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SENATE BILL 09-176

BY SENATOR(S) Spence, Groff, Harvey, King K., Kopp, Lundberg, Romer, Scheffel, Schultheis, White;
also REPRESENTATIVE(S) Casso and Massey, Gardner B., Gerou, Kefalas, Kerr J., King S., Lambert, Murray, Rice, Scanlan, Summers, Carroll T.

CONCERNING CHARTER SCHOOL PARTICIPATION IN SCHOOL DISTRICT BOND ELECTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 22-30.5-403 (4), Colorado Revised Statutes, is amended to read:

22-30.5-403. Definitions. As used in this part 4, unless the context otherwise requires:

(4) "Charter school capital construction" or "capital construction" means constructing, demolishing, remodeling, financing, or refinancing the acquisition of land, buildings, or facilities used for occupancy by pupils enrolled in or to be enrolled in a charter school. The term also includes actions taken to achieve the purposes set forth in section ~~22-42-102 (2) (a) (I) to (2) (a) (V)~~ 22-42-102 (2) (a) (I) TO (2) (a) (V), (2) (a) (VII), AND (2)

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(a) (VIII).

SECTION 2. 22-30.5-404 (1), (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 22-30.5-404 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

22-30.5-404. Needs-based inclusion of charter schools in district bond elections - eligibility - allocation of bond revenues. (1) (a) In enacting this section, it is the intent of the general assembly to respect the principle of school district local control and to encourage school districts and charter schools to work together to ensure that the capital construction needs of charter schools can be met. Accordingly, nothing in this section shall be construed to limit in any way the existing ability of any school district to include a charter school in any local bond elections or to otherwise assist a charter school in financing its capital construction needs in any legal manner mutually agreed upon by the school district and the charter school.

(b) A SCHOOL DISTRICT SHALL ALLOW FOR REPRESENTATION BY CHARTER SCHOOLS ON THE SCHOOL DISTRICT'S LONG-RANGE PLANNING COMMITTEE AND ANY COMMITTEE ESTABLISHED BY THE SCHOOL DISTRICT TO ASSESS AND PRIORITIZE THE DISTRICT'S CAPITAL CONSTRUCTION NEEDS AND SHALL NOTIFY CHARTER SCHOOLS OF THE COMMITTEE'S MEETING SCHEDULE. CHARTER SCHOOLS SHALL COOPERATE IN DETERMINING THE PERSON OR PERSONS WHO WILL REPRESENT THE INTERESTS OF CHARTER SCHOOLS ON THE COMMITTEE.

(c) Each school district that is considering submitting any question of contracting bonded indebtedness to the eligible electors of the district at an upcoming election shall invite each charter school chartered by the district to participate in discussions regarding the possible submission of such a question at the earliest possible time BUT NO LATER THAN JUNE 1 OF THE APPLICABLE ELECTION YEAR, and each school district is encouraged to voluntarily include funding for the capital construction needs of charter schools in the district's questions of contracting bonded indebtedness without requiring a charter school to comply with the capital construction plan submission process set forth in subsection (3) of this section.

(4) (a) (I) The board of education of a school district shall review a capital construction plan submitted by a charter school pursuant to

~~subsection (3) of this section and determine whether the charter school has established a need for the capital construction, a need to incur bonded indebtedness or obtain revenues from a special mill levy to finance the capital construction, and a viable plan for the capital construction. The board shall also determine the priority of the charter school capital construction need in relation to the capital construction needs of OTHER SCHOOLS IN the entire district. If the board determines that~~ IF THE CHARTER SCHOOL'S CAPITAL CONSTRUCTION PLAN REMEDIES SHORTCOMINGS IN THE CHARTER SCHOOL'S FACILITIES IDENTIFIED IN THE FINANCIAL ASSISTANCE PRIORITY ASSESSMENT OF PUBLIC SCHOOL FACILITIES CREATED PURSUANT TO SECTION 22-43.7-108, OR, WHEN THE ASSESSMENT CREATED PURSUANT TO SECTION 22-43.7-108 IS NO LONGER VALID, IN ANOTHER ASSESSMENT USING SIMILAR CRITERIA FOR ALL SCHOOLS IN THE DISTRICT, THE BOARD OF EDUCATION SHALL PRIORITIZE A CHARTER SCHOOL'S CAPITAL CONSTRUCTION NEEDS IN THE SCHOOL DISTRICT'S LONG-RANGE PLAN AND INCLUDE THOSE NEEDS IN THE CURRENT BALLOT QUESTION IN THE UPCOMING ELECTION IF THE CHARTER SCHOOL'S FACILITY NEEDS RECEIVE A HIGHER PRIORITY ASSESSMENT THAN THE OTHER SCHOOLS IN THE DISTRICT.

