 100 percent funding for all non-classroom based charter schools. CDE expressed concerns over profiteering, the problem that prompted the funding adjustments in the first place. This proposal was ultimately rejected by the Legislature.

Questions:

- 1) What is the rationale for funding determinations in the first and third year and how is that an improvement over existing law?
- 2) How will this proposal "equalize funding disparities" as the Administration suggests?
- 3) What are the costs associated with providing full funding to those currently not receiving full funding?
- 4) What is the audit process for non-classroom based charter schools approved for funding? How often are these charter schools audited?

ISSUE 3: CHARTER SCHOOLS: CHARTER SCHOOL FACILITY GRANT PROGRAM AND THE CHARTER SCHOOL REVOLVING LOAN FUND

The issues for the Subcommittee to consider are related to the Charter School Facilities Grant Program (CSFGP) and the Charter School Revolving Loan Fund (CSRLF). Specifically, the Governor's budget proposes to:

- 1) Shift administration of the CSFGP and the CSRLF from the Department of Education (CDE) to the Charter School Finance Authority (CSFA). This includes a shift of \$175,000 in ongoing General Fund (Non-98) and 2.0 positions from CDE to CSFA to support administration of these programs.
- 2) Expand CSFGP eligibility to charter schools with non-classroom-based instruction.
- 3) Adopt changes to the CSFGP to expedite program funding payments to charter schools.

BACKGROUND

California School Finance Authority (CSFA). The CSFA was created in 1985 to oversee the statewide system for the sale of revenue bonds to reconstruct, remodel or replace existing school buildings, acquire new school sites and buildings to be made available to public school districts (K-12) and community colleges, and to assist school districts by providing access to financing for working capital and capital improvements. Over the last 25 years, the CSFA has developed a number of school facilities financing programs and most recently is focused on assisting charter schools to meet their facility needs. The CSFA is a three-member board comprised of the State Treasurer, the Superintendent of Public Instruction, and the Director of the DOF, and is administered within the Office of the State Treasurer.

Various State and Federal Programs Support Charter School Startup and Facility Needs. According to the Legislative Analyst's Office, there are various state and federal programs that provide grants and other financial support to charter schools for startup and facility needs. As the figure shows, three programs are administered by the California Department of Education (CDE), three are administered within the State Treasurer's Office by the California School Finance Authority (CSFA), and one is administered by the Office of Public School Construction with support from CSFA.

Figure 1

Governor Would Transfer Two Charter School Programs From CDE to CSFA

Program	Funding	Description	Current Administrator	Proposed Administrator
Public Charter School Grant Program	Federal	Startup grants for new charter schools.	CDE	CDE
Charter School Revolving Loan Fund	State General Fund ^a	Low-interest loans for new charter schools.	CDE	CSFA
Charter School Facility Grant Program	State General Fund	Grants for lease, rent, and maintenance costs for schools serving low-income students.	CDE	CSFA
State Charter School Facility Incentive Grants	Federal	Grants for lease, rent, maintenance, construction, and renovation costs for schools serving low-income students.	CSFA	CSFA
Qualified School Construction Bonds	Federal	Allows charter school to issue tax-advantaged bonds (part of ARRA).	CSFA	CSFA
Credit Enhancement Program	Federal	Increases credit-worthiness by making debt payments if a school defaults.	CSFA	CSFA
Charter School Facilities Program	State education bonds	Bond funding for charter schools to build or renovate facilities.	OPSC ^b	OPSC

^a Includes repayments and interest earnings.
^b CSFA staff review financial health of charter schools applying for program.
 CDE = California Department of Education; CSFA = California School Finance Authority; ARRA = American Recovery and Reinvestment Act; and OPSC = Office of Public School Construction.

Programs proposed for transfer from CDE to CSFA:

- Charter School Facility Grant Program. The Charter School Facility Grant Program (CSFGP), established under SB 740 (O'Connell), Chapter 892, Statutes of 2001, is a noncompetitive program that provides assistance with facilities rent and lease expenditures for charter schools that meet specific eligibility criteria. The grant program was enacted in 2002 to reimburse charter schools for rental and lease costs in low-income areas. This program is targeted toward schools and communities with high proportions of economically disadvantaged students. Eligible applicants must have at least 70 percent of students enrolled at the charter school who are eligible for free or reduced-price meals or the charter school must be physically located in an elementary school attendance area where at least 70 percent of students enrolled are eligible for free or reduced-price meals. The charter school must also give a preference in admissions to students who reside in the elementary school attendance area. The charter schools are funded \$750 per unit of classroom-based average daily attendance (ADA), up to 75 percent of its annual facilities rent and lease costs for the school. Historically, the program funds were used to reimburse eligible charter schools for their prior year facilities rent and lease expenditures. Commencing with fiscal year 2009-10, the state converted the program from a reimbursement to a grant program.

