

HB1345_L.012

HOUSE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Education.

After consideration on the merits, the Committee recommends the following:

HB10-1345 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. 22-2-113 (1), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 22-2-113. Commissioner - powers. (1) Subject to the
6 supervision of the state board, the commissioner has the following
7 powers:

8 (i) TO ISSUE EMERGENCY ORDERS CONCERNING A CHARTER
9 SCHOOL PURSUANT TO SECTION 22-30.5-603.

10 SECTION 2. Article 30.5 of title 22, Colorado Revised Statutes,
11 is amended BY THE ADDITION OF A NEW PART to read:

12 PART 6
13 EMERGENCY POWERS

14 22-30.5-601. Short title. THIS PART 6 SHALL BE KNOWN AND MAY
15 BE CITED AS THE "CHARTER SCHOOL EMERGENCY POWERS ACT".

16 22-30.5-602. Definitions. AS USED IN THIS PART 6, UNLESS THE
17 CONTEXT OTHERWISE REQUIRES:

18 (1) "AUTHORIZER" MEANS A SCHOOL DISTRICT BOARD OF



1 EDUCATION THAT AUTHORIZES A CHARTER SCHOOL PURSUANT TO PART 1
2 OF THIS ARTICLE OR THE STATE CHARTER SCHOOL INSTITUTE ESTABLISHED
3 PURSUANT TO SECTION 22-30.5-503.

4 (2) "CHARTER MANAGEMENT ORGANIZATION" MEANS THE
5 COLORADO OPERATIONS OF AN ENTITY THAT OPERATES ONE OR MORE
6 CHARTER SCHOOLS.

7 (3) "CHARTER RESPONDENT" MEANS A CHARTER SCHOOL OR
8 CHARTER MANAGEMENT ORGANIZATION THAT IS THE SUBJECT OF A
9 REQUEST FOR OR AN ORDER GRANTING EMERGENCY POWERS PURSUANT TO
10 THIS PART 6.

11 (4) "CHARTER SCHOOL" MEANS A CHARTER SCHOOL AS DEFINED IN
12 SECTION 22-30.5-103 (2) OR AN INSTITUTE CHARTER SCHOOL AS DEFINED
13 IN SECTION 22-30.5-502 (6).

14 (5) "COMMISSIONER" MEANS THE OFFICE OF THE COMMISSIONER
15 OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 1 OF
16 ARTICLE IX OF THE STATE CONSTITUTION.

17 (6) "EMERGENCY" MEANS A SITUATION THAT:

18 (a) PRESENTS A SIGNIFICANT THREAT, AS DETERMINED BY THE
19 COMMISSIONER, TO THE HEALTH OR SAFETY OF THE STUDENTS, STAFF, OR
20 OTHER INDIVIDUALS INVOLVED WITH A CHARTER SCHOOL;

21 (b) PRESENTS A SIGNIFICANT THREAT, AS DETERMINED BY THE
22 COMMISSIONER, TO SUBSTANTIAL PROPERTY RIGHTS OF AN AUTHORIZER
23 OR A SIGNIFICANT RISK, AS DETERMINED BY THE COMMISSIONER, TO A
24 CHARTER RESPONDENT'S SOLVENCY;

25 (c) INDICATES A SUBSTANTIAL DIVERSION, AS DETERMINED BY THE
26 COMMISSIONER, OF CHARTER SCHOOL MONEYS THROUGH ONE OR MORE
27 EXCESS BENEFIT TRANSACTIONS; OR

28 (d) IS DEFINED BY RULE OF THE STATE BOARD AS ONE THAT
29 JUSTIFIES ACTION PURSUANT TO THIS PART 6.