(II) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (4) CONCERNING THE PRIORITIZATION OF A CHARTER SCHOOL'S CAPITAL CONSTRUCTION PLAN AND INCLUSION IN A DISTRICT BALLOT QUESTION FOR APPROVAL OF BONDED INDEBTEDNESS, THE BOARD OF EDUCATION OF A SCHOOL DISTRICT AND A CHARTER SCHOOL MAY AGREE TO AN ALTERNATIVE FINANCIAL PLAN THAT ADDRESSES A CHARTER SCHOOL'S FACILITIES NEEDS, INCLUDING RETIRING FINANCIAL OBLIGATIONS OR BONDS PREVIOUSLY ISSUED FOR THE BENEFIT OF THE CHARTER SCHOOL.

(III) (A) NOTHING IN THIS SUBSECTION (4) SHALL REQUIRE A SCHOOL DISTRICT TO PRIORITIZE THE CAPITAL CONSTRUCTION PLAN OF A CHARTER SCHOOL THAT IS ON PROBATION WITH THE DISTRICT OR THAT HAS BEEN AUTHORIZED WITHIN THE PREVIOUS FIVE YEARS.

(B) THE BOARD OF EDUCATION OF A SCHOOL DISTRICT MAY REQUIRE A CHARTER SCHOOL TO CERTIFY THAT SCHOOL CONSTRUCTION TO BE FINANCED WITH BOND PROCEEDS IN ACCORDANCE WITH THIS SECTION WILL REMEDIATE A SHORTCOMING IN THE CHARTER SCHOOL'S FACILITIES IDENTIFIED PURSUANT TO SECTION 22-43.7-108, AND THAT ANY CONSTRUCTION WILL CONFORM TO ANY CONSTRUCTION GUIDELINES ESTABLISHED PURSUANT TO 22-43.7-107.

(C) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), THE BOARD OF EDUCATION OF A SCHOOL DISTRICT AND A CHARTER SCHOOL MAY AGREE TO RESERVE OR ESCROW FUNDS FOR THE BENEFIT OF THE CHARTER SCHOOL.

(IV) THE BOARD OF EDUCATION SHALL NOTIFY THE CHARTER SCHOOL IN WRITING WHETHER THE SCHOOL DISTRICT HAS PRIORITIZED THE CHARTER SCHOOL'S CAPITAL CONSTRUCTION NEEDS FOR INCLUSION IN THE BALLOT QUESTION AT THE UPCOMING ELECTION NO LATER THAN SIXTY DAYS PRIOR TO THE DATE BY WHICH THE SCHOOL DISTRICT IS REQUIRED TO CERTIFY THE BALLOT QUESTION TO THE COUNTY CLERK AND RECORDER.

~~(a) (b) The charter school has established capital construction needs, a need to incur bonded indebtedness or obtain revenues from a special mill levy to finance the capital construction, and a viable plan, and IF the board has prioritized the charter school capital construction needs in relation to the capital construction needs of the entire district PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) FOR INCLUSION IN THE BALLOT QUESTION AT THE UPCOMING ELECTION, the board shall either include the charter school's capital construction in a THE SAME ballot question BEING SUBMITTED BY THE DISTRICT for approval of bonded indebtedness in accordance with subsection (5) of this section. or submit a separate special mill levy question to the voters of the district pursuant to section 22-30.5-405. The board shall have the discretion to choose between the bond or special mill levy options and to determine the amount of bonds that will be needed to be sold or the amount of moneys that will be needed to be raised by a special mill levy; but the board shall first consider any information provided or preferences expressed by the charter school:~~

