

STATE OF NEW YORK

6604

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. GALEF -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the financing of charter schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2856 of the education law, as added by chapter 4 of
2 the laws of 1998, subdivision 1 as amended by section 4 of part YYY of
3 chapter 59 of the laws of 2017, subparagraph (viii) of paragraph (a) as
4 amended and subparagraphs (ix) and (x) of paragraph (a) as added by
5 section 26-a of part A of chapter 56 of the laws of 2020, is amended to
6 read as follows:

7 § 2856. Financing of charter schools. 1. (a) The enrollment of
8 students attending charter schools shall not be included in the enroll-
9 ment, attendance, membership and, if applicable, count of students with
10 disabilities of the school district in which the pupil resides. The
11 charter school shall report all such data to the [~~school districts of~~
12 ~~residence~~] department in a timely manner. [~~Each school district shall~~
13 ~~report such enrollment, attendance and count of students with disabili-~~
14 ~~ties to the department.~~] The [~~school district of residence~~] department
15 shall pay directly to the charter school for each student enrolled in
16 the charter school [~~who resides in the school district~~] the charter
17 school basic tuition, which shall be:

18 (i) for school years prior to the two thousand nine--two thousand ten
19 school year, an amount equal to one hundred percent of the amount calcu-
20 lated pursuant to paragraph f of subdivision one of section thirty-six
21 hundred two of this chapter for the student's school district of resi-
22 dence for the year prior to the base year increased by the percentage
23 change in the state total approved operating expense calculated pursuant
24 to paragraph t of subdivision one of section thirty-six hundred two of
25 this chapter from two years prior to the base year to the base year;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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(ii) for the two thousand nine--two thousand ten school year, the charter school basic tuition shall be the amount payable by such district as charter school basic tuition for the two thousand eight--two thousand nine school year;

(iii) for the two thousand ten--two thousand eleven through two thousand thirteen--two thousand fourteen school years, the charter school basic tuition shall be the basic tuition computed for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph;

(iv) for the two thousand fourteen--two thousand fifteen, two thousand fifteen--two thousand sixteen and two thousand sixteen--two thousand seventeen school years, the charter school basic tuition shall be the sum of the lesser of the charter school basic tuition computed for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph or the charter school basic tuition computed for the current year pursuant to the provisions of subparagraph (i) of this paragraph plus the supplemental basic tuition;

(v) for the two thousand seventeen--two thousand eighteen school year, the charter school basic tuition shall be the sum of (A) the charter school basic tuition for the two thousand sixteen--two thousand seventeen school year plus (B) five hundred dollars;

(vi) for the two thousand eighteen--two thousand nineteen school year, the charter school basic tuition shall be the lesser of (A) the product of (i) the charter school basic tuition calculated for the base year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year five years prior to the base year and finishing with the year prior to the base year of the total approved operating expense for such school district calculated pursuant to paragraph t of subdivision one of section thirty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year, provided that the highest and lowest annual quotients shall be excluded from the calculation of such average or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with paragraph b of subdivision twenty-one of section three hundred five of this chapter published annually on May fifteenth for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to paragraph n of subdivision one of section thirty-six hundred two of this chapter for the year prior to the base year.

(vii) for the two thousand nineteen--two thousand twenty school year the charter school basic tuition shall be the lesser of (A) the product of (i) the charter school basic tuition calculated for the base year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the base year and finishing with the year prior to the base year of the total approved operating expense for such school district calculated pursuant to paragraph t of subdivision one of section thirty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year provided that the highest annual quotient calculated pursuant to this subparagraph shall be replaced by the average quotient calculated pursuant to subparagraph (vi) of this paragraph or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to

1 an electronic data file created for the purpose of compliance with para-
2 graph b of subdivision twenty-one of section three hundred five of this
3 chapter published annually on May fifteenth for the year prior to the
4 base year divided by the total estimated public enrollment for the
5 school district pursuant to paragraph n of subdivision one of section
6 thirty-six hundred two of this chapter for the year prior to the base
7 year.

8 (viii) for the two thousand twenty--two thousand twenty-one and two
9 thousand twenty-one--two thousand twenty-two school years, the charter
10 school basic tuition shall be the lesser of (A) the product of (i) the
11 charter school basic tuition calculated for the base year multiplied by
12 (ii) the average of the quotients for each school year in the period
13 commencing with the year three years prior to the base year and finish-
14 ing with the year prior to the base year of the total approved operating
15 expense for such school district calculated pursuant to paragraph t of
16 subdivision one of section thirty-six hundred two of this chapter for
17 each such year divided by the total approved operating expense for such
18 district for the immediately preceding year multiplied by, for the two
19 thousand twenty--two thousand twenty-one school year only, (iii) nine
20 hundred forty-five one-thousandths (0.945) or (B) the quotient of the
21 total general fund expenditures for the school district calculated
22 pursuant to an electronic data file created for the purpose of compli-
23 ance with paragraph b of subdivision twenty-one of section three hundred
24 five of this chapter published annually on May fifteenth for the year
25 prior to the base year divided by the total estimated public enrollment
26 for the school district pursuant to paragraph n of subdivision one of
27 section thirty-six hundred two of this chapter for the year prior to the
28 base year.

