

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

ENGROSSED

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

LLS NO. 11-0825.01 Nicole Myers

SENATE BILL 11-188

SENATE SPONSORSHIP

Bacon and King K.,

HOUSE SPONSORSHIP

Casso,

Senate Committees
Education

House Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING THE STATE'S OVERSIGHT OF THE PROGRAM**
102 **THAT ALLOWS THE FINANCING OF CAPITAL CONSTRUCTION FOR**
103 **QUALIFIED CHARTER SCHOOLS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law contains a program that allows qualified charter schools to finance capital construction with revenues from bonds issued on their behalf (bonds) by the Colorado educational and cultural facilities authority (CECFA) and to obtain such financing on favorable terms by

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.

SENATE
Amended 2nd Reading
March 21, 2011

providing a source of state moneys that can be used to make bond payments if the qualified charter school fails to make such payments. This program is commonly referred to as the charter school capital construction moral obligation program (moral obligation program). The bill makes the following changes to the program:

- ! Currently, if the state treasurer expends certain moneys from the state charter school debt reserve fund (state fund) to make bond payments because a qualified charter school fails to make the payments, the state treasurer is authorized to withhold charter school per pupil facilities aid moneys that are appropriated annually through the "Public School Finance Act of 1994" to the extent necessary to restore the state fund to a one million dollar balance. The bill authorizes the state treasurer to also withhold the aid moneys to the extent necessary to restore the balance of the state charter school interest savings account (account) to the account balance prior to the state treasurer's expenditure of moneys from the account.
- ! Upon the expenditure of moneys from the state fund or the account by the state treasurer, the state treasurer may file a lien on behalf of the state on the property securing the bonds for which a qualified charter school debt reserve fund (charter school fund) has been established. In the event that the state sells the property, the state treasurer is required to deposit any net proceeds from the sale into the state fund and into the account, as specified, after the state treasurer's costs have been reimbursed.
- ! CECFA must publicly disclose the application requirements, the application and processing timeline, and all issuer fees and expenses that will apply to the transaction of issuing bonds on behalf of a qualified charter school. In addition, CECFA may not charge a trailer fee to a qualified charter school once the bonds have been issued.
- ! CECFA currently tracks the amount of principal allocated to all qualified charter schools from the total amount that the general assembly is authorized to appropriate to restore any charter school fund and verifies that there is enough principal left to back the bonds of a qualified charter school. The bill transfers this tracking and verification responsibility to the state treasurer.
- ! CECFA is currently required to submit an annual report to the state auditor that contains certain information regarding the issuance of bonds through the moral obligation program. The bill transfers the reporting requirement to the state treasurer, and the state treasurer may hire a contractor

to compile the report. The state treasurer may charge an administrative fee for the costs of compiling the report to each qualified charter school that has had bonds issued on its behalf through the moral obligation program.

! In the event that a charter school that is a qualified charter school and that has had bonds issued on its behalf through the moral obligation program may have its charter revoked or not renewed, the commissioner of education may suspend the revocation or nonrenewal for up to 120 days. During the suspension, the state treasurer, the commissioner of education, and CECFA may work with the chartering local board of education or the state charter school institute, as applicable, to determine whether an alternative to the revocation or nonrenewal of the charter exists.

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

2 **SECTION 1.** 22-30.5-407 (2) (a), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

4 **22-30.5-407. State charter school debt reserve fund - creation**
5 **- use of fund moneys - legislative declaration.** (2) (a) There is hereby
6 created in the state treasury the state charter school debt reserve fund.

7 The fund shall consist of the following moneys:

8 (IV) MONEYS CREDITED TO THE FUND BY THE STATE TREASURER
9 PURSUANT TO SECTION 22-30.5-408 (2) (c) (II).

10 **SECTION 2.** The introductory portion to 22-30.5-407 (4) (d) and
11 22-30.5-407 (4) (d) (II), Colorado Revised Statutes, are amended to read:

12 **22-30.5-407. State charter school debt reserve fund - creation**
13 **- use of fund moneys - legislative declaration.** (4) (d) If the state
14 treasurer expends moneys from the portion of the state charter school debt
15 reserve fund that is not the state charter school interest savings account
16 OR IF THE STATE TREASURER EXPENDS MONEYS FROM THE STATE CHARTER
17 SCHOOL INTEREST SAVINGS ACCOUNT FOR PURPOSES OTHER THAN THE

