



## **How the New Charter Laws Affect You (updated fall 2005)**

Each year, new laws take effect that significantly affect new charter school developers, existing charter school operators, and charter-granting agencies. Many of the new laws reflect legislators' increasing concerns about the accountability of charter schools and the oversight responsibility of charter-granting agencies. Most charter school constituents struggle to keep up with the volume and technicality of the ongoing legislative changes. The following article summarizes "in plain English" the most critical recent changes and their current and future implications for charter schools.

The article is divided into three sections: "Changes Affecting Charter School Developers," "Changes Affecting Recently Approved and Currently Operating Charter Schools," and "Changes Affecting Charter-Granting Agencies." For the complete legal text of the newly revised Charter Schools Act, with the changes highlighted by code section, see CSDC's annotated "Charter Schools Act of 1992" on our website at [www.cacharterschools.org/lawpolicy.html](http://www.cacharterschools.org/lawpolicy.html)

### **Changes Affecting Charter School Developers**

#### *Revised Charter Numbering System*

Old Law: In 1998-99, the maximum number of charter schools authorized to operate in California was 250, with an additional 100 charters allowed each year thereafter. Each approved charter petition was given a number by the State Board of Education (SBE). The charter petitions could include multiple school sites under one charter number.

New Law: The cap on the number of charter schools remains the same. (For the 2004-05 school year, our cap is now 850, with 100 additional each July 1.) Moreover, each approved charter petition is still given a number by the SBE. However, as of January 1, 2003, charter school "satellite" sites are now considered separate schools and need to be given separate charter numbers unless the school sites "share a common educational program" and "serve similar pupil populations" (Education Code section 47602(a)(1)).

Bottom Line Implications: This push to count charter "satellite" sites toward the statewide cap was driven largely by the California Teachers Association (CTA). As a result, charter schools that want to operate multiple sites may need to get multiple charters. The terms "common educational program" and "similar student populations" are not defined in law, and interpretation will likely be up to the State Board.

## *Geographic Limitations for New Charter Schools*

Old Law: Charter school petitions were not required to list the number or specific locations of sites. Charter schools could operate sites both within and outside the boundaries of the district and county that granted the charter. Charter schools could serve grade levels not served by the district where the charter school was located. (For example, a charter school could serve grades 9-12 in an elementary school district.)

New Law: Generally, charter schools must now operate within the geographic boundaries of the district that grants the charter. The school can propose to operate one or multiple sites within the district, but each site's location must be identified in the charter petition. If the charter school wants to open more sites within the district after its charter is approved, it must submit a charter amendment to the district governing board listing the new locations. The board must decide at an open public meeting whether to approve the additional locations and materially revise the charter (Education Code section 47605(a)(1) and (4)).

Under limited circumstances, a charter school may operate *one* site outside the boundaries of the charter-granting district, but still within the same county. In order for this to occur, the charter petitioners must notify the granting district before charter approval, notify the county superintendent and state superintendent of the location before commencing operations, and must meet one of two circumstances: either (1) the school attempted to house the entire program all in one facility or site but was unable to find an available site or facility in the area, or (2) the out-of-district site is needed temporarily during a construction or expansion project (Education Code sections 47605(a)(5)).

Another change to the law affects which grade levels charter schools can serve, depending on where they wish to locate their schools. As mentioned above, previously, a charter school could serve grade levels not served by the school district. However, effective January 1, 2003, a charter school can no longer propose to serve grade levels not served by the district unless the petition proposes to serve students in all of the grade levels served by the district (Education Code section 47605(a)(6)). This poses no issue in "unified" school districts because, by definition, they serve all grades K-12. In many parts of the state, however, elementary and high school grades are served by different elementary and high school districts. In such areas, charter schools may only serve grades outside of the granting district's normal span if they serve all grades within that district's span. For example, if a charter school wants to serve grades 9-12 in an elementary district (grades K-6), the charter petition must propose serving grades K-12.

Bottom Line Implications: New charter schools are now much more geographically restricted than before. The impetus for keeping charter school sites "closer to home" stems from recent scandals in which a few out-of-district charter schools were found to be violating some laws without the grantors' knowledge. In reality, holding charter schools accountable is not a function of distance (e.g. a granting agency might never monitor the charter school next door) but of having clear processes and procedures in place for overseeing their operations. These recently revised provisions prevent charter school developers whose local districts are hostile or unwelcoming toward charter schools from gaining sponsorship outside of their local district unless they locate the school in that other district.

### *Additional Charter Petition Requirements*

Old Law: The old law had 15 required charter elements. There were no special requirements for charter high school petitions.

