

## CHAPTER 342

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**EDUCATION - PUBLIC SCHOOLS**


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**HOUSE BILL 04-1397**

BY REPRESENTATIVE(S) King, Fairbank, Harvey, Lee, Spence, Hefley, Stafford, and Welker;  
also SENATOR(S) Anderson.

**AN ACT****CONCERNING THE FINANCING OF PUBLIC SCHOOLS, AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 22-54-103 (9.5), (10) (b) (I), and (10) (f), Colorado Revised Statutes, are amended to read:

**22-54-103. Definitions - repeal.** As used in this article, unless the context otherwise requires:

(9.5) (a) "Preschool enrollment" means the number of pupils enrolled in a district preschool program pursuant to article 28 of this title on October 1 within the applicable budget year or the school date nearest said date; except that a pupil enrolled in a district preschool program pursuant to article 28 of this title shall be counted as a half-day pupil.

(b) FOR PURPOSES OF DETERMINING PRESCHOOL ENROLLMENT FOR THE 2005-06 BUDGET YEAR AND EACH BUDGET YEAR THEREAFTER, A DISTRICT SHALL COUNT AND RECEIVE FUNDING ONLY FOR:

(I) PUPILS ENROLLED IN A DISTRICT PRESCHOOL PROGRAM PURSUANT TO SECTION 22-28-104 (1) (a.5) WHO ARE THREE YEARS OLD AS OF OCTOBER 1 OF THE APPLICABLE BUDGET YEAR;

(II) PUPILS ENROLLED IN A DISTRICT PRESCHOOL PROGRAM PURSUANT TO SECTION 22-28-104 (1) (a) WHO ARE FOUR YEARS OLD AS OF OCTOBER 1 OF THE APPLICABLE BUDGET YEAR; AND

(III) PUPILS ENROLLED IN A FULL-DAY KINDERGARTEN COMPONENT OF A DISTRICT

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

PRESCHOOL PROGRAM PURSUANT TO SECTION 22-28-104 (1) (a) AND (2) (d) (I) (E) WHO ARE FIVE YEARS OLD AS OF OCTOBER 1 OF THE APPLICABLE BUDGET YEAR.

(10) (b) (I) A pupil enrolled in a half-day kindergarten educational program shall be counted as NOT MORE THAN a half-day pupil. FOR THE 2005-06 BUDGET YEAR AND EACH BUDGET YEAR THEREAFTER, A DISTRICT SHALL COUNT AND RECEIVE FUNDING ONLY FOR PUPILS ENROLLED IN A HALF-DAY KINDERGARTEN EDUCATIONAL PROGRAM WHO ARE FIVE YEARS OLD AS OF OCTOBER 1 OF THE APPLICABLE BUDGET YEAR.

(f) In certifying the district's pupil enrollment to the state board pursuant to the provisions of section 22-54-112, the district shall specify the number of pupils enrolled in half-day kindergarten; ~~the number of pupils enrolled in full-day kindergarten~~; the number of pupils enrolled in first grade through twelfth grade, specifying those who are enrolled as full-time ~~students~~ PUPILS and those who are enrolled as less than full-time ~~students~~ PUPILS; the number of expelled pupils receiving educational services pursuant to section 22-33-203; the number of pupils enrolled in the district's preschool program; the number of pupils receiving educational programs under the "Exceptional Children's Educational Act", ARTICLE 20 OF THIS TITLE; and the number of at-risk pupils.

**SECTION 2.** 22-54-103 (10) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**22-54-103. Definitions - repeal.** As used in this article, unless the context otherwise requires:

(10) (a) (IV) FOR PURPOSES OF DETERMINING PUPIL ENROLLMENT IN FIRST GRADE FOR THE 2006-07 BUDGET YEAR AND EACH BUDGET YEAR THEREAFTER, A DISTRICT SHALL COUNT AND RECEIVE FUNDING ONLY FOR PUPILS ENROLLED IN FIRST GRADE WHO ARE SIX YEARS OLD ON OR BEFORE OCTOBER 1 OF THE APPLICABLE BUDGET YEAR.

**SECTION 3.** The introductory portions to 22-54-104 (2) (a) (V) and (2) (b) and 22-54-104 (2) (b) (II) (A), Colorado Revised Statutes, are amended, and the said 24-54-104 (2) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**22-54-104. District total program.** (2) (a) (V) Except as otherwise provided in this subsection (2), subsection (6) of this section, or section 22-54-104.3, a district's total program for the 2002-03 budget year ~~and budget years thereafter~~ shall be the greater of the following:

(VII) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2), SUBSECTION (6) OR (7) OF THIS SECTION, OR SECTION 22-54-104.3, A DISTRICT'S TOTAL PROGRAM FOR THE 2003-04 BUDGET YEAR AND BUDGET YEARS THEREAFTER SHALL BE THE GREATER OF THE FOLLOWING:

(A) (DISTRICT PER PUPIL FUNDING X (DISTRICT FUNDED PUPIL COUNT - DISTRICT ON-LINE PUPIL ENROLLMENT)) + DISTRICT AT-RISK FUNDING + DISTRICT ON-LINE FUNDING; OR