1 PAYMENT OF THE ADMINISTRATIVE COSTS OF THE STATE TREASURER, the
2 state treasurer shall withhold charter school per pupil facilities aid
3 program moneys to the extent necessary to restore that portion of the state
4 charter school debt reserve fund, by the transfer of all withheld amounts
5 from the state education fund to that portion of the state charter school
6 debt reserve fund, to a one million dollar balance AND TO THE EXTENT
7 NECESSARY TO RESTORE THE STATE CHARTER SCHOOL INTEREST SAVINGS
8 ACCOUNT, BY THE TRANSFER OF ALL WITHHELD AMOUNTS FROM THE
9 STATE EDUCATION FUND TO THE STATE CHARTER SCHOOL INTEREST
10 SAVINGS ACCOUNT, TO THE BALANCE PRIOR TO EXPENDITURE OF MONEYS
11 FROM THE ACCOUNT, in accordance with the following requirements:

12 (II) If, in any given fiscal year, the state treasurer determines that
13 after withholding the maximum amount of charter school per pupil
14 facilities aid program moneys that may be withheld pursuant to
15 subparagraph (I) of this paragraph (d) the portion of the state charter
16 school debt reserve fund that is not the state charter school interest
17 savings account will not be restored to a one million dollar balance OR
18 THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT WILL NOT BE
19 RESTORED TO THE BALANCE IN THE ACCOUNT PRIOR TO THE STATE
20 TREASURER'S EXPENDITURE OF MONEYS FROM THE ACCOUNT, each charter
21 school that is not relying upon the state charter school debt reserve fund
22 and the provisions of section 22-30.5-408 with respect to bonds issued on
23 its behalf by the Colorado educational and cultural facilities authority
24 shall have its payment reduced by the same percentage and by a
25 maximum of ten percent.

26 **SECTION 3.** 22-30.5-408 (1), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1 **22-30.5-408. Replenishment of qualified charter school debt**
2 **service reserve funds - additional responsibilities - state treasurer -**
3 **qualified charter schools - definitions.** (1) As used in this section:

4 (b.5) "MAXIMUM PRINCIPAL OUTSTANDING" MEANS THE
5 AGGREGATE OUTSTANDING PRINCIPAL AMOUNT OF BONDS FOR WHICH
6 MONEYS MAY BE APPROPRIATED PURSUANT TO PARAGRAPH (a) OF
7 SUBSECTION (2) OF THIS SECTION.

8 **SECTION 4.** 22-30.5-408 (2), Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10 **22-30.5-408. Replenishment of qualified charter school debt**
11 **service reserve funds - additional responsibilities - state treasurer -**
12 **qualified charter schools - definitions.** (2) (c) (I) UPON THE
13 EXPENDITURE OF MONEYS FROM THE STATE CHARTER SCHOOL DEBT
14 RESERVE FUND OR THE STATE CHARTER SCHOOL INTEREST SAVINGS
15 ACCOUNT OF THE FUND BY THE STATE TREASURER, THE STATE TREASURER
16 MAY FILE A LIEN ON BEHALF OF THE STATE ON THE PROPERTY SECURING
17 THE BONDS FOR WHICH THE QUALIFIED CHARTER SCHOOL DEBT RESERVE
18 FUND IS ESTABLISHED IN AN AMOUNT EQUAL TO THE AMOUNT OF MONEYS
19 EXPENDED FROM THE STATE CHARTER SCHOOL DEBT RESERVE FUND OR
20 THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT; EXCEPT THAT
21 SUCH LIEN SHALL NOT BE ON A PARITY WITH OR SUPERIOR TO ANY LIEN
22 THEN SECURED BY THE PROPERTY, INCLUDING ANY LIEN SECURING SUCH
23 QUALIFIED CHARTER SCHOOL BONDS.

24 (II) ANY NET PROCEEDS FROM THE SALE OF PROPERTY SECURING
25 THE BONDS FOR WHICH THE QUALIFIED CHARTER SCHOOL DEBT RESERVE
26 FUND IS ESTABLISHED SHALL BE USED TO REIMBURSE THE STATE
27 TREASURER FOR ANY COSTS INCURRED IN CONNECTION WITH THE SALE OF

1 SUCH PROPERTY. THE STATE TREASURER SHALL CREDIT ANY ADDITIONAL
2 NET PROCEEDS FROM THE SALE OF SUCH PROPERTY TO THE STATE CHARTER
3 SCHOOL DEBT RESERVE FUND TO RESTORE THE FUND TO A BALANCE OF
4 ONE MILLION DOLLARS. THE STATE TREASURER SHALL CREDIT ANY
5 REMAINING NET PROCEEDS FROM THE SALE OF SUCH PROPERTY TO THE
6 STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT IN THE STATE
7 CHARTER SCHOOL DEBT RESERVE FUND.

8 **SECTION 5.** 22-30.5-408, Colorado Revised Statutes, is
9 amended BY THE ADDITION OF THE FOLLOWING NEW
10 SUBSECTIONS to read:

11 **22-30.5-408. Replenishment of qualified charter school debt**
12 **service reserve funds - additional responsibilities - state treasurer -**
13 **qualified charter schools - definitions.** (1.5) (a) THE COLORADO
14 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY SHALL DEVELOP
15 AND PUBLICLY DISCLOSE THE APPLICATION REQUIREMENTS FOR THE
16 QUALIFIED CHARTER SCHOOL, THE APPLICATION AND PROCESSING
17 TIMELINE, AND ALL ISSUER FEES AND EXPENSES THAT WILL APPLY TO THE
18 TRANSACTION.

19 (b) THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES
20 AUTHORITY SHALL NOT CHARGE A QUALIFIED CHARTER SCHOOL FOR
21 WHICH IT ISSUES BONDS PURSUANT TO SECTION 22-30.5-407 AN ANNUAL
22 FEE AFTER THE ISSUANCE OF THE BONDS OCCURS; EXCEPT THAT THIS
23 PARAGRAPH (b) SHALL NOT BE CONSTRUED TO PROHIBIT THE AUTHORITY
24 FROM CHARGING A QUALIFIED CHARTER SCHOOL FOR FEES AND EXPENSES
25 INCURRED IN THE ENFORCEMENT OF COVENANTS OR REMEDIES.

26 (2.5) IF THE AMOUNT OF THE REQUESTS BY QUALIFIED CHARTER
27 SCHOOLS FOR ISSUANCE OF QUALIFIED CHARTER SCHOOL BONDS EXCEEDS

1 THE MAXIMUM PRINCIPAL OUTSTANDING, THE STATE TREASURER SHALL
2 ALLOCATE THE UNUSED AMOUNT OF THE MAXIMUM PRINCIPAL
3 OUTSTANDING TO QUALIFIED CHARTER SCHOOLS IN THE ORDER IN WHICH
4 THE QUALIFIED CHARTER SCHOOLS REQUESTED ISSUANCE OF QUALIFIED
5 CHARTER SCHOOL BONDS. IF THE COLORADO EDUCATIONAL AND
6 CULTURAL FACILITIES AUTHORITY DOES NOT ISSUE ITS BONDS FOR WHICH
7 AN ALLOCATION IS MADE BY THE STATE TREASURER DUE TO SCARCITY OF
8 MAXIMUM PRINCIPAL OUTSTANDING WITHIN ONE HUNDRED FIFTY DAYS OF
9 THE STATE TREASURER'S ALLOCATION, THE ALLOCATION EXPIRES.

10 (2.7) A QUALIFIED CHARTER SCHOOL THAT HAS FINANCED CAPITAL
11 CONSTRUCTION WITH QUALIFIED CHARTER SCHOOL BONDS SHALL CONFIRM
12 A STAND-ALONE CREDIT ASSESSMENT OR RATING OF AT LEAST
13 INVESTMENT GRADE BY A NATIONALLY RECOGNIZED RATING AGENCY ON
14 ITS OUTSTANDING QUALIFIED CHARTER SCHOOL BONDS AT THE TIME OF
15 THE ISSUANCE OF ANY NEW CHARTER SCHOOL BONDS.

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17 **SECTION 6.** Part 1 of article 30.5 of title 22, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **22-30.5-110.3. Nonrenewal or revocation - qualified charter**
21 **school - exceptions.** (1) NOTWITHSTANDING THE PROVISIONS OF
22 SECTIONS 22-30.5-108 AND 22-30.5-110, THE PROVISIONS OF THIS SECTION
23 SHALL APPLY IF:

24 (a) A CHARTERING LOCAL BOARD OF EDUCATION DETERMINES
25 THAT THE CHARTER OF A QUALIFIED CHARTER SCHOOL, AS DEFINED IN
26 SECTION 22-30.5-408 (1) (c), WILL BE REVOKED OR WILL NOT BE
27 RENEWED; AND

1 (b) THE QUALIFIED CHARTER SCHOOL HAS FINANCED CAPITAL
2 CONSTRUCTION WITH REVENUES FROM BONDS ISSUED ON BEHALF OF THE
3 QUALIFIED CHARTER SCHOOL BY THE COLORADO EDUCATIONAL AND
4 CULTURAL FACILITIES AUTHORITY CREATED IN SECTION 23-15-104(1)(a),
5 C.R.S., PURSUANT TO SECTION 22-30.5-407.