New Law: 2003 changes to the law created two new changes to charter petition requirements. First, new requirements were added for charter high school petitions, and second, a 16<sup>th</sup> element was added to address charter school closure. Specifically, in the first element of the charter (description of the school's educational program), petitioners that wish to serve high school students now have to inform parents about the transferability of courses to other public high schools and about the courses' eligibility to meet college entrance requirements. The law states that courses approved by WASC (the Western Association of Schools and Colleges) may be considered transferable, and courses approved by UC (the University of California) and CSU (California State University) under the "a-g" criteria meet college entrance requirements (Education Code Section 47605(b)(5)(A)(ii)).

Next, in the additional 16<sup>th</sup> element that addresses charter school closure, charter petitioners must describe what will happen to the school's assets and liabilities and how student records will be transferred in the event that the school closes (Education Code Section 47605(b)(5)(P)). For sample language for this new petition element and all other charter sections, see CSDC's "Sample Charter," available on-line at [www.cacharterschools.org](http://www.cacharterschools.org).

Bottom Line Implications: Despite the language in this provision, WASC, while it accredits schools, does not currently accredit courses. Thus, there are not currently any shared, transferable course standards. Charter school petitioners developing high schools will need to gather information and perhaps dialogue with other local public high schools regarding the compatibility of their course offerings. Regarding college entrance requirements, following the "a-g" requirements will address course approval for students applying to UC and CSU but does not address admission requirements for any other colleges and universities. Charter high schools will need to dialogue with the admissions officers at the individual higher education institutions where their students apply. Note that UC also now requires charter high schools to be accredited by WASC in order for their courses to count as a-g approved. For more information on recent requirements regarding accreditation and college entrance requirements at UC, see the "New UC Stamp of Approval" article in CSDC's winter 2003 *Charter Currents*, available at [www.cacharterschools.org](http://www.cacharterschools.org) under "News."

The school closure element of the petition forces charter school developers to clarify the legal and governance relationship between the charter school, its granting agency, and any other appropriate entities. Part of this clarification should include an explicit understanding of asset ownership and liability.

### *Preference for Low-Achieving Students*

Old Law: There were no preferences for certain types of charter petitions.

New Law: School districts and counties must give preference to charter petitions that demonstrate they will provide “comprehensive learning experiences” to students who are not performing well on the state standards (Education Code sections 47605(h) and 47605.6(i)).

#### *No Mid-Year School Openings Allowed*

Old Law: After its petition was approved, a new charter school could open any time during the school year.

New Law: A new charter school must now begin instruction within the first three months of the fiscal year (beginning July 1). Any charter schools opening after September 30 will not receive funding (Education Code Section 47652(b)).

Bottom Line Implications: The California Department of Education sought this amendment to prohibit charter schools from opening mid-year. Most new charter schools open in the summer or fall. However, many earlier new charter schools had opened later, often due to delays in securing or preparing facilities. These new provisions force schools that are not ready to open by September 30 to wait until the next academic year, unless they can survive on other sources of funding until they receive their government funding.

#### *Appeal Process for Denied Charters*

Old Law: Charter school petitioners whose petitions were denied by a school district could either appeal to the county board of education, then to the state board, or directly to the state.

New Law: Petitioners denied by a district must first appeal to a county office of education. Only if the county subsequently denies them can they then appeal to the State Board of Education for approval.

Bottom Line Implications: Charter school petitioners facing both unwelcoming districts and counties must jump through two hoops before appealing to the state.

#### *County-Wide Charters*

Old Law: A charter school that wanted to apply directly (i.e. not on appeal) to a county board of education for approval had to plan to serve the student populations typically served by a county office of education (e.g. adjudicated youth, pregnant and parenting teens, etc.). County offices of education typically serve special and low-incidence student populations.

New Law: Charter schools may now apply directly to a county board of education with plans to serve “mainstream students” if they can prove that their proposed student population would not be served as well if the charter school only operated in one school district in the county. They must operate their site(s) within the geographic boundaries of the granting county (Education Code Section 47605.6). The deadlines, charter petition elements, denial criteria, and review process are similar to those for petitions submitted to a district, with the following exceptions:

- The charter school development group must give 30 days notice to each of the districts in which it plans to operate a facility before submitting its petition

- No conversions of a regular public school to a charter school are allowed
- The timelines are slightly different. The county has 60 (not 30) days from the date of petition submission to hold a public hearing and 90 (not 60) days to render a decision.
- The county can enter into an agreement with a third party to oversee any charter schools it approves.
- The county can deny the petition for any reason it deems justified.
- Charter developers whose charter petition is denied by the county board may not appeal to the state board.

In addition, changes to the charter law effective January 1, 2006 clarify that charter developers seeking approval of a county-wide charter petition must include the same charter petition elements as those required in a petition submitted to a school district, including: for charter high schools, an explanation of how the charter school will inform parents of course transferability and eligibility to meet college entrance requirements, charter school admission requirements, students' public school attendance alternatives, employee rights upon leaving the charter school, and charter school closure procedures.

