



JANUARY 2004 AGENDA

SUBJECT	X	ACTION
Countywide Charter Schools (Assembly Bill 1994): Approve commencement of the permanent rulemaking process for an addition to Title 5 of the California Code of Regulations.		INFORMATION
	<input checked="" type="checkbox"/>	PUBLIC HEARING

Recommendation:

California Department of Education staff recommend that the State Board of Education: (1) approve the proposed regulations pertaining to funding for countywide charter schools established by provisions of Assembly Bill (AB) 1994, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking, with technical modifications as may be identified and incorporated by staff, subject to the approval of the Executive Director of the State Board; (2) direct staff to proceed with the 45-day public comment period in accordance with the Administrative Procedure Act; and (3) direct staff to conduct a public hearing on the proposed regulations pursuant to California Code of Regulations, Title 5, Section 18460.

Summary of Previous State Board of Education Discussion and Action:

The State Board of Education adopted permanent regulations implementing the financial reporting requirements established by AB 1994. Those regulations were approved by the Office of Administrative Law (OAL) and are now operative.

The State Board received an information memorandum in August 2003 with an earlier draft of this regulation. A second draft was provided as an October 2003 information memorandum. Consideration was postponed at the November 2003 meeting to allow for the incorporation of some additional technical changes.

Summary of Key Issue(s):

Assembly Bill 1994 (Chapter 1058, Statutes of 2002) contained a number of significant programmatic provisions affecting charter schools, and the bill requires the State Board to adopt regulations to implement certain aspects of the statutory changes. The Advisory Commission on Charter Schools (ACCS) discussed various versions of AB 1994 programmatic implementation regulations on several occasions, both in concept and with regard to certain specific elements. During August 2003, State Board members received an information memorandum with a version of the permanent regulations that the ACCS had tentatively endorsed in July. However, at its September 2003 meeting, the ACCS considered the regulations further, and proposed several significant changes. The attached text reflects those changes along with additional technical changes prepared since that time.

Summary of Key Issue(s):

This proposed regulation has been separated from the other AB 1994 regulations in an effort to have them become operative during the 2003-04 fiscal year. There is concern that some of the provisions of the other programmatic regulations may generate controversy and take longer to get through the adoption process. The funding mechanism proposed in this regulation is modeled after the existing funding method for other county-approved charter schools; therefore, it is anticipated that the adoption process for this regulation could be more straightforward. The other AB 1994 programmatic regulations will be brought to the State Board in March.

The proposed regulation is currently undergoing fiscal review by CDE staff. There may be technical changes recommended as a result of this review, which would need to be incorporated into the regulations prior to the initial rulemaking package being submitted to OAL.

Fiscal Analysis (as appropriate)

The statutory changes enacted by AB 1994 will result in increased costs associated with the increased workload to the CDE and State Board to review, approve, and oversee a greater number of charter schools. There are no anticipated additional costs associated with this proposed regulation, although CDE staff has not completed the financial impact statement. That statement will be provided in a last minute memorandum.

Attachment(s)

[Attachment 1](#): Notice of Proposed Rulemaking (Pages 1-5)

[Attachment 2](#): Initial Statement of Reasons (Pages 1-2)

[Attachment 3](#): Proposed Regulations (Pages 1-2)

STATE OF CALIFORNIA
Governor

ARNOLD SCHWARZENEGGER,

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street, Room 5111
Sacramento, California 95814



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Countywide Charter Schools

[Notice published _____, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at _____ on _____, _____, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. All written comments must be received by the Regulations Adoption Coordinator no later than the close of the public hearing scheduled to start at _____ on _____, _____. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 94244-2720

Telephone : (916) 319-0641
FAX: (916) 319-0155
E-mail: dstrain@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for these regulations is found in *Education Code* Section 33031. *Education Code* Section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

Additional authority is provided in Education Code Section 47605.6(b)(5)(I), which requires the State Board to adopt regulations to determine the manner in which financial audits for countywide charter schools shall be conducted.

References are made to Education Code Sections 47605.6 and 47611.3, as well as to Chapter 6 of Part 26.8 (commencing with Section 47630) of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations are necessary to clarify certain aspects of the funding and operation of countywide charter schools and to determine the manner in which financial audits shall be conducted for countywide charter schools, which were established by Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002).