~~(b) The charter school has not established capital construction needs, a need to incur bonded indebtedness or obtain revenues from a special mill levy to finance the capital construction, or a viable plan:~~

~~(f) The board shall provide the charter school with a written statement specifying its reasons for concluding that the charter school has not established capital construction needs, a need to incur bonded indebtedness or obtain revenues from a special mill levy to finance the capital construction, or a viable plan; and~~

~~(H) (c) IF the board need not include the charter school's capital~~

~~construction in the district's ballot question for approval of bonded indebtedness but shall submit a special mill levy ballot question to the voters of the district pursuant to section 22-30.5-405 if the charter school requests that a special mill levy be submitted and the charter school agrees to pay all of the costs of submitting the special mill levy ballot question HAS NOT PRIORITIZED THE CHARTER SCHOOL'S CAPITAL CONSTRUCTION NEEDS FOR INCLUSION IN THE BALLOT QUESTION AT THE UPCOMING ELECTION, THE BOARD SHALL PROVIDE THE CHARTER SCHOOL WITH A WRITTEN STATEMENT SPECIFYING THE REASONS FOR EXCLUDING THE NEEDS AND THE CHARTER SCHOOL SHALL HAVE AN OPPORTUNITY TO ADDRESS ANY ISSUES RAISED BY THE BOARD.~~

(5) ~~If the board of a school~~ WHEN A district chooses to include INCLUDES a charter school's capital construction in a district ballot question seeking approval of bonded indebtedness:

(a) ~~The board shall consult with the charter school in determining the amount of, and repayment schedule for, the bonds proposed to be sold to finance the charter school's capital construction;~~

(b) The board and the charter school shall agree to the prioritization of the distribution of bond proceeds between the charter school and any other public school that will receive bond proceeds before PROCESS BY WHICH THE BOND PROCEEDS AND INVESTMENT AND INTEREST EARNINGS ON SUCH PROCEEDS SHALL BE DISTRIBUTED TO THE CHARTER SCHOOL PRIOR TO submitting the ballot question to the voters of the school district;

(c) The investment and interest earnings on bond proceeds shall be distributed on a pro rata basis to the participating charter school after management fees have been collected; and

(d) The costs of submitting the ballot question shall be borne by both the district and the charter school in proportion to their respective portions of the total bond proceeds to be received unless the board and the charter school agree to a different cost-sharing arrangement. ~~Except as otherwise provided in paragraph (b) of subsection (4) of this section, if the board of the district submits a separate special mill levy ballot question on the same ballot as a ballot question for approval of bonded indebtedness, the costs of submitting the special mill levy ballot question shall be borne as agreed upon by the school district and the charter school.~~

(5.5) IF A CHARTER SCHOOL REQUESTS THAT A SCHOOL DISTRICT SUBMIT A BALLOT QUESTION FOR APPROVAL OF A SPECIAL MILL LEVY TO THE VOTERS OF THE DISTRICT PURSUANT TO SECTION 22-30.5-405, THE CHARTER SCHOOL SHALL AGREE TO PAY ALL COSTS OF SUBMITTING THE BALLOT QUESTION. NOTWITHSTANDING THIS REQUIREMENT, IF THE BOARD OF THE DISTRICT SUBMITS A SEPARATE SPECIAL MILL LEVY BALLOT QUESTION ON THE SAME BALLOT AS A BALLOT QUESTION FOR APPROVAL OF BONDED INDEBTEDNESS, THE COSTS OF SUBMITTING THE SPECIAL MILL LEVY BALLOT QUESTION SHALL BE BORNE AS AGREED UPON BY THE SCHOOL DISTRICT AND THE CHARTER SCHOOL.

(6) (a) Notwithstanding any other provision of this section, no bonds shall be issued for the purpose of financing charter school capital construction unless the charter school that is to receive bond proceeds and the district have entered into a contract specifying ~~that~~: THAT, IF THE CHARTER SCHOOL'S CHARTER IS REVOKED OR NOT RENEWED, THE CHARTER SCHOOL BECOMES INSOLVENT AND CAN NO LONGER OPERATE AS A CHARTER SCHOOL, OR THE CHARTER SCHOOL OTHERWISE CEASES TO OPERATE, FOLLOWING PAYMENT OF ALL OTHER DEBTS SECURED BY THE CAPITAL CONSTRUCTION, THE OWNERSHIP OF ANY CAPITAL CONSTRUCTION FINANCED BY THE BOND PROCEEDS SHALL AUTOMATICALLY REVERT TO THE SCHOOL DISTRICT.