Bottom Line Implications: On the positive side, these provisions provide charter schools with unfriendly districts and mainstream students a new option to apply directly to the county. However, the burden is on the petitioners to prove that their proposed students would not be served as well if a district had approved the petition. These provisions also give the county boards complete discretion in approving or denying a charter for virtually any reason they see fit. Petitioners approaching skeptical or unfriendly counties should do their best to negotiate, but must realize that the cards are completely in the county's hands. Charter-friendly counties, meanwhile, will have new opportunities for opening charter schools within their boundaries.

### *State-Wide Charters*

Old Law: Charter schools could only submit their petitions to the State Board of Education (SBE) for approval upon appeal, after being denied by a district and/or county.

New Law: Charter petitioners may now apply directly to the state. Approved petitions may operate multiple sites across the state; the geographic restrictions will not apply. Petitioners again face the burden of proof to describe why their program could not effectively operate in only one district or county. As with the countywide charters, the state may choose to contract with a third party to monitor the charter school. The SBE also may deny the charter for any reason it deems justifiable. The SBE has developed draft regulations to implement these provisions. (Education Code Section 47605.8)

Bottom Line Implications: As with the new countywide charters, this provision provides charter school developers with another grantor option but leaves the cards completely in the state board's hands.

### *Notice of Charter Approval*

Old Law: Charter school petitioners whose charters were approved by the district or county were required to give written notice, including a copy of the petition, to the State Board of Education.

New Law: Charter petitioners that were approved by a district now need to give written approval notices and petition copies to the applicable county superintendent, the California Department of Education (CDE), and State Board of Education (SBE) (Education Code Section 47605(i)). Charter petitioners that are approved by a county upon appeal must provide written notice and copy to the CDE and SBE (Education Code Section 47605(j)(6)). Charter schools that are approved directly by a county must submit their approval notice and charter copy to the school districts within the county, the State Superintendent of Public Instruction, and the SBE (Education Code Section 47605.6(j)).

Bottom Line Implications: More paperwork for petitioners as the county and state seek to keep closer track of the number of charter schools. As was the case before these changes, charter petitioners, not the approving districts or counties, are responsible for notifying the applicable state and now county offices of their approval. Petitioners are also responsible for getting on the agenda of a State Board of Education meeting to receive their official state approval and charter number.

### *New Funding Level for New Conversion Charter Schools in Unified School Districts*

Old Law: Conversion charter schools in a unified school district received the same charter school funding for equivalent grade levels as all other charter schools. Adjustments were made to unified school district funding levels for in-district students who attended charter schools.

New Law: The new law, passed in 2005, removes the adjustments made to unified school district funding levels and creates a funding level for new “conversion” charter schools authorized by unified school districts that differs from funding rates for all other charter schools. Specifically, conversion charter schools approved after July 1, 2005 in a unified school district will receive general purpose funding at a rate that approximates the funding level it received in its last year as a non-charter school district school.

Bottom Line Implications: This new provision could either be a boon or a bust for charter developers considering developing a new “conversion” charter school in unified school districts, depending on whether the prior year funding for those district schools was higher or lower than the charter school funding rate.

### **Changes Affecting Recently Approved and Currently Operating Charter Schools**

#### *Additional Fiscal Reporting*

Old Law: Charter schools were not required to report annual budget data to the state. Charter schools were required to submit an annual financial audit report to their charter-granting agency and to the California Department of Education (CDE) by December 15 of each year.

New Law: 2002 additions: Charter school fiscal data is required as part of the annual fiscal report submitted by the district to the county and ultimately the state. Specifically, on or before September 15, each charter school must approve an annual statement of all of its receipts and expenditures for the prior fiscal year and file the statement with the district or county that granted its charter. The district and county then incorporate the charter school fiscal data into their annual financial statements. On or before October 15, the county superintendent checks the statements for mathematical accuracy and submits a copy to the state Superintendent of Instruction. The forms for the fiscal reports were developed by the State Superintendent of Public Instruction (SPI), adopted by the State Board of Education, and are posted to the CDE's website at [www.cde.ca.gov](http://www.cde.ca.gov). (Education Code sections 1628 and 42100)

In addition, charter schools must submit their annual fiscal audit report by December 15 not only to their charter grantors and the CDE but also to the county superintendent where the school is located (unless it is a county-granted charter school) and to the State Controller (Education Code Section 47605(m)).

2003 additions: Charter schools must submit quarterly fiscal reports according to specific timelines to their charter-granting agencies and county superintendents. The granting agency must use this information to "assess the fiscal condition of the school" (Education Code section 47604.33).

Bottom Line Implications: Charter schools should add these additional fiscal reporting requirements and deadlines to their fiscal calendars. Regarding the audit reports, it is unclear what the county superintendents or State Controller will do with the information, since neither has the power to regulate charter schools. Given the strict compliance orientation of some county superintendents and State Controllers Office staff, some charter advocates fear this requirement may lead to increased conflict.

