

S 6468 SAMPSON Same as Uni. [A 9558](#) Silver
ON FILE: 01/16/10 Education Law
TITLE....Relates to the establishment, organization, and
administration of charter schools
01/16/10 REFERRED TO EDUCATION

[A9558](#) Silver Same as Uni. [S 6468](#) SAMPSON
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SAMPSON, OPPENHEIMER, SMITH
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STATE OF NEW YORK

S. 6468

A. 9558

SENATE - ASSEMBLY

January 16, 2010

IN SENATE -- Introduced by Sens. SAMPSON, OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. SILVER, NOLAN -- read once and referred to the Committee on Education

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

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

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

3 1. An application to establish a charter school may be submitted by
4 teachers, parents, school administrators, community residents or any
5 combination thereof. Such application may be filed in conjunction with
6 a college, university, museum, educational institution, not-for-profit
7 corporation exempt from taxation under paragraph 3 of subsection (c) of
8 section 501 of the internal revenue code or for-profit business or
9 corporate entity authorized to do business in New York state. **Provided**
10 **however, for-profit business or corporate entities shall not be eligible**
11 **to submit an application to establish a charter school pursuant to**
12 **subdivision nine-a of section twenty-eight hundred fifty-two of this**
13 **article, or operate or manage a charter school for a charter issued**
14 **pursuant to subdivision nine-a of section twenty-eight hundred fifty-two**
15 **of this article.** For charter schools established in conjunction with a
16 for-profit business or corporate entity, the charter shall specify the
17 extent of the entity's participation in the management and operation of
18 the school.

19 § 2. Paragraph (c) of subdivision 2 of section 2851 of the education
20 law, as added by chapter 4 of the laws of 1998, is amended to read as
21 follows:

22 (c) The proposed governance structure of the school, including a list

23 of members of the initial board of trustees, a description of the quali-
24 fications, terms and method of appointment or election of trustees, the
25 organizational structure of the school, a procedure for conducting and

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

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1 publicizing monthly board of trustee meetings at each charter school,
2 and the processes to be followed by the school to promote parental and
3 staff involvement in school governance.

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

7 (v) A code of ethics for the charter school, setting forth for the
8 guidance of its trustees, officers and employees the standards of
9 conduct expected of them including standards with respect to disclosure
10 of conflicts of interest regarding any matter brought before the board
11 of trustees.

12 § 4. Subdivision 2 of section 2851 of the education law is amended by
13 adding a new paragraph (j-1) to read as follows:

14 (j-1) Notwithstanding paragraph (j) of this subdivision, any applica-
15 tion submitted for a charter issued pursuant to subdivision nine-a of
16 section twenty-eight hundred fifty-two of this article shall include
17 information regarding the facilities to be used by the school including
18 the location of the school and the means by which pupils will be trans-
19 ported to and from the school. If the facilities to be used by the
20 proposed school change at any time after the application is submitted to
21 the charter entity, the applicant shall notify the board of regents,
22 conduct or, if applicable, repeat any public outreach and hearing
23 requirements pursuant to this article, and resubmit an amended applica-
24 tion with information regarding the new facilities and public comments
25 raised. A charter school must obtain a certificate of occupancy for
26 facilities prior to the date on which instruction is to commence at the
27 school.

28 § 5. Paragraph (p) of subdivision 2 of section 2851 of the education
29 law, as added by chapter 4 of the laws of 1998, is amended to read as
30 follows:

31 (p) The term of the proposed charter, which shall not exceed five
32 years; provided however, in the case of charters issued pursuant to
33 subdivision nine-a of section twenty-eight hundred fifty-two of this
34 article the term of such proposed charter shall not exceed five years in
35 which instruction is provided to pupils plus the period commencing with
36 the effective date of the charter and ending with the opening of the
37 school for instruction.

38 § 5-a. Subdivision 3 of section 2851 of the education law, as added by
39 chapter 4 of the laws of 1998, paragraph (a) as amended by section 6 of
40 part B of chapter 57 of the laws of 2008, is amended to read as follows:

41 3. An applicant shall submit the application to a charter entity for
42 approval. For purposes of this article, a charter entity shall be:

43 (a) The board of education of a school district eligible for an appor-
44 tionment of aid under subdivision four of section thirty-six hundred two
45 of this chapter, provided that a board of education shall not approve an
46 application for a school to be operated outside the school district's
47 geographic boundaries and further provided that in a city having a popu-
48 lation of one million or more, the chancellor of any such city school
49 district shall be the charter entity established by this paragraph;

50 (b) The board of trustees of the state university of New York; or

51 (c) The board of regents.

52 The board of regents shall be the only entity authorized to issue a
53 charter pursuant to this article and shall be the only entity authorized
54 to act as the charter entity for any charter proposed or issued pursuant

1 contrary, an application for the conversion of an existing public school
2 to a charter school shall be submitted to, and may only be approved by,
3 the charter entity set forth in paragraph (a) of this subdivision. [~~Any~~]
4 Notwithstanding any law, rule or regulation to the contrary, any such
5 application for conversion shall be consistent with this section but
6 shall not be subject to the process pursuant to subdivision nine-a of
7 section twenty-eight hundred fifty-two of this article, and the charter
8 entity shall require that the parents or guardians of a majority of the
9 students then enrolled in the existing public school vote in favor of
10 converting the school to a charter school.