~~(a) The ownership of any capital construction financed by bond revenues shall automatically revert to the district if the charter school loses its charter, fails to pay for the capital construction to be financed by bond revenues, or becomes insolvent and can no longer operate as a charter school; and~~

(b) The charter school shall not encumber any capital construction financed by bond revenues with any additional debt WITHOUT THE EXPRESS APPROVAL OF THE SCHOOL DISTRICT. IF THE SCHOOL DISTRICT DENIES APPROVAL, THE SCHOOL DISTRICT SHALL PROVIDE WRITTEN REASONS FOR SUCH DENIAL.

SECTION 3. 22-30.5-405 (1) and (5), Colorado Revised Statutes, are amended to read:

22-30.5-405. Mill levy for charter school capital construction.

(1) With the agreement of all charter schools that will receive the revenues

generated by a special mill levy, the board of education of any school district shall, at any time at which a ballot issue arising under section 20 of article X of the state constitution may be decided, submit to the eligible electors of the district the question of whether to impose a mill levy of a stated amount AND FOR A STATED DURATION for the purpose of financing capital construction for one or more charter schools chartered by the district. ~~which mill levy shall not exceed one mill in any year or exceed ten years in duration.~~ When a mill levy for more than one year has been approved, the board shall, without calling an election, decrease the amount or duration of the mill levy as necessary to avoid excessive collections as each capital construction project financed by the mill levy is completed OR THE FINANCING FOR SUCH CAPITAL CONSTRUCTION HAS BEEN PAID BY THE TAXPAYERS OF SUCH SCHOOL DISTRICT. If the board is required to submit the ballot question for a mill levy pursuant to section 22-30.5-404 (4), the board shall consult with all affected charter schools that will receive the revenues generated by the special mill levy before determining the amount and duration of the special mill levy. THE BOARD OF EDUCATION OF ANY SCHOOL DISTRICT HAS THE DISCRETION TO COMBINE THE BALLOT QUESTION FOR A MILL LEVY WITH ANY OTHER TAX QUESTION THAT THE SCHOOL DISTRICT IS SUBMITTING TO THE ELIGIBLE ELECTORS OF THE DISTRICT OR TO SUBMIT THE BALLOT QUESTION AS A SEPARATE QUESTION.

~~(5) A school district may impose a total mill levy pursuant to this section in excess of one mill in any year if the voters of the district approve multiple ballot questions, but the mill levy imposed pursuant to any single ballot question submitted pursuant to this section shall not exceed one mill in any year as specified in subsection (1) of this section. The imposition of a second or subsequent mill levy pursuant to this section shall not affect the rights of any charter school to the revenues generated by any preexisting special mill levy.~~

SECTION 4. 22-42-102 (2) (a) (VI) and (2) (a) (VII), Colorado Revised Statutes, are amended, and the said 22-42-102 (2) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

22-42-102. Bonded indebtedness - elections. (2) (a) The board of education of any school district, at any regular biennial school election or at a special election called for the purpose, shall submit to the eligible electors of the district the question of contracting a bonded indebtedness for one or more of the following purposes:

(VI) For funding floating indebtedness; or

(VII) For acquiring, constructing, or improving any capital asset that the district is authorized by law to own; OR

(VIII) FOR SUPPORTING CHARTER SCHOOL CAPITAL CONSTRUCTION AS DEFINED IN SECTION 22-30.5-403 (4) OR THE LAND AND FACILITIES NEEDS OF A CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-403 (3), WITHOUT TITLE OR OWNERSHIP OF CHARTER SCHOOL CAPITAL ASSETS BEING HELD BY THE SCHOOL DISTRICT OR OWNERSHIP OR USE RESTRICTIONS PLACED ON THE CHARTER SCHOOL BY THE SCHOOL DISTRICT.

SECTION 5. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item,

section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Peter C. Groff
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO