The Story of California’s Charter School Legislation

BY GARY K. HART AND SUE BURR

Mr. Hart and Ms. Burr describe the history of California’s S.B. 1448 and offer suggestions for ways to improve it. While charter schools are not panaceas for all that ails public education, the authors argue that they are powerful tools to spur innovation and systemic change.

This article describes how two progressive lifelong Democrats — one a former public school teacher and veteran chair of the state Senate Education Committee, the other an unrepentant education policy wonk who served as consultant to that committee — initiated the charter school movement in California. We describe the impetus for charter school legislation, summarize its arduous political/legislative journey, suggest needed improvements to expand charter schools, and, finally, look at charter schools through the lens of other education reform issues.

Impetus for Charter School Legislation

The voucher threat. To understand the impetus for charter school legislation in California, it is important to examine the political context in which it was enacted. Sen. Gary Hart introduced S.B. 1448, a charter school bill drafted by Sue Burr, in January 1992, just as public debate about school vouchers in California was heating up. A group of potentially well-funded voucher proponents, led by one of the state’s top business leaders, had drafted and were circulating a ballot initiative that would entitle parents to send their children to any school — public or private — they chose. Under the terms of the initiative, funding for these “voucher-redeem-
“I want you to know that I had very little input into these grades.”
“hot button” issues.

We also knew that any kind of “school choice” proposal was likely to elicit a polarized response: liberal Democrats would probably be opposed, and conservative Republicans would probably say that charter schools didn’t go far enough. So we worked to craft the bipartisan support of individuals in the middle of the political landscape.

The first hurdle was the Senate Education Committee. The bill needed six votes to pass. Before the committee hearing, we met individually with each committee member. Most were interested in our bill but non-committal and somewhat confused about the charter school concept. We were again reminded that our message had to be sharpened. To drive home the message that schools needed much greater flexibility, we hauled the 11-volume, 6,000-page education code to the committee hearing and stacked it on the table in a three-foot pile. This graphic display, with its implication of schools being crushed under prescriptive statutes, proved to be quite powerful, and, after an extremely lengthy and contentious hearing, the bill passed out of committee by a vote of 6 to 5.

Interest groups. As we were cultivating legislative support, we were also working on education constituency groups. The school boards association supported the concept early on, viewing charter schools as a way to return local control to communities and to ease the restrictions of California’s influential collective bargaining law. On the other hand, it was precisely the latter possibility — that the right of collective bargaining would be eroded — that led the unions to oppose the bill and to work very hard to defeat its passage.

It is important to note here that the principles we used to draft the bill were somewhat antithetical to the usual political process and worked against us in obtaining support. In a typical bill, in order to gain the support of various groups, you have to “give” them something. However, we wanted to keep the bill as simple and flexible as possible to allow many charter school alternatives. We were fearful that once we started to accept amendments to reinsert certain statutory “protections,” we would be deluged with such requests — and, if we weren’t careful, we would end up “reinventing” that 11-volume education code we used so effectively as a prop.

Following this approach, though, meant that we had to say no to many interest groups. These included the state parent/teacher association, because it wanted prescriptive language about the nature of parent involvement included in the bill; the state credentialing commission, because it wanted all charter school teachers to be credentialed; and, most significantly, the teacher unions, because they wanted all existing collective bargaining rights explicitly protected.

We believed that all of these issues should be determined by charter school developers, and we resisted what we saw as attempts to re-create state-level directives. In every instance, we tried to err on the side of limiting bureaucracy and to keep the focus on the outcomes of the schools, not on issues of compliance with procedures. We succeeded in keeping the bill simple and maintained its integrity, but we disappointed many longtime friends — some of whom became enemies.

Attempts at compromise. We did include a provision in the bill that required charter school originators to obtain a specific number of teacher signatures on a charter school petition before they could approach their local governing board for action. The rationale for this provision was twofold. First, it was an attempt to obtain the teacher unions’ support for the bill. Second, it represented our belief that teachers should be at the center of the charter school movement. Our hope was that many charter schools would be teacher-led.

To our disappointment, this provision did not lessen the opposition of the teacher unions and had the effect of hardening the opposition of the other school personnel unions, because they believed that they were now explicitly excluded from any role in the development of charter schools. However, even though the teacher signature requirement did not soften or remove the teacher unions’ opposition, we kept it in the bill because we thought it was a wise policy.

An apparent dead end. The two bills moved smoothly through the legislature and, in accordance with our agreement, were sent to a conference committee. Both at a private meeting before the hearing and during the conference committee proceedings, it was quite apparent that reaching a compromise between our bill and Eastin’s would be very difficult. We wanted more schools to be authorized (100 ver-
sue 25), we wanted to limit prescriptive-ness (no mandating of credentials or collective bargaining), and we wanted the approval process to remain local (no state role). We also knew, based on preliminary discussions with Gov. Pete Wilson's staff, that he would not sign Eastin’s bill in its present form but was inclined to sign our bill. Because of the fierce union opposition, we did not obtain the needed two votes by Democratic assembly members to move the bill out of the conference committee, and it appeared to be dead.