## (B) MINIMUM PER PUPIL FUNDING X DISTRICT FUNDED PUPIL COUNT.

(b) If the district percentage of at-risk pupils is greater than the statewide average percentage of at-risk pupils and the district's funded pupil count is greater than four hundred fifty-nine, ~~and the district's size factor is calculated pursuant to subparagraph (1.4) of paragraph (b) of subsection (5) of this section,~~ the district's total program shall be the lesser of:

(II) (A) The district's total program as calculated by: Adding the amount determined by multiplying the district's per pupil funding by four hundred fifty-nine to the amount determined by multiplying 11.5% of the district's per pupil funding by the district's at-risk pupils; then dividing the sum of those two amounts by four hundred fifty-nine; ~~and then multiplying the resulting amount by the district's funded pupil count minus the district's on-line pupil enrollment; AND THEN ADDING THE DISTRICT'S ON-LINE FUNDING; EXCEPT THAT, FOR THE 2004-05, 2005-06, AND 2006-07 BUDGET YEARS, THE DISTRICT'S TOTAL PROGRAM AS CALCULATED BY:~~ ADDING THE AMOUNT DETERMINED BY MULTIPLYING THE DISTRICT'S PER PUPIL FUNDING BY FOUR HUNDRED FIFTY-NINE TO THE AMOUNT DETERMINED BY MULTIPLYING 11.2% OF THE DISTRICT'S PER PUPIL FUNDING BY THE DISTRICT'S AT-RISK PUPILS; THEN DIVIDING THE SUM OF THOSE TWO AMOUNTS BY FOUR HUNDRED FIFTY-NINE; AND THEN MULTIPLYING THE RESULTING AMOUNT BY THE DISTRICT'S FUNDED PUPIL COUNT MINUS THE DISTRICT'S ON-LINE PUPIL ENROLLMENT; AND THEN ADDING THE DISTRICT'S ON-LINE FUNDING.

**SECTION 4.** 22-54-104 (4) and (5) (f), Colorado Revised Statutes, are amended to read:

**22-54-104. District total program.** (4) A district's at-risk funding shall be determined in accordance with one of the following formulas:

(a) (I) If the district percentage of at-risk pupils is equal to or less than the statewide average percentage of at-risk pupils or the district's funded pupil count is equal to or less than four hundred fifty-nine, the formula shall be:

(District per pupil funding x 11.5%) x District at-risk pupils

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), FOR THE 2004-05, 2005-06, AND 2006-07 BUDGET YEARS, IF THE DISTRICT PERCENTAGE OF AT-RISK PUPILS IS EQUAL TO OR LESS THAN THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS OR THE DISTRICT'S FUNDED PUPIL COUNT IS EQUAL TO OR LESS THAN FOUR HUNDRED FIFTY-NINE, THE FORMULA SHALL BE:

(DISTRICT PER PUPIL FUNDING X 11.2%) X DISTRICT AT-RISK PUPILS

(b) (I) If the district percentage of at-risk pupils is greater than the statewide average percentage of at-risk pupils and the district's funded pupil count is greater than four hundred fifty-nine, the formula shall be:

((District per pupil funding x 11.5%) x (Statewide average percentage of at-risk pupils x District pupil enrollment)) + ((District per pupil funding x District at-risk factor) x (District at-risk pupils - (Statewide average percentage of at-risk

pupils x District pupil enrollment)))

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), FOR THE 2004-05, 2005-06, AND 2006-07 BUDGET YEARS, IF THE DISTRICT PERCENTAGE OF AT-RISK PUPILS IS GREATER THAN THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS AND THE DISTRICT'S FUNDED PUPIL COUNT IS GREATER THAN FOUR HUNDRED FIFTY-NINE, THE FORMULA SHALL BE:

((DISTRICT PER PUPIL FUNDING X 11.2%) X (STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS X DISTRICT PUPIL ENROLLMENT)) + ((DISTRICT PER PUPIL FUNDING X DISTRICT AT-RISK FACTOR) X (DISTRICT AT-RISK PUPILS - (STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS X DISTRICT PUPIL ENROLLMENT)))

(5) For purposes of the formulas used in this section:

(f) (I) If the district percentage of at-risk pupils is greater than the statewide average percentage of at-risk pupils and the district's funded pupil count is greater than four hundred fifty-nine but not in excess of fifty thousand, the district's at-risk factor shall be 11.5% plus a 0.30 percentage point for each percentage point that the district percentage of at-risk pupils exceeds the statewide average percentage of at-risk pupils; except that no district's at-risk factor shall exceed 30%. NOTWITHSTANDING THE PROVISIONS OF THIS SUBPARAGRAPH (I), FOR THE 2004-05, 2005-06, AND 2006-07 BUDGET YEARS, IF THE DISTRICT PERCENTAGE OF AT-RISK PUPILS IS GREATER THAN THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS AND THE DISTRICT'S FUNDED PUPIL COUNT IS GREATER THAN FOUR HUNDRED FIFTY-NINE BUT NOT IN EXCESS OF FIFTY THOUSAND, THE DISTRICT'S AT-RISK FACTOR SHALL BE 11.2% PLUS A 0.30 PERCENTAGE POINT FOR EACH PERCENTAGE POINT THAT THE DISTRICT PERCENTAGE OF AT-RISK PUPILS EXCEEDS THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS; EXCEPT THAT NO DISTRICT'S AT-RISK FACTOR SHALL EXCEED 30%.