The program currently prohibits funding from being apportioned for: 1) Units of ADA generated through non-classroom based instruction, 2) Charter schools occupying existing school district or county office of education facilities or 3) Charter schools receiving reasonably equivalent facilities from their chartering authority.

Funds for this program have increased substantially over time, with the bulk of the funding coming from the transfer of funds from the phase out of the Multi-track Year-Round Education (MTYRE) Operational Grant Program. SB 658 (Romero), Chapter 271, Statutes of 2008, required all funds appropriated for the MTYRE Program at the FY 2007-08 level, which, at the time, was \$97 million, to be transferred to the CSFGP at a rate of 20 percent each year. The 2012-13 Budget Act made the last payment of \$15 million Proposition 98 (General Fund) from MTYRE to the CSFGP.

Starting in 2009, the CSFGP was included in the reduction to categorical programs made pursuant to Control Section 12.42 reduction in the annual Budget Act. The 2012-13 Budget Act provides \$92 million for this program after the nearly 20 percent across-the-board reduction is applied.

- Charter School Revolving Loan Fund. The Charter School Revolving Loan Fund (CSRLF), established in statute and created in the State Treasury, provides low-interest loans of up to \$250,000 to new, non-conversion charter schools to provide startup and initial operating capital to assist schools in establishing charter school operations. Both classroom and non-classroom-based schools are eligible for this program. Specifically, the loan helps meet the objectives established in a school's charter, such as leasing facilities, making necessary improvements to facilities, purchasing instructional materials and equipment, and expanding programs.

The CSRLF is comprised of federal funds obtained by the state for charter schools and any other funds appropriated or transferred to the fund through the annual budget process. The loans must be repaid within five years, beginning with the first fiscal year after receipt of the loan. Loans shall be made at the interest rate earned by the money in the Pooled Money Investment Account (PMIA) as of the date of disbursement of the funds to the charter school. In the case of default of a loan made directly to a charter school, the charter school is liable for repayment of the loan.

In 2011-12, CDE approved loans for 51 charter schools who were awarded \$12.1 million from the RLF.

Governor's Proposal. The Governor's Budget proposes the following changes to the Charter Schools Facility Grant Program (CSFGP) and the Charter Schools Revolving Loan Fund (CSRLF):

- 1) Program Transfers. The Governor proposes to shift responsibility for the CSFGP and the CSRLF from CDE to CSFA. The Governor indicates that the shift is appropriate because: (1) the programs are similar to programs already administered by CSFA, (2) some level of coordination is already required among these two programs and the

other programs CSFA administers, and (3) CSFA staff have experience with loan and facility issues.

The Governor proposes to transfer \$92.0 million in Proposition 98 funding from the CDE for the CFSA to reflect the CSFGP shift. Trailer bill language specifies that this amount shall be considered the base level of funding for the program in subsequent fiscal years.

In addition, the Governor proposes to shift \$175,000 in ongoing General Fund (Non-98) and 2.0 positions from CDE to CSFA to support the transfer of both programs starting in 2013-14.

- 2) Coverage for Non-Classroom Based Instruction. The Governor's budget proposes trailer bill language to repeal provisions of current law which prohibit CSFGP funding for units of average daily attendance (ADA) generated through non-classroom based instruction. Instead, proposed language disallows apportionments for "non-instructional facilities operated by non-classroom based charter schools", but allows apportionments for "portions of a charter school's facilities that are used to provide direct instruction and instructional support to pupils enrolled in the school".
- 3) Apportionment Schedule. The Governor proposes trailer bill language to require the CSFA to apportion CSFG funding by August 31 of each fiscal year, or 30 days after the enactment of the annual budget act, whichever is later. Current law requires CDE to apportion funding by October 1st of each fiscal year.

The Governor's proposal further requires that August apportionments be based upon prior year data on pupil eligibility for free and reduced price meals for the school site and prior year rent or lease costs provided by the charter school to determine eligibility for the grant program until current year data or actual rent or lease costs become known or until June 30 of each fiscal year.