30 (7) "EXCESS BENEFIT" MEANS A FINANCIAL BENEFIT ARISING
31 DIRECTLY OR INDIRECTLY FROM A TRANSACTION WITH A CHARTER SCHOOL



1 THAT WOULD BE CONSIDERED AN EXCESS BENEFIT UNDER SECTION 4958
2 (c) (1) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
3 AMENDED, AND REGULATIONS ADOPTED THEREUNDER; EXCEPT THAT THE
4 DEFINITION OF EXCESS BENEFIT SHALL EXTEND TO ALL CHARTER SCHOOLS
5 REGARDLESS OF WHETHER THEY HAVE APPLIED FOR OR RECEIVED
6 NONPROFIT STATUS UNDER SECTION 501 (c) (3) OF THE FEDERAL
7 "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THE SALARIES OF
8 ADMINISTRATORS IN COMPARABLE POSITIONS AT OTHER COLORADO
9 CHARTER SCHOOLS, CHARTER MANAGEMENT ORGANIZATIONS, BOARDS OF
10 COOPERATIVE SERVICES, AND SCHOOL DISTRICTS SERVING A REASONABLY
11 COMPARABLE NUMBER OF STUDENTS SHALL SERVE AS THE COMPARISON
12 FOR DETERMINING WHETHER THE SALARIES OF CHARTER SCHOOL OR
13 CHARTER MANAGEMENT ORGANIZATION ADMINISTRATORS ARE
14 REASONABLE OR EXCESSIVE FOR THE PURPOSES OF THIS PART 6.

15 (8) "FIDUCIARY" MEANS A PERSON WHO MEETS THE
16 REQUIREMENTS OF THE "UNIFORM FIDUCIARIES LAW", PART 1 OF ARTICLE
17 1 OF TITLE 15, C.R.S., AND ANY OTHER APPLICABLE LAW OR RULE.

18 (9) "ORGANIC DOCUMENTS" MEANS THE ARTICLES OF
19 INCORPORATION, ARTICLES OF ORGANIZATION, CONSTITUTION, BYLAWS,
20 OR OTHER DOCUMENTS, HOWEVER DENOMINATED, THAT DEFINE THE BASIC
21 GOVERNANCE STRUCTURE FOR A CHARTER SCHOOL AND THE BODY OR
22 BODIES THAT HAVE GOVERNING AUTHORITY FOR A CHARTER SCHOOL.

23 (10) "STATE BOARD" MEANS THE STATE BOARD OF EDUCATION
24 CREATED AND EXISTING PURSUANT TO SECTION 1 OF ARTICLE IX OF THE
25 STATE CONSTITUTION.

26 **22-30.5-603. Emergency powers - request - orders - process.**

27 (1) AN AUTHORIZER MAY REQUEST THAT THE COMMISSIONER PERMIT
28 EXTERNAL CONTROL OVER CERTAIN FUNCTIONS OF A CHARTER SCHOOL OR
29 CHARTER MANAGEMENT ORGANIZATION BY SUBMITTING TO THE
30 COMMISSIONER AND THE CHARTER SCHOOL OR CHARTER MANAGEMENT
31 ORGANIZATION A CONCISE WRITTEN STATEMENT IDENTIFYING THE
32 EMERGENCY THAT JUSTIFIES EXTERNAL CONTROL AND THE FORM OR
33 FORMS OF EXTERNAL CONTROL REQUESTED. THE AUTHORIZER SHALL
34 STATE CLEARLY IF IT IS REQUESTING AN ORDER OF REORGANIZATION. THE
35 COMMISSIONER MAY AUTHORIZE EXTERNAL CONTROL OVER A CHARTER
36 SCHOOL OR CHARTER MANAGEMENT ORGANIZATION BY ISSUING A
37 TEMPORARY ORDER AS PROVIDED IN SUBSECTION (2) OF THIS SECTION OR

