

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 787

Introduced by Assembly Member Roger Hernández

February 25, 2015

An act to amend ~~Section~~ *Sections 47604 and 47605* of the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 787, as amended, Roger Hernández. Charter schools: operation: nonprofit public benefit corporations.

(1) Existing law, the Charter Schools Act of 1992, authorizes a charter school to elect to operate as, or be operated by, a nonprofit public benefit corporation, as specified. The act requires the governing board of a school district that grants a charter for the establishment of a charter school formed and organized as a nonprofit public benefit corporation to be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.

This bill instead would require that an authority that grants a charter for the establishment of a charter school formed and organized as a nonprofit public benefit corporation be entitled to a single representative on the board of directors of the nonprofit public benefit corporation. The bill also would require that the initial chartering authority appoint a majority of the members of the board of directors of the nonprofit public benefit corporation, as provided, for a charter school that elects to operate as, or be operated by, a nonprofit public benefit corporation and submits a charter petition, charter renewal, or material revision application on or after January 1, 2016. By imposing additional duties

on local educational agencies, the bill would impose a state-mandated local program.

This bill also would prohibit a charter school from operating as, or being operated by, a for-profit corporation.

(2) The Charter Schools Act of 1992 prohibits the governing board of a school district from denying a petition for the establishment of a charter school unless the governing board of the school district finds that the petition does not contain specified information, including, among other information, a reasonably comprehensive description of the governance structure of the school.

This bill would require the petition for the establishment of a charter school that will operate as, or be operated by, a nonprofit public benefit corporation also to include the names and background information for all persons whom the petitioner nominates to serve on the board of directors of the nonprofit public benefit corporation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Charter Schools Act of 1992 specifies the procedures for the submission, review, and approval or denial of a petition to establish a charter school. Existing law provides that a charter school may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law.~~

~~This bill would make nonsubstantive changes to the provision authorizing a charter school to elect to operate as, or be operated by, a nonprofit public benefit corporation.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 47604 of the Education Code is amended
- 2 to read:

1 47604. (a) A charter school may elect to operate as, or be
2 operated by, a nonprofit public benefit corporation, formed and
3 organized pursuant to the Nonprofit Public Benefit Corporation
4 Law (Part 2 (commencing with Section 5110) of Division 2 of
5 Title 1 of the Corporations Code).

6 ~~(b) The governing board of a school district~~ *An authority* that
7 grants a charter for the establishment of a charter school formed
8 and organized pursuant to this section shall be entitled to a single
9 representative on the board of directors of the nonprofit public
10 benefit corporation.

11 *(c) For a charter school that elects to operate pursuant to this*
12 *section, and that submits a charter petition, charter renewal, or*
13 *material revision application on or after January 1, 2016, all of*
14 *the following shall apply:*

15 *(1) The initial chartering authority shall appoint a majority of*
16 *the members of the board of directors of the nonprofit public*
17 *benefit corporation from persons publicly nominated in the charter*
18 *petition, charter renewal, or material revision application. The*
19 *number of persons nominated shall be twice the total number of*
20 *members that comprise the board of directors. The majority*
21 *calculation required by this subdivision shall not include the*
22 *representative appointed pursuant to subdivision (b).*

23 *(2) The initial chartering authority, during the term of the*
24 *charter, shall ensure that a majority of the members of the board*
25 *of directors of the nonprofit public benefit corporation are*
26 *members appointed pursuant to paragraph (1). In the event that*
27 *a member appointed pursuant to paragraph (1) no longer serves*
28 *on the board of directors, for reasons including, but not limited*
29 *to, death, disability, removal, or resignation, the initial chartering*
30 *authority shall appoint a new member from persons nominated by*
31 *the nonprofit public benefit corporation at the time the vacancy*
32 *occurs, consistent with paragraph (1) and by submitting a material*
33 *revision application.*

34 *(3) Nothing in this subdivision limits or supersedes the ability*
35 *of a charter school operated pursuant to this section to either use*
36 *an election process or other community involvement process to*
37 *select nominees for the board of directors of the nonprofit public*
38 *benefit corporation for consideration by the initial chartering*
39 *authority or to nominate persons for positions on the board of*
40 *directors of the nonprofit public benefit corporation by using*

1 *specified eligibility criteria. It shall be the policy of the state to*
2 *encourage and to promote parental, educator, and community*
3 *participation in the governance of a charter school.*

4 *(4) A member of the board of directors of the nonprofit public*
5 *benefit corporation is subject to removal from his or her board*
6 *position pursuant to Article 3 (commencing with Section 3060) of*
7 *Chapter 7 of Division 4 of Title 1 of the Government Code and as*
8 *otherwise provided by law.*

9 *(d) A charter school shall not operate as, or be operated by, a*
10 *for-profit corporation.*

11 *(e)*

12 *(e) An authority that grants a charter to a charter school to be*
13 *operated by, or as, a nonprofit public benefit corporation is not*
14 *liable for the debts or obligations of the charter school, or for*
15 *claims arising from the performance of acts, errors, or omissions*
16 *by the charter school, if the authority has complied with all*
17 *oversight responsibilities required by law, including, but not limited*
18 *to, those required by Section 47604.32 and subdivision (m) of*
19 *Section 47605.*

20 *SEC. 2. Section 47605 of the Education Code is amended to*
21 *read:*

22 *47605. (a) (1) Except as set forth in paragraph (2), a petition*
23 *for the establishment of a charter school within a school district*
24 *may be circulated by one or more persons seeking to establish the*
25 *charter school. A petition for the establishment of a charter school*
26 *shall identify a single charter school that will operate within the*
27 *geographic boundaries of that school district. A charter school*
28 *may propose to operate at multiple sites within the school district,*
29 *as long as each location is identified in the charter school petition.*
30 *The petition may be submitted to the governing board of the school*
31 *district for review after either of the following conditions is met:*

32 *(A) The petition is signed by a number of parents or legal*
33 *guardians of pupils that is equivalent to at least one-half of the*
34 *number of pupils that the charter school estimates will enroll in*
35 *the charter school for its first year of operation.*

36 *(B) The petition is signed by a number of teachers that is*
37 *equivalent to at least one-half of the number of teachers that the*
38 *charter school estimates will be employed at the charter school*
39 *during its first year of operation.*

1 (2) A petition that proposes to convert an existing public school
2 to a charter school that would not be eligible for a loan pursuant
3 to subdivision-(b) (c) of Section 41365 may be circulated by one
4 or more persons seeking to establish the charter school. The petition
5 may be submitted to the governing board of the school district for
6 review after the petition is signed by not less than 50 percent of
7 the permanent status teachers currently employed at the public
8 school to be converted.

9 (3) A petition shall include a prominent statement that a
10 signature on the petition means that the parent or legal guardian
11 is meaningfully interested in having his or her child or ward attend
12 the charter school, or in the case of a teacher's signature, means
13 that the teacher is meaningfully interested in teaching at the charter
14 school. The proposed charter shall be attached to the petition.

15 (4) After receiving approval of its petition, a charter school that
16 proposes to establish operations at one or more additional sites
17 shall request a material revision to its charter and shall notify the
18 authority that granted its charter of those additional locations. The
19 authority that granted its charter shall consider whether to approve
20 those additional locations at an open, public meeting. If the
21 additional locations are approved, they shall be a material revision
22 to the charter school's charter.

23 (5) A charter school that is unable to locate within the
24 jurisdiction of the chartering school district may establish one site
25 outside the boundaries of the school district, but within the county
26 in which that school district is located, if the school district within
27 the jurisdiction of which the charter school proposes to operate is
28 notified in advance of the charter petition approval, the county
29 superintendent of schools and the Superintendent are notified of
30 the location of the charter school before it commences operations,
31 and either of the following circumstances exists:

32 (A) The *charter* school has attempted to locate a single site or
33 facility to house the entire program, but a site or facility is
34 unavailable in the area in which the *charter* school chooses to
35 locate.

36 (B) The site is needed for temporary use during a construction
37 or expansion project.

38 (6) Commencing January 1, 2003, a petition to establish a charter
39 school ~~may~~ shall not be approved to serve pupils in a grade level
40 that is not served by the school district of the governing board

1 considering the petition, unless the petition proposes to serve pupils
2 in all of the grade levels served by that school district.