If this data is not available, the proposed trailer bill language directs CSFA to use estimates provided by the charter school so the total rent and lease costs do not exceed the school's total advanced apportionment funding.

The Governor proposes these changes to expedite the apportionment schedule for the CSFG program to address delays in payments to charter schools.

CDE comments. The CDE is not opposed to the shift of the CSFGP and the CSRLF from a policy perspective, however, CDE is concerned with the loss of positions associated with the proposal. According to CDE, they did not receive a permanent position or funding related to the administration of the CSFGP program. Further, the CDE contends that they have had significant increased workload over the past several years due to various charter school activities and have not received funding to support the workload. For example, CDE submitted a BCP this year to DOF for 2.5 positions in response to new regulations related to revocation of charter schools. This BCP was denied by DOF.

LAO Comments:

- 1) Program transfer. According to the LAO, the CSFGP and CSRLF are similar to four other programs currently administered by CSFA that provide loans or facility support to charter schools. The CSFGP and the State Charter School Facility Incentive Grants program are especially similar, and coordination of the two programs is necessary given the existing combined funding cap. Given CSFA's successful experience running similar programs, the agency appears capable of administering the two additional programs. For these reasons, the LAO recommends adopting the Governor's proposal to transfer the CSFGP and CSRLF from CDE to CSFA.
- 2) Expansion to non-classroom based programs. LAO believes that due to significant increases in funding for the CSFGP over the last few years, available funding exceeds the amount requested by eligible schools. Further, although non-classroom based programs may have fewer facility needs than traditional classroom-based programs, many of these schools have facility costs. Given these costs, the LAO believes the Governor's proposal to allow some of them to access facility funding is reasonable.

The LAO is concerned, however, that the Governor's proposal to distinguish between instructional and non-instructional space would complicate the application process. Existing rules do not require CDE staff to make these distinctions when a classroom-based charter school applies for funding. Under the Governor's proposal, however, staff would need to determine which portions of a facility were related to instruction or instructional support. In some cases, this definition is open to varying interpretations. It is unclear, for example, whether a principal's office or multipurpose room would qualify as space for instructional support. Making an accurate determination likely would require non-classroom-based charter schools to submit additional documentation and could delay processing of these applications.

Given the LAO concerns, the LAO recommends other options to consider:

- Allow non-classroom-based schools to receive funding for all of their facility space but at a lower rate based on the average facility spending reported by non-classroom based charter schools in 2011-12 (\$425 per ADA). Although this approach would not account for the differences in instructional programs or facilities needs across different types of non-classroom based charter schools, the state currently lacks the data to determine appropriate funding rates for each school.
- Require non-classroom based charter schools applying for CSFGP funds to provide additional information regarding their instructional programs, such as the type of instructional approach and the share of classroom instruction that occurs at the school site. Such data, along with the expenditure data schools must submit to obtain CSFGP funding, would allow the state to assess whether the non-classroom based funding rate could be modified moving forward to better reflect the facility needs of different non-classroom based schools.

- 3) Apportionment Schedule. The LAO believes the Governor's proposal to apportion some of the FGP funding by August 31 using prior-year data and current-year estimates are reasonable. Given that charter schools may need to make lease payments in the beginning of the year, providing a portion of funds earlier in the fiscal year would reduce the need to use general purpose funds to pay for facility costs. The Governor's proposal also would address concerns raised several years ago regarding the late release of funds, as well as more recent concerns new charter schools have raised regarding the timing of initial apportionments. The Governor's proposal, however, does not specify the amount of funding that would be released by the August 31 deadline. The LAO recommends modifying the Governor's proposal to include a statutory schedule for the apportionment of CSFGP funds to require the release of 50 percent of CSFGP funding by the end of August, 25 percent by the end of February, and 25 percent by the end of July following the close of the fiscal year. This schedule would provide a large share of CSFGP funding early in the fiscal year while making smaller payments later in the year to allow payments to be adjusted as actual cost and attendance data become available.

STAFF COMMENTS/QUESTIONS

Pending Legislation. AB 948 (Olsen), pending in the Assembly Education Committee, proposes several changes to CSFGP including, providing funding for non-classroom based charter schools. The bill proposes to change program eligibility requirements and repeals the Legislature's statement of intent that not less than \$18,000,000 annually be appropriated for purposes of the grant program. The bill would also require the annual audit of a charter school to include specified information related to the grant program.

