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I N A S S E M B L Y

January 20, 2010

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

AN ACT to amend the education law, in relation to the location and management of charter schools and the enrollment of students at charter schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. New York's charter school law was  
2 enacted eleven years ago in an effort to create new learning opportu-  
3 nities for all students, to encourage different and innovative teaching  
4 methods and to provide parents and students with expanded choice within  
5 the public schools. Eleven years provides the state with enough informa-  
6 tion to make judgments about changes that are needed in the law to  
7 ensure the public knows how their tax dollars are being spent and to  
8 ensure public schools serving the majority of students have the  
9 resources needed to provide a quality education to all students. This  
10 legislation is intended to clarify the transparency and accountability  
11 of charter schools and provide fiscal relief to the school districts  
12 where charter schools are located.

13 S 2. Subdivision 1 of section 2851 of the education law, as added by  
14 chapter 4 of the laws of 1998, is amended to read as follows:

15 1. An application to establish a charter school may be submitted by  
16 teachers, parents, school administrators, community residents or any  
17 combination thereof. Such application may be filed in conjunction with  
18 a college, university, museum, educational institution, not-for-profit  
19 corporation exempt from taxation under paragraph 3 of subsection (c) of  
20 section 501 of the internal revenue code [or for-profit business or  
21 corporate entity authorized to do business in New York state. For char-  
22 ter schools established in conjunction with a for-profit business or  
23 corporate entity, the charter shall specify the extent of the entity's  
24 participation in the management and operation of the school]. THE APPLI-  
25 CATION SHALL INCLUDE THE AMOUNT OF ANY MANAGEMENT FEE TO BE PAID TO ANY  
26 NOT-FOR-PROFIT CORPORATION WORKING IN CONJUNCTION WITH THE APPLICANTS.  
27 SALARIES OF THE EMPLOYEES OF SUCH NOT-FOR-PROFIT CORPORATION MAY NOT

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

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1 EXCEED THE SALARIES FOR COMPARABLE POSITIONS IN THE SCHOOL DISTRICT OF  
2 LOCATION.

3 S 3. Paragraph (d) of subdivision 2 of section 2851 of the education  
4 law, as added by chapter 4 of the laws of 1998, is amended to read as  
5 follows:

6 (d) Admission policies and procedures for the school, which shall be  
7 consistent with the requirements of subdivision two of section twenty-  
8 eight hundred fifty-four of this article. FOR CHARTER RENEWALS, SUCH  
9 POLICIES AND PROCEDURES SHALL INCLUDE PLANS FOR ENSURING THE STUDENT  
10 ENROLLMENT OF THE CHARTER SCHOOL INCLUDES A COMPARABLE PERCENTAGE OF  
11 STUDENTS ON FREE LUNCH, STUDENTS WITH DISABILITIES AND ENGLISH LANGUAGE  
12 LEARNERS AS THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED.

13 S 4. Paragraph (a) of subdivision 4 of section 2851 of the education  
14 law, as added by chapter 4 of the laws of 1998, is amended to read as  
15 follows:

16 (a) A report of the progress of the charter school in achieving the  
17 educational objectives set forth in the charter. SUCH REPORT SHALL  
18 INCLUDE DISAGGREGATED STUDENT PERFORMANCE DATA FOR ALL STUDENT  
19 SUBGROUPS.

20 S 5. Subdivision 7 of section 2852 of the education law is amended by  
21 adding a new paragraph (c) to read as follows:

22 (C) WHEN A REVISION OF A CHARTER INVOLVES AN INCREASE IN ENROLLMENT  
23 WHICH BRINGS TOTAL ENROLLMENT IN CHARTER SCHOOLS IN THE SCHOOL DISTRICT  
24 OF LOCATION ABOVE FIVE PERCENT, THE REVISION SHALL BE DENIED UNLESS THE  
25 SCHOOL DISTRICT OF LOCATION APPROVES THE REVISION OR THE RESIDENTS OF  
26 THE SCHOOL DISTRICT APPROVE THE REVISION THROUGH A REFERENDUM OF THE  
27 ELIGIBLE VOTERS TO BE HELD IN CONJUNCTION WITH THE ANNUAL BUDGET VOTE.  
28 FOR PURPOSES OF THIS PARAGRAPH IN A CITY HAVING A POPULATION OF ONE  
29 MILLION OR MORE, THE SCHOOL DISTRICT OF LOCATION SHALL BE THE COMMUNITY  
30 SCHOOL DISTRICT WHERE THE CHARTER SCHOOL IS LOCATED.

