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Charter Schools. Public Records. Open Meetings.
Conflicts of Interest. Initiative Statute.

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December 12, 2013VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

RECEIVED

DEC 12 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Stop Corporate Exploitation of Charter Schools Act – Version 2*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of version 2 of the initiative measure entitled the "The Stop Corporate Exploitation of Charter Schools Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Karen Getman
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,



Thomas A. Willis

Enclosures

THE STOP CORPORATE EXPLOITATION OF CHARTER SCHOOLS ACT

SEC. 1. Title.

This act shall be known and may be cited as "The Stop Corporate Exploitation of Charter Schools Act."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare as follows:

1. Charter schools are public schools that have been given freedom from many state laws with the goal of increasing flexibility and school choice. Unfortunately, this has allowed wealthy investors, hedge fund managers and unscrupulous businessmen to profit from charter schools at the expense of our students.

2. Charter schools are part of the public school system and receive public funding from taxpayer dollars. Yet many charter schools are run by for-profit or nonprofit corporations that claim to be exempt from state conflict of interest, open meeting, and disclosure laws.

3. This means that charter school officials and board members can approve lucrative contracts with their own private companies; use the charter school as a laboratory to test-market their own for-profit products; sell or lease their own property to the schools; control investments of charter school funds; and loan money to the schools on terms they decide in closed-door meetings without public oversight. This leads to documented abuses and the potential for charter schools to be saddled with bad debts that take money away from our children. For example:

(a) The founder of three charter schools in Oakland benefitted from over \$3.7 million in payments the schools made to businesses owned by him and his wife. Despite revocation of the charter by the County Office of Education, the charter company is still in operation today.

(b) The founder of one of California's largest charter school networks also founded a for-profit company to provide administrative services to those same charter schools. He simultaneously served as CEO of both the charter schools and the administrative services company. This gave him the ability to direct charter school funds for his own benefit, including paying for such things as \$1.2 million in compensation to eight of his own relatives, extended stays at Disneyland Resorts, tickets to a rock concert, two jet skis, and six vehicles for himself and his relatives, including a Cadillac Escalade and Ford Excursion. At the same time, one of the charter schools spent only 17 percent of its funds on teachers, compared with the statewide average of 42 to 45 percent.

(c) The CEO eventually was indicted on 56 counts of misappropriation of public funds and 56 counts of grand theft. He and other executives of the charter school operation were alleged to have misused at least \$25.6 million in public education money, including \$2.6 million for their personal expenses. Yet six years later, the CEO has yet to be brought to trial.

(d) The founder of a large charter school system in San Jose was recruited to sit on the board of a for-profit company that develops and sells educational software used by those schools. The software company then commissioned an "independent study" of students using the software at those charter schools; it uses that study to market its products to other schools across the country.

(e) That same charter school founder has now left to form his own software start-up, and is using the schoolchildren at the charter schools he founded to test his new products. His long-term plan is to market that software to schools in India, no doubt hoping to make himself a hefty profit as a result.

(f) That same charter school system is expanding even further with help from a for-profit hedge fund specifically targeted at charter schools. The fund profits by buying distressed properties, converting them into school facilities and leasing those facilities back to charter school operators – all at market-rate profits paid for with public education funds.

(g) Hedge funds and banks also are taking advantage of a federal tax-credit program to reap enormous profits from charter schools in San Jose and Los Angeles. These special tax-credit investments permit wealthy investors to almost double their money in seven years while saddling charter schools with expensive loans they may struggle to pay back.

(h) In New York, a person who sat on the board of a charter school that entered into one of these special tax-credit investment loans also sat on the board of the company that received large commissions for setting up the loan. The same thing could be happening right now in California without our knowledge.

(i) California charter schools have secured millions in short-term revenue anticipation notes and tens of millions more in long-term construction bonds using private investor financing rather than state funds. That financing is paid back with taxpayer dollars, yet taxpayers may not know what the terms were on the loan or whether any charter school board members or staff had a financial interest in the funder.

4. To avoid these actual and potential abuses, charter schools should be held to the same types of laws as public schools:

(a) Public school officials cannot approve contracts with their own private companies; or profit from leasing or selling their own property to the school district; or loan money to the school district; or invest school money in risky hedge funds they manage or control; or use the schools to endorse products they manufacture on the side.

(b) Public school officials must disclose their financial interests to the public; must refrain from participating in or influencing any deal in which they have a personal financial interest; and are prohibited from entering into contracts in which they have a financial interest.