2012-13 Budget Language. Trailer bill language adopted in 2012-13 requires the CDE to monitor the adequacy of the amount of funds in the Charter School Revolving Loan Fund and report annually to the DOF and the Controller on the need, if any, to transfer funds from the Charter School Security Fund to the Charter School Revolving Loan Fund. This statute is intended to ensure that the interest payments collected in the Security Fund can be transferred to the Revolving Loan Fund as the original law intended. The Governor's budget proposes conforming trailer bill language to shift this duty to from CDE to CSFA.

Charter Schools Loan Default Rate is Problematic. The LAO has raised concerns about the current imbalance of the Charter School Revolving Fund due to a high loan default rate and the small amount of revenues available to offset loan defaults. Funds generated from interest payment on loans are supposed to offset the losses the state incurs when a charter school cannot repay its loan (or closes and the state cannot recover associated funds). According to CDE, the primary reason for loan default is the closure of some charter schools. As of last year, the LAO reported the Revolving Fund has accumulated \$5.7 million in losses from the default of 38 charter school loans.

Other comments. The Department of Finance has stated that they are working with CSFA to determine whether the 2.0 positions are adequate to administer the CSFGP and CSRLF. The DOF is continuing to review the issue in the context of the May Revision.

Questions:

- 1) Why does the Administration propose to transfer the Charter School Facility Grant Program and the Revolving Loan Program? Will the transfer achieve efficiencies and/or better align programs?
- 2) With regard to the Revolving Loan Program, does the Administration believe the CSFA would be in a better position to improve the loan balance and make the fund self-sustaining? Will CSFA be in any better position to recoup funds from charter schools that default?
- 3) Why is there a need to provide additional facilities funding for non-classroom based pupils?
- 4) What are the costs of adding non-classroom ADA to the Charter School Facility Grant program per the Governor's proposal? Will additional costs be covered within current appropriation levels?
- 5) What will the impact of ADA expansion be for charter schools currently served by the program?
- 6) Is the Governor's proposal to make first grant payments by August 31st each year achievable for all charter schools, including schools new to the program?

ISSUE 4: CHARTER SCHOOLS: CONVEYANCE OF SURPLUS PROPERTY

The issue for the Subcommittee to consider is the Governor's proposal to extend for five years provisions of current law that requires school districts with surplus property to sell those resources first to charter schools before selling those assets to other entities or disposing of them. The Governor also proposes to permanently extend rules that provide exceptions on the use of proceeds from the sale of surplus property.

BACKGROUND

If a school district has surplus property, the local governing board can vote to sell or lease the property through a competitive bidding process. Before using this process, however, the district must offer to sell or lease the property to certain types of entities, including agencies interested in sponsoring low-income housing, local parks and recreation districts, and city and county governments. In most cases, the school district may sell or lease the property to these entities at current market value.

The 2012-13 Budget Act included trailer bill language to require that school districts offer charter schools the option to purchase or lease surplus property designed for instruction or instructional support prior to offering the property to other agencies or soliciting competitive bids. As described below, the price of the sale or lease is subject to certain caps and can be significantly below market value.

- If the property is sold, the sale price cannot exceed the price paid by the district to acquire the property, adjusted for inflation and the cost of any construction that has occurred. This price, however, must be at least 25 percent of the property's current market value.

- If the property is leased, the annual lease rate cannot exceed 5 percent of the price that would apply if the property were purchased.

Under either a sale or lease agreement, the charter school must use the property exclusively for instructional activities or support for at least five years. After five years, the law provides no further restrictions on the usage or sale of the property. These sale and lease provisions are operative only from July 1, 2012 through June 30, 2013.

Regardless of which entity purchases or leases surplus property, a school district can use the proceeds of the transaction only for certain purposes. State law generally requires that school districts deposit the proceeds in a restricted capital outlay or maintenance fund. Surplus property proceeds can be used for one-time general operating expenses, however, under certain conditions. Specifically, if a school district and the State Allocation Board agree that the district (1) has no major deferred maintenance requirements and (2) does not anticipate new construction within the next ten years, then the district may use surplus property proceeds for any one-time general operating expense. In this case, the district forfeits its eligibility for new construction and modernization funding through the School Facility Program (SFP) for at least five years.