Parliamentary rebirth. Through a series of complicated and creative parliamentary maneuvers, however, the senate bill was brought up for a final vote late in the evening on the last night of the legislative session. The bill passed by a narrow margin and went to the governor, as did the Eastin legislation. The opponents believed they had killed our bill in the conference committee and were quite upset by this turn of events. Several days later the governor signed S.B. 1448 and vetoed Eastin’s bill.

No army (or array of education lobbyists) can withstand an idea whose time has come. With the governor’s signing of S.B. 1448, an enormous amount of publicity and interest was generated, and shortly thereafter the charter school concept was debated and acted on in many school districts throughout the state. With little political support, fierce opposition, and a bit of luck, we created an education movement that is alive and well today. There are now more than 100 charter schools in California, with more clamoring to be established. It was fun to be, in Dean Acheson’s words, “present at the creation” and gratifying to see so many enthusiastic teachers, parents, and students engaged in new learning opportunities through charter schools. The mold is indeed being broken.

Where Do We Go from Here?

Almost four years have passed since the charter school legislation became operative in California. Despite concerns that charter schools would cater to middle-class and to largely white communities, many ethnically diverse charter schools have been created in our large, urban areas. In fact, by 1994 the Los Angeles Unified School District had opened 10 ethnically diverse charter schools, the maximum number allowed by law in a single district.

Although we believe that the Charter Schools Act has been a success, there are a number of legislative changes that should be made to build on the initial accomplishments.

Expand the number of charter schools. Two key roadblocks exist to the expansion of charter schools. Most obvious is the cap established in the 1992 legislation. California hit the cap this year, but many more communities want to create charter schools. At a time when enthusiasm for public schools is low, it is irrational to block the growth of a zero-cost program that is reinvigorating public schools up and down the state. Minnesota, after originating the charter school concept in 1991, had expanded the program fourfold by 1994. California should follow suit without delay.

California’s restrictive rules regarding the creation of charter schools constitute the second roadblock. Today, only a local school board may grant charters, yet many refuse even to give serious consideration to charter school petitioners. Parents should have the leverage to take their business elsewhere if their local board balks at granting them a charter. California should adopt the model offered by states that also permit charters to be granted by other public education agencies, such as the state board of education and the governing boards of public universities.

Ensure strong accountability for charter schools. In exchange for their unprecedented freedom of action, charter schools clearly carry a responsibility to be accountable to the public. The Charter Schools Act required charter schools to administer the standard state achievement test, allowing for direct comparisons between student achievement at individual schools statewide — an important consumer protection. With the collapse of the state achievement test last year, however, this link to charter schools has been severed. A new state testing program enacted earlier this year does not specifically include charter schools. This legislative oversight should be corrected as soon as possible.

Education Reform
And Charter Schools

No silver bullets. Many people involved in the creation and implementation of charter schools tend to view them as the central strategy to achieve true reform of the public education system. While we agree that they represent powerful tools for systemic change and can spur innovation in traditional schools, charter schools should not be viewed as a panacea for all that ails our schools: they are not the only settings in which public education can thrive. No one in the education reform arena has a monopoly on innovation, effectiveness, or virtue.

Our observations of several schools have shown us that charter schools sometimes behave much like their predecessors on the road to change: they focus on governance issues and get mired in political struggles within and outside the school. It’s easy to get distracted and to forget that what occurs in the classroom is the key to effective education. Charter schools need to stay focused on issues of curriculum, instruction, and assessment.

Objective research needed. The impact of charter schools should be carefully and objectively evaluated. We emphasize objectively because we have noted a predilection among researchers to approach such scholarship with a noticeable bias. Some hostile university researchers believe that charter schools are inherently unfair or are just a subtle attempt to undermine public education. On the other end of the spectrum, conservative think tanks, looking to validate any kind of free market venture, bring a positive bias to any research on charter schools.

We think that teachers and students in charter schools should be evaluated against the expected outcomes articulated in S.B. 1448. Do charter schools improve student learning? Do they increase learning outcomes for all students, especially those identified as low-achievers? Are they cost-effective? Do they encourage the use of innovative teaching methods? Do they create new professional opportunities for teachers? Do they provide parents and students with expanded choices within the public school system? Only after these questions are carefully and objectively answered will we have an accurate assessment of charter schools’ promise for the future of public education. In the meantime, the charter experiment is thriving. We have demonstrated that innovation and new ways of doing business are possible in California.

1. In November 1993 the California electorate rejected the voucher initiative by a margin of almost 2 to 1.