

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

REVISED

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

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
Education

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.*

HOUSE
Am ended 2nd Reading
April 11, 2011

SENATE
3rd Reading Unamended
March 22, 2011

SENATE
Am ended 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 EXPENDED 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.

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1 (2.7) A QUALIFIED CHARTER SCHOOL THAT HAS FINANCED CAPITAL
2 CONSTRUCTION WITH QUALIFIED CHARTER SCHOOL BONDS SHALL CONFIRM
3 A STAND-ALONE CREDIT ASSESSMENT OR RATING OF AT LEAST
4 INVESTMENT GRADE BY A NATIONALLY RECOGNIZED RATING AGENCY ON
5 ITS OUTSTANDING QUALIFIED CHARTER SCHOOL BONDS AT THE TIME OF
6 THE ISSUANCE OF ANY NEW CHARTER SCHOOL BONDS.

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

11 **22-30.5-110.3. Nonrenewal or revocation - qualified charter**
12 **school - exceptions.** (1) NOTWITHSTANDING THE PROVISIONS OF
13 SECTIONS 22-30.5-108 AND 22-30.5-110, THE PROVISIONS OF THIS SECTION
14 SHALL APPLY IF:

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

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

24 (2) (a) IF A CHARTERING LOCAL BOARD OF EDUCATION MAKES A
25 DETERMINATION TO REVOKE OR NOT RENEW THE CHARTER OF A QUALIFIED
26 CHARTER SCHOOL AND SUBSECTION (1) OF THIS SECTION APPLIES, THE
27 CHARTERING LOCAL BOARD OF EDUCATION SHALL NOTIFY THE STATE

1 TREASURER AND THE COMMISSIONER OF EDUCATION IMMEDIATELY UPON
2 SUCH DETERMINATION. UPON RECEIPT OF SUCH NOTICE, THE
3 COMMISSIONER SHALL SUSPEND THE REVOCATION OR NONRENEWAL OF
4 THE CHARTER UNTIL SUCH TIME AS THE STATE TREASURER, THE
5 COMMISSIONER, AND THE COLORADO EDUCATIONAL AND CULTURAL
6 FACILITIES AUTHORITY DETERMINE, WITH THE CHARTERING LOCAL BOARD
7 OF EDUCATION AND THE QUALIFIED CHARTER SCHOOL, WHETHER AN
8 ALTERNATIVE EXISTS TO SUCH REVOCATION OR NONRENEWAL OF THE
9 CHARTER.

10 (b) A CHARTERING LOCAL BOARD OF EDUCATION SHALL NOT BE
11 REQUIRED TO SUSPEND A REVOCATION OR NONRENEWAL OF A CHARTER
12 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) FOR MORE THAN
13 ONE HUNDRED TWENTY DAYS AFTER THE DATE THAT THE COMMISSIONER
14 OF EDUCATION AND THE STATE TREASURER RECEIVED NOTICE OF THE
15 DETERMINATION TO REVOKE OR NOT RENEW THE CHARTER PURSUANT TO
16 PARAGRAPH (a) OF THIS SUBSECTION (2) OR SIXTY DAYS AFTER THE
17 ACTION OF THE STATE BOARD PURSUANT TO SECTION 22-30.5-108 (3) (a),
18 WHICHEVER IS LATER.

19 (3) THE STATE TREASURER, COMMISSIONER OF EDUCATION,
20 CHARTERING LOCAL BOARD OF EDUCATION, CHARTER SCHOOL, AND
21 COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY MAY
22 PURSUE THE FOLLOWING:

23 (a) THE CONVERSION OF THE QUALIFIED CHARTER SCHOOL FROM
24 A SCHOOL OF THE CHARTERING DISTRICT TO AN INSTITUTE CHARTER
25 SCHOOL;

26 (b) THE REORGANIZATION OF THE QUALIFIED CHARTER SCHOOL
27 AND APPLICATION TO THE INITIAL CHARTERING LOCAL BOARD OF

1 EDUCATION OR THE STATE CHARTER SCHOOL INSTITUTE FOR APPROVAL AS
2 A CHARTER SCHOOL WITH THE CONDITION THAT THE NEWLY APPROVED
3 CHARTER SCHOOL WILL ASSUME THE BOND OBLIGATIONS OF THE FORMER
4 QUALIFIED CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-407; OR

5 (c) ANY OTHER ALTERNATIVE DEEMED FEASIBLE BY THE STATE
6 TREASURER, THE COMMISSIONER OF EDUCATION, THE COLORADO
7 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, THE CHARTERING
8 LOCAL BOARD OF EDUCATION, AND THE QUALIFIED CHARTER SCHOOL.