### *County Oversight*

Old Law: County offices and superintendents lacked explicit legal authority to monitor charter schools. County boards had authority to monitor only those charter schools that they granted.

New Law: Whether or not the county is the charter-granting agency, the county superintendent may now investigate a charter school located within that county based on parent complaints or other information and monitor its operations. The county will incur no liability beyond the cost of the investigation. In addition, the charter school must promptly respond to all "reasonable inquiries" (undefined) by the county office of education. In addition, before commencing operations, a charter school must notify the county superintendent of the location of each of its school sites within that county (Education Code sections 47604.3 and 47604.4).

Further, new law passed in 2005 expands the authority of the county superintendent of schools to "review or audit the expenditures and internal controls" of a charter school within the county upon suspicion that the charter school has committed fraud misappropriated funds, or other illegal fiscal practice. The county superintendent is responsible for completing the investigation in a timely manner, reporting the findings to the charter school board of directors, and providing

a copy of the report to the charter school's granting agency. The new law also allows a charter school to seek "fiscal management assistance" from a county Fiscal Crisis and Management Assistance Team (FCMAT); provided however, that the charter school will be responsible for the FCMAT team's on-site personnel and travel costs associated with the assistance.

Bottom Line Implications: Another layer of oversight has been added to charter schools. Counties have been given broad rein to "sniff around" charter schools. On the positive side, well-intentioned counties can use these provisions to address cases of poor oversight by charter-granting districts. On the down side, hostile counties could misuse this new power to unduly harass charter schools.

### *Geographic Restrictions for Approved and Operating Charter Schools*

Old Law: Just as with new charter schools, there were no restrictions on a charter school being approved by one district or county and operating sites in another.

New Law: As with new charter petitions, already approved and operating charter schools must now generally operate their site(s) within the geographic boundaries of the districts or counties that granted their charters. There are several complicated "grandfathering" provisions and other timelines for existing charter schools with multiple, widespread sites (found in Education Code Section 47605.1). These requirements are based primarily upon when a charter school was approved and began providing educational services to students, although other exceptions exist. Specifically:

- Charter schools that were granted a charter after July 1, 2002 and began providing educational services on or after that date must operate within the boundaries of the district (or county) that granted its charter.
- Charter schools that were approved, but did not begin operating, before July 1, 2002 must comply with these new geographic restrictions upon the expiration of their charters, so long as the charter was in existence by January 1, 2003. For example, a charter school that was approved at the end of June 2002 and started its operations in September 2002 has until June 2007 to operate its out-of-district sites (assuming it was granted a five-year charter).
- Charter schools that were granted a charter upon appeal by the State Board of Education after July 1, 2002 and began providing instructional services on or after that date can only locate within the geographic boundaries of the district or county that originally denied them. The law does not address charter schools that were granted a charter upon appeal by the county, only those that were approved directly by a county. Charter schools whose petitions are approved directly by a county must locate their school sites within the boundaries of that county.
- For charter schools that were approved and began providing educational services to students before July 1, 2002, these geographic restrictions only apply to any new sites established or acquired on or after July 1, 2002. These schools can continue operating their existing out-of-district sites that were opened before July 1, 2002.
- By June 30, 2005 or upon the expiration of a charter that existed by January 1, 2003, whichever is later, all charter schools will be subject to these geographic restrictions, except as noted below.

There are a few exceptions to these geographic restrictions:

- Non-classroom-based independent study charter schools can operate a “resource center, meeting space, or other satellite facility” in an adjacent county to provide “educational support” to their enrolled students. To qualify, these schools must provide their “primary educational services” in the county where the charter was granted and serve a majority of students who live in that county.
- New charter schools that are unable to find a site within the chartering district can establish one site outside the district, but within the same county, according to the requirements and conditions outlined under “Geographic Limitations for New Charter Schools,” above.
- The geographic limitations do not apply to any charter schools that provide instruction in exclusive partnership with the federal Workforce Investment Act of 1998, federally affiliated Youth Build programs, federal job corps programs, the California Conservation Corps, local conservation corps certified by the California Corps, or residential juvenile court schools. Interestingly, these same groups (minus the juvenile court schools) are also now exempt from the restrictions on charter schools serving students over age 19. Under the law, charter school students over 19 must remain continuously enrolled and make “satisfactory progress” toward a high school diploma. These new changes exempt these carve-out groups from this restriction (Education Code Section 47612.1).

Bottom Line Implications: These geographic restrictions on charter schools were largely driven by the California School Boards Association. As soon as the grandfathering provisions run out, charter schools granted by a district or county or the state upon appeal will no longer be able to run multiple sites across the state. Nor will charter-granting agencies be able to grant charters outside their boundaries, except in the above limited circumstances. These provisions may eventually close down many successful out-of-district charter schools.