1 A PRELIMINARY ORDER AS PROVIDED IN SUBSECTION (3) OF THIS SECTION.

2 (2) THE COMMISSIONER MAY ISSUE A TEMPORARY ORDER IN THE
3 EVENT THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE
4 WILL RESULT FROM THE IDENTIFIED EMERGENCY BEFORE THE CHARTER
5 RESPONDENT IS ABLE TO STATE ITS OPPOSITION AND BEFORE THE
6 AUTHORIZER'S ATTORNEY CERTIFIES IN WRITING OR IN PERSON TO THE
7 COMMISSIONER THE EFFORTS THAT HAVE BEEN MADE TO GIVE NOTICE TO
8 THE CHARTER RESPONDENT. A TEMPORARY ORDER ISSUED PURSUANT TO
9 THIS SUBSECTION (2) SHALL STATE THE DATE AND HOUR OF ISSUANCE,
10 DEFINE THE INJURY, STATE WHY THE INJURY IS IRREPARABLE, AND STATE
11 WHY THE TEMPORARY ORDER WAS GIVEN WITHOUT NOTICE. A
12 TEMPORARY ORDER ISSUED UNDER THIS SUBSECTION (2) SHALL BE VALID
13 FOR TEN DAYS AND MAY BE EXTENDED FOR UP TO AN ADDITIONAL TEN
14 DAYS FOR GOOD CAUSE SHOWN. THE AUTHORIZER SHALL IMMEDIATELY
15 PROVIDE THE CHARTER RESPONDENT WITH A COPY OF ANY TEMPORARY
16 ORDER ISSUED PURSUANT TO THIS SUBSECTION (2). A CHARTER
17 RESPONDENT SHALL PROVIDE AN AUTHORIZER TWO BUSINESS DAYS'
18 NOTICE PRIOR TO REQUESTING THAT THE COMMISSIONER DISSOLVE A
19 TEMPORARY ORDER ISSUED PURSUANT TO THIS SUBSECTION (2).

20 (3) THE COMMISSIONER SHALL ISSUE A PRELIMINARY ORDER ONLY
21 IF:

22 (a) THE CHARTER RESPONDENT RECEIVED TWO BUSINESS DAYS'
23 WRITTEN NOTICE THAT THE AUTHORIZER HAS REQUESTED EXTERNAL
24 CONTROL OVER CERTAIN FUNCTIONS OF THE CHARTER RESPONDENT AND
25 THE BASIS FOR THE REQUEST;

26 (b) IN THE CASE OF A CHARTER RESPONDENT THAT IS A CHARTER
27 MANAGEMENT ORGANIZATION, AUTHORIZERS OF EACH OF THE AFFECTED
28 CHARTER SCHOOLS HAVE RECEIVED TWO BUSINESS DAYS' WRITTEN NOTICE
29 OF THE REQUEST FOR EXTERNAL CONTROL;

30 (c) THE AUTHORIZER REQUESTING EXTERNAL CONTROL AND ALL
31 PARTIES THAT RECEIVED NOTICE HAVE HAD THE OPPORTUNITY TO MEET
32 WITH THE COMMISSIONER TO PRESENT SUCH EVIDENCE AND ARGUMENT AS
33 THE COMMISSIONER FINDS APPROPRIATE UNDER THE CIRCUMSTANCES. IN
34 ANY MEETING HELD BEFORE ISSUING A PRELIMINARY ORDER PURSUANT TO
35 THIS SUBSECTION (3), THE COMMISSIONER MAY ACCEPT EVIDENCE AND
36 ARGUMENTS FROM THE PARTIES INVOLVED AS HE OR SHE DEEMS



1 APPROPRIATE, BUT NEITHER A FORMAL ADVERSARIAL HEARING NOR
2 APPLICATION OF THE RULES OF EVIDENCE SHALL BE REQUIRED.

3 (d) FOLLOWING A MEETING HELD PURSUANT TO PARAGRAPH (c) OF
4 THIS SUBSECTION (3), THE COMMISSIONER FINDS AND DETERMINES THAT
5 THE AUTHORIZER HAS DEMONSTRATED AN EMERGENCY AND THE RISK OF
6 IRREPARABLE INJURY RESULTING FROM THE EMERGENCY JUSTIFIES AN
7 INTRUSION ON THE INTERNAL OPERATIONS OF THE CHARTER RESPONDENT.