11 § 6. Subdivision 3 of section 2851 of the education law, as amended by
12 section five-a of this act, is amended to read as follows:

13 3. An applicant shall submit the application to a charter entity for
14 approval. For purposes of this article, a charter entity shall be[+

15 ~~(a) The board of education of a school district eligible for an appor-~~
16 ~~tionment of aid under subdivision four of section thirty-six hundred two~~
17 ~~of this chapter, provided that a board of education shall not approve an~~
18 ~~application for a school to be operated outside the school district's~~
19 ~~geographic boundaries and further provided that in a city having a popu-~~
20 ~~lation of one million or more, the chancellor of any such city school~~
21 ~~district shall be the charter entity established by this paragraph;~~

22 ~~(b) The board of trustees of the state university of New York; or~~

23 ~~(c) The] the board of regents.~~

24 The board of regents shall be the only entity authorized to issue a
25 charter pursuant to this article [~~and shall be the only entity author-~~
26 ~~ized to act as the charter entity for any charter proposed or issued~~
27 ~~pursuant to subdivision nine-a of section twenty-eight hundred fifty-two~~
28 ~~of this article.] and shall act as the charter entity where the original~~

29 charter entity was a board of education, the chancellor of a city school
30 district in a city having a population of one million or more, or the
31 board of trustees of the state university of New York. Notwithstanding

32 any provision of this subdivision to the contrary, an application for
33 the conversion of an existing public school to a charter school shall be

34 [~~submitted to, and may only be~~] approved by[, ~~the charter entity set~~
35 ~~forth in paragraph (a) of this subdivision]~~ the board of education of

36 the school district where the proposed conversion charter school is to
37 be located prior to the board of regents issuing a charter for such

38 school. Notwithstanding any law, rule or regulation to the contrary, any
39 such application for conversion shall be consistent with this section

40 but shall not be subject to the process pursuant to subdivision nine-a
41 of section twenty-eight hundred fifty-two of this article, and the char-

42 ter entity shall require that the parents or guardians of a majority of
43 the students then enrolled in the existing public school vote in favor

44 of converting the school to a charter school.

45 § 6-a. Subdivision 4 of section 2851 of the education law is amended
46 by adding a new paragraph (e) to read as follows:

47 (e) A demonstration of the efforts taken by the charter school to

48 attract and retain high-need students, including students at risk of

49 educational failure or students who are otherwise in need of special

50 assistance and support which shall be considered by the charter entity

51 prior to approving such charter school's application for renewal.

52 § 7. Subdivision 1 of section 2852 of the education law, as amended by
53 section 2 of part D-2 of chapter 57 of the laws of 2007, is amended to
54 read as follows:

55 1. A charter entity that receives an application for approval of a
56 charter school shall act on each request received prior to July first of
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1 a calendar year on or before January first of the succeeding calendar

2 year, and a proposed charter between the applicant and the charter enti-
3 ty resulting from such application shall be executed on or before Febru-
4 ary first of such succeeding year. Nothing in this subdivision shall be
5 construed to prevent a charter entity from receiving or acting upon an
6 application at any time. This subdivision shall not apply to applica-
7 tions that are submitted pursuant to subdivision nine-a of this section.

8 § 8. Subdivision 3 of section 2852 of the education law, as added by
9 chapter 4 of the laws of 1998, is amended to read as follows:

10 3. A charter entity is not required to approve a charter and may
11 require an applicant to modify or supplement an application as a condi-
12 tion of approval. An existing private school shall not be eligible to
13 convert to a charter school. In determining whether an application
14 involves the conversion of an existing private school, the [~~charter~~
15 ~~entity and the~~] board of regents shall consider such factors as: (a)
16 whether the charter school would have the same or substantially the same
17 board of trustees and/or officers as an existing private school; (b)
18 whether a substantial proportion of employees of the charter school
19 would be drawn from such existing private school; (c) whether a substan-
20 tial portion of the assets and property of such existing private school
21 would be transferred to the charter school; (d) whether the charter
22 school would be located at the same site as such existing private
23 school; (e) upon renewal only, whether such private school closed within
24 one year of establishment of the charter school; and (f) upon renewal
25 only, whether a substantial portion of the charter school's students
26 were drawn from such existing private school.

27 § 9. Subdivision 4 of section 2852 of the education law, as added by
28 chapter 4 of the laws of 1998, is amended to read as follows:

29 4. Each individual applicant seeking to establish a charter school
30 shall submit a full set of fingerprints to the charter entity for the
31 purpose of obtaining a state and federal criminal records check. The
32 division of criminal justice services is authorized to provide this
33 information to the federal bureau of investigation and to perform a
34 state and federal criminal records check on each applicant and report
35 the results to the [~~charter entity and the~~] board of regents. The crimi-
36 nal records check shall be completed to the satisfaction of the charter
37 entity prior to approval of the application. The department and the
38 division of criminal justice services shall enter into any memoranda of
39 agreement necessary to implement the requirements of this subdivision.

40 § 10. Subdivision 5 of section 2852 of the education law, as added by
41 chapter 4 of the laws of 1998, is amended to read as follows:

42 5. Upon approval of an application by a charter entity, the applicant
43 and charter entity shall enter into a proposed agreement allowing the
44 applicants to organize and operate a charter school. Such written agree-
45 ment, known as the charter, shall include (a) the information required
46 by subdivision two of section twenty-eight hundred fifty-one of this
47 article, as modified or supplemented during the approval process, (b) in
48 the case of charters to be issued pursuant to subdivision nine-a of this
49 section, information required by such subdivision, (c) any other terms
50 or conditions required by applicable laws, rules and regulations, and
51 [~~(e)~~] (d) any other terms or conditions, not inconsistent with law,
52 agreed upon by the applicant and the charter entity. In addition, the
53 charter shall include the specific commitments of the charter entity
54 relating to its obligations to oversee and supervise the charter school.
55 Within five days after entering into a proposed charter, the charter
56 entity other than the board of regents shall submit to the board of
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1 regents a copy of the charter, the application and supporting documenta-
2 tion for final approval and issuance by the board of regents in accord-
3 ance with subdivisions five-a and five-b of this section.

4 § 11. Subdivision 5 of section 2852 of the education law, as amended
5 by section ten of this act, is amended to read as follows:

6 5. Upon approval of an application by a charter entity, the applicant

7 and charter entity shall enter into a proposed agreement allowing the
8 applicants to organize and operate a charter school. Such written agree-
9 ment, known as the charter, shall include (a) the information required
10 by subdivision two of section twenty-eight hundred fifty-one of this
11 article, as modified or supplemented during the approval process, (b) in
12 the case of charters to be issued pursuant to subdivision nine-a of this
13 section, information required by such subdivision, (c) any other terms
14 or conditions required by applicable laws, rules and regulations, and
15 (d) any other terms or conditions, not inconsistent with law, agreed
16 upon by the applicant and the charter entity. In addition, the charter
17 shall include the specific commitments of the charter entity relating to
18 its obligations to oversee and supervise the charter school. [~~Within~~
19 ~~five days after entering into a proposed charter, the charter entity~~
20 ~~other than the board of regents shall submit to the board of regents a~~
21 ~~copy of the]~~ Such proposed charter, the application and supporting
22 documentation [~~for~~] shall be subject to final approval and issuance by
23 the board of regents in accordance with subdivisions five-a and five-b
24 of this section.

25 § 12. Subdivision 5-a of section 2852 of the education law, as amended
26 by section 2 of part D-2 of chapter 57 of the laws of 2007, is amended
27 to read as follows:

28 5-a. Upon receipt of a proposed charter submitted by a charter entity,
29 the board of regents shall review such proposed charter in accordance
30 with the standards set forth in subdivision two of this section, and any
31 other applicable specifications required by this article. The board of
32 regents shall either (a) approve and issue the charter as proposed by
33 the charter entity or (b) return the proposed charter to the charter
34 entity for reconsideration with the written comments and recommendations
35 of the board of regents; provided however, the board of regents shall
36 approve and issue a charter where the proposed charter agreement pursu-
37 ant to subdivision five of this section is for an initial charter pursu-
38 ant to subdivision nine-a of this section. If the board of regents fails
39 to act on such proposed charter within ninety days of its submission to
40 the board of regents in accordance with the previous sentence, the
41 proposed charter shall be deemed to have been approved and issued by the
42 board of regents at the expiration of such period.

43 § 13. Subdivision 5-a of section 2852 of the education law, as amended
44 by section twelve of this act, is amended to read as follows:

45 5-a. Upon receipt of a proposed charter [~~submitted by a charter enti-~~
46 ~~ty~~], the board of regents shall review such proposed charter in accord-
47 ance with the standards set forth in subdivision two of this section,
48 and any other applicable specifications required by this article. The
49 board of regents shall either (a) approve and issue the charter as
50 proposed [~~by the charter entity~~] or (b) return the proposed charter to
51 the [~~charter entity~~] applicant for reconsideration with the written
52 comments and recommendations of the board of regents; provided however,
53 the board of regents shall approve and issue a charter where the
54 proposed charter agreement pursuant to subdivision five of this section
55 is for an initial charter pursuant to subdivision nine-a of this
56 section. [~~If the board of regents fails to act on such proposed charter~~
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1 ~~within ninety days of its submission to the board of regents in accord-~~
2 ~~ance with the previous sentence, the proposed charter shall be deemed to~~
3 ~~have been approved and issued by the board of regents at the expiration~~
4 ~~of such period.]~~

5 § 14. Subdivision 5-b of section 2852 of the education law, as added
6 by chapter 4 of the laws of 1998, is amended to read as follows:

7 5-b. If the board of regents returns a proposed charter to the [~~char-~~
8 ~~ter entity~~] applicant pursuant to the provisions of subdivision five-a
9 of this section, such [~~charter entity~~] applicant shall reconsider the
10 proposed charter, taking into consideration the comments and recommenda-
11 tion of the board of regents. Thereafter, the [~~charter entity~~] appli-

12 cant shall resubmit the proposed charter to the board of regents with
13 modifications, provided that the applicant consents in writing to such
14 modifications[~~, resubmit the proposed charter to the board of regents~~
15 ~~without modifications,~~] or abandon the proposed charter. The board of
16 regents shall review each such resubmitted proposed charter in accord-
17 ance with the provisions of subdivision five-a of this section[~~;~~
18 ~~provided, however, that it shall be the duty of the board of regents to~~
19 ~~approve and issue a proposed charter resubmitted by the charter entity~~
20 ~~described in paragraph (b) of subdivision three of section twenty-eight~~
21 ~~hundred fifty-one of this article within thirty days of the resubmission~~
22 ~~of such proposed charter or such proposed charter shall be deemed~~
23 ~~approved and issued at the expiration of such period].~~

24 § 15. Subdivision 7 of section 2852 of the education law, as amended
25 by section 2 of part D-2 of chapter 57 of the laws of 2007, is amended
26 to read as follows:

27 7. (a) A revision of a charter shall be made only upon the approval of
28 the [~~charter entity and the~~] board of regents in accordance with the
29 provisions of subdivisions five-a and five-b of this section.

30 (b) When a revision of a charter involves the relocation of a charter
31 school to a different school district, the proposed new school district
32 shall be given at least forty-five days notice of the proposed relo-
33 cation. In addition, the applicant shall provide an analysis of the
34 community support for such relocation and of the projected programmatic
35 and fiscal impact of the charter school on the proposed new school
36 district of location and other public and nonpublic schools in the area.

37 (c) A revision of a charter shall be required before a charter school
38 may relocate to an existing public school building. The rigorous demon-
39 stration required pursuant to subparagraph (iii) of paragraph (b) of
40 subdivision nine-a of this section shall be made prior to the approval
41 of any revision required by this paragraph.

42 § 16. Subdivision 9 of section 2852 of the education law, as amended
43 by section 2 of part D-2 of chapter 57 of the laws of 2007, is amended
44 to read as follows:

45 9. The total number of charters issued pursuant to this article shall
46 not exceed [~~two~~] four hundred. One hundred of such charters shall be
47 issued on the recommendation of the charter entity described in para-
48 graph (b) of subdivision three of section twenty-eight hundred fifty-one
49 of this article, [~~and~~] one hundred of such charters shall be issued on
50 the recommendation of the other charter entities set forth in subdivi-
51 sion three of section twenty-eight hundred fifty-one of this article,
52 provided that up to fifty of the additional charters authorized to be
53 issued by the chapter of the laws of two thousand seven which amended
54 this subdivision effective July first, two thousand seven shall be
55 reserved for a city school district of a city having a population of one
56 million or more, and two hundred of such charters shall be issued by the

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1 board of regents pursuant to a competitive process in accordance with
2 subdivision nine-a of this section. The failure of any body to issue
3 the regulations authorized pursuant to this article shall not [~~effect~~]
4 affect the authority of a charter entity to propose a charter to the
5 board of regents or the board of regents' authority to grant such char-
6 ter. A conversion of an existing public school to a charter school or
7 the renewal or extension of a charter shall not be counted toward the
8 numerical limits established by this subdivision.