6 (2) (a) IF A CHARTERING LOCAL BOARD OF EDUCATION MAKES A
7 DETERMINATION TO REVOKE OR NOT RENEW THE CHARTER OF A QUALIFIED
8 CHARTER SCHOOL AND SUBSECTION (1) OF THIS SECTION APPLIES, THE
9 CHARTERING LOCAL BOARD OF EDUCATION SHALL NOTIFY THE STATE
10 TREASURER AND THE COMMISSIONER OF EDUCATION IMMEDIATELY UPON
11 SUCH DETERMINATION. UPON RECEIPT OF SUCH NOTICE, THE
12 COMMISSIONER SHALL SUSPEND THE REVOCATION OR NONRENEWAL OF
13 THE CHARTER UNTIL SUCH TIME AS THE STATE TREASURER, THE
14 COMMISSIONER, AND THE COLORADO EDUCATIONAL AND CULTURAL
15 FACILITIES AUTHORITY DETERMINE, WITH THE CHARTERING LOCAL BOARD
16 OF EDUCATION AND THE QUALIFIED CHARTER SCHOOL, WHETHER AN
17 ALTERNATIVE EXISTS TO SUCH REVOCATION OR NONRENEWAL OF THE
18 CHARTER.

19 (b) A CHARTERING LOCAL BOARD OF EDUCATION SHALL NOT BE
20 REQUIRED TO SUSPEND A REVOCATION OR NONRENEWAL OF A CHARTER
21 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) FOR MORE THAN
22 ONE HUNDRED TWENTY DAYS AFTER THE DATE THAT THE COMMISSIONER
23 OF EDUCATION AND THE STATE TREASURER RECEIVED NOTICE OF THE
24 DETERMINATION TO REVOKE OR NOT RENEW THE CHARTER PURSUANT TO
25 PARAGRAPH (a) OF THIS SUBSECTION (2) OR SIXTY DAYS AFTER THE
26 ACTION OF THE STATE BOARD PURSUANT TO SECTION 22-30.5-108 (3),
27 WHICHEVER IS GREATER.

1 (3) THE STATE TREASURER, COMMISSIONER OF EDUCATION,
2 CHARTERING LOCAL BOARD OF EDUCATION, CHARTER SCHOOL, AND
3 COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY MAY
4 PURSUE THE FOLLOWING:

5 (a) THE CONVERSION OF THE QUALIFIED CHARTER SCHOOL FROM
6 A SCHOOL OF THE CHARTERING DISTRICT TO AN INSTITUTE CHARTER
7 SCHOOL;

8 (b) THE REORGANIZATION OF THE QUALIFIED CHARTER SCHOOL
9 AND APPLICATION TO THE INITIAL CHARTERING LOCAL BOARD OF
10 EDUCATION OR THE STATE CHARTER SCHOOL INSTITUTE FOR APPROVAL AS
11 A CHARTER SCHOOL WITH THE CONDITION THAT THE NEWLY APPROVED
12 CHARTER SCHOOL WILL ASSUME THE BOND OBLIGATIONS OF THE FORMER
13 QUALIFIED CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-407; OR

14 (c) ANY OTHER ALTERNATIVE DEEMED FEASIBLE BY THE STATE
15 TREASURER, THE COMMISSIONER OF EDUCATION, THE COLORADO
16 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, THE CHARTERING
17 LOCAL BOARD OF EDUCATION, AND THE QUALIFIED CHARTER SCHOOL.

18 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT
19 THE CHARTERING LOCAL BOARD OF EDUCATION FROM REVOKING OR
20 NOT RENEWING THE CHARTER OF A QUALIFIED CHARTER SCHOOL
21 PURSUANT TO SECTION 22-30.5-110.