(c) Public school officials who violate the State's conflict of interest provisions can be subject to criminal penalties.

(d) Public school officials' compensation is a matter of public record.

(e) Board members of California charities must disclose their personal financial interests in any transactions of the nonprofit, and must refrain from participating in or influencing such transactions.

(f) Nonprofits must publicly disclose the compensation paid to their most highly paid officers.

(g) Public schools are subject to investigation by civil grand juries.

(h) Public schools cannot be run by for-profit companies.

5. Based on accounts of the mismanagement of public funds for personal gain by charter school officials, a legislative committee recently concluded that, "[c]harter school governing bodies should be held to the same conflict of interest standards as school district governing boards." The report concluded that complying with the laws would cost all charter schools less than a combined \$100,000 annually.

6. The legislature has twice passed bills requiring charter schools to comply with conflict of interest laws, open meeting laws and public records laws. Both times, former Governor Schwarzenegger vetoed the bills. Two other attempts failed to even make it to the governor.

7. Some charter management organizations and charter schools already voluntarily comply by adopting conflict of interest codes, conducting public board meetings and posting their financial records on their websites. Others maintain a code of silence.

8. Requiring all charter schools and charter management organizations to comply with conflict of interest rules and conduct business in an open and transparent manner

will renew the faith of parents and the community that their charter schools are acting in the best interests of children.

SEC. 3. Purpose and Intent.

In enacting this Act, the people of the State of California do hereby declare it is their purpose and intent to:

1. Establish conflict-of-interest policies for the governing bodies of charter schools that mirror existing conflict-of-interest policies followed by the governing boards of school districts.
2. Ensure that charter school officials who violate the State's conflict of interest laws are subject to the same criminal and civil penalties as public school officials.
3. Provide transparency in the financial operations of charter schools by requiring the governing bodies of charter schools to meet in open, public sessions and provide the public access to their documents.
4. Ensure that funds entrusted to charter schools are invested wisely and conservatively, without the taint of conflicts of interest.
5. Continue to provide greater autonomy to charter schools than traditional public schools and provide greater transparency to parents and the public with regard to the use of public funds by the governing body of charter schools.
6. Establish standards and procedures consistent with the Charter Schools Act of 1992 to avoid conflicts of interest in charter schools.
7. Ensure that charter schools are subject to investigation by civil grand juries like public schools.

SEC. 4. Section 47604.1 is added to the Education Code, to read:

47604.1. (a) For purposes of this section, "Charter School" shall mean a charter school, a charter management organization, or any other related entity established for the purpose of leasing or guaranteeing the lease of real property to a charter school or charter management organization.

(b) A Charter School is subject to all of the following:

(1) The Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), except that a Charter School operated by

an entity governed by the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) is subject to the Bagley-Keene Open Meeting Act regardless of the authorizing entity.

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

(3) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, including all criminal and civil enforcement provisions.

(4) The Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code), including all criminal, civil and administrative enforcement provisions. For purposes of Section 87300 of the Government Code, a Charter School shall be considered an agency.

(i) A member of the governing body of a Charter School, and any superintendent, chief financial officer, chief executive officer, or chief administrative officer of such Charter School, or any other person who manages public funds on behalf of a Charter School, shall file a statement of economic interests in the same manner as those individuals required to file statements of economic interest pursuant to Sections 87200 through 87210. It is the intent of this subsection that the broadest scope of disclosure of economic interests under Government Code section 87200 et seq. shall apply to all persons who file pursuant to this subsection.

(ii) All statements of economic interests required to be filed pursuant to this subsection must be posted on the website of the Charter School no later than five days after a statement is filed. If the Charter School does not have a website, the statements of economic interests must be posted on the website of the authority that granted the charter of the Charter School.

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

(d) A Charter School may not be operated as, or be operated by, a for-profit entity. A charter school may not contract with a for-profit entity to provide instructional services or exercise control over the school's daily operations.

(e) To the extent that the governing body of a Charter School engages in activities that are not related to the operation of a charter school located in California, this section does not make those unrelated activities subject to the Ralph M. Brown Act, the Bagley-Keene Open Meeting Act, the California Public Records Act, Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, and the Political Reform Act of 1974.

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

(g) In addition to any other notices required under the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, the governing body of a Charter School shall post all notices of meetings, within the time period required, on its website and on the website of any organization that directs and controls its activities, or that is under its direction and control. If the Charter School does not have a website, the notices must be posted on the website of the authority that granted the charter for the Charter School.