31 S 6. Paragraph (a) of subdivision 3 of section 2853 of the education  
32 law, as amended by section 4 of part D-2 of chapter 57 of the laws of  
33 2007, is amended to read as follows:

34 (a) A charter school may be located in part of an existing public  
35 school building, in space provided on a private work site, in a public  
36 building or in any other suitable location PROVIDED, HOWEVER, A CHARTER  
37 SCHOOL SHALL NOT BE LOCATED IN ANY PART OF AN EXISTING SCHOOL BUILDING  
38 WHEN SUCH SHARING WOULD IMPACT THE PUBLIC SCHOOL'S ABILITY TO MEET THE  
39 CLASS SIZE TARGETS ESTABLISHED PURSUANT TO SECTION TWO HUNDRED ELEVEN-D  
40 OF THIS CHAPTER. Provided, however, before a charter school may be  
41 located in part of an existing public school building, the charter enti-  
42 ty shall provide notice to the parents or guardians of the students then  
43 enrolled in the existing school building and shall hold a public hearing  
44 for purposes of discussing the location of the charter school. A charter  
45 school may own, lease or rent its space. For purposes of local zoning,  
46 land use regulation and building code compliance, a charter school shall  
47 be deemed a nonpublic school.

48 S 7. Subdivision 3 of section 2853 of the education law is amended by  
49 adding two new paragraphs (d) and (e) to read as follows:

50 (D) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY CAPITAL FACILITY, OR  
51 OTHER IMPROVEMENTS MADE IN PUBLIC SCHOOL BUILDINGS, WITH PUBLIC OR  
52 PRIVATE FUNDS, TO ACCOMMODATE A CHARTER SCHOOL, SHALL REQUIRE MATCHING  
53 OR COMPARABLE IMPROVEMENTS BE MADE FOR OTHER DISTRICT SCHOOLS LOCATED IN  
54 THE SAME BUILDING.

55 (E) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY CONSTRUCTION OR CAPI-  
56 TAL IMPROVEMENT MADE IN ACCORDANCE WITH THIS ARTICLE SHALL BE MADE IN

1 ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF ARTICLES EIGHT AND NINE  
2 OF THE LABOR LAW.

3 S 8. Subdivision 2 of section 2854 of the education law, as added by  
4 chapter 4 of the laws of 1998, paragraphs (a) and (b) as amended by  
5 section 5 of part D-2 of chapter 57 of the laws of 2007, is amended to  
6 read as follows:

7 2. Admissions; enrollment; students. (a) A charter school shall be  
8 nonsectarian in its programs, admission policies, employment practices,  
9 and all other operations and shall not charge tuition or fees; provided  
10 that a charter school may require the payment of fees on the same basis  
11 and to the same extent as other public schools. A charter school shall  
12 not discriminate against any student, employee or any other person on  
13 the basis of ethnicity, national origin, gender, or disability or any  
14 other ground that would be unlawful if done by a school. Admission of  
15 students shall not be limited on the basis of intellectual ability,  
16 measures of achievement or aptitude, athletic ability, disability, race,  
17 creed, gender, national origin, religion, or ancestry; provided, howev-  
18 er, that nothing in this article shall be construed to prevent the  
19 establishment of a single-sex charter school or a charter school  
20 designed to provide expanded learning opportunities for students at-risk  
21 of academic failure; and provided, further, that the charter school  
22 shall [demonstrate good faith efforts to] attract and retain a compara-  
23 ble or greater enrollment of students with disabilities and limited  
24 English proficient students when compared to the enrollment figures for  
25 such students in the school district in which the charter school is  
26 located. IF A CHARTER SCHOOL IS NOT SUCCESSFUL IN ATTRACTING A COMPARA-  
27 BLE OR GREATER ENROLLMENT OF STUDENTS WITH DISABILITIES AND LIMITED  
28 ENGLISH PROFICIENT STUDENTS AS COMPARED TO THE ENROLLMENT FIGURES FOR  
29 SUCH STUDENTS IN THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS  
30 LOCATED, SUCH CHARTER SCHOOL SHALL PROVIDE THE CHARTERING ENTITY WITH A  
31 PLAN FOR IMPROVING THE ENROLLMENT OF SUCH STUDENTS IN THE FOLLOWING  
32 YEAR. FAILURE TO COMPLY WITH THIS REQUIREMENT FOR TWO CONSECUTIVE YEARS  
33 SHALL BE SUBJECT TO REVOCATION IN ACCORDANCE WITH SUBDIVISION ONE OF  
34 SECTION TWENTY-EIGHT HUNDRED FIFTY-FIVE OF THIS ARTICLE. A charter shall  
35 not be issued to any school that would be wholly or in part under the  
36 control or direction of any religious denomination, or in which any  
37 denominational tenet or doctrine would be taught.

