

AMENDED IN ASSEMBLY APRIL 20, 2015

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 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~~: *corporations: board of directors*.

(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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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:
3 47604. (a) A charter school may elect to operate as, or be
4 operated by, a nonprofit public benefit corporation, formed and
5 organized pursuant to the Nonprofit Public Benefit Corporation
6 Law (Part 2 (commencing with Section 5110) of Division 2 of
7 Title 1 of the Corporations Code).
8 (b) An authority that grants a charter for the establishment of a
9 charter school formed and organized pursuant to this section shall
10 be entitled to a single representative on the board of directors of
11 the nonprofit public benefit corporation.

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

5 (1) The initial chartering authority shall appoint a majority of
6 the members of the board of directors of the nonprofit public
7 benefit corporation from persons publicly nominated in the charter
8 petition, charter renewal, or material revision application. The
9 number of persons nominated shall be twice the total number of
10 members that comprise the board of directors. The majority
11 calculation required by this subdivision shall not include the
12 representative appointed pursuant to subdivision (b).

13 (2) The initial chartering authority, during the term of the
14 charter, shall ensure that a majority of the members of the board
15 of directors of the nonprofit public benefit corporation are members
16 appointed pursuant to paragraph (1). In the event that a member
17 appointed pursuant to paragraph (1) no longer serves on the board
18 of directors, for reasons including, but not limited to, death,
19 disability, removal, or resignation, the initial chartering authority
20 shall appoint a new member from persons nominated by the
21 nonprofit public benefit corporation at the time the vacancy occurs,
22 consistent with paragraph (1) and by submitting a material revision
23 application.

24 (3) Nothing in this subdivision limits or supersedes the ability
25 of a charter school operated pursuant to this section to either use
26 an election process or other community involvement process to
27 select nominees for the board of directors of the nonprofit public
28 benefit corporation for consideration by the initial chartering
29 authority or to nominate persons for positions on the board of
30 directors of the nonprofit public benefit corporation by using
31 specified eligibility criteria. It shall be the policy of the state to
32 encourage and to promote parental, educator, and community
33 participation ~~in~~ *in, and geographic and ethnic diversity in*, the
34 governance of a charter school.

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

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

3 (e) An authority that grants a charter to a charter school to be
4 operated by, or as, a nonprofit public benefit corporation is not
5 liable for the debts or obligations of the charter school, or for
6 claims arising from the performance of acts, errors, or omissions
7 by the charter school, if the authority has complied with all
8 oversight responsibilities required by law, including, but not limited
9 to, those required by Section 47604.32 and subdivision (m) of
10 Section 47605.

11 SEC. 2. Section 47605 of the Education Code is amended to
12 read:

13 47605. (a) (1) Except as set forth in paragraph (2), a petition
14 for the establishment of a charter school within a school district
15 may be circulated by one or more persons seeking to establish the
16 charter school. A petition for the establishment of a charter school
17 shall identify a single charter school that will operate within the
18 geographic boundaries of that school district. A charter school
19 may propose to operate at multiple sites within the school district,
20 as long as each location is identified in the charter school petition.
21 The petition may be submitted to the governing board of the school
22 district for review after either of the following conditions is met:

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

27 (B) The petition is signed by a number of teachers that is
28 equivalent to at least one-half of the number of teachers that the
29 charter school estimates will be employed at the charter school
30 during its first year of operation.

31 (2) A petition that proposes to convert an existing public school
32 to a charter school that would not be eligible for a loan pursuant
33 to subdivision (c) of Section 41365 may be circulated by one or
34 more persons seeking to establish the charter school. The petition
35 may be submitted to the governing board of the school district for
36 review after the petition is signed by not less than 50 percent of
37 the permanent status teachers currently employed at the public
38 school to be converted.

39 (3) A petition shall include a prominent statement that a
40 signature on the petition means that the parent or legal guardian

1 is meaningfully interested in having his or her child or ward attend
2 the charter school, or in the case of a teacher's signature, means
3 that the teacher is meaningfully interested in teaching at the charter
4 school. The proposed charter shall be attached to the petition.

5 (4) After receiving approval of its petition, a charter school that
6 proposes to establish operations at one or more additional sites
7 shall request a material revision to its charter and shall notify the
8 authority that granted its charter of those additional locations. The
9 authority that granted its charter shall consider whether to approve
10 those additional locations at an open, public meeting. If the
11 additional locations are approved, they shall be a material revision
12 to the charter school's charter.

13 (5) A charter school that is unable to locate within the
14 jurisdiction of the chartering school district may establish one site
15 outside the boundaries of the school district, but within the county
16 in which that school district is located, if the school district within
17 the jurisdiction of which the charter school proposes to operate is
18 notified in advance of the charter petition approval, the county
19 superintendent of schools and the Superintendent are notified of
20 the location of the charter school before it commences operations,
21 and either of the following circumstances exists:

22 (A) The charter school has attempted to locate a single site or
23 facility to house the entire program, but a site or facility is
24 unavailable in the area in which the charter school chooses to
25 locate.

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

28 (6) Commencing January 1, 2003, a petition to establish a charter
29 school shall not be approved to serve pupils in a grade level that
30 is not served by the school district of the governing board
31 considering the petition, unless the petition proposes to serve pupils
32 in all of the grade levels served by that school district.

33 (b) No later than 30 days after receiving a petition, in accordance
34 with subdivision (a), the governing board of the school district
35 shall hold a public hearing on the provisions of the charter, at
36 which time the governing board of the school district shall consider
37 the level of support for the petition by teachers employed by the
38 school district, other employees of the school district, and parents.
39 Following review of the petition and the public hearing, the
40 governing board of the school district shall either grant or deny

1 the charter within 60 days of receipt of the petition, provided,
2 however, that the date may be extended by an additional 30 days
3 if both parties agree to the extension. In reviewing petitions for
4 the establishment of charter schools pursuant to this section, the
5 chartering authority shall be guided by the intent of the Legislature
6 that charter schools are and should become an integral part of the
7 California educational system and that the establishment of charter
8 schools should be encouraged. The governing board of the school
9 district shall grant a charter for the operation of a charter school
10 under this part if it is satisfied that granting the charter is consistent
11 with sound educational practice. The governing board of the school
12 district shall not deny a petition for the establishment of a charter
13 school unless it makes written factual findings, specific to the
14 particular petition, setting forth specific facts to support one or
15 more of the following findings:

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

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

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

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

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

26 (A) (i) A description of the educational program of the charter
27 school, designed, among other things, to identify those whom the
28 charter school is attempting to educate, what it means to be an
29 “educated person” in the 21st century, and how learning best
30 occurs. The goals identified in that program shall include the
31 objective of enabling pupils to become self-motivated, competent,
32 and lifelong learners.

33 (ii) A description, for the charter school, of annual goals, for
34 all pupils and for each subgroup of pupils identified pursuant to
35 Section 52052, to be achieved in the state priorities, as described
36 in subdivision (d) of Section 52060, that apply for the grade levels
37 served, or the nature of the program operated, by the charter school,
38 and specific annual actions to achieve those goals. A charter
39 petition may identify additional charter school priorities, the goals

1 for the charter school priorities, and the specific annual actions to
2 achieve those goals.

3 (iii) If the proposed charter school will serve high school pupils,
4 a description of the manner in which the charter school will inform
5 parents about the transferability of courses to other public high
6 schools and the eligibility of courses to meet college entrance
7 requirements. Courses offered by the charter school that are
8 accredited by the Western Association of Schools and Colleges
9 may be considered transferable and courses approved by the
10 University of California or the California State University as
11 creditable under the “A” to “G” admissions criteria may be
12 considered to meet college entrance requirements.

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

25 (C) The method by which pupil progress in meeting those pupil
26 outcomes is to be measured. To the extent practicable, the method
27 for measuring pupil outcomes for state priorities shall be consistent
28 with the way information is reported on a school accountability
29 report card.

30 (D) (i) The governance structure of the charter school,
31 including, but not limited to, the process to be followed by the
32 charter school to ensure parental involvement.

33 (ii) If the charter school elects to operate as, or be operated by,
34 a nonprofit public benefit corporation pursuant to Section 47604,
35 the names and background information for all persons whom the
36 petitioner nominates to serve on the board of directors of that
37 nonprofit public benefit ~~corporation~~, *corporation* pursuant to
38 subdivision (c) of Section 47604.

39 (E) The qualifications to be met by individuals to be employed
40 by the charter school.

- 1 (F) The procedures that the charter school will follow to ensure
2 the health and safety of pupils and staff. These procedures shall
3 include the requirement that each employee of the charter school
4 furnish the charter school with a criminal record summary as
5 described in Section 44237.
- 6 (G) The means by which the charter school will achieve a racial
7 and ethnic balance among its pupils that is reflective of the general
8 population residing within the territorial jurisdiction of the school
9 district to which the charter petition is submitted.
- 10 (H) Admission requirements, if applicable.
- 11 (I) The manner in which annual, independent financial audits
12 shall be conducted, which shall employ generally accepted
13 accounting principles, and the manner in which audit exceptions
14 and deficiencies shall be resolved to the satisfaction of the
15 chartering authority.
- 16 (J) The procedures by which pupils can be suspended or
17 expelled.
- 18 (K) The manner by which staff members of the charter schools
19 will be covered by the State Teachers' Retirement System, the
20 Public Employees' Retirement System, or federal social security.
- 21 (L) The public school attendance alternatives for pupils residing
22 within the school district who choose not to attend charter schools.
- 23 (M) A description of the rights of an employee of the school
24 district upon leaving the employment of the school district to work
25 in a charter school, and of any rights of return to the school district
26 after employment at a charter school.
- 27 (N) The procedures to be followed by the charter school and
28 the entity granting the charter to resolve disputes relating to
29 provisions of the charter.
- 30 (O) A declaration of whether or not the charter school shall be
31 deemed the exclusive public school employer of the employees of
32 the charter school for purposes of Chapter 10.7 (commencing with
33 Section 3540) of Division 4 of Title 1 of the Government Code.
- 34 (P) A description of the procedures to be used if the charter
35 school closes. The procedures shall ensure a final audit of the
36 charter school to determine the disposition of all assets and
37 liabilities of the charter school, including plans for disposing of
38 any net assets and for the maintenance and transfer of pupil records.
- 39 (c) (1) Charter schools shall meet all statewide standards and
40 conduct the pupil assessments required pursuant to Sections 60605

1 and 60851 and any other statewide standards authorized in statute
2 or pupil assessments applicable to pupils in noncharter public
3 schools.

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

7 (d) (1) In addition to any other requirement imposed under this
8 part, a charter school shall be nonsectarian in its programs,
9 admission policies, employment practices, and all other operations,
10 shall not charge tuition, and shall not discriminate against a pupil
11 on the basis of the characteristics listed in Section 220. Except as
12 provided in paragraph (2), admission to a charter school shall not
13 be determined according to the place of residence of the pupil, or
14 of his or her parent or legal guardian, within this state, except that
15 an existing public school converting partially or entirely to a charter
16 school under this part shall adopt and maintain a policy giving
17 admission preference to pupils who reside within the former
18 attendance area of that public school.

19 (2) (A) A charter school shall admit all pupils who wish to
20 attend the charter school.

21 (B) If the number of pupils who wish to attend the charter school
22 exceeds the charter school's capacity, attendance, except for
23 existing pupils of the charter school, shall be determined by a
24 public random drawing. Preference shall be extended to pupils
25 currently attending the charter school and pupils who reside in the
26 school district except as provided for in Section 47614.5. Other
27 preferences may be permitted by the chartering authority on an
28 individual school basis and only if consistent with the law.

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

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

1 (e) The governing board of a school district shall not require an
2 employee of the school district to be employed in a charter school.

3 (f) The governing board of a school district shall not require a
4 pupil enrolled in the school district to attend a charter school.

5 (g) The governing board of a school district shall require that
6 the petitioner or petitioners provide information regarding the
7 proposed operation and potential effects of the charter school,
8 including, but not limited to, the facilities to be used by the charter
9 school, the manner in which administrative services of the charter
10 school are to be provided, and potential civil liability effects, if
11 any, upon the charter school and upon the school district. The
12 description of the facilities to be used by the charter school shall
13 specify where the charter school intends to locate. The petitioner
14 or petitioners also shall be required to provide financial statements
15 that include a proposed first-year operational budget, including
16 startup costs, and cashflow and financial projections for the first
17 three years of operation.

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

25 (i) Upon the approval of the petition by the governing board of
26 the school district, the petitioner or petitioners shall provide written
27 notice of that approval, including a copy of the petition, to the
28 applicable county superintendent of schools, the department, and
29 the state board.

30 (j) (1) If the governing board of a school district denies a
31 petition, the petitioner may elect to submit the petition for the
32 establishment of a charter school to the county board of education.
33 The county board of education shall review the petition pursuant
34 to subdivision (b). If the petitioner elects to submit a petition for
35 establishment of a charter school to the county board of education
36 and the county board of education denies the petition, the petitioner
37 may file a petition for establishment of a charter school with the
38 state board, and the state board may approve the petition, in
39 accordance with subdivision (b). A charter school that receives
40 approval of its petition from a county board of education or from

1 the state board on appeal shall be subject to the same requirements
2 concerning geographic location to which it would otherwise be
3 subject if it received approval from the entity to which it originally
4 submitted its petition. A charter petition that is submitted to either
5 a county board of education or to the state board shall meet all
6 otherwise applicable petition requirements, including the
7 identification of the proposed site or sites where the charter school
8 will operate.

9 (2) In assuming its role as a chartering agency, the state board
10 shall develop criteria to be used for the review and approval of
11 charter school petitions presented to the state board. The criteria
12 shall address all elements required for charter approval, as
13 identified in subdivision (b), and shall define “reasonably
14 comprehensive,” as used in paragraph (5) of subdivision (b), in a
15 way that is consistent with the intent of this part. Upon satisfactory
16 completion of the criteria, the state board shall adopt the criteria
17 on or before June 30, 2001.

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

22 (4) If either the county board of education or the state board
23 fails to act on a petition within 120 days of receipt, the decision
24 of the governing board of the school district to deny the petition
25 shall be subject to judicial review.

26 (5) The state board shall adopt regulations implementing this
27 subdivision.

28 (6) Upon the approval of the petition by the county board of
29 education, the petitioner or petitioners shall provide written notice
30 of that approval, including a copy of the petition, to the department
31 and the state board.

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

37 (2) The designated local educational agency shall have all
38 monitoring and supervising authority of a chartering agency,
39 including, but not limited to, powers and duties set forth in Section

1 47607, except the power of revocation, which shall remain with
2 the state board.

3 (3) A charter school that is granted its charter through an appeal
4 to the state board and elects to seek renewal of its charter shall,
5 before expiration of the charter, submit its petition for renewal to
6 the governing board of the school district that initially denied the
7 charter. If the governing board of the school district denies the
8 charter school's petition for renewal, the charter school may
9 petition the state board for renewal of its charter.

10 (l) Teachers in charter schools shall hold a Commission on
11 Teacher Credentialing certificate, permit, or other document
12 equivalent to that which a teacher in other public schools would
13 be required to hold. These documents shall be maintained on file
14 at the charter school and are subject to periodic inspection by the
15 chartering authority. It is the intent of the Legislature that charter
16 schools be given flexibility with regard to noncore, noncollege
17 preparatory courses.

18 (m) A charter school shall transmit a copy of its annual,
19 independent financial audit report for the preceding fiscal year, as
20 described in subparagraph (I) of paragraph (5) of subdivision (b),
21 to its chartering entity, the Controller, the county superintendent
22 of schools of the county in which the charter school is sited, unless
23 the county board of education of the county in which the charter
24 school is sited is the chartering entity, and the department by
25 December 15 of each year. This subdivision does not apply if the
26 audit of the charter school is encompassed in the audit of the
27 chartering entity pursuant to Section 41020.

28 SEC. 3. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.