29 (ix) for the two thousand twenty-two--two thousand twenty-three
30 through two thousand twenty-four--two thousand twenty-five school years
31 the charter school basic tuition shall be the lesser of (A) the product
32 of (i) the charter school basic tuition calculated for the base year
33 multiplied by (ii) the average of the quotients for each school year in
34 the period commencing with the year four years prior to the base year
35 and finishing with the year prior to the base year, excluding the two
36 thousand twenty--two thousand twenty-one school year, of the total
37 approved operating expense for such school district calculated pursuant
38 to paragraph t of subdivision one of section thirty-six hundred two of
39 this chapter for each such year divided by the total approved operating
40 expense for such district for the immediately preceding year or (B) the
41 quotient of the total general fund expenditures for the school district
42 calculated pursuant to an electronic data file created for the purpose
43 of compliance with paragraph b of subdivision twenty-one of section
44 three hundred five of this chapter published annually on May fifteenth
45 for the year prior to the base year divided by the total estimated
46 public enrollment for the school district pursuant to paragraph n of
47 subdivision one of section thirty-six hundred two of this chapter for
48 the year prior to the base year.

49 (x) for the two thousand twenty-five--two thousand twenty-six school
50 year and thereafter the charter school basic tuition shall be the lesser
51 of (A) the product of (i) the charter school basic tuition calculated
52 for the base year multiplied by (ii) the average of the quotients for
53 each school year in the period commencing with the year three years
54 prior to the base year and finishing with the year prior to the base
55 year of the total approved operating expense for such school district
56 calculated pursuant to paragraph t of subdivision one of section thir-

ty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with paragraph b of subdivision twenty-one of section three hundred five of this chapter published annually on May fifteenth for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to paragraph n of subdivision one of section thirty-six hundred two of this chapter for the year prior to the base year.

For the purposes of this subdivision, the "supplemental basic tuition" shall be (A) for a school district for which the charter school basic tuition computed for the current year is greater than or equal to the charter school basic tuition for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the two thousand fourteen--two thousand fifteen school year two hundred and fifty dollars, and (2) for the two thousand fifteen--two thousand sixteen school year three hundred and fifty dollars, and (3) for the two thousand sixteen--two thousand seventeen school year five hundred dollars, and (4) for the two thousand seventeen--two thousand eighteen school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the two thousand sixteen--two thousand seventeen school year plus (ii) five hundred dollars, and (B) for school years prior to the two thousand seventeen--two thousand eighteen school year, for a school district for which the charter school basic tuition for the two thousand ten--two thousand eleven school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the charter school basic tuition for the two thousand ten--two thousand eleven school year minus the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the two thousand sixteen--two thousand seventeen school years, for a school district for which the charter school basic tuition for the two thousand ten--two thousand eleven school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the two thousand sixteen--two thousand seventeen school year plus (ii) five hundred dollars.

(b) The ~~[school-district]~~ department shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision from state or local funds may be reduced pursuant to an agreement between the department, the charter school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the ~~[school-district]~~ department in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter until actual enrollment data is reported to the school district by the charter school. Such projections shall be reconciled with the actual enrollment as actual

1 enrollment data is so reported and at the end of the school's first year
2 of operation and each subsequent year based on a final report of actual
3 enrollment by the charter school, and any necessary adjustments result-
4 ing from such final report shall be made to payments during the school's
5 following year of operation.

6 (c) Notwithstanding any other provision of this subdivision to the
7 contrary, payment of the federal aid attributable to a student with a
8 disability attending a charter school shall be made in accordance with
9 the requirements of section 8065-a of title twenty of the United States
10 code and sections 76.785-76.799 and 300.209 of title thirty-four of the
11 code of federal regulations.

12 (d) School districts shall be eligible for an annual apportionment
13 equal to the amount of the supplemental basic tuition for the charter
14 school in the base year for the expenses incurred in the two thousand
15 fourteen--two thousand fifteen, two thousand fifteen--two thousand
16 sixteen, two thousand sixteen--two thousand seventeen school years and
17 thereafter.