8 (4) THE COMMISSIONER MAY DEMAND PRODUCTION OF PUBLIC
9 RECORDS AS OTHERWISE PROVIDED FOR IN SECTION 24-72-203, C.R.S.,
10 MAY ISSUE SUBPOENAS AS OTHERWISE PROVIDED FOR IN SECTION 24-4-105
11 (5), C.R.S., AND MAY DRAW APPROPRIATE INFERENCES FROM FAILURE OF
12 ANY PARTY TO PROMPTLY COMPLY WITH SUCH REQUESTS.

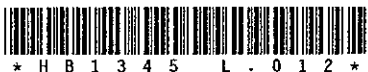
13 (5) A PRELIMINARY ORDER ISSUED PURSUANT TO SUBSECTION (3)
14 OF THIS SECTION SHALL BE VALID FOR ONE HUNDRED TWENTY DAYS AND
15 MAY BE EXTENDED FOR UP TO AN ADDITIONAL ONE HUNDRED TWENTY
16 DAYS, UPON GOOD CAUSE SHOWN.

17 (6) (a) A TEMPORARY OR PRELIMINARY ORDER MAY APPOINT THE
18 AUTHORIZER OR ANOTHER ENTITY OR PERSON TO ACT AS A FIDUCIARY;
19 EXCEPT THAT, IF MORE THAN ONE AUTHORIZER IS A PARTY TO THE
20 PROCEEDING OR IF THE AUTHORIZER IS REQUESTING AN ORDER OF
21 REORGANIZATION, THE COMMISSIONER SHALL APPOINT A SEPARATE
22 PERSON OR ENTITY THAT IS NOT A PARTY TO THE PROCEEDING TO ACT AS
23 A FIDUCIARY. THE FIDUCIARY MAY EXERCISE, SUBJECT TO THE
24 LIMITATIONS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (6), THE
25 POWERS OVER AND FOR THE CHARTER RESPONDENT THAT ARE ORDINARILY
26 EXERCISED BY THE CHARTER RESPONDENT'S BOARD OF DIRECTORS AND
27 MAY TAKE ACTION RESPECTING EXCESS BENEFITS AS AUTHORIZED
28 PURSUANT TO SECTION 22-30.5-604.

29 (b) A TEMPORARY OR PRELIMINARY ORDER SHALL NOT AUTHORIZE,
30 NOR BE CONSTRUED TO PERMIT, A FIDUCIARY TO:

31 (I) CONCLUDE, DISSOLVE, RELINQUISH, OR SURRENDER THE
32 CHARTER CONTRACT;

33 (II) EFFECT NONRENEWAL OR REVOCATION OF THE CHARTER
34 CONTRACT;



1 (III) NEGOTIATE, RENEGOTIATE, OR AMEND THE CHARTER
2 CONTRACT;

3 (IV) EXERCISE THE LEGAL STANDING OF THE CHARTER
4 RESPONDENT IN ANY ADMINISTRATIVE OR COURT PROCEEDING OTHER
5 THAN ONE BROUGHT PURSUANT TO THIS SECTION; EXCEPT THAT THE
6 FIDUCIARY MAY SEEK RECOVERY OF UNPAID MONEYS DUE TO THE
7 CHARTER RESPONDENT FROM AN AUTHORIZER;

8 (V) TRANSFER INTO A TRUST THE ASSETS OF THE CHARTER
9 RESPONDENT;

10 (VI) REPEAL, ALTER, AMEND, RESTATE, OR IN ANY FASHION
11 MODIFY THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS;

12 (VII) REMOVE, RECALL, OR APPOINT ANY MEMBER OF THE
13 CHARTER RESPONDENT'S GOVERNING BOARD OR OFFICERS;

14 (VIII) TAKE ANY ACTION THAT IS RESERVED FOR THE
15 MEMBERSHIP OF A CHARTER RESPONDENT THAT IS ORGANIZED AS A
16 MEMBERSHIP ORGANIZATION; OR

17 (IX) TAKE ANY ACTION THAT IS NOT WITHIN THE POWER OF THE
18 CHARTER RESPONDENT'S GOVERNING BOARD.