9 § 17. Subdivision 9 of section 2852 of the education law, as amended
10 by section sixteen of this act, is amended to read as follows:

11 9. The total number of charters issued pursuant to this article shall
12 not exceed four hundred. [~~One~~] Two hundred of such charters shall be
13 issued [~~on the recommendation of the charter entity described in para-~~
14 ~~graph (b) of subdivision three of section twenty-eight hundred fifty-one~~
15 ~~of this article, one hundred of such charters shall be issued on the~~
16 ~~recommendation of the other charter entities set forth in subdivision~~

17 ~~three of section twenty-eight hundred fifty-one of this article,~~
18 ~~provided that]~~ by the board of regents pursuant to a competitive process
19 in accordance with subdivision nine-a of this section and up to fifty of
20 the additional charters authorized to be issued by the chapter of the
21 laws of two thousand seven which amended this subdivision effective July
22 first, two thousand seven shall be reserved for a city school district
23 of a city having a population of one million or more[, ~~and two hundred~~
24 ~~of such charters shall be issued by the board of regents pursuant to a~~
25 ~~competitive process in accordance with subdivision nine-a of this~~
26 ~~section)]. The failure of any body to issue the regulations authorized~~
27 pursuant to this article shall not affect the authority of a charter
28 entity to propose a charter to the board of regents or the board of
29 regents' authority to grant such charter. A conversion of an existing
30 public school to a charter school or the renewal or extension of a char-
31 ter shall not be counted toward the numerical limits established by this
32 subdivision.

33 § 18. Section 2852 of the education law is amended by adding a new
34 subdivision 9-a to read as follows:

35 9-a. (a) The board of regents is hereby authorized and directed to
36 issue two hundred charters pursuant to a competitive request for
37 proposals process.

38 (i) By July first, two thousand ten, the board of regents, in conjunc-
39 tion with the board of trustees of the state university of New York,
40 must jointly develop and issue a request for proposals for charter
41 schools which would commence instructional operation by the September of
42 the next calendar year.

43 (ii) Commencing on January first, two thousand eleven, and of each
44 succeeding year, such request for proposals shall be developed and
45 issued for charter schools which would commence instructional operation
46 by the September of the next calendar year.

47 (iii) If the board of regents determines, in any given year, that
48 there are an insufficient number of qualified applications to meet the
49 number of proposed charters, they shall only issue charters to those
50 applications that are determined to be qualified. Such determinations
51 must be made by December thirty-first of each year and the proposed
52 charters included in the request for proposals which were not issued
53 charters in such year shall be included in the request for proposals for
54 the succeeding year.

55 (b) The board of regents shall work in conjunction with the board of
56 trustees of the state university of New York to develop such request for

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1 proposals in a manner that facilitates a thoughtful review of charter
2 school applications and seeks to locate charter schools in a region or
3 regions where there may be a lack of alternatives and access to charter
4 schools would provide new alternatives within the local public education
5 system that would offer the greatest educational benefit to students.
6 Applications may be submitted to the board of regents or to the board of
7 trustees of the state university of New York and shall be evaluated in
8 accordance with the criteria and objectives contained within a request
9 for proposals. Furthermore, when evaluating applications submitted in
10 response to a request for proposals pursuant to this subdivision, the
11 board of regents and the board of trustees of the state university of
12 New York shall consider the support of the school district in which the
13 proposed charter school will be located and the applicant's intent to
14 establish an ongoing relationship with such school district. The board
15 of regents and the board of trustees of the state university of New York
16 shall not consider any applications which do not rigorously demonstrate
17 that they have met the following criteria:

18 (i) that the proposed charter school would meet enrollment and
19 retention targets, as prescribed by the board of regents, in conjunction
20 with the board of trustees of the state university of New York, of high-
21 need students, including students at risk of educational failure or

22 students who are otherwise in need of special assistance and support
23 such as students who are living in poverty, students with disabilities,
24 English language learners, students who are homeless, or students who
25 have been incarcerated;

26 (ii) that the applicant has conducted public outreach, in conformity
27 with a thorough and meaningful public review process prescribed by the
28 board of regents, in conjunction with the board of trustees of the state
29 university of New York, to solicit community input regarding the
30 proposed charter school and to address comments received from the
31 impacted community concerning the educational and programmatic needs of
32 students; and

33 (iii) in the case of a proposed charter school being located or co-lo-
34 cated in an existing public school building, that the applicant has
35 demonstrated that the location or co-location is acceptable to the
36 parents or guardians of students then enrolled in such existing school
37 building.

38 (c) The board of regents and the board of trustees of the state
39 university of New York shall grant priority based on a jointly developed
40 scoring rubric to those applications that best demonstrate how they will
41 achieve the following objectives, and any additional objectives the
42 board of regents, in conjunction with the board of trustees of the state
43 university of New York, may prescribe:

44 (i) increasing student achievement and decreasing student achievement
45 gaps in reading/language arts and mathematics;

46 (ii) increasing high school graduation rates and focusing on serving
47 specific high school student populations including, but not limited to,
48 students at risk of not obtaining a high school diploma, re-enrolled
49 high school drop-outs, and students with academic skills below grade
50 level;

51 (iii) focusing on the academic achievement of middle school students
52 and preparing them for a successful transition to high school;

53 (iv) utilizing high-quality assessments designed to measure a
54 student's knowledge, understanding of, and ability to apply, critical
55 concepts through the use of a variety of item types and formats;

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1 (v) increasing the acquisition, adoption, and use of local instruc-
2 tional improvement systems that provide teachers, principals, and admin-
3 istrators with the information and resources they need to inform and
4 improve their instructional practices, decision-making, and overall
5 effectiveness;

6 (vi) partnering with low performing public schools in the area to
7 share best educational practices and innovations;

8 (vii) demonstrating the management and leadership techniques necessary
9 to overcome initial start-up problems to establish a thriving, finan-
10 cially viable charter school.

11 (d) By October first, two thousand ten, and of each succeeding year,
12 after a thorough review of applications received, the board of trustees
13 of the state university of New York shall recommend for approval to the
14 board of regents the qualified applications that it has determined
15 rigorously demonstrate the criteria and best satisfy the objectives
16 contained within a request for proposals, along with supporting documen-
17 tation outlining such determination.

18 (e) The board of regents shall have sole authority and discretion to
19 issue charters. The board of regents shall consider applications
20 submitted directly to the board of regents and applications recommended
21 by the board of trustees of the state university of New York, and shall
22 only issue charters to those applications that it determines to be qual-
23 ified.

24 (f) Notwithstanding paragraph (e) of this subdivision, the board of
25 regents shall issue charters to a total of sixty-five applications
26 deemed to be highly recommended by the board of trustees of the state
27 university of New York. Provided however, that the number of highly

28 recommended applications submitted by the board of trustees of the state
29 university of New York shall not exceed fifty percent of the total
30 number of charters proposed to be established in the request for
31 proposals in any given year.

32 (g) Each application submitted in response to a request for proposals
33 pursuant to this subdivision shall also meet the application require-
34 ments set out in this article and any other applicable laws, rules and
35 regulations.

36 (h) The commissioner shall promulgate rules and regulations necessary
37 for the implementation of this subdivision.

38 (i) During the development of the request for proposals pursuant to
39 this subdivision the board of regents and the board of trustees of the
40 state university of New York shall afford the public an opportunity to
41 submit comments and shall review and consider the comments raised by all
42 interested parties.

43 § 19. Subdivision 10 of section 2852 of the education law, as added by
44 section 3 of part D-2 of chapter 57 of the laws of 2007, is amended to
45 read as follows:

46 10. ~~[Except in the case of a charter school formed by a school~~
47 ~~district as a charter entity pursuant to paragraph (a) of subdivision~~
48 ~~three of section twenty-eight hundred fifty-one of this article, a] A~~
49 charter school formed by approval of the regents ~~[or by operation of~~
50 ~~law]~~ on or after March fifteenth in any school year shall not commence
51 instruction until July of the second school year next following.

52 § 20. Paragraph (a) of subdivision 1 of section 2853 of the education
53 law, as added by chapter 4 of the laws of 1998, is amended to read as
54 follows:

55 (a) Upon the approval of a charter by the board of regents, the board
56 of regents shall incorporate the charter school as an education corpo-
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1 ration for a term not to exceed five years, provided however in the case
2 of charters issued pursuant to subdivision nine-a of section twenty-
3 eight hundred fifty-two of this article the board of regents shall
4 incorporate the charter school as an education corporation for a term
5 not to exceed five years in which instruction is provided to pupils plus
6 the period commencing with the effective date of the charter and ending
7 with the opening of the school for instruction. Such certificate of

8 incorporation shall not modify or limit any terms of the charter
9 approved by the board of regents. Upon approval of an application to
10 renew a charter, the board of regents shall extend the certificate of
11 incorporation for a term not to exceed five years. Upon termination or
12 nonrenewal of the charter of a charter school pursuant to section twen-
13 ty-eight hundred fifty-five of this article, the certificate of incorpo-
14 ration of the charter school shall be revoked by the board of regents
15 pursuant to section two hundred nineteen of this chapter, provided that
16 compliance with the notice and hearing requirements of such section
17 twenty-eight hundred fifty-five of this article shall be deemed to
18 satisfy the notice and hearing requirements of such section two hundred
19 nineteen. It shall be the duty of the trustees of the charter school to
20 obtain federal tax-exempt status no later than one year following
21 approval of a charter school by the board of regents. For purposes of
22 this article, "certificate of incorporation" shall mean the provisional
23 charter issued by the board of regents to form the charter school as an
24 educational corporation pursuant to sections two hundred sixteen and two
25 hundred seventeen of this chapter.

26 § 21. Paragraph (c) of subdivision 1 of section 2853 of the education
27 law, as added by chapter 4 of the laws of 1998, is amended to read as
28 follows:

29 (c) A charter school shall be deemed an independent and autonomous
30 public school, except as otherwise provided in this article. The ~~[char-~~
31 ~~ter entity and the]~~ board of regents shall be deemed to be the public
32 agents authorized to supervise and oversee the charter school.

33 § 22. Paragraph (g) of subdivision 1 of section 2853 of the education
34 law, as added by chapter 4 of the laws of 1998, is amended to read as
35 follows:

36 (g) Notwithstanding any provision of law to the contrary, no civil
37 liability shall attach to [~~any charter entity,~~] the board of regents, or
38 to any of [~~their~~] its members or employees, individually or collective-
39 ly, for any acts or omissions of the charter school. Neither the local
40 school district, the charter entity nor the state shall be liable for
41 the debts or financial obligations of a charter school or any person or
42 corporate entity who operates a charter school.

43 § 23. Subdivision 2 of section 2853 of the education law, as added by
44 chapter 4 of the laws of 1998, is amended to read as follows:

45 2. The board of regents [~~and charter entity~~] shall oversee each char-
46 ter school [~~approved by such entity~~], and may visit, examine into and
47 inspect any charter school, including the records of such school, under
48 its oversight. Oversight by [~~a charter entity and~~] the board of regents
49 shall be sufficient to ensure that the charter school is in compliance
50 with all applicable laws, regulations and charter provisions.

51 § 24. Subdivision 2-a of section 2853 of the education law, as added
52 by chapter 4 of the laws of 1998, is amended to read as follows:

53 2-a. [~~For schools approved by an entity described in paragraph (b) or~~
54 ~~(c) of subdivision three of section twenty-eight hundred fifty-one of~~
55 ~~this article, the~~] The school district in which the charter school is
56 located shall have the right to visit, examine into, and inspect the
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1 charter school for the purpose of ensuring that the school is in compli-
2 ance with all applicable laws, regulations and charter provisions. Any
3 evidence of non-compliance may be forwarded by such school district to
4 the board of regents [~~and the charter entity~~] for action pursuant to
5 section twenty-eight hundred fifty-five of this article.

6 § 25. Paragraph (a) of subdivision 3 of section 2853 of the education
7 law, as amended by section 4 of part D-2 of chapter 57 of the laws of
8 2007, is amended and two new paragraphs (a-1) and (a-2) are added to
9 read as follows:

10 (a) A charter school may be located in part of an existing public
11 school building, in space provided on a private work site, in a public
12 building or in any other suitable location. Provided, however, before a
13 charter school may be located in part of an existing public school
14 building, the charter entity shall provide notice to the parents or
15 guardians of the students then enrolled in the existing school building
16 and shall hold a public hearing for purposes of discussing the location
17 of the charter school. A charter school may own, lease or rent its
18 space. [~~For purposes of local zoning, land use regulation and building~~
19 ~~code compliance, a charter school shall be deemed a nonpublic school.]~~

20 (a-1) For charters issued pursuant to subdivision nine-a of section
21 twenty-eight hundred fifty-two of this article, the department shall
22 approve plans and specifications and issue certificates of occupancy for
23 such charter schools. Such charter schools shall comply with all depart-
24 ment health, sanitary, and safety requirements applicable to facilities
25 and shall be treated the same as other public schools for purposes of
26 local zoning, land use regulation and building code compliance. Provided
27 however, that the department shall be authorized to grant specific
28 exemptions from the requirements of this paragraph to charter schools
29 upon a showing that compliance with such requirements creates an undue
30 economic hardship or that some other good cause exists that makes
31 compliance with this paragraph extremely impractical. A demonstrated
32 effort to overcome the stated obstacles must be provided.

33 (a-2) A charter school shall be deemed a nonpublic school for purposes
34 of local zoning, land use regulation and building code compliance if it
35 has been granted an exemption by the department pursuant to paragraph
36 (a-1) of this subdivision or if its charter was not issued pursuant to
37 subdivision nine-a of section twenty-eight hundred fifty-two of this

38 article.

39 § 26. Paragraph (c) of subdivision 1 of section 2854 of the education
40 law, as amended by chapter 267 of the laws of 2005, is amended to read
41 as follows:

42 (c) A charter school shall be subject to the financial audits, the
43 audit procedures, and the audit requirements set forth in the charter
44 and shall be subject to audits of the comptroller [~~as set forth in~~
45 ~~section thirty-three of the general municipal law~~] of the state of New
46 York at his or her discretion. Such procedures and standards shall be
47 consistent with generally accepted accounting and audit standards. Inde-
48 pendent fiscal audits shall be required at least once annually.

49 § 26-a. Subdivision 1 of section 2854 of the education law is amended
50 by adding a new paragraph (f) to read as follows:

51 (f) A charter school shall be subject to the provisions of sections
52 eight hundred, eight hundred one, eight hundred two, eight hundred
53 three, eight hundred four, eight hundred four-a, eight hundred five,
54 eight hundred five-a, eight hundred five-b and eight hundred six of the
55 general municipal law to the same extent such sections apply to school
56 districts.

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1 § 27. Paragraph (b) of subdivision 2 of section 2854 of the education
2 law, as amended by section 5 of part D-2 of chapter 57 of the laws of
3 2007, is amended to read as follows:

4 (b) Any child who is qualified under the laws of this state for admis-
5 sion to a public school is qualified for admission to a charter school.
6 Applications for admission to a charter school shall be submitted on a
7 uniform application form created by the department and shall be made
8 available by a charter school in languages predominately spoken in the
9 community in which such charter school is located. The school shall
10 enroll each eligible student who submits a timely application by the
11 first day of April each year, unless the number of applications exceeds
12 the capacity of the grade level or building. In such cases, students
13 shall be accepted from among applicants by a random selection process,
14 provided, however, that an enrollment preference shall be provided to
15 pupils returning to the charter school in the second or any subsequent
16 year of operation and pupils residing in the school district in which
17 the charter school is located, and siblings of pupils already enrolled
18 in the charter school. The commissioner shall establish regulations to
19 require that the random selection process conducted pursuant to this
20 paragraph be performed in a transparent and equitable manner and to
21 require that the time and place of the random selection process be
22 publicized in a manner consistent with the requirements of section one
23 hundred four of the public officers law and be open to the public. For
24 the purposes of this paragraph and paragraph (a) of this subdivision,
25 the school district in which the charter school is located shall mean,
26 for the city school district of the city of New York, the community
27 district in which the charter school is located.

28 § 27-a. Paragraph (a) of subdivision 2 of section 2854 of the educa-
29 tion law, as amended by section 5 of part D-2 of chapter 57 of the laws
30 of 2007, is amended to read as follows:

31 (a) A charter school shall be nonsectarian in its programs, admission
32 policies, employment practices, and all other operations and shall not
33 charge tuition or fees; provided that a charter school may require the
34 payment of fees on the same basis and to the same extent as other public
35 schools. A charter school shall not discriminate against any student,
36 employee or any other person on the basis of ethnicity, national origin,
37 gender, or disability or any other ground that would be unlawful if done
38 by a school. Admission of students shall not be limited on the basis of
39 intellectual ability, measures of achievement or aptitude, athletic
40 ability, disability, race, creed, gender, national origin, religion, or
41 ancestry; provided, however, that nothing in this article shall be
42 construed to prevent the establishment of a single-sex charter school or

43 a charter school designed to provide expanded learning opportunities for
44 students at-risk of academic failure or students who are otherwise in
45 need of special assistance and support such as students with disabili-
46 ties and English language learners; and provided, further, that the
47 charter school shall demonstrate good faith efforts to attract and
48 retain a comparable or greater enrollment of students with disabilities
49 and limited English proficient students when compared to the enrollment
50 figures for such students in the school district in which the charter
51 school is located. A charter shall not be issued to any school that
52 would be wholly or in part under the control or direction of any reli-
53 gious denomination, or in which any denominational tenet or doctrine
54 would be taught.