18 ~~2. [In the event of the failure of the school district to make~~
19 ~~payments required by this section, the state comptroller shall deduct~~
20 ~~from any state funds which become due to such school district an amount~~
21 ~~equal to the unpaid obligation. The comptroller shall pay over such sum~~
22 ~~to the charter school upon certification of the commissioner. The~~
23 ~~commissioner shall promulgate regulations to implement the provisions of~~
24 ~~this subdivision.~~

25 ~~3.]~~ Nothing in this article shall be construed to prohibit any person
26 or organization from providing funding or other assistance to the estab-
27 lishment or operation of a charter school. The board of trustees of a
28 charter school is authorized to accept gifts, donations or grants of any
29 kind made to the charter school and to expend or use such gifts,
30 donations or grants in accordance with the conditions prescribed by the
31 donor; provided, however, that no gift, donation or grant may be
32 accepted if subject to a condition that is contrary to any provision of
33 law or term of the charter.

34 § 2. Subdivision 1 of section 2856 of the education law, as amended by
35 section 4-a of part YYY of chapter 59 of the laws of 2017, subparagraph
36 (viii) of paragraph (a) as amended and subparagraphs (ix) and (x) of
37 paragraph (a) as added by section 26-b of part A of chapter 56 of the
38 laws of 2020, is amended to read as follows:

39 1. (a) The enrollment of students attending charter schools shall **not**
40 be included in the enrollment, attendance and, if applicable, count of
41 students with disabilities of the school district in which the pupil
42 resides. The charter school shall report all such data to the [~~school~~
43 ~~districts of residence~~] **department** in a timely manner. [~~Each school~~
44 ~~district shall report such enrollment, attendance and count of students~~
45 ~~with disabilities to the department.~~] The [~~school district of residence~~]
46 **department** shall pay directly to the charter school for each student
47 enrolled in the charter school [~~who resides in the school district~~] the
48 charter school basic tuition which shall be:

49 (i) for school years prior to the two thousand nine--two thousand ten
50 school year, an amount equal to one hundred percent of the amount calcu-
51 lated pursuant to paragraph f of subdivision one of section thirty-six
52 hundred two of this chapter for the school district for the year prior
53 to the base year increased by the percentage change in the state total
54 approved operating expense calculated pursuant to paragraph t of subdi-
55 vision one of section thirty-six hundred two of this chapter from two
56 years prior to the base year to the base year;

(ii) for the two thousand nine--two thousand ten school year, the charter school basic tuition shall be the amount payable by such district as charter school basic tuition for the two thousand eight--two thousand nine school year;

(iii) for the two thousand ten--two thousand eleven through two thousand thirteen--two thousand fourteen school years, the charter school basic tuition shall be the basic tuition computed for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph;

(iv) for the two thousand fourteen--two thousand fifteen, two thousand fifteen--two thousand sixteen and two thousand sixteen--two thousand seventeen school years, the charter school basic tuition shall be the sum of the lesser of the charter school basic tuition computed for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph or the charter school basic tuition computed for the current year pursuant to the provisions of subparagraph (i) of this paragraph plus the supplemental basic tuition;

(v) for the two thousand seventeen--two thousand eighteen school year, the charter school basic tuition shall be the sum of (A) the charter school basic tuition for the two thousand sixteen--two thousand seventeen school year plus (B) five hundred dollars;

(vi) for the two thousand eighteen--two thousand nineteen school year, the charter school basic tuition shall be the lesser of (A) the product of (i) the charter school basic tuition calculated for the base year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year five years prior to the base year and finishing with the year prior to the base year of the total approved operating expense for such school district calculated pursuant to paragraph t of subdivision one of section thirty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year, provided that the highest and lowest annual quotients shall be excluded from the calculation of such average or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with paragraph b of subdivision twenty-one of section three hundred five of this chapter published annually on May fifteenth for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to paragraph n of subdivision one of section thirty-six hundred two of this chapter for the year prior to the base year.

(vii) for the two thousand nineteen--two thousand twenty school year the charter school basic tuition shall be the lesser of (A) the product of (i) the charter school basic tuition calculated for the base year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the base year and finishing with the year prior to the base year of the total approved operating expense for such school district calculated pursuant to paragraph t of subdivision one of section thirty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year provided that the highest annual quotient calculated pursuant to this subparagraph shall be replaced by the average quotient calculated pursuant to subparagraph (vi) of this paragraph or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to

1 an electronic data file created for the purpose of compliance with para-
2 graph b of subdivision twenty-one of section three hundred five of this
3 chapter published annually on May fifteenth for the year prior to the
4 base year divided by the total estimated public enrollment for the
5 school district pursuant to paragraph n of subdivision one of section
6 thirty-six hundred two of this chapter for the year prior to the base
7 year.