Charter schools currently operating multiple sites and/or sites that are located outside the boundaries of their charter-granting districts or counties must review these timelines carefully and think very strategically about the long-term enrollment, facilities, and perhaps sustainability of their school programs. They may need to resume negotiations with their granting school districts or with the districts where their satellite sites are currently located.

#### *Changes to Charter School Facilities Funding Program*

Old Law: Charter schools could receive reimbursement for facilities costs of up to \$750 per ADA to reimburse up to 75% of the school’s annual rent and lease costs if the school was located in the school attendance area of a public elementary school in which at least 70% of the students is eligible for free and reduced price lunch. Charter schools whose own student population comprised 70% or more free and reduced price lunch students were not eligible unless they met the above criteria.

New Law: Charter schools can now also receive this facilities costs reimbursement if at least 70% of the charter school’s students is eligible for free and reduced price lunch, even if the local elementary school does not meet this requirement. Those charter schools that are located near a public elementary school meeting this requirement must now give admissions preference to the students currently enrolled in that elementary school and others residing in that attendance area

in order to qualify for the facilities reimbursement (Education Code Section 47614.5). Furthermore, charter schools located in the attendance area of a public elementary school where at least 50% of the students are eligible for free and reduced price lunch may now give admissions preference to the students at that elementary school or those who live in that attendance area (Education Code Section 47605.3).

In addition to the facilities reimbursement program, charter schools may now also receive facilities funding through state facilities bond funds. \$300 million of these bond proceeds have been set aside for charter schools, with another \$49 million augmentation from the federal government. Either the granting school district or charter school can apply. To qualify, charter schools must have established a track record of sound finances for at least two years.

Unfortunately, there are several restrictions, including:

- There is a requirement for a 50% local match, which can be paid through low-interest lease payments.
- The local school district would hold title to the facility. This makes it very difficult, perhaps impossible, for charter schools to build equity, even if they pay the local match.
- As a district-owned facility, it would have to comply with all laws governing public school plan review, including the Field Act.
- Projects can only be funded in districts that are otherwise eligible for state facilities funding.

Bottom Line Implications: The charter school facilities reimbursement funds are a “mixed bag.” On the positive side, it is a potentially good funding source for those who qualify. On the down side, it is a gamble each year as to whether this program will survive the state budget cuts. (The program narrowly missed being cut by Governor Schwarzenegger this past spring.) In addition, since the program is under-funded, and funds are allocated proportionally to all who apply and qualify, charter schools may not get all of their eligible expenses covered if many schools apply in a given year. Finally, cash flow could be an issue for some schools applying for these funds, as the funds are reimbursed a year in arrears.

The state facilities bond funds are helpful, but represent a small contribution that will help only a few charter schools in California’s costly real estate market. In addition, the law prohibits local school districts from waiving local building ordinances for charter schools, a current practice that has saved some charter schools thousands of dollars. Moreover, the district retains title to the building, no matter how much the charter school invests in it. Finally, the application process for these state bond funds is extremely complex and arguably political.

#### *Extended Year Special Education Services*

Old Law: Charter schools received no funding reimbursement for special education students whose Individualized Education Plans (IEPs) require extended year services.

New Law: Charter schools may now claim ADA for special education students whose IEPs require extended year services (Education Code Section 47646(b)(1)).

Bottom Line Implications: This law will assist several charter schools that previously have had to provide these services during the summer and winter breaks without receiving any funding.

### *State Student Data Collection System*

Old Law: There were no laws addressing longitudinal student achievement data collection systems.

New Law: Recent changes to the state law now require the State Board of Education to develop and maintain a data system that would track progress of individual students over time. This data system has been named the California School Information Services, or CSIS program. Data to be tracked includes the STAR tests, English Language Development test, and the high school exit exam. The data system would also track student information required by the federal No Child Left Behind (NCLB) Act, such as dropout and graduation rates. Statewide data system efforts are currently focused on a student tracking system that assigns unique statewide student identification numbers to all K-12 students, known as Statewide Student Identifiers (SSIs). School districts, county offices of education, and charter schools wishing to participate in the development of CSIS receive one-time start-up money, but do not receive any cost reimbursements, as it is not a state mandated program. Instead, \$6,880,000 was appropriated from federal funds to fulfill the requirements of NCLB. (Education Code Section 49084 and chapter 10, beginning with section 60900, added to part 33 of the Education Code)

Bottom Line Implications: To date, the state has lacked the capacity to track longitudinal student achievement data. This has been one of many of the major statistical flaws with the current API and related accountability systems. Once fully implemented, this data system will allow charter schools, other public schools, and the state to track the academic growth of individual students over time. This could be especially important for the many charter schools that enroll large numbers of under-performing students from other public schools and/or experience rapid turnover of their student populations. Under this new system, charter schools could more readily demonstrate the effectiveness of their academic programs even when admitting new, low-performing students whose poor test scores lower school-wide averages.