In 2009, the Legislature allowed school districts to use the proceeds from the sale of the property for one-time general operating expenses without forfeiting eligibility for new construction and modernization funds through the SFP. Instead, districts forfeit any future hardship funding through the SFP up to the amount of the proceeds used for one-time general operating expenses. In addition, districts forfeit eligibility for hardship funds awarded through the state's Deferred Maintenance Program (DMP) for five years. These exceptions regarding property purchased with local funds are scheduled to expire on January 1, 2014.

Governor's Budget. The Governor's budget includes two provisions related to the sale and lease of surplus property, and the use of proceeds from these sales, as follows:

- 1) Extends Requirement to Offer Surplus Property to Charter Schools for Five Years. The Governor proposes to extend for an additional five years the requirement that school districts give charter schools first call on purchase or lease of surplus property. Under current law, this requirement is operative through June 30, 2013. The Governor's proposal would sunset on June 30, 2018.
- 2) Permanently Extends Exceptions for Use of Proceeds From Locally Purchased Property Sales. The Governor proposes to eliminate the January 1, 2014 expiration date on the rules pertaining to the sale of surplus property financed entirely with local funds. As a result, districts would continue to be able to use proceeds from the sale of these properties for one-time operating expenses permanently without forfeiting eligibility for new construction or modernization funding through the School Facilities Program. Districts would continue to forfeit eligibility for hardship funding through the School Facilities Program and Deferred Maintenance Programs.

LAO Comments. The LAO recommends that the Legislature adopt the Governor's proposal to provide charter schools first call on surplus property, but with some modifications. Specifically, the LAO recommends that the state:

- Require the charter school to use the purchased or leased property for instructional activities or support.
- Require that before the property may be sold or used for any other purpose, it must be offered for sale or lease to the school district that provided the property, followed by any interested charter schools. Require that if one of these interested charter schools obtains the property, it is likewise bound by these terms. (If the school district and other charter schools decline the offer to purchase or lease, the property could be sold or leased to another entity or used for any purpose.)
- Limit the price paid by a school district to reacquire property it provided to a charter school to the price paid by the charter school, adjusted for inflation and the cost of any construction that has occurred (or 5 percent of this amount for an annual lease). Establish similar limits if the property is sold or leased to another charter school.
- Require charter schools to use proceeds from the sale or lease of surplus property for capital outlay or maintenance costs (with the same exceptions as provided to school districts).

- Require charter schools to maintain Field Act compliance for all buildings obtained from a school district that are compliant on the date the charter school takes possession.

The LAO recommends that the Legislature reject the Governor's proposal to make permanent certain rules regarding the use of proceeds from the sale of surplus property purchased entirely with local funds. Districts still would be allowed, under existing law, to sell surplus property and use the proceeds for one-time general purposes. Districts would have to consider this option carefully, however, since they would forfeit their eligibility for state construction and modernization funds for at least five years. In the LAO's view, this higher stakes trade-off better protects the state from providing future facility funding to a school district that has recently sold property and used the proceeds for non-facility purposes.

STAFF COMMENTS/QUESTIONS

- 1) Under the Governor's proposal, are charter schools required to provide maintenance and upkeep of any property purchased or leased from school districts?
- 2) Under the Governor's proposal, what happens to purchased or leased property if a charter school closes its operations?
- 3) Does the Governor's proposal change how the sale of surplus property affects district eligibility for state bond funding?

ISSUE 5: CHARTER SCHOOLS: COUNTY-WIDE BENEFIT CHARTERS AND STATE BOARD OVERSIGHT OF CHARTERS

The issues for the Subcommittee to consider are:

- 1) The Governor's proposal to allow county-wide benefit charter petitions to designate multiple sites as individual schools for purposes of compliance monitoring, data reporting and collection, student performance data, oversight and apportionment.
- 2) Allow the State Board of Education -- by mutual agreement -- to delegate its oversight responsibilities for a charter school it has approved to any local educational agency.

BACKGROUND

Most charter schools in California are authorized and monitored by the school district in which they reside and are prohibited from operating outside the jurisdiction of that district. If a charter school organization is able to demonstrate that it cannot accomplish its educational mission if limited to a single district, however, it may apply for recognition as a countywide or statewide charter school. Countywide charter schools are authorized by a county office of education (COE) and may operate anywhere within the boundaries of that county. Statewide charter schools are authorized by the State Board of Education (SBE) and may operate anywhere within the state. Currently, there are 28 countywide charter schools and 3 statewide charter schools.