22 **SECTION 7.** Part 5 of article 30.5 of title 22, Colorado Revised
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
24 read:

25 **22-30.5-511.3. Nonrenewal or revocation - qualified charter**
26 **school - exceptions.** (1) NOTWITHSTANDING THE PROVISIONS OF SECTION
27 22-30.5-511, THE PROVISIONS OF THIS SECTION SHALL APPLY IF:

1 (a) THE INSTITUTE BOARD DETERMINES THAT THE CHARTER OF A
2 QUALIFIED CHARTER SCHOOL, AS DEFINED IN SECTION 22-30.5-408 (1) (c),
3 WILL BE REVOKED OR WILL NOT BE RENEWED; AND

4 (b) THE QUALIFIED CHARTER SCHOOL HAS FINANCED CAPITAL
5 CONSTRUCTION WITH REVENUES FROM BONDS ISSUED ON BEHALF OF THE
6 QUALIFIED CHARTER SCHOOL BY THE COLORADO EDUCATIONAL AND
7 CULTURAL FACILITIES AUTHORITY CREATED IN SECTION 23-15-104 (1) (a),
8 C.R.S., PURSUANT TO SECTION 22-30.5-407.

9 (2) (a) IF THE INSTITUTE BOARD MAKES A DETERMINATION TO
10 REVOKE OR NOT RENEW THE CHARTER OF A QUALIFIED CHARTER SCHOOL
11 AND SUBSECTION (1) OF THIS SECTION APPLIES, THE INSTITUTE BOARD
12 SHALL NOTIFY THE STATE TREASURER AND THE COMMISSIONER OF
13 EDUCATION IMMEDIATELY UPON SUCH DETERMINATION. UPON
14 RECEIPT OF SUCH NOTICE, THE COMMISSIONER SHALL SUSPEND THE
15 REVOCATION OR NONRENEWAL OF THE CHARTER UNTIL SUCH TIME AS THE
16 STATE TREASURER, THE COMMISSIONER, AND THE COLORADO
17 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY DETERMINE, WITH
18 THE INSTITUTE BOARD AND THE QUALIFIED CHARTER SCHOOL, WHETHER
19 AN ALTERNATIVE EXISTS TO SUCH REVOCATION OR NONRENEWAL OF THE
20 CHARTER.

21 (b) THE INSTITUTE BOARD SHALL NOT BE REQUIRED TO SUSPEND
22 A REVOCATION OR NONRENEWAL OF A CHARTER PURSUANT TO PARAGRAPH
23 (a) OF THIS SUBSECTION (2) FOR MORE THAN ONE HUNDRED TWENTY DAYS
24 AFTER THE DATE THAT THE COMMISSIONER OF EDUCATION AND THE
25 STATE TREASURER RECEIVED NOTICE OF THE DETERMINATION TO REVOKE
26 OR NOT RENEW THE CHARTER PURSUANT TO PARAGRAPH (a) OF THIS
27 SUBSECTION (2) OR SIXTY DAYS AFTER THE ACTION OF THE STATE BOARD

1 PURSUANT TO SECTION 22-30.5-511 (5) (b) (II), WHICHEVER IS GREATER.

2 (3) THE STATE TREASURER, COMMISSIONER OF EDUCATION,
3 INSTITUTE BOARD, CHARTER SCHOOL, AND COLORADO EDUCATIONAL AND
4 CULTURAL FACILITIES AUTHORITY MAY PURSUE THE FOLLOWING:

5 (a) THE CONVERSION OF THE QUALIFIED CHARTER SCHOOL FROM
6 AN INSTITUTE CHARTER SCHOOL TO A SCHOOL OF THE ACCOUNTING
7 DISTRICT OF THE INSTITUTE CHARTER SCHOOL, AS DEFINED IN SECTION
8 22-30.5-513 (1) (a);

9 (b) THE REORGANIZATION OF THE QUALIFIED CHARTER SCHOOL
10 AND APPLICATION TO THE INSTITUTE BOARD OR THE LOCAL BOARD OF
11 EDUCATION OF THE ACCOUNTING DISTRICT FOR APPROVAL AS A CHARTER
12 SCHOOL WITH THE CONDITION THAT THE NEWLY APPROVED CHARTER
13 SCHOOL WILL ASSUME THE BOND OBLIGATIONS OF THE FORMER QUALIFIED
14 CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-407; OR

15 (c) ANY OTHER ALTERNATIVE DEEMED FEASIBLE BY THE STATE
16 TREASURER, THE COMMISSIONER OF EDUCATION, THE COLORADO
17 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, THE INSTITUTE
18 BOARD, AND THE QUALIFIED CHARTER SCHOOL.

19 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT
20 THE INSTITUTE BOARD FROM REVOKING OR NOT RENEWING THE
21 CHARTER OF A QUALIFIED CHARTER SCHOOL PURSUANT TO SECTION
22 22-30.5-511.

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24 **SECTION 8. Effective date.** This act shall take effect July 1,
25 2011.

26 **SECTION 9. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.