(h) The governing body of a Charter School may hold closed sessions to consider a matter regarding pupil discipline as described in Section 48912.

(i) A statement of economic interest that is filed by a Charter School official or employee after the required deadline pursuant to the Political Reform Act of 1974 shall not be the sole basis for revocation of a Charter pursuant to Section 47607.

(j) For purposes of this section, "facility" means a Charter School campus, resource center, meeting space, or satellite facility.

SEC. 5. Section 47614.8 is added to the Education Code, to read:

47614.8 (a) For purposes of this section, "Charter School" shall mean a charter school, a charter management organization, or any other related entity established for the purpose of leasing or guaranteeing the lease of real property to a charter school or charter management organization.

(b) Before a Charter School enters into any loan, indebtedness, contract, lease, or other transaction the total value of which will exceed \$10,000 or more over the life of the transaction, other than a contract with an individual whose position is covered by an existing collective bargaining agreement, the transaction shall be voted on by the

governing board of the Charter School in public session and the governing body shall provide to the public the following details of the transaction prior to approval:

(1) the name of all parties to the transaction, including any person or entity who has a 10% or more ownership interest in those parties;

(2) a summary of the terms of the transaction, including but not limited to the amount of any fees that will be incurred, the annual lease amount, or the interest rate being charged;

(3) whether the transaction was competitively bid and if not, the reasons therefor;

(4) the extent to which the Charter School has determined whether the transaction is the most reasonable and lowest cost option, and if it is not, a detailed description of why the transaction is being pursued;

(5) the extent to which the Charter School investigated other options, and in particular, any options for transacting with the State of California or its agencies, and why those options were not pursued; and

(6) whether any Charter School official or employee, or family member of any official or employee, has any financial interest in the transaction. For purposes of this section, "financial interest" shall have the same meaning as that term is defined in Section 87103 of the Government Code.

(c) The following information must be posted on the website of a Charter School or if the Charter School has no website, on the website of the authority that granted the charter to the Charter School:

(1) the corporate organizational documents of the Charter School, including articles of incorporation, bylaws, and board resolutions showing the appointment or election of the current officers and directors;

(2) a list of all individuals who currently serve or served at any time in the last two calendar years as an officer, director, trustee or key employee of the Charter School and the reportable compensation they have received from the Charter School and related organizations. For purposes of this section, the definitions for "reportable compensation," "key employee," and "related organizations" shall be the same as those terms are used by the Internal Revenue Service, for the purpose of tax-exempt organizations reporting this information on their tax returns;

(3) the charter granted by the chartering authority, including any conditions imposed by that authority.

SEC. 6. Section 933.7 is added to the Penal Code, to read:

933.7. A grand jury may at any time examine the books and records of any Charter School of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such charter school.

For purposes of this section, "Charter School" shall mean a charter school, a charter management organization, or any other related entity established for the purpose of leasing or guaranteeing the lease of real property to a charter school or charter management organization.

SEC. 7. Section 47614.9 is added to the Education Code, to read:

47614.9 (a) For purposes of this section, "Charter School" shall mean a charter school, a charter management organization, or any other related entity established for the purpose of leasing or guaranteeing the lease of real property to a charter school or charter management organization.

(b) Any public funds held or controlled by a Charter School may only be deposited in a bank or other institution whose accounts are federally insured or invested in the following securities:

(1) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(2) Bonds or interest-bearing notes or obligations that are guaranteed as to principal and interest by a federal agency of the United States.

(3) Bonds, notes, and warrants of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(4) Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district of this state.

(5) Investment certificates or withdrawable shares in state-chartered savings and loan associations and savings accounts of federal savings and loans associations, provided that those associations are doing business in this state and have accounts insured by the Federal Savings and Loan Insurance Corporation.

SEC. 8. Waiver.

Any waiver of the provisions of this initiative is contrary to public policy, and is void and unenforceable.

SEC. 9. Amendment.

The statutory provisions of this measure may be amended to further the purposes of the initiative by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

SEC. 10. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another initiative measure or measures relating to conflicts of interest and transparency in charter schools appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SEC. 12. Proponent Standing.

(a) The people of the State of California declare that the proponents of this Act have a direct and personal stake in defending this Act and grant formal authority to the proponents to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the people and the State in the event that the State declines to defend the Act or declines to appeal an adverse judgment against the Act.

(b) In the event that the proponents are defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse judgment against it, the proponents shall:

(1) act as agents of the people and the State;

(2) be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceeding; and

(3) take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the people and the State in such legal proceeding.