3 (b) No later than 30 days after receiving a petition, in accordance
4 with subdivision (a), the governing board of the school district
5 shall hold a public hearing on the provisions of the charter, at
6 which time the governing board of the school district shall consider
7 the level of support for the petition by teachers employed by the
8 *school* district, other employees of the *school* district, and parents.
9 Following review of the petition and the public hearing, the
10 governing board of the school district shall either grant or deny
11 the charter within 60 days of receipt of the petition, provided,
12 however, that the date may be extended by an additional 30 days
13 if both parties agree to the extension. In reviewing petitions for
14 the establishment of charter schools pursuant to this section, the
15 chartering authority shall be guided by the intent of the Legislature
16 that charter schools are and should become an integral part of the
17 California educational system and that *the* establishment of charter
18 schools should be encouraged. The governing board of the school
19 district shall grant a charter for the operation of a *charter* school
20 under this part if it is satisfied that granting the charter is consistent
21 with sound educational practice. The governing board of the school
22 district shall not deny a petition for the establishment of a charter
23 school unless it makes written factual findings, specific to the
24 particular petition, setting forth specific facts to support one or
25 more of the following findings:

26 (1) The charter school presents an unsound educational program
27 for the pupils to be enrolled in the charter school.

28 (2) The petitioners are demonstrably unlikely to successfully
29 implement the program set forth in the petition.

30 (3) The petition does not contain the number of signatures
31 required by subdivision (a).

32 (4) The petition does not contain an affirmation of each of the
33 conditions described in subdivision (d).

34 (5) The petition does not contain reasonably comprehensive
35 descriptions of all of the following:

36 (A) (i) A description of the educational program of the *charter*
37 school, designed, among other things, to identify those whom the
38 *charter* school is attempting to educate, what it means to be an
39 “educated person” in the 21st century, and how learning best
40 occurs. The goals identified in that program shall include the

1 objective of enabling pupils to become self-motivated, competent,
2 and lifelong learners.

3 (ii) A description, for the charter school, of annual goals, for
4 all pupils and for each subgroup of pupils identified pursuant to
5 Section 52052, to be achieved in the state priorities, as described
6 in subdivision (d) of Section 52060, that apply for the grade levels
7 served, or the nature of the program operated, by the charter school,
8 and specific annual actions to achieve those goals. A charter
9 petition may identify additional *charter* school priorities, the goals
10 for the *charter* school priorities, and the specific annual actions to
11 achieve those goals.

12 (iii) If the proposed *charter* school will serve high school pupils,
13 a description of the manner in which the charter school will inform
14 parents about the transferability of courses to other public high
15 schools and the eligibility of courses to meet college entrance
16 requirements. Courses offered by the charter school that are
17 accredited by the Western Association of Schools and Colleges
18 may be considered transferable and courses approved by the
19 University of California or the California State University as
20 creditable under the “A” to “G” admissions criteria may be
21 considered to meet college entrance requirements.

22 (B) The measurable pupil outcomes identified for use by the
23 charter school. “Pupil outcomes,” for purposes of this part, means
24 the extent to which all pupils of the *charter* school demonstrate
25 that they have attained the skills, knowledge, and attitudes specified
26 as goals in the *charter* school’s educational program. Pupil
27 outcomes shall include outcomes that address increases in pupil
28 academic achievement both schoolwide and for all groups of pupils
29 served by the charter school, as that term is defined in subparagraph
30 (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil
31 outcomes shall align with the state priorities, as described in
32 subdivision (d) of Section 52060, that apply for the grade levels
33 served, or the nature of the program operated, by the charter school.

34 (C) The method by which pupil progress in meeting those pupil
35 outcomes is to be measured. To the extent practicable, the method
36 for measuring pupil outcomes for state priorities shall be consistent
37 with the way information is reported on a school accountability
38 report card.

1 (D) (i) The governance structure of the *charter* school,
2 including, but not limited to, the process to be followed by the
3 *charter* school to ensure parental involvement.

4 (ii) *If the charter school elects to operate as, or be operated by,*
5 *a nonprofit public benefit corporation pursuant to Section 47604,*
6 *the names and background information for all persons whom the*
7 *petitioner nominates to serve on the board of directors of that*
8 *nonprofit public benefit corporation, pursuant to subdivision (c)*
9 *of Section 47604.*

10 (E) The qualifications to be met by individuals to be employed
11 by the *charter* school.

12 (F) The procedures that the *charter* school will follow to ensure
13 the health and safety of pupils and staff. These procedures shall
14 include the requirement that each employee of the *charter* school
15 furnish the *charter* school with a criminal record summary as
16 described in Section 44237.

17 (G) The means by which the *charter* school will achieve a racial
18 and ethnic balance among its pupils that is reflective of the general
19 population residing within the territorial jurisdiction of the school
20 district to which the charter petition is submitted.

21 (H) Admission requirements, if applicable.

22 (I) The manner in which annual, independent financial audits
23 shall be conducted, which shall employ generally accepted
24 accounting principles, and the manner in which audit exceptions
25 and deficiencies shall be resolved to the satisfaction of the
26 chartering authority.