Statewide and Countywide charters currently tracked differently. When a charter school submits a petition to SBE to operate as a statewide charter school, it must specify the sites where student instruction will take place. Existing SBE regulations require the school to consist initially of at least two sites (additional sites may be added later with approval of SBE). Although all of the sites are managed by a single agency, each site is tracked separately by the state. Each site, for example, receives a separate ranking for state and federal accountability purposes, is monitored individually by SBE, and can apply individually for various state and federal programs. The 3 statewide charter schools have a total of 14 separately tracked sites.

In contrast to statewide charter schools, the sites operated by a countywide charter school are not tracked separately. When a school submits a petition to a COE to operate as a countywide charter school, it still must describe the locations where instruction will occur. The information from each site, however, is aggregated and tracked as a single school. A countywide charter school, for example, receives a single score for state and federal accountability purposes and can apply only as one entity for various state and federal programs. The number of individual sites at the 28 countywide charter schools is not tracked by the state.

Fiscal Implications for Individual and Collective Tracking. The distinction between individual and collective tracking of site information has fiscal implications for two programs that provide funding for new charter schools: the Public Charter School Grant Program (PCSGP) and the

Charter School Revolving Loan Fund (CSRLF). The PCSGP is a federal initiative that provides startup grants to charter schools on a per-school basis. A statewide charter school whose sites are considered separate schools can submit a funding application for each school, while a countywide charter school recognized as one school—even with multiple sites—can submit only one application.

The CSRLF is a pool of state funds that provide low-interest loans to new charter schools and, like the PCSGP, establishes eligibility on a per-school basis. The distinction between individual and collective tracking is less important for other types of state funding, such as base general purpose funding, because these funds are awarded on a *per-student* basis.

SBE Oversight Responsibility. In addition to authorizing all statewide charter schools, SBE also authorizes 19 charter schools whose petitions originally were rejected at the local level but approved by SBE on appeal. (Although authorized by SBE, these charter schools must operate within the jurisdiction of the school district or COE that initially reviewed the school's petition.) Existing law allows SBE to delegate its oversight responsibilities for any school it has authorized to a consenting local educational agency (LEA) in the county where the school is located. The SBE, however, has historically declined to exercise this authority and instead delegated all of its oversight responsibilities to the California Department of Education (CDE).

Governor's Budget proposes the following:

- 1) Trailer bill language to allow county-wide benefit charter petitions to designate multiple sites as individual schools for purposes of compliance monitoring, data reporting and collection, student performance data, oversight, and apportionment. Per the Governor, this language would allow county-wide benefit charter schools with multiple sites to be treated the same as state-wide benefit charter schools with regard to designation of individual schools.
- 2) Trailer bill language to allow SBE to delegate the oversight responsibilities of any charter school it has authorized to any consenting LEA in the state, even if it is not located within the county where the school is located. (The SBE would retain the discretion to continue delegating oversight to CDE.)

LAO Comments. The LAO makes the following recommendations for the Subcommittee to consider:

- 1) LAO recommends the Legislature adopt the proposed trailer bill language to allow Countywide Charters Schools to Establish Tracking of Individual Sites. According to the LAO, although countywide charter schools are operated by a single entity, individual sites may serve different grade spans or student populations. Different sites also could be more or less effective than other sites. As such, a countywide charter school may want each site to be tracked separately for funding and accountability purposes. Although certain countywide charter schools could receive additional funding from PCSGP or CSRLF due to the proposal, the LAO thinks this is reasonable given that start-up costs are typically incurred on a per-site basis. Since PCSGP is

federally funded and CSRLF consists of a fixed pool of state funds, additional funding applications are unlikely to increase state General Fund costs.

- 2) LAO recommends the Legislature adopt the proposed trailer bill language to allow SBE to delegate oversight to any LEA. According to the LAO, for charter schools located in smaller counties, the options for delegating oversight within the county may be very limited. By allowing SBE to delegate oversight to a capable school district or other COE, the proposal would improve the prospects of quality oversight. In addition, given oversight is currently managed by CDE—which is located a considerable distance from some of the schools it oversees—the entity selected as the oversight authority under the Governor’s proposal likely would be located closer to the charter school.

CDE concerns.