19 (7) THE COMMISSIONER MAY REQUIRE A FIDUCIARY TO PROVIDE
20 EVIDENCE OF APPROPRIATE INSURANCE COVERAGE, INCLUDING BUT NOT
21 LIMITED TO APPROPRIATE CERTIFICATES OF INSURANCE. THE INSURANCE
22 COVERAGE SHALL BE REASONABLY ADEQUATE TO PROTECT AGAINST RISKS
23 OF LIABILITY FOR ANY ACTIONS TAKEN UNDER AN ORDER GRANTED
24 PURSUANT TO THIS SECTION.

25 (8) (a) IF AN AUTHORIZER HAS REQUESTED AN ORDER OF
26 REORGANIZATION AND THE COMMISSIONER, AFTER APPROPRIATE
27 PROCEEDINGS PURSUANT TO THIS SECTION, HAS APPOINTED A FIDUCIARY
28 OTHER THAN THE AUTHORIZER TO EXERCISE CERTAIN POWERS, THE
29 FIDUCIARY SHALL INDEPENDENTLY DETERMINE WHETHER TO CONTINUE TO
30 REQUEST THE ORDER OF REORGANIZATION. AN ORDER OF
31 REORGANIZATION SHALL BE AUTHORIZED ONLY IF IT IS ISSUED IN
32 COMPLIANCE WITH THE PROCESSES, STANDARDS, AND PURPOSES SET
33 FORTH IN THIS SECTION.



1 (b) A FIDUCIARY OTHER THAN AN AUTHORIZER MAY REQUEST AN
2 ORDER OF REORGANIZATION AT ANY TIME WHILE A PRELIMINARY ORDER
3 OR AN EXTENSION OF A PRELIMINARY ORDER IS PENDING, SO LONG AS THE
4 FIDUCIARY PROVIDES AT LEAST TEN DAYS' NOTICE TO THE CHARTER
5 RESPONDENT, THE AUTHORIZER, AND THE COMMISSIONER. THE FIDUCIARY
6 SHALL SPECIFICALLY STATE IN THE NOTICE THE POWERS OF
7 REORGANIZATION HE OR SHE IS REQUESTING AND THE REASONS JUSTIFYING
8 THE REQUEST. NOTWITHSTANDING THE LIMITATIONS PLACED ON THE
9 POWERS OF A FIDUCIARY ACTING UNDER A TEMPORARY OR PRELIMINARY
10 ORDER, AS SET FORTH IN SUBSECTION (6) OF THIS SECTION, THE POWERS OF
11 REORGANIZATION SHALL ONLY INCLUDE ONE OR MORE OF THE FOLLOWING
12 POWERS:

13 (I) TO FILL ONE OR MORE BOARD VACANCIES, NOTWITHSTANDING
14 THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS;

15 (II) TO REMOVE ONE OR MORE BOARD DIRECTORS OR OFFICERS,
16 NOTWITHSTANDING THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS;
17 OR

18 (III) TO MAKE SPECIFIC, STATED MODIFICATIONS TO THE CHARTER
19 RESPONDENT'S ORGANIC DOCUMENTS, NOTWITHSTANDING THE PROCESS
20 FOR AMENDMENT OR RESTATEMENT OTHERWISE PRESCRIBED IN THOSE
21 DOCUMENTS.

22 (c) THE COMMISSIONER MAY ISSUE AN ORDER OF REORGANIZATION
23 ONLY AFTER GIVING THE AUTHORIZER AND THE CHARTER RESPONDENT A
24 REASONABLE OPPORTUNITY TO BE HEARD, AND THEN ONLY IF THE
25 COMMISSIONER FINDS THAT THE RISKS CREATED BY THE EMERGENCY TO
26 THE CHARTER RESPONDENT AND THE AUTHORIZER CANNOT BE RESOLVED
27 BY ANY LESS RESTRICTIVE MEANS. IN ANY MEETING HELD BEFORE ISSUING
28 AN ORDER OF REORGANIZATION, THE COMMISSIONER MAY ACCEPT
29 EVIDENCE AND ARGUMENT FROM THE PARTIES INVOLVED AS HE OR SHE
30 DEEMS APPROPRIATE, BUT NEITHER A FORMAL ADVERSARIAL HEARING NOR
31 APPLICATION OF THE RULES OF EVIDENCE SHALL BE REQUIRED.

32 (d) AN ORDER OF REORGANIZATION SHALL BE VALID FOR THE
33 BALANCE OF THE TERM OF ANY PENDING PRELIMINARY ORDER OR FOR
34 SIXTY DAYS, WHICHEVER IS GREATER, AND MAY BE RENEWED FOR AN
35 ADDITIONAL THIRTY DAYS UPON GOOD CAUSE SHOWN. AN ORDER OF
36 REORGANIZATION SHALL BE VALID FOR NO MORE THAN NINETY DAYS.



1 (9) THE FIDUCIARY SHALL SUBMIT APPROPRIATE FINANCIAL
2 INFORMATION TO THE COMMISSIONER AND THE DIRECTOR OF PUBLIC
3 SCHOOL FINANCE WITHIN THE DEPARTMENT OF EDUCATION AND PROVIDE
4 COPIES TO THE CHARTER RESPONDENT AND AUTHORIZER. THE CHARTER
5 RESPONDENT AND AUTHORIZER MAY SUBMIT ADDITIONAL INFORMATION
6 TO THE DIRECTOR OF PUBLIC SCHOOL FINANCE. AFTER RECEIPT OF ALL
7 PERTINENT FINANCIAL INFORMATION, THE DIRECTOR OF PUBLIC SCHOOL
8 FINANCE SHALL MAKE A WRITTEN RECOMMENDATION TO THE
9 COMMISSIONER.

10 (10) A TEMPORARY OR PRELIMINARY ORDER OR AN ORDER FOR
11 REORGANIZATION GRANTED PURSUANT TO THIS SECTION SHALL STATE THE
12 REASONS FOR ISSUANCE; BE SPECIFIC IN ITS TERMS; AND DESCRIBE IN
13 REASONABLE DETAIL, WITHOUT REFERENCE TO THE REQUEST OR OTHER
14 DOCUMENTS, THE ACT OR ACTS AUTHORIZED. AN ORDER GRANTED
15 PURSUANT TO THIS SECTION IS BINDING ONLY UPON THE FIDUCIARY AND
16 THE PARTIES TO THE PROCEEDING, THEIR OFFICERS, AGENTS, SERVANTS,
17 EMPLOYEES, AND ATTORNEYS AND UPON THOSE PERSONS IN ACTIVE
18 CONCERT OR PARTICIPATION WITH THEM OR WHO RECEIVE ACTUAL NOTICE
19 OF THE ORDER. AN ORDER APPOINTING A FIDUCIARY MAY SPECIFY OR
20 LIMIT THE FIDUCIARY'S POWERS AND MAY DIRECT THE FIDUCIARY TO ACT
21 ONLY UPON PARTICULAR ISSUES OR ONLY TO EXERCISE CERTAIN POWERS.

