

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 09-0739.01 Brita Darling

SENATE BILL 09-176

SENATE SPONSORSHIP

Spence,

HOUSE SPONSORSHIP

(None),

Senate Committees
Education

House Committees
Education

A BILL FOR AN ACT

101 **CONCERNING CHARTER SCHOOL PARTICIPATION IN SCHOOL DISTRICT**
102 **BOND ELECTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Specifies the date by which a school district (district) shall invite each charter school of the district to participate in discussions concerning participation by the charter school in an upcoming district bond election.

Removes the requirement that a district board of education review a charter school's capital construction plan to determine the need for capital construction, the viability of the capital construction plan, and the need to obtain revenues through bonded indebtedness or from a special

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Am ended 2nd Reading
April 14, 2009

SENATE
3rd Reading Unam ended
March 24, 2009

SENATE
Am ended 2nd Reading
March 23, 2009

mill levy.

Removes the requirement that a district board of education consult with the charter school with respect to the amount of, and repayment schedule for, the bonds proposed to be sold to finance the charter school's capital construction.

Clarifies that a district board of education may submit a question to eligible electors of a district concerning contracting bonded indebtedness for the land and facilities needs of a charter school of the district and charter school capital construction.

Requires that a district include a charter school's capital construction needs in a bond election unless the district and the charter school agree otherwise.

Removes the requirement that the charter school enter into a contract with the district specifying that the ownership of any construction financed through bonded indebtedness automatically revert to the district if the charter school loses its charter, fails to pay for the capital construction, or no longer operates as a charter school.

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

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

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

6 (4) "Charter school capital construction" or "capital construction"
7 means constructing, demolishing, remodeling, financing, or refinancing
8 the acquisition of land, buildings, or facilities used for occupancy by
9 pupils enrolled in or to be enrolled in a charter school. The term also
10 includes actions taken to achieve the purposes set forth in section
11 ~~22-42-102 (2) (a) (I) to (2) (a) (V)~~ 22-42-102 (2) (a) (I) TO (2) (a) (V), (2)
12 (a) (VII), AND (2) (a) (VIII).

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

16 **22-30.5-404. Needs-based inclusion of charter schools in**

1 **district bond elections - eligibility - allocation of bond revenues.**

2 (1) (a) In enacting this section, it is the intent of the general assembly to
3 respect the principle of school district local control and to encourage
4 school districts and charter schools to work together to ensure that the
5 capital construction needs of charter schools can be met. Accordingly,
6 nothing in this section shall be construed to limit in any way the existing
7 ability of any school district to include a charter school in any local bond
8 elections or to otherwise assist a charter school in financing its capital
9 construction needs in any legal manner mutually agreed upon by the
10 school district and the charter school.

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

19 (c) Each school district that is considering submitting any question
20 of contracting bonded indebtedness to the eligible electors of the district
21 at an upcoming election shall invite each charter school chartered by the
22 district to participate in discussions regarding the possible submission of
23 such a question at the earliest possible time BUT NO LATER THAN JUNE 1
24 OF THE APPLICABLE ELECTION YEAR, and each school district is
25 encouraged to voluntarily include funding for the capital construction
26 needs of charter schools in the district's questions of contracting bonded
27 indebtedness without requiring a charter school to comply with the capital

1 construction plan submission process set forth in subsection (3) of this
2 section.

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

24 (II) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (4)
25 CONCERNING THE PRIORITIZATION OF A CHARTER SCHOOL'S CAPITAL
26 CONSTRUCTION PLAN AND INCLUSION IN A DISTRICT BALLOT QUESTION FOR
27 APPROVAL OF BONDED INDEBTEDNESS, THE BOARD OF EDUCATION OF A

1 SCHOOL DISTRICT AND A CHARTER SCHOOL MAY AGREE TO AN
2 ALTERNATIVE FINANCIAL PLAN THAT ADDRESSES A CHARTER SCHOOL'S
3 FACILITIES NEEDS, INCLUDING RETIRING FINANCIAL OBLIGATIONS OR
4 BONDS PREVIOUSLY ISSUED FOR THE BENEFIT OF THE CHARTER SCHOOL.

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

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

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

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

26
27 (a) (b) ~~The charter school has established capital construction~~

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

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

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

25 (H) (c) ~~IF the board need not include the charter school's capital~~
26 ~~construction in the district's ballot question for approval of bonded~~
27 ~~indebtedness but shall submit a special mill levy ballot question to the~~

1 voters of the district pursuant to section 22-30.5-405 if the charter school
2 requests that a special mill levy be submitted and the charter school
3 agrees to pay all of the costs of submitting the special mill levy ballot
4 question HAS NOT PRIORITIZED THE CHARTER SCHOOL'S CAPITAL
5 CONSTRUCTION NEEDS FOR INCLUSION IN THE BALLOT QUESTION AT THE
6 UPCOMING ELECTION, THE BOARD SHALL PROVIDE THE CHARTER SCHOOL
7 WITH A WRITTEN STATEMENT SPECIFYING THE REASONS FOR EXCLUDING
8 THE NEEDS AND THE CHARTER SCHOOL SHALL HAVE AN OPPORTUNITY TO
9 ADDRESS ANY ISSUES RAISED BY THE BOARD. == ==