### *Mandated Charter School Oversight*

(See “Changes Affecting Charter-Granting Agencies,” below.)

### *Charter Renewal Requirements*

Old Law: Under the old charter school law, charter renewals were to be based on “the standards and criteria of Education Code section 47605” (the same as those for submitting initial charter petitions).

New Law: 2003 changes to the law require charter schools to meet certain state accountability requirements before they can be renewed, effective January 1, 2005 or after the charter school has been in operation for four years, whichever is later. Specifically, a charter school can only be renewed if it meets one of the following: 1) The charter school meets its Academic Performance Index (API) growth target in the prior year or in two of the three past years, or in

the aggregate for the prior three years; 2) The charter school achieves an API state or comparison rank of 4 or above in the prior year or two of the three past years; 3) The charter-granting agency determines, based on “clear and convincing data,” that the charter school’s academic performance is at least equal to both the performance of the public schools that the charter school students otherwise would have attended and to the other schools in the district where the charter school is located, taking into account the charter school’s student population; or 5) The charter school has qualified for the Alternative Schools Accountability Model (Education Code section 47607(2)(b)).

Bottom Line Implications: These new renewal requirements increase the already high stakes attached to performing well on the state tests, which form the primary basis for the API rankings. Directly put, if a charter school does not perform well on the API, it potentially may no longer exist in a few years. These new requirements will have an especially negative impact on those charter schools serving academically underperforming students such as those with academic skills below grade level, dropouts, English Language Learners, etc. The other criteria besides the API bars are also extremely difficult for many schools to meet. Proving, to the high legal standard of “clear and convincing data” that a charter school’s performance is at least *equal* to every other charter school that the students would otherwise attend or to every other school in the district would be logistically extremely challenging, especially in the larger districts, and perhaps not possible to demonstrate. Moreover, many charter-granting agencies will likely not have the capacity and/or desire to collect or review this data. The relationship between the charter school and its charter-granting agency will be a critical factor in how this provision of the renewal criteria is interpreted and implemented. Those charter-granting agencies that have a positive relationship with their charter schools will likely interpret this section liberally. Those charter-granting agencies that have a contentious relationship with their charter schools will likely take a more restrictive read of this requirement. Finally, the requirements for the Alternative Schools Accountability Model have been severely restricted, and many schools that previously qualified may no longer meet the new criteria.

#### *Restrictions on Charter School Facilities near Airport Runways*

Old Law: Previously, there were no restrictions on charter school facilities’ proximity to airport runways.

New Law: New laws passed in 2005 place restrictions on the location of charter school facilities in relation to airport runways. A charter school seeking to purchase or lease facilities must provide the California Department of Education (CDE) with a notice of its intent to purchase or occupy a facility and, if the facility is within two miles “by air line” (i.e. “as the crow flies”) of an airport runway, must provide the CDE with any information it requests about the facility. The CDE will then inform the Department of Transportation (DOT) of the charter school’s proposed acquisition or occupancy of the site. The DOT will have thirty (30) days to conduct an investigation and make a recommendation to the CDE regarding whether the charter school may safely acquire or occupy the site. If the recommendation is negative, the charter school may not acquire or occupy the site. If the recommendation is positive, the charter school must hold a public hearing before acquiring or occupying the site.

Bottom Line Implications: These laws will make it more difficult for charter schools currently or planning to locate near airports to obtain facilities space.

#### *New Facilities Building Code Compliance*

Old Law: Previous charter law was silent regarding charter schools' compliance with local and state building code regulations.

New Law: 2005 changes to charter law require all charter school buildings to comply with sections of the California Building Code (Part 2, beginning with section 101), as enforced by the local building enforcement agency. These provisions address such safety issues as electrical, mechanical, plumbing, fire, energy, and elevators. Charter schools do not need to comply with these Building Code requirements if their facilities comply with the Field Act or if the building is owned by an entity not subject to the Building Code, such as a federal government building.

Bottom Line Implications: Nearly all charter school buildings will be forced to comply with the California Building Codes, with very limited exceptions (see above) before January 1, 2007. This requirement will likely create a significant hardship for both new and existing charter schools. Charter schools should confirm whether their current facilities are compliant with the California Building Code, or fall under one of the exceptions, well in advance of the January 1, 2007 deadline.

#### *New Charter School Funding Model*

Old Law: Former law established the Charter School Categorical Block Grant (the "block grant") in 1998-99, which provides charter schools with block funding in-lieu of a number of separate state categorical aid programs. The block grant's per Average Daily Attendance (ADA) funding level was tied to the per ADA funding level for the underlying categorical aid programs, and block grant funding increases were based on increases in categorical aid funding in addition to charter school ADA growth and a cost of living adjustment. A portion of the block grant funding was also set aside for programs serving disadvantaged students and English language learners, in lieu of the funding given to traditional school districts for Economic Impact Aid.