22 (11) EXPENSES INCURRED BY AN AUTHORIZER IN PURSUING A
23 PROCEEDING PURSUANT TO THIS SECTION SHALL BE BORNE BY THE
24 AUTHORIZER, AND EXPENSES INCURRED BY A CHARTER RESPONDENT IN
25 DEFENDING ANY PROCEEDING PURSUANT TO THIS SECTION SHALL BE
26 BORNE BY THE CHARTER RESPONDENT. EXPENSES INCURRED BY A
27 FIDUCIARY SHALL BE SUBMITTED TO THE CHARTER RESPONDENT AND
28 COMMISSIONER FOR APPROVAL AND, AFTER THE COMMISSIONER RESOLVES
29 ANY DISPUTED CHARGES, SHALL BE BORNE BY THE CHARTER RESPONDENT.

30 (12) NOTWITHSTANDING ANY OTHER PROVISION OF COLORADO
31 LAW, INCLUDING BUT NOT LIMITED TO THE "COLORADO REVISED
32 NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S.,
33 OR ANY PROVISION OF A CHARTER CONTRACT TO THE CONTRARY, THE
34 POWERS GRANTED PURSUANT TO THIS PART 6 SHALL BE EFFECTIVE AND
35 VALID AS A MATTER OF LAW.

36 (13) NOTHING IN THIS PART 6 SHALL LIMIT THE AUTHORITY OF AN
37 AUTHORIZER TO EXERCISE ANY CONTRACTUAL RIGHTS, INCLUDING ANY



1 REMEDIES, EMERGENCY OR OTHERWISE, FOR BREACH OF A CHARTER
2 CONTRACT. A CHARTER CONTRACT PROVISION THAT PURPORTS TO GRANT
3 AUTHORITY TO AN AUTHORIZER TO EXERCISE EMERGENCY POWERS AS
4 DESCRIBED IN THIS PART 6 SHALL BE CONSTRUED, IF POSSIBLE, TO BE
5 CONSISTENT WITH THIS PART 6. A PROVISION CONSTRUED TO BE
6 INCONSISTENT WITH THIS PART 6 SHALL BE DEEMED CONTRARY TO PUBLIC
7 POLICY, VOID, UNENFORCEABLE, AND OF NO LEGAL EFFECT. THE BURDEN
8 SHALL BE ON THE CHARTER RESPONDENT TO DEMONSTRATE THAT SUCH A
9 PROVISION IS INCONSISTENT WITH THIS PART 6.

10 (14) AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE
11 FINAL AND BINDING AND NOT SUBJECT TO APPEAL. A CHARTER
12 RESPONDENT MAY SEEK JUDICIAL REVIEW OF AN ORDER ISSUED PURSUANT
13 TO THIS SECTION UNDER RULE 106 (a) (4) OF THE COLORADO RULES OF
14 CIVIL PROCEDURE; EXCEPT THAT A TEMPORARY ORDER SHALL NOT BE
15 SUBJECT TO JUDICIAL REVIEW. A CHARTER RESPONDENT MAY FILE AN
16 ACTION FOR JUDICIAL REVIEW IN THE DISTRICT COURT FOR THE CITY AND
17 COUNTY OF DENVER OR THE DISTRICT COURT IN THE COUNTY IN WHICH
18 THE CHARTER RESPONDENT IS LOCATED.

19 (15) AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL NOT BE
20 DEEMED TO BE AN APPOINTMENT OF A TRUSTEE OR RECEIVER UNDER THE
21 TERMS OF ANY FINANCING OF A CHARTER SCHOOL FACILITY OR OTHER
22 INSTRUMENT.

23 (16) THE COMMISSIONER MAY FILL ANY VACANCY CREATED BY
24 THE DEATH OR INABILITY OF A FIDUCIARY OR, FOR GOOD CAUSE SHOWN,
25 MAY REMOVE A FIDUCIARY THAT IS EXERCISING POWERS PURSUANT TO A
26 PRELIMINARY ORDER OR ORDER OF REORGANIZATION AND APPOINT A NEW
27 FIDUCIARY.