27 (J) The procedures by which pupils can be suspended or
28 expelled.

29 (K) The manner by which staff members of the charter schools
30 will be covered by the State Teachers' Retirement System, the
31 Public Employees' Retirement System, or federal social security.

32 (L) The public school attendance alternatives for pupils residing
33 within the school district who choose not to attend charter schools.

34 (M) A description of the rights of ~~any~~ *an* employee of the school
35 district upon leaving the employment of the school district to work
36 in a charter school, and of any rights of return to the school district
37 after employment at a charter school.

38 (N) The procedures to be followed by the charter school and
39 the entity granting the charter to resolve disputes relating to
40 provisions of the charter.

1 (O) A declaration *of* whether or not the charter school shall be
2 deemed the exclusive public school employer of the employees of
3 the charter school for purposes of Chapter 10.7 (commencing with
4 Section 3540) of Division 4 of Title 1 of the Government Code.

5 (P) A description of the procedures to be used if the charter
6 school closes. The procedures shall ensure a final audit of the
7 *charter* school to determine the disposition of all assets and
8 liabilities of the charter school, including plans for disposing of
9 any net assets and for the maintenance and transfer of pupil records.

10 (c) (1) Charter schools shall meet all statewide standards and
11 conduct the pupil assessments required pursuant to Sections 60605
12 and 60851 and any other statewide standards authorized in statute
13 or pupil assessments applicable to pupils in noncharter public
14 schools.

15 (2) Charter schools shall, on a regular basis, consult with their
16 parents, legal guardians, and teachers regarding the *charter* school's
17 educational programs.

18 (d) (1) In addition to any other requirement imposed under this
19 part, a charter school shall be nonsectarian in its programs,
20 admission policies, employment practices, and all other operations,
21 shall not charge tuition, and shall not discriminate against ~~any~~ *a*
22 pupil on the basis of the characteristics listed in Section 220. Except
23 as provided in paragraph (2), admission to a charter school shall
24 not be determined according to the place of residence of the pupil,
25 or of his or her parent or legal guardian, within this state, except
26 that an existing public school converting partially or entirely to a
27 charter school under this part shall adopt and maintain a policy
28 giving admission preference to pupils who reside within the former
29 attendance area of that public school.

30 (2) (A) A charter school shall admit all pupils who wish to
31 attend the *charter* school.

32 (B) If the number of pupils who wish to attend the charter school
33 exceeds the *charter* school's capacity, attendance, except for
34 existing pupils of the charter school, shall be determined by a
35 public random drawing. Preference shall be extended to pupils
36 currently attending the charter school and pupils who reside in the
37 *school* district except as provided for in Section 47614.5. Other
38 preferences may be permitted by the chartering authority on an
39 individual school basis and only if consistent with the law.

1 (C) In the event of a drawing, the chartering authority shall
2 make reasonable efforts to accommodate the growth of the charter
3 school and in no event shall take any action to impede the charter
4 school from expanding enrollment to meet pupil demand.

5 (3) If a pupil is expelled or leaves the charter school without
6 graduating or completing the school year for any reason, the charter
7 school shall notify the superintendent of the school district of the
8 pupil's last known address within 30 days, and shall, upon request,
9 provide that school district with a copy of the cumulative record
10 of the pupil, including a transcript of grades or report card, and
11 health information. This paragraph applies only to pupils subject
12 to compulsory full-time education pursuant to Section 48200.

13 (e) The governing board of a school district shall not require
14 ~~any~~ *an* employee of the school district to be employed in a charter
15 school.

16 (f) The governing board of a school district shall not require
17 ~~any~~ *a* pupil enrolled in the school district to attend a charter school.

18 (g) The governing board of a school district shall require that
19 the petitioner or petitioners provide information regarding the
20 proposed operation and potential effects of the *charter* school,
21 including, but not limited to, the facilities to be used by the *charter*
22 school, the manner in which administrative services of the *charter*
23 school are to be provided, and potential civil liability effects, if
24 any, upon the *charter* school and upon the school district. The
25 description of the facilities to be used by the charter school shall
26 specify where the *charter* school intends to locate. The petitioner
27 or petitioners *also* shall ~~also~~ be required to provide financial
28 statements that include a proposed first-year operational budget,
29 including startup costs, and cashflow and financial projections for
30 the first three years of operation.