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

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

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

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

26 (d) The costs of submitting the ballot question shall be borne by
27 both the district and the charter school in proportion to their respective

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

9 (5.5) IF A CHARTER SCHOOL REQUESTS THAT A SCHOOL DISTRICT
10 SUBMIT A BALLOT QUESTION FOR APPROVAL OF A SPECIAL MILL LEVY TO
11 THE VOTERS OF THE DISTRICT PURSUANT TO SECTION 22-30.5-405, THE
12 CHARTER SCHOOL SHALL AGREE TO PAY ALL COSTS OF SUBMITTING THE
13 BALLOT QUESTION. NOTWITHSTANDING THIS REQUIREMENT, IF THE BOARD
14 OF THE DISTRICT SUBMITS A SEPARATE SPECIAL MILL LEVY BALLOT
15 QUESTION ON THE SAME BALLOT AS A BALLOT QUESTION FOR APPROVAL
16 OF BONDED INDEBTEDNESS, THE COSTS OF SUBMITTING THE SPECIAL MILL
17 LEVY BALLOT QUESTION SHALL BE BORNE AS AGREED UPON BY THE
18 SCHOOL DISTRICT AND THE CHARTER SCHOOL.

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

1 FINANCED BY THE BOND PROCEEDS SHALL AUTOMATICALLY REVERT TO
2 THE SCHOOL DISTRICT.

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

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

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

15 22-30.5-405. Mill levy for charter school capital construction.

16 (1) With the agreement of all charter schools that will receive the
17 revenues generated by a special mill levy, the board of education of any
18 school district shall, at any time at which a ballot issue arising under
19 section 20 of article X of the state constitution may be decided, submit to
20 the eligible electors of the district the question of whether to impose a
21 mill levy of a stated amount AND FOR A STATED DURATION for the purpose
22 of financing capital construction for one or more charter schools
23 chartered by the district. ~~which mill levy shall not exceed one mill in any~~
24 ~~year or exceed ten years in duration.~~ When a mill levy for more than one
25 year has been approved, the board shall, without calling an election,
26 decrease the amount or duration of the mill levy as necessary to avoid
27 excessive collections as each capital construction project financed by the

1 mill levy is completed OR THE FINANCING FOR SUCH CAPITAL
2 CONSTRUCTION HAS BEEN PAID BY THE TAXPAYERS OF SUCH SCHOOL
3 DISTRICT. If the board is required to submit the ballot question for a mill
4 levy pursuant to section 22-30.5-404 (4), the board shall consult with all
5 affected charter schools that will receive the revenues generated by the
6 special mill levy before determining the amount and duration of the
7 special mill levy. THE BOARD OF EDUCATION OF ANY SCHOOL DISTRICT
8 HAS THE DISCRETION TO COMBINE THE BALLOT QUESTION FOR A MILL LEVY
9 WITH ANY OTHER TAX QUESTION THAT THE SCHOOL DISTRICT IS
10 SUBMITTING TO THE ELIGIBLE ELECTORS OF THE DISTRICT OR TO SUBMIT
11 THE BALLOT QUESTION AS A SEPARATE QUESTION.

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

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

23 **22-42-102. Bonded indebtedness - elections.** (2) (a) The board
24 of education of any school district, at any regular biennial school election
25 or at a special election called for the purpose, shall submit to the eligible
26 electors of the district the question of contracting a bonded indebtedness
27 for one or more of the following purposes:

- 1 (VI) For funding floating indebtedness; ~~or~~
- 2 (VII) For acquiring, constructing, or improving any capital asset
- 3 that the district is authorized by law to own; OR
- 4 (VIII) FOR SUPPORTING CHARTER SCHOOL CAPITAL CONSTRUCTION
- 5 AS DEFINED IN SECTION 22-30.5-403 (4) OR THE LAND AND FACILITIES
- 6 NEEDS OF A CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-403 (3),
- 7 WITHOUT TITLE OR OWNERSHIP OF CHARTER SCHOOL CAPITAL ASSETS
- 8 BEING HELD BY THE SCHOOL DISTRICT _____ OR OWNERSHIP OR USE
- 9 RESTRICTIONS PLACED ON THE CHARTER SCHOOL BY THE SCHOOL
- 10 DISTRICT.

11 **SECTION 5. Act subject to petition - effective date.** This act
12 shall take effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly that is
14 allowed for submitting a referendum petition pursuant to article V,
15 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
16 sine die is on May 6, 2009); except that, if a referendum petition is filed
17 against this act or an item, section, or part of this act within such period,
18 then the act, item, section, or part, if approved by the people, shall take
19 effect on the date of the official declaration of the vote thereon by
20 proclamation of the governor.