8 (viii) for the two thousand twenty--two thousand twenty-one and two
9 thousand twenty-one--two thousand twenty-two school years, the charter
10 school basic tuition shall be the lesser of (A) the product of (i) the
11 charter school basic tuition calculated for the base year multiplied by
12 (ii) the average of the quotients for each school year in the period
13 commencing with the year three years prior to the base year and finish-
14 ing with the year prior to the base year of the total approved operating
15 expense for such school district calculated pursuant to paragraph t of
16 subdivision one of section thirty-six hundred two of this chapter for
17 each such year divided by the total approved operating expense for such
18 district for the immediately preceding year multiplied by, for the two
19 thousand twenty--two thousand twenty-one school year only, (iii) nine
20 hundred forty-five one-thousandths (0.945) or (B) the quotient of the
21 total general fund expenditures for the school district calculated
22 pursuant to an electronic data file created for the purpose of compli-
23 ance with paragraph b of subdivision twenty-one of section three hundred
24 five of this chapter published annually on May fifteenth for the year
25 prior to the base year divided by the total estimated public enrollment
26 for the school district pursuant to paragraph n of subdivision one of
27 section thirty-six hundred two of this chapter for the year prior to the
28 base year.

29 (ix) for the two thousand twenty-two--two thousand twenty-three
30 through two thousand twenty-four--two thousand twenty-five school years
31 the charter school basic tuition shall be the lesser of (A) the product
32 of (i) the charter school basic tuition calculated for the base year
33 multiplied by (ii) the average of the quotients for each school year in
34 the period commencing with the year four years prior to the base year
35 and finishing with the year prior to the base year, excluding the two
36 thousand twenty--two thousand twenty-one school year, of the total
37 approved operating expense for such school district calculated pursuant
38 to paragraph t of subdivision one of section thirty-six hundred two of
39 this chapter for each such year divided by the total approved operating
40 expense for such district for the immediately preceding year or (B) the
41 quotient of the total general fund expenditures for the school district
42 calculated pursuant to an electronic data file created for the purpose
43 of compliance with paragraph b of subdivision twenty-one of section
44 three hundred five of this chapter published annually on May fifteenth
45 for the year prior to the base year divided by the total estimated
46 public enrollment for the school district pursuant to paragraph n of
47 subdivision one of section thirty-six hundred two of this chapter for
48 the year prior to the base year.

49 (x) for the two thousand twenty-five--two thousand twenty-six school
50 year and thereafter the charter school basic tuition shall be the lesser
51 of (A) the product of (i) the charter school basic tuition calculated
52 for the base year multiplied by (ii) the average of the quotients for
53 each school year in the period commencing with the year three years
54 prior to the base year and finishing with the year prior to the base
55 year of the total approved operating expense for such school district
56 calculated pursuant to paragraph t of subdivision one of section thir-

ty-six hundred two of this chapter for each such year divided by the total approved operating expense for such district for the immediately preceding year or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with paragraph b of subdivision twenty-one of section three hundred five of this chapter published annually on May fifteenth for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to paragraph n of subdivision one of section thirty-six hundred two of this chapter for the year prior to the base year.

For the purposes of this subdivision, the "supplemental basic tuition" shall be (A) for a school district for which the charter school basic tuition computed for the current year is greater than or equal to the charter school basic tuition for the two thousand ten--two thousand eleven school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the two thousand fourteen--two thousand fifteen school year two hundred and fifty dollars, and (2) for the two thousand fifteen--two thousand sixteen school year three hundred and fifty dollars, and (3) for the two thousand sixteen--two thousand seventeen school year five hundred dollars, and (4) for the two thousand seventeen--two thousand eighteen school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the two thousand sixteen--two thousand seventeen school year plus (ii) five hundred dollars, and (B) for school years prior to the two thousand seventeen--two thousand eighteen school year, for a school district for which the charter school basic tuition for the two thousand ten--two thousand eleven school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the charter school basic tuition for the two thousand ten--two thousand eleven school year minus the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the two thousand sixteen--two thousand seventeen school years, for a school district for which the charter school basic tuition for the two thousand ten--two thousand eleven school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the two thousand sixteen--two thousand seventeen school year plus (ii) five hundred dollars.

(b) The ~~[school-district]~~ department shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision may be reduced pursuant to an agreement between the department, the charter school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the ~~[school-district]~~ department in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation,

1 and any necessary adjustments shall be made to payments during the
2 school's second year of operation.

3 (c) School districts shall be eligible for an annual apportionment
4 equal to the amount of the supplemental basic tuition for the charter
5 school in the base year for the expenses incurred in the two thousand
6 fourteen--two thousand fifteen, two thousand fifteen--two thousand
7 sixteen, two thousand sixteen--two thousand seventeen school years and
8 thereafter.

9 § 3. This act shall take effect immediately, provided, however, that
10 the amendments to subdivision 1 of section 2856 of the education law
11 made by section one of this act shall not affect the expiration and
12 reversion of such subdivision pursuant to subdivision d of section 27 of
13 chapter 378 of the laws of 2007, as amended when upon such date the
14 provisions of section two of this act shall take effect.