28 (17) A MEETING CONDUCTED BY THE COMMISSIONER PURSUANT TO
29 THIS SECTION SHALL BE OPEN TO ALL PARTIES TO THE PROCEEDING. AN
30 ORDER OF THE COMMISSIONER ISSUED PURSUANT TO THIS SECTION AND
31 ALL REQUESTS FOR ORDERS, BY ANY PARTY, SHALL BE CONSIDERED PUBLIC
32 DOCUMENTS.

33 **22-30.5-604. Excess benefits - cancellation of contracts - civil**
34 **action and penalty.** (1) IF A FIDUCIARY OTHER THAN AN AUTHORIZER,
35 OPERATING UNDER THE AUTHORITY OF A PRELIMINARY ORDER OR AN
36 ORDER FOR REORGANIZATION, DETERMINES THAT A CHARTER RESPONDENT



1 HAS ENGAGED IN AN EXCESS BENEFIT TRANSACTION, THE FIDUCIARY MAY:

2 (a) CANCEL IN WRITING AND WITHOUT PENALTY ANY CONTRACT
3 ENTERED INTO BY THE CHARTER SCHOOL THAT AWARDS THE EXCESS
4 BENEFIT TO AN INDIVIDUAL OR ANOTHER ENTITY AND CANCEL ANY
5 FURTHER COMPENSATION TO THE PARTY THAT RECEIVED THE EXCESS
6 BENEFIT. THE FIDUCIARY MAY DEMAND THE RETURN, WITHIN TEN
7 BUSINESS DAYS, TO THE CHARTER RESPONDENT OF ALL EXCESS BENEFITS
8 PAID WITHIN THE PRECEDING THREE YEARS OR, IF THE EXCESSIVE
9 PAYMENT HAS BEEN CONCEALED FROM THE CHARTER RESPONDENT'S FULL
10 GOVERNING BOARD, THE PRECEDING SIX YEARS.

11 (b) IF PAYMENT IS NOT MADE AS DEMANDED PURSUANT TO
12 PARAGRAPH (a) OF THIS SUBSECTION (1), FILE IN THE NAME OF THE
13 CHARTER RESPONDENT, A CIVIL ACTION FOR RECOVERY OF THE EXCESS
14 BENEFIT AND IMPOSITION OF A CIVIL PENALTY. IF THE COURT FINDS THAT
15 THE CHARTER RESPONDENT PAID THE EXCESS BENEFIT AND THE PERSON
16 RECEIVING THE EXCESS BENEFIT DID NOT REPAY THE AMOUNT WITHIN TEN
17 BUSINESS DAYS FOLLOWING THE DEMAND FOR REPAYMENT, THE COURT
18 SHALL DEEM THE EXCESS BENEFIT AN UNAUTHORIZED PAYMENT OF
19 CHARTER SCHOOL MONEYS AND AWARD THE CHARTER RESPONDENT,
20 THROUGH THE FIDUCIARY, AN AMOUNT FIXED IN THE COURT'S DISCRETION
21 AND BASED ON ALL THE CIRCUMSTANCES. HOWEVER, THE AMOUNT SHALL
22 NOT BE LESS THAN THE EXCESS BENEFIT PAID AND SHALL NOT BE MORE
23 THAN DOUBLE THE EXCESS BENEFIT PAID PLUS ALL REASONABLE
24 ATTORNEY FEES AND COSTS. IF THE COURT FINDS THAT THE FIDUCIARY
25 DID NOT HAVE A REASONABLE BASIS IN LAW AND FACT FOR CLAIMING AN
26 EXCESS BENEFIT AND FILING THE ACTION, IT MAY AWARD THE PARTY
27 DEFENDING THE ACTION ATTORNEY FEES AND COSTS.

28 **SECTION 3. Safety clause.** The general assembly hereby finds,
29 determines, and declares that this act is necessary for the immediate
30 preservation of the public peace, health, and safety."

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