38 (b) Any child who is qualified under the laws of this state for admis-  
39 sion to a public school is qualified for admission to a charter school.  
40 The school shall enroll each eligible student who submits a timely  
41 application by the first day of April each year, unless the number of  
42 applications exceeds the capacity of the grade level or building. In  
43 such cases, students shall be accepted from among applicants by a random  
44 selection process, provided, however, that an enrollment preference  
45 shall be provided to pupils returning to the charter school in the  
46 second or any subsequent year of operation and pupils residing in the  
47 school district in which the charter school is located, and siblings of  
48 pupils already enrolled in the charter school AND STUDENTS ON FREE AND  
49 REDUCED PRICE LUNCH, AND STUDENTS WITH DISABILITIES, AND STUDENTS WITH  
50 LIMITED ENGLISH PROFICIENCY. For the purposes of this paragraph and  
51 paragraph (a) of this subdivision, the school district in which the  
52 charter school is located shall mean, for the city school district of  
53 the city of New York, the [community district] ATTENDANCE ZONE in which  
54 the charter school is located. THE CHARTER ENTITY IS RESPONSIBLE FOR  
55 ENSURING THE SELECTION PROCESS IS CONDUCTED IN ACCORDANCE WITH THIS  
56 PARAGRAPH. IF THE CHARTER ENTITY DETERMINES THE PROCESS IS NOT IN

1 COMPLIANCE WITH THIS PARAGRAPH, THE CHARTER ENTITY SHALL CONDUCT THE  
2 PROCESS.

3 (c) A charter school shall serve one or more of the grades one through  
4 twelve, and shall limit admission to pupils within the grade levels  
5 served. Nothing herein shall prohibit a charter school from establishing  
6 a kindergarten program.

7 (d) A student may withdraw from a charter school at any time and  
8 enroll in a public school. A CHARTER SCHOOL MUST PROVIDE A REPORT TO THE  
9 CHARTERING ENTITY EACH YEAR INDICATING THE NUMBER OF STUDENTS LEAVING  
10 THE CHARTER SCHOOL, THE MONTHS IN WHICH THE STUDENTS LEAVE THE SCHOOL,  
11 THE REASON THE STUDENTS LEAVE THE SCHOOL AND THE SCHOOL THE STUDENT IS  
12 CURRENTLY ATTENDING. A charter school may refuse admission to any  
13 student who has been expelled or suspended from a public school until  
14 the period of suspension or expulsion from the public school has  
15 expired, consistent with the requirements of due process.

16 S 9. Subdivision 1 of section 2855 of the education law, as added by  
17 chapter 4 of the laws of 1998, is amended to read as follows:

18 1. The charter entity, or the board of regents, [may] SHALL terminate  
19 a charter upon any of the following grounds:

20 (a) When a charter school's outcome on student assessment measures  
21 adopted by the board of regents falls below the level that would allow  
22 the commissioner to revoke the registration of another public school,  
23 and student achievement on such measures [has not shown improvement] HAS  
24 NOT MET ANNUAL YEARLY PROGRESS over the preceding three school years[:];

25 (b) Serious violations of law;

26 (c) Material and substantial violation of the charter, including  
27 fiscal mismanagement AND FAILURE TO MEET STUDENT PERFORMANCE TARGETS;  
28 [or]

29 (d) When the public employment relations board makes a determination  
30 that the charter school demonstrates a practice and pattern of egregious  
31 and intentional violations of subdivision one of section two hundred  
32 nine-a of the civil service law involving interference with or discrimi-  
33 nation against employee rights under article fourteen of the civil  
34 service law[.]; OR

35 (E) FAILURE TO ENROLL A COMPARABLE PERCENTAGE OF STUDENTS QUALIFYING  
36 FOR FREE LUNCH, STUDENTS WITH DISABILITIES AND ENGLISH LANGUAGE LEARNERS  
37 FOR TWO CONSECUTIVE YEARS.

38 S 10. This act shall take effect immediately.