New Law: Effective immediately, changes to the law passed in 2005 significantly modify the manner in which charter school funding is calculated. Instead of negotiating each year the specific state categorical programs that will be included in or excluded from the block grant, the new funding model allocates a "lump sum" amount over the next three years. This funding amount will be \$400 per ADA for the 2006-07 fiscal year and \$500 per ADA for the 2007-08 fiscal year. For each year thereafter, the charter school block grant will increase by charter school ADA growth and a cost of living adjustment (COLA) only. The manner in which the block grant funding set-aside to fund charter schools in lieu of Economic Impact Aid funding remains unchanged. The new law contains a list of categorical aid programs for which charter schools are ineligible to apply but presumes that charter schools are eligible to apply for all future categorical aid programs unless the legislature specifically prohibits it. The new law calls for the block grant funding level to be revisited every three years.

**Bottom Line Implications:** In the short term, the new law should provide charter schools with substantially more funding per ADA than they would have likely received under the old block grant methodology. However, beginning in 2008-09, block grant funding will “level off” and will grow modestly year over year – based only on ADA growth and COLA. In the short term, charter schools should be aware of the categorical aid programs for which they can and cannot apply for funding. The list of programs for which charter schools cannot apply, as of this publication, is as follows:

• Agricultural Career Technical Education	• Pupil Retention Block Grant
• Bilingual Teacher Training Assistance Program	• Reader Services for Blind Teachers
• Peer Assistance and Review	• School and Library Block Grant
• College Prep Programs	• School Safety Competitive Block Grant
• English Language Acquisition Program	• School Safety Programs
• Foster Youth Programs	• Specialized Secondary Programs
• Gifted and Talented	• State Instructional Materials
• Transportation	• Targeted Instructional Improvement Grant (TIIG)*
• International Baccalaureate	• Teacher Credentialing Block Grant
• Math/Reading Professional Development	• Teacher Dismissal
• Principal Training	• Deferred Maintenance
• Professional Development Block Grant	• Year-Round Schools
• Grades 9-12 Class Size Reduction	• Pupil Retention Block Grant

#### *New Charter School Diploma Requirements*

**Old Law:** Charter schools have enjoyed a high degree of flexibility to determine the diploma requirements for their own programs.

**New Law:** The new law, passed in 2005, will require that all charter high school students pass the California High School Exit Exam (CAHSEE) as a condition receiving a diploma of graduation from high school.

**Bottom Line Implications:** Charter high schools must require their students to take and pass the CAHSEE before students can receive a diploma from the charter school.

#### *Mandatory Notice of Student Expulsion or Transfer*

**Old Law:** Charter schools had no legal requirement to notify or transfer student records if a student leaves the charter school program for any reason without graduating or prior to the end of the school year.

**New Law:** Beginning on January 1, 2006, charter schools will be required to notify the school district in which a student resides, based on that student’s last known address, that the student has left the charter school. This requirement applies if a student is expelled from the charter school or leaves the charter school prior to graduating or before the school year-end for any reason. The charter school would also be required to provide the school district with the student’s cumulative file and other relevant student information upon request.

Bottom Line Implications: Charter schools must be vigilant in tracking student mobility and informing the school district that the student has left. Charter schools must also keep cumulative file information on each student including a transcript of grades or report card and health information.

#### *New Charter Revision Requirements*

Old Law: Existing law allows charter schools to make “material revisions” to their charter documents, either at renewal time or at any point during the term of the charter. Charter revisions have to be approved by the charter-granting agency and are to be governed by the standards and criteria of the original charter petition (as outlined in Education Code section 47605).

New Law: The new law, taking effect on January 1, 2006, will require all charters to be revised to include any new charter requirement that was passed since the charter was granted or last renewed. The charter must include a “reasonably comprehensive” description of the new elements.

Bottom Line Implications: Charter leaders seeking renewal or material amendments will need to be familiar with changes in the law since the petition was last approved by the charter-granting agency and incorporate those changes into the revised charter. Presumably, the charter-granting agency can refuse to approve the revised charter on the basis that the charter school did not provide a reasonably comprehensive description of the new elements.

#### *Penalty Waiver for Instructional Minutes Violations*

Old Law: The law requires charter schools to offer the same minimum number of annual instructional minutes as offered by traditional non-charter public schools for the same grade levels. The state can penalize charter schools that fail to offer the minimum number of instructional minutes by reducing their apportionment.

New Law: Under new laws passed in 2005, the State Board of Education (SBE) will have the authority to waive the penalties that are automatically assessed if a charter school falls short of its minimum annual instructional minutes targets. However, to qualify for a waiver, a charter school must be willing to make up the deficit in instructional minutes for twice the number of years it was deficient. For example, a charter school that was short 100 annual instructional minutes in the 2004-05 school year would have to add an additional 100 minutes in each of 2005-06 and 2006-07. Verification that a charter school has met these additional targets must be provided in a charter school’s annual fiscal audit.