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1 § 28. Paragraph (b-1) of subdivision 3 of section 2854 of the educa-
2 tion law, as amended by section 6 of part D-2 of chapter 57 of the laws
3 of 2007, is amended to read as follows:

4 (b-1) The employees of a charter school that is not a conversion from
5 an existing public school shall not be deemed members of any existing
6 collective bargaining unit representing employees of the school district
7 in which the charter school is located, and the charter school and its
8 employees shall not be subject to any existing collective bargaining
9 agreement between the school district and its employees. Provided,
10 however, that (i) if the student enrollment of the charter school on the
11 first day on which the charter school commences student instruction
12 exceeds two hundred fifty or if the average daily student enrollment of
13 such school exceeds two hundred fifty students at any point during the
14 first two years after the charter school commences student instruction,
15 all employees of the school who are eligible for representation under
16 article fourteen of the civil service law shall be deemed to be repres-
17 ented in a separate negotiating unit at the charter school by the same
18 employee organization, if any, that represents like employees in the
19 school district in which such charter school is located; (ii) [~~the~~
20 ~~provisions of subparagraph (i) of this paragraph may be waived in up to~~
21 ~~ten charters issued on the recommendation of the charter entity set~~
22 ~~forth in paragraph (b) of subdivision three of section twenty eight~~
23 ~~hundred fifty one of this article; (iii)] the provisions of subparagraph
24 (i) of this paragraph shall not be applicable to the renewal or exten-
25 sion of a charter; and [~~(iv)~~] (iii) nothing in this sentence shall be
26 construed to subject a charter school subject to the provisions of this
27 paragraph or its employees to any collective bargaining agreement
28 between any public school district and its employees or to make the
29 employees of such charter school part of any negotiating unit at such
30 school district. The charter school may, in its sole discretion, choose
31 whether or not to offer the terms of any existing collective bargaining
32 to school employees.~~

33 § 29. The opening paragraph of subdivision 1 of section 2855 of the
34 education law, as added by chapter 4 of the laws of 1998, is amended to
35 read as follows:

36 The [~~charter entity, or the~~] board of regents, may terminate a charter
37 upon any of the following grounds:

38 § 30. Subdivision 2 of section 2855 of the education law, as added by
39 chapter 4 of the laws of 1998, is amended to read as follows:

40 2. Notice of intent to revoke a charter shall be provided to the board
41 of trustees of a charter school at least thirty days prior to the effec-
42 tive date of the proposed revocation. Such notice shall include a state-
43 ment of reasons for the proposed revocation. The charter school shall be
44 allowed at least thirty days to correct the problems associated with the
45 proposed revocation. Prior to revocation of the charter, a charter
46 school shall be provided an opportunity to be heard, consistent with the
47 requirements of due process. Upon the termination of a charter, the
48 charter school shall proceed with dissolution pursuant to the procedures
49 of the charter and direction of the [~~charter entity and the~~] board of

50 regents.

51 § 31. Subdivision 3 of section 2855 of the education law, as added by
52 chapter 4 of the laws of 1998, is amended to read as follows:

53 3. In addition to the provisions of subdivision two of this section,
54 the [~~charter entity or the~~] board of regents may place a charter school
55 falling within the provisions of subdivision one of this section on
56 probationary status to allow the implementation of a remedial action
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1 plan. The failure of a charter school to comply with the terms and
2 conditions of a remedial action plan may result in summary revocation of
3 the school's charter.

4 § 32. Subdivision 4 of section 2855 of the education law, as added by
5 chapter 4 of the laws of 1998, is amended to read as follows:

6 4. Any individual or group may bring a complaint to the board of trus-
7 tees of a charter school alleging a violation of the provisions of this
8 article, the charter, or any other provision of law relating to the
9 management or operation of the charter school. If, after presentation of
10 the complaint to the board of trustees of a charter school, the individ-
11 ual or group determines that such board has not adequately addressed the
12 complaint, they may present that complaint to the [~~charter entity, which
13 shall investigate and respond. If, after presentation of the complaint
14 to the charter entity, the individual or group determines that the char-
15 ter entity has not adequately addressed the complaint, they may present
16 that complaint to the~~] board of regents, which shall investigate and
17 respond. The [~~charter entity and the~~] board of regents shall have the
18 power and the duty to issue appropriate remedial orders to charter
19 schools under their jurisdiction to effectuate the provisions of this
20 section.

21 § 33. Subdivision 1 of section 2857 of the education law, as amended
22 by section 7 of part D-2 of chapter 57 of the laws of 2007, is amended
23 to read as follows:

24 1. The board of regents shall distribute information announcing the
25 availability of the charter school process described in this article to
26 each local school district and public postsecondary educational institu-
27 tion. At each significant stage of the chartering process, the [~~charter
28 entity and the~~] board of regents shall provide appropriate notification
29 to the school district in which the charter school is located and to
30 public and nonpublic schools in the same geographic area as the proposed
31 charter school. Such notification shall be provided [~~by each charter
32 entity~~] within thirty days of [~~its~~] receipt of an application for forma-
33 tion of a new charter school or for renewal of an existing charter
34 school, and at least forty-five days prior to initial approval of the
35 charter application by the charter entity. Prior to the issuance,
36 revision, or renewal of a charter, the school district in which the
37 charter school is located shall hold a public hearing to solicit
38 comments from the community in connection with the foregoing. Such hear-
39 ing shall be held within the community potentially impacted by the
40 proposed charter school. When a revision involves the relocation of a
41 charter school to a different school district, the proposed new school
42 district shall also hold such hearing. In addition, such school
43 districts shall be given an opportunity to comment on the proposed char-
44 ter to the charter entity and such charter entity shall consider any
45 comments raised [~~and submit any such comments to the board of regents
46 with the application for~~] prior to the issuance, revision, or renewal of
47 a charter.