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

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

16 **22-30.5-511.3. Nonrenewal or revocation - qualified charter**
17 **school - exceptions.** (1) NOTWITHSTANDING THE PROVISIONS OF SECTION
18 22-30.5-511, THE PROVISIONS OF THIS SECTION SHALL APPLY IF:

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

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

27 (2) (a) IF THE INSTITUTE BOARD MAKES A DETERMINATION TO

1 REVOKE OR NOT RENEW THE CHARTER OF A QUALIFIED CHARTER SCHOOL
2 AND SUBSECTION (1) OF THIS SECTION APPLIES, THE INSTITUTE BOARD
3 SHALL NOTIFY THE STATE TREASURER AND THE COMMISSIONER OF
4 EDUCATION IMMEDIATELY UPON SUCH DETERMINATION. UPON
5 RECEIPT OF SUCH NOTICE, THE COMMISSIONER SHALL SUSPEND THE
6 REVOCATION OR NONRENEWAL OF THE CHARTER UNTIL SUCH TIME AS THE
7 STATE TREASURER, THE COMMISSIONER, AND THE COLORADO
8 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY DETERMINE, WITH
9 THE INSTITUTE BOARD AND THE QUALIFIED CHARTER SCHOOL, WHETHER
10 AN ALTERNATIVE EXISTS TO SUCH REVOCATION OR NONRENEWAL OF THE
11 CHARTER.

12 (b) THE INSTITUTE BOARD SHALL NOT BE REQUIRED TO SUSPEND
13 A REVOCATION OR NONRENEWAL OF A CHARTER PURSUANT TO PARAGRAPH
14 (a) OF THIS SUBSECTION (2) FOR MORE THAN ONE HUNDRED TWENTY DAYS
15 AFTER THE DATE THAT THE COMMISSIONER OF EDUCATION AND THE
16 STATE TREASURER RECEIVED NOTICE OF THE DETERMINATION TO REVOKE
17 OR NOT RENEW THE CHARTER PURSUANT TO PARAGRAPH (a) OF THIS
18 SUBSECTION (2) OR SIXTY DAYS AFTER THE ACTION OF THE STATE BOARD
19 PURSUANT TO SECTION 22-30.5-511 (5) (b) (II), WHICHEVER IS LATER.

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

23 (a) THE CONVERSION OF THE QUALIFIED CHARTER SCHOOL FROM
24 AN INSTITUTE CHARTER SCHOOL TO A SCHOOL OF THE ACCOUNTING
25 DISTRICT OF THE INSTITUTE CHARTER SCHOOL, AS DEFINED IN SECTION
26 22-30.5-513 (1) (a);

27 (b) THE REORGANIZATION OF THE QUALIFIED CHARTER SCHOOL

1 AND APPLICATION TO THE INSTITUTE BOARD OR THE LOCAL BOARD OF
2 EDUCATION OF THE ACCOUNTING DISTRICT FOR APPROVAL AS A CHARTER
3 SCHOOL WITH THE CONDITION THAT THE NEWLY APPROVED CHARTER
4 SCHOOL WILL ASSUME THE BOND OBLIGATIONS OF THE FORMER QUALIFIED
5 CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-407; OR

6 (c) ANY OTHER ALTERNATIVE DEEMED FEASIBLE BY THE STATE
7 TREASURER, THE COMMISSIONER OF EDUCATION, THE COLORADO
8 EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, THE INSTITUTE
9 BOARD, AND THE QUALIFIED CHARTER SCHOOL.

10 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT
11 THE INSTITUTE BOARD FROM REVOKING OR NOT RENEWING THE
12 CHARTER OF A QUALIFIED CHARTER SCHOOL PURSUANT TO SECTION
13 22-30.5-511.

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15 **SECTION 8. Effective date.** This act shall take effect July 1,
16 2011.

17 **SECTION 9. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.