
SB 114: New Laws Impacting Charter Schools—More Extensions and Clarification on Application of Standard of Review for Charter Petition Appeals

August 1, 2023
Number 27

Written by:

Erin M. Hamor
Partner
Sacramento Office
ehamor@lozanosmith.com

Courtney De Groof
Senior Counsel
Sacramento Office
cdegroof@lozanosmith.com

On July 10, 2023, Governor Gavin Newsom signed the Education Omnibus Budget Trailer Bill, Senate Bill (SB) 114 (Trailer Bill), which, among other things, clarifies and revises provisions of the Charter Schools Act (Act). Notably, the Trailer Bill: (1) provides an automatic one-year extension for certain charter terms; (2) extends the nonclassroom-based moratorium through January 1, 2026; and (3) clarifies application of the standard of review for appeals of charter petition denials to the State Board of Education (SBE). The Trailer Bill became effective immediately upon signing.

Charter Term Extension

Due to COVID-19 and the lack of available California School Dashboard (Dashboard) data, all charter petitions expiring between January 1, 2022 and June 30, 2025 previously received an automatic two-year charter term extension under Assembly Bill (AB) 130. ([See 2021 Client News Brief Number 18.](#)) The Trailer Bill further extends, for one additional year, all charter petitions expiring between January 1, 2024 and June 30, 2027. The extension means that Dashboard data supporting charter school performance categories under AB 1505 should be more readily available to authorizers evaluating renewal petitions in the coming years. Authorizers are encouraged to review existing written agreements, such as memorandums of understanding, leases, and facility use agreements, to determine whether amendments are required to cover the extension period.

Nonclassroom-Based Moratorium Extension

AB 1505 initially imposed a two-year moratorium on the approval of petitions to establish new nonclassroom-based charter schools, until January 1, 2022. AB 130 extended the moratorium to January 1, 2025. The Trailer Bill now extends the moratorium until January 1, 2026. The Legislature has directed this one-year extension be used to study funding processes for nonclassroom-based charter schools, with the goal of identifying and making recommendations on potential improvements, including recommendations for enhancing oversight.

Authorizers should closely review new charter petitions received during the moratorium, to determine whether the charter school proposes to offer less than 80 percent of instructional time at the school site. If so, the charter may be defined as

providing “nonclassroom-based instruction” under Education Code section 47612.5, and an authorizer would likely be prohibited from approving the petition.

SBE Review of Charter Petition Denials

In its new limited role under AB 1505, the SBE may only reverse charter petition denials on appeal if it finds there was an “abuse of discretion” at the local agency level—by the denying county board of education and school district. ([See 2019 Client News Brief Number 49.](#)) The Trailer Bill clarifies application of the abuse of discretion standard, providing that the “[a]buse of discretion is the most deferential standard of review, under which the state board must give deference to the decisions of the governing board of the school district and the county board of education to deny the petition.” The Trailer Bill further clarifies that when considering charter petition appeals, the SBE *must* find there was abuse of discretion at *both* the school district and county board of education levels, respectively, to reverse a petition denial on appeal. If the SBE finds that only one of the local agencies abused its discretion, but the other did not, that will be insufficient to reverse a charter petition denial on appeal.

Takeaways

The Trailer Bill has several potential impacts on charter schools and authorizers, relating to renewals, instructional format, and consideration of charter petitions on appeal. There is now additional time to plan for charter renewals, mitigating previously anticipated challenges related to the unavailability of Dashboard data. Further, the Trailer Bill offers statutory clarity that may be helpful to charter schools and authorizers alike in navigating the charter petition and appeals process. Finally, the extended moratorium and related study period may offer insight into funding and oversight processes for nonclassroom-based charters.

If you have any questions regarding these provisions of the Trailer Bill, or charter school petitions and renewals in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.