- 1) County-wide charter changes. The CDE is strongly opposed to the Governor's proposal to allow county-wide benefit charter petitions to designate multiple sites as individual schools. According to the CDE:
 - It is a significant policy shift to treat individual sites as separate entities for all purposes. Statewide benefit charters are inherently different than county wide charters— they are small in number of sites, they are spread throughout the state, they are regulated by and recognized by the SBE and are bound by specific regulations that impose restrictions through regulation.
 - While there are not many countywide schools, this will increase cost pressures; circumvent the cap on the number of new schools each year; and increase workload to: track and fund separate sites, manage the creation and movement of sites for numbering and accountability, and obtain separate funding information at the site level, recover overpayments from sites that close or move, etc.
 - There are a number of district approved charters that currently operate multiple sites. This proposal will create a pressure or expectation that they should be allowed to be recognized separately as well, which will exacerbate the problems listed above.
 - If there is a desire to be treated separately at the local level, they should submit separate petitions.

Allowing a charter school at its discretion to establish individual sites within one petition would also require CDE to establish multiple codes throughout the year for accountability and funding purposes. Furthermore, the number and location of these schools could change at the will of the charter. The proposal also lacks clarity as to whether the sites are to be treated as schools for other purposes, e.g. open by a certain date, subject to separate funding allocations, subject to audit, etc. CDE has also raised various fiscal tracking issues, for example, it could become difficult to keep track of the multiple site payments.

- 2) SBE oversight delegation. According to the CDE, it is not clear why this change is necessary. The SBE currently has the authority to delegate its oversight of a statewide charter school to the county in which the charter is located but the SBE has not exercised this option. CDE also notes that delegation could create a funding problem for state-level oversight, which is based on fees collected from charters. Further, CDE suggests a technical change to clarify that authority cannot be delegated to another charter school, but rather must be a school district or COE.

Pending Legislation. AB 445 (Chavez), pending in the Assembly Education Committee, is substantially similar to the Governor's proposal related to SBE oversight in that it authorizes the State Board of Education (SBE), by mutual consent, to designate its supervisory and oversight responsibilities for a charter school it has approved to any local educational agency (LEA). The bill was put over at the author's request.

ISSUE 6: CHARTER SCHOOLS: MULTI-TRACK ATTENDANCE ACCOUNTING
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The issue for the Subcommittee to consider is the Governor's proposed trailer bill language to specify the conditions under which charter schools can receive attendance funding for students on multi-track school calendars.

BACKGROUND

Currently, charter schools must seek a waiver from the State Board of Education for a multi-track charter school to separately calculate ADA in each track, rather than for the school as a whole. The Department of Education has received 38 multi-track waiver requests in the last three years. All of these requests have been approved by the State Board of Education, typically on consent a vote.

The Governor's proposal is intended to regulate multi-track attendance funding for charter schools through statute – instead of through State Board waivers to streamline the process.

CDE Proposed Amendments. The CDE proposes the following amendments to the Administration's language (underlined text). According to CDE, these reflect the current requirements utilized by the State Board of Education in granting waivers for charter schools with multi-track attendance.

SEC. 17. 47612. (a) A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Section 8 of Article IX of the California Constitution, with regard to the appropriation of public moneys to be apportioned to any charter school, including, but not limited to, appropriations made for the purposes of this chapter.

(b) The average daily attendance in a charter school may not, in any event, be generated by a pupil who is not a California resident. To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress towards award of a high school diploma. The State Board of Education shall, on or before January 1, 2000, adopt regulations defining "satisfactory progress."

(c) A charter school shall be deemed to be a "school district" for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24, Section 47638, and Sections 8 and 8.5 of Article XVI of the California Constitution.

(d) *For purposes of calculating average daily attendance, no pupil shall generate more than one day of attendance in a calendar day. Notwithstanding any other provision of law, a charter school that operates a multi-track calendar shall comply with the following:*

1) calculate attendance separately for each track and the divisor in the calculation shall be the calendar days in which school was taught for pupils in each track,
2) operate no more than five tracks, unless it is a conversion school in which case it will operate no more than the number of tracks it operated prior to conversion,

- 3) each track will operate a minimum of 175 days; if the charter school is a conversion school, the school may continue its previous schedule as long as it provides no less than 163 days of instruction in each track,
- 4) for each track, the charter school will provide the total number of instructional minutes contained in Section 47612.5,
- 5) no track will have fewer than 55 percent of its school days prior to April 15, and
- 6) unless otherwise authorized by statute, no pupil shall generate more than one unit of average daily attendance in a fiscal year
- e) Compliance with the conditions set forth in this section shall be included in the audits conducted pursuant to Section 41020.