31 (h) In reviewing petitions for the establishment of charter
32 schools within the school district, the governing board of the school
33 district shall give preference to petitions that demonstrate the
34 capability to provide comprehensive learning experiences to pupils
35 identified by the petitioner or petitioners as academically low
36 achieving pursuant to the standards established by the department
37 under Section 54032, as it read before July 19, 2006.

38 (i) Upon the approval of the petition by the governing board of
39 the school district, the petitioner or petitioners shall provide written
40 notice of that approval, including a copy of the petition, to the

1 applicable county superintendent of schools, the department, and
2 the state board.

3 (j) (1) If the governing board of a school district denies a
4 petition, the petitioner may elect to submit the petition for the
5 establishment of a charter school to the county board of education.
6 The county board of education shall review the petition pursuant
7 to subdivision (b). If the petitioner elects to submit a petition for
8 establishment of a charter school to the county board of education
9 and the county board of education denies the petition, the petitioner
10 may file a petition for establishment of a charter school with the
11 state board, and the state board may approve the petition, in
12 accordance with subdivision (b). A charter school that receives
13 approval of its petition from a county board of education or from
14 the state board on appeal shall be subject to the same requirements
15 concerning geographic location to which it would otherwise be
16 subject if it received approval from the entity to which it originally
17 submitted its petition. A charter petition that is submitted to either
18 a county board of education or to the state board shall meet all
19 otherwise applicable petition requirements, including the
20 identification of the proposed site or sites where the charter school
21 will operate.

22 (2) In assuming its role as a chartering agency, the state board
23 shall develop criteria to be used for the review and approval of
24 charter school petitions presented to the state board. The criteria
25 shall address all elements required for charter approval, as
26 identified in subdivision ~~(b)~~ (b), and shall define “reasonably
27 ~~comprehensive~~” *comprehensive*,” as used in paragraph (5) of
28 subdivision ~~(b)~~ (b), in a way that is consistent with the intent of
29 this part. Upon satisfactory completion of the criteria, the state
30 board shall adopt the criteria on or before June 30, 2001.

31 (3) A charter school for which a charter is granted by either the
32 county board of education or the state board based on an appeal
33 pursuant to this subdivision shall qualify fully as a charter school
34 for all funding and other purposes of this part.

35 (4) If either the county board of education or the state board
36 fails to act on a petition within 120 days of receipt, the decision
37 of the governing board of the school district to deny *a* the petition
38 shall, ~~thereafter~~, be subject to judicial review.

39 (5) The state board shall adopt regulations implementing this
40 subdivision.

1 (6) Upon the approval of the petition by the county board of
2 education, the petitioner or petitioners shall provide written notice
3 of that approval, including a copy of the ~~petition~~ *petition*, to the
4 department and the state board.

5 (k) (1) The state board may, by mutual agreement, designate
6 its supervisory and oversight responsibilities for a charter school
7 approved by the state board to any local educational agency in the
8 county in which the charter school is located or to the governing
9 board of the school district that first denied the petition.

10 (2) The designated local educational agency shall have all
11 monitoring and supervising authority of a chartering agency,
12 including, but not limited to, powers and duties set forth in Section
13 47607, except the power of revocation, which shall remain with
14 the state board.

15 (3) A charter school that is granted its charter through an appeal
16 to the state board and elects to seek renewal of its charter shall,
17 before expiration of the charter, submit its petition for renewal to
18 the governing board of the school district that initially denied the
19 charter. If the governing board of the school district denies the
20 *charter* school's petition for renewal, the *charter* school may
21 petition the state board for renewal of its charter.

22 (l) Teachers in charter schools shall hold a Commission on
23 Teacher Credentialing certificate, permit, or other document
24 equivalent to that which a teacher in other public schools would
25 be required to hold. These documents shall be maintained on file
26 at the charter school and are subject to periodic inspection by the
27 chartering authority. It is the intent of the Legislature that charter
28 schools be given flexibility with regard to noncore, noncollege
29 preparatory courses.

30 (m) A charter school shall transmit a copy of its annual,
31 independent financial audit report for the preceding fiscal year, as
32 described in subparagraph (I) of paragraph (5) of subdivision (b),
33 to its chartering entity, the Controller, the county superintendent
34 of schools of the county in which the charter school is sited, unless
35 the county board of education of the county in which the charter
36 school is sited is the chartering entity, and the department by
37 December 15 of each year. This subdivision does not apply if the
38 audit of the charter school is encompassed in the audit of the
39 chartering entity pursuant to Section 41020.

1 *SEC. 3. If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

O