Bottom Line Implications: A charter school must meet its annual instructional minutes targets. If it does not, the Superintendent of Public Instruction and the SBE will impose fiscal penalties for the number of minutes that the charter school was deficient. A charter school can petition the SBE to have these penalties waived, provided that the charter school agrees to make up the deficient instructional minutes.

#### *New Independent Study Pupil-to-Teacher Ratio Option*

Old Law: Under existing law, charter schools offering independent study are required to calculate their annual pupil-to-certificated employee (i.e. pupil-to-teacher) ratio as a condition of funding apportionment. Charter schools have not been allowed to receive apportionment funding for any unit of Average Daily Attendance (ADA) that exceeds the pupil-to-certificated employee ratio of the largest unified school district in the county where the charter school is located.

New Law: The new law, which takes effect on January 1, 2006, gives independent charter schools the option of using a fixed pupil-to-certificated employee ratio of 25-to-1 as their “cap” on apportionment instead of the ratio found in the largest unified school district in their counties.

Bottom Line Implications: Charter schools whose local pupil-to-teacher ratio was lower than 25:1 will benefit from this new option.

## **Changes Affecting Charter-Granting Agencies**

### *Mandated Charter School Oversight*

Old Law: Charter-granting agencies had fairly broad discretion in overseeing the performance of their charter schools. The laws contained some oversight-related provisions, such as those addressing annual financial audit findings and when to revoke charter schools under certain conditions. However, much of the ongoing monitoring and renewal processes were left for charter-granting agencies to decide at the local district or county level, preferably in conjunction with their charter schools.

New Law: Under the 2003 changes to the law, charter-granting agencies must perform specified oversight activities to monitor their charter schools, including annual site visits. The cost of these new oversight activities is to be paid from charter school oversight fees rather than from a state mandate reimbursement (Education Code section 47604.32). In addition, the charter-granting liability provisions were changed for those charter schools that are operated by or as nonprofit public benefit corporations. The liability now extends grantor indemnification to include errors and omissions; however, the charter-granting agency loses all liability protection if it does not comply with all of the new oversight requirements (Education Code section 47604(c)).

Other recent legal changes require charter-granting agencies to review quarterly fiscal reports according to specific timelines and to use this information to “assess the fiscal condition of the school” (Education Code section 47604.33). Charter-granting agencies must also review API scores and potentially other academic data when deciding whether to renew a charter (see above).

Bottom Line Implications: These new, state-mandated charter school oversight activities change the original charter law’s intent of allowing charter-granting agencies at the local district and county level to develop their own monitoring activities and instead shift authority to the state level to determine how charter oversight should be done. In addition, for several charter-granting agencies, especially those that grant large numbers of charter schools, the annual site

visits, quarterly fiscal reports, and other new oversight requirements are extremely and costly. For many, their oversight fees will not adequately cover the costs of executing these activities.

### *Restrictions on Oversight Fees*

Old Law: Previously, charter-granting agencies could charge for the actual costs of “supervisory oversight” of a charter school, not to exceed 1% of the charter school’s revenue or 3% if they provided a charter school with a “substantially rent-free facility.” The definition of “revenue” as unclear.

New Law: 2003 changes to the law define “revenue” as general purpose and categorical block grant funding (Education Code section 47613(f)).

Bottom Line Implications: The new definition presumably prevents charter-granting agencies from deducting oversight fees from charter schools’ grant funds and other categorical funds.

### *Changes to Charter Funding for Unified School Districts*

Old Law: Under the previous law, unified school district funding was adjusted as a result of students who would have otherwise attended the unified school district and instead attend a charter school. Unified school districts were given an additional few hundred dollars per Average Daily Attendance (ADA) in general purpose funding for elementary school students. Likewise, unified school district general purpose funding was reduced for each district high school student attending a charter high school. These adjustments were made in an attempt to provide unified school district-sponsored charter schools with funding that approximated the amount of money actually spent per student.

New Law: Changes to the law in 2005 attempt to correct what some unified school districts perceived to be an inequity in the system. Education Code section 47660 has been heavily modified so that unified school districts will no longer have their funding levels adjusted for in-district students who attend charter schools. Instead, any fiscal shortages or windfalls as a result of the different charter school and unified school district funding rates will be borne by the state. General purpose funding rates for charter schools will not be impacted with one exception – “conversion” charter schools approved in unified school districts after July 1, 2005. These new “conversion” charter schools will be funded at a rate that approximates the funding rate they received in the year prior to converting to a charter school.

Bottom Line Implications: Unified school districts with high proportions of charter high school students will benefit financially from this change, while unified school districts with high proportions of charter elementary school students will likely see a modest negative financial impact. Currently operating charter schools in unified school districts will not be impacted by this change.

--Laurie Gardner and Gary Borden