48 § 34. Subdivision 2 of section 2857 of the education law, as amended
49 by section 7 of part D-2 of chapter 57 of the laws of 2007, is amended
50 to read as follows:

51 2. Each charter school shall submit to the charter entity and to the
52 board of regents an annual report. Such report shall be issued no later
53 than the first day of August of each year for the preceding school year
54 and shall be made publicly available by such date and shall be posted on

1 as shall be prescribed by the commissioner and shall include at least
2 the following components:

3 (a) a charter school report card, which shall include measures of the
4 comparative academic and fiscal performance of the school, as prescribed
5 by the commissioner in regulations adopted for such purpose. Such meas-
6 ures shall include, but not be limited to, graduation rates, dropout
7 rates, performance of students on standardized tests, college entry
8 rates, total spending per pupil and administrative spending per pupil.
9 Such measures shall be presented in a format that is easily comparable
10 to similar public schools. In addition, the charter school shall ensure
11 that such information is easily accessible to the community including
12 making it publicly available by transmitting it to local newspapers of
13 general circulation and making it available for distribution at board of
14 trustee meetings.

15 (b) discussion of the progress made towards achievement of the goals
16 set forth in the charter.

17 (c) a certified financial statement setting forth, by appropriate
18 categories, the revenues and expenditures for the preceding school year,
19 including a copy of the most recent independent fiscal audit of the
20 school and any audit conducted by the comptroller of the state of New
21 York.

22 § 35. Subdivision 2 of section 2857 of the education law, as amended
23 by section thirty-four of this act, is amended to read as follows:

24 2. Each charter school shall submit to the [~~charter entity and to the~~]
25 board of regents an annual report. Such report shall be issued no later
26 than the first day of August of each year for the preceding school year
27 and shall be made publicly available by such date and shall be posted on
28 the charter school's website. The annual report shall be in such form
29 as shall be prescribed by the commissioner and shall include at least
30 the following components:

31 (a) a charter school report card, which shall include measures of the
32 comparative academic and fiscal performance of the school, as prescribed
33 by the commissioner in regulations adopted for such purpose. Such meas-
34 ures shall include, but not be limited to, graduation rates, dropout
35 rates, performance of students on standardized tests, college entry
36 rates, total spending per pupil and administrative spending per pupil.
37 Such measures shall be presented in a format that is easily comparable
38 to similar public schools. In addition, the charter school shall ensure
39 that such information is easily accessible to the community including
40 making it publicly available by transmitting it to local newspapers of
41 general circulation and making it available for distribution at board of
42 trustee meetings.

43 (b) discussion of the progress made towards achievement of the goals
44 set forth in the charter.

45 (c) a certified financial statement setting forth, by appropriate
46 categories, the revenues and expenditures for the preceding school year,
47 including a copy of the most recent independent fiscal audit of the
48 school and any audit conducted by the comptroller of the state of New
49 York.

50 (d) efforts taken by the charter school in the existing school year,
51 and a plan for efforts to be taken in the succeeding school year, to
52 attract and retain high-need students, including students at risk of
53 educational failure or students who are otherwise in need of special
54 assistance and support.

55 § 36. Subdivision 3 of section 2857 of the education law is amended by
56 adding a new paragraph (a-1) to read as follows:

1 (a-1) A list including the number of charter schools closed during the
2 preceding year, and a brief description of the reasons therefor includ-

3 ing, but not limited to, non-renewal of the charter or revocation of the
4 charter;

5 § 37. Section 2857 of the education law is amended by adding a new
6 subdivision 5 to read as follows:

7 5. The board of regents shall on an annual basis review and make
8 available to school districts best educational practices employed by
9 charter schools.

10 § 38. Paragraph (d) of subdivision 41 of section 3602 of the education
11 law, as added by section 18 of part B of chapter 57 of the laws of 2007,
12 is amended to read as follows:

13 (d) For purposes of this subdivision the number of pupils enrolled in
14 a charter school shall not include pupils enrolled in a charter school
15 for which the charter was approved by a charter entity contained in
16 former paragraph a of subdivision three of section twenty-eight hundred
17 fifty-one of this chapter.

18 § 39. The education law is amended by adding a new section 211-e to
19 read as follows:

20 § 211-e. Educational management organizations. 1. Each common,
21 central, central high school, union free, except special act school
22 districts as defined in section four thousand one of this chapter, and
23 city school district shall be authorized to enter into contracts with
24 approved educational management organizations for the purpose of manag-
25 ing individual schools within the district in order to turn around the
26 persistently lowest-achieving schools. Contracts shall be solicited and
27 awarded pursuant to a competitive request for proposals process that
28 shall be developed by the board of education in consultation with the
29 superintendent of schools in accordance with commissioner's regulations
30 pursuant to subdivision two of this section. For the purposes of this
31 section, the term "board of education" shall mean the trustee, trustees
32 or board of education of any school district, and in a city school
33 district in a city having a population of one million or more inhabit-
34 ants the term "superintendent of schools" shall mean the community
35 superintendent of a community district.

36 2. The department shall establish a list of approved educational
37 management organizations selected through a rigorous review process.
38 Eligible educational management organizations shall include non-profit
39 entities with proven success in raising the achievement of high-need
40 students and demonstration of capacity. For-profit business or corporate
41 entities or any entity engaged in managing or operating a charter school
42 shall not be eligible to be approved as an educational management organ-
43 ization. The commissioner shall be authorized to promulgate any regu-
44 lations necessary to implement the provisions to this section including
45 regulations for consistency and compliance with any applicable federal
46 or state guidelines, including those contained within the federal Ameri-
47 can Recovery and Reinvestment Act of 2009.

48 § 39-a. Severability clause. If any clause, sentence, paragraph,
49 subdivision, section or part of this act shall be adjudged by any court
50 of competent jurisdiction to be invalid, such judgment shall not affect,
51 impair, or invalidate the remainder thereof, but shall be confined in
52 its operation to the clause, sentence, paragraph, subdivision, section
53 or part thereof directly involved in the controversy in which such judg-
54 ment shall have been rendered. It is hereby declared to be the intent of
55 the legislature that this act would have been enacted even if such
56 invalid provisions had not been included herein.

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1 § 40. This act shall take effect immediately; provided, however, that
2 sections six, six-a, eight, nine, eleven, thirteen, fourteen, fifteen,
3 seventeen, nineteen, twenty-one, twenty-two, twenty-three, twenty-four,
4 twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two,
5 thirty-three, thirty-five and thirty-eight of this act shall take effect
6 January 1, 2011.

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