Specifically, this proposal adds Section 11967.8 to Title 5 of the California Code of Regulations to provide technical clarity regarding the funding calculation and process for providing operational funding to countywide charter schools. In significant part, the regulation defines “sponsoring local education agency” for purposes of calculating local funds to be transferred to countywide charter schools in keeping with the funding scheme set forth in Education Code Section 47630 et seq. The regulations reflect the calculation methodology applied to charter schools that have been directly authorized by county boards of education (i.e., not authorized as appeals of district denials of charter petitions).

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: Fiscal analysis pending.

Cost or savings to any state agency: Fiscal analysis pending.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: Fiscal analysis pending.

Other non-discretionary cost or savings imposed on local educational agencies: Fiscal analysis pending.

Cost or savings in federal funding to the state: Fiscal analysis pending.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: Fiscal analysis pending.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The proposed regulations do not affect small businesses. They relate exclusively to necessary elaboration on statutory provisions establishing a new type of charter school. The proposed regulations do not impose additional workload on small businesses or contractors funded by the Department.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator
California Department of Education
Charter School Division
1430 N Street, Room 5401
Sacramento, CA 95814
E-mail: ecubansk@cde.ca.gov
Telephone: (916) 322-6029
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulation as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/regulations>.

INITIAL STATEMENT OF REASONS

Section 11967.8. Countywide Charter Schools

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations will clarify existing law with regard to the funding process to be used for countywide charter schools, and will determine the manner in which financial audits for countywide charter schools shall be conducted.

NECESSITY/RATIONALE

Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002) amended the Charter School Act of 1992, and added *Education Code* Section 47605.6 that creates new responsibilities for county boards of education to review and approve charter schools of countywide interest that propose to operate on multiple sites within the county.

SECTION 11967.8

This section provides technical clarity regarding the funding and operations of countywide charter schools, as well as the conduct of audits and resolution of audit exceptions. The regulations are proposed to be effective for the whole of 2003-04 and each fiscal year thereafter.

Subdivision (a). Clarifies that a countywide charter school is funded in keeping with the funding provisions otherwise applicable to charter schools and is directly funded. These are sensible elaborations on a statute that is incomplete and result in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

Subdivision (b). Clarifies the meaning of “sponsoring local education agency” for purposes of countywide charter schools. This clarification ensures that local tax funds are transferred appropriately to countywide charter schools based upon the revenues accruing to the districts in which the schools’ pupils resides, and ensures that related financial calculations are made properly. This is sensible elaboration on a statute that is incomplete and results in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

Subdivision (c). Clarifies how funds are technically to be allocated on behalf of countywide charter schools. This is a sensible elaboration on a statute that is incomplete and results in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

Subdivision (d). Provides technical authorization for inclusion of countywide charter schools in STRS and PERS (which is clearly envisioned in statute). These are sensible elaborations on a

statute that is incomplete and result in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

Subdivision (e). Extends to countywide charter schools the regulations pertaining to audits and resolution of audit exceptions that apply to schools chartered by the State Board of Education on appeal. These are sensible elaborations and are consistent with the specific direction set forth in Education Code Section 47605.6(b)(5)(I).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The State Board was not presented with other viable alternatives to the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed regulations would not have a significant adverse economic impact on any business because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses.

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 11. Special Programs

Subchapter 19. Charter Schools

Add Section 11967.8 to read:

Section 11967.8. Countywide Charter Schools.

For the purpose of a countywide charter school approved pursuant to Education Code Section 47605.6, the following shall apply:

(a) The charter school shall be funded pursuant to Chapter 6 of Part 26.8 of the Education Code (commencing with Section 47630) and receive its funding directly.

(b) The charter school's "sponsoring local education agency" for purposes of Chapter 6 of Part 26.8 of the Education Code shall be the school district of residence of each of the pupils attending the school.

(c) The warrant shall be drawn in favor of the superintendent of schools of the county that approved the school, and that county superintendent is authorized to establish appropriate funds or accounts in the county treasury for the school.

(d) The county superintendent is authorized to make necessary arrangements for the school's participation in State Teachers' Retirement System and/or Public Employees Retirement System in accordance with Education Code Section 47611.3.

(e) For the purposes of Education Code Section 47605.6(b)(5)(I), the provisions of paragraph (9) of subdivision (f) of Section 11967.5.1 shall apply. If the school has multiple sites, the charter shall indicate how each of the school's sites will be appropriately included in the processes of auditing and resolving audit exceptions.

This section shall apply for the entire 2003-04 fiscal year and each fiscal year thereafter.

Note: Authority cited: Sections 33031 and 47605.6(b)(5)(I), Education Code. Reference Section 47611.3 and Chapter 6 of Part 26.8 (commencing with Section 47630), Education Code.