(II) If the district percentage of at-risk pupils is greater than the statewide average percentage of at-risk pupils and the district's funded pupil count is greater than fifty thousand, the district's at-risk factor shall be 11.5% plus a 0.36 percentage point for each percentage point that the district percentage of at-risk pupils exceeds the statewide average percentage of at-risk pupils; except that no district's at-risk factor shall exceed 30%. NOTWITHSTANDING THE PROVISIONS OF THIS SUBPARAGRAPH (II), FOR THE 2004-05, 2005-06, AND 2006-07 BUDGET YEARS, IF THE DISTRICT PERCENTAGE OF AT-RISK PUPILS IS GREATER THAN THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS AND THE DISTRICT'S FUNDED PUPIL COUNT IS GREATER THAN FIFTY THOUSAND, THE DISTRICT'S AT-RISK FACTOR SHALL BE 11.2% PLUS A 0.36 PERCENTAGE POINT FOR EACH PERCENTAGE POINT THAT THE DISTRICT PERCENTAGE OF AT-RISK PUPILS EXCEEDS THE STATEWIDE AVERAGE PERCENTAGE OF AT-RISK PUPILS; EXCEPT THAT NO DISTRICT'S AT-RISK FACTOR SHALL EXCEED 30%.

**SECTION 5.** 22-54-104 (5) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**22-54-104. District total program.** (5) For purposes of the formulas used in this section:

(a) (XI) FOR THE 2004-05 BUDGET YEAR, THE STATEWIDE BASE PER PUPIL FUNDING SHALL BE \$4,666.29, WHICH IS AN AMOUNT EQUAL TO \$4,570.31 SUPPLEMENTED BY \$95.98 TO ACCOUNT FOR INFLATION PLUS AN ADDITIONAL ONE PERCENTAGE POINT.

**SECTION 6.** 22-54-104 (5) (c) (II) (B.1), Colorado Revised Statutes, is amended to read:

**22-54-104. District total program.** (5) For purposes of the formulas used in this section:

(c) (II) (B.1) Except as provided in subparagraph (IV) of this paragraph (c), for the 2000-01 budget year and budget years thereafter, a district's cost of living factor shall be the district's cost of living factor for the prior budget year, but, if the percentage change in the district's cost of living amount from the previous cost of living study to the current cost of living study is greater than the ~~rate of inflation for the most recent calendar year preceding the budget year in which the cost of living factor is to take effect~~ PERCENT INCREASE IN THE INCOME LEVEL USED IN THE COST OF LIVING STUDY, a district's cost of living factor shall be determined by dividing the percentage change in the district's cost of living amount from the previous cost of living study to the current cost of living study by the ~~rate of inflation for the calendar year preceding the budget year in which the cost of living factor is to take effect~~ PERCENT INCREASE IN THE INCOME LEVEL USED IN THE COST OF LIVING STUDY, dividing said amount by one thousand and rounding to the nearest one-thousandth of one percent, and adding the result obtained to the district's cost of living factor for the prior budget year. ~~For purposes of this sub-subparagraph (B.1), "the rate of inflation" means the percentage change in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States department of labor, bureau of labor statistics, or its successor index.~~

**SECTION 7.** 22-2-107 (1) (g.5), Colorado Revised Statutes, is amended to read:

**22-2-107. State board - powers.** (1) The state board has the power:

(g.5) To revoke or withhold accreditation of any school district under section 22-2-106 (1) (c) if it determines that the school district has not complied with the provisions of the "Public School Finance Act of 1994", as set forth in article 54 of this title, ~~but such~~ OR THAT THE SCHOOL DISTRICT HAS NOT COMPLIED WITH A SPECIFIC WRITTEN DIRECTIVE OR ORDER OF THE STATE BOARD TO THE SCHOOL DISTRICT. Action AGAINST A SCHOOL DISTRICT'S ACCREDITATION may be taken only after at least sixty days' notice to the district and an opportunity for the district to be heard at a hearing held in accordance with rules promulgated by the state board.

**SECTION 8.** 22-11-104 (2) (k), Colorado Revised Statutes, is amended to read:

**22-11-104. Accreditation indicators.** (2) **Contents.** The accreditation indicators shall include but shall not be limited to the following:

(k) Compliance with the budgeting, accounting, and reporting requirements set forth in articles 44 and 45 of this title AND COMPLIANCE WITH ANY SPECIFIC WRITTEN DIRECTIVE OR ORDER OF THE STATE BOARD TO THE SCHOOL DISTRICT.

**SECTION 9.** 22-30.5-104 (4) and (6), Colorado Revised Statutes, are amended to read:

**22-30.5-104. Charter school - requirements - authority.** (4) A charter school shall be administered and governed by a governing body in a manner agreed to by the charter school applicant and the local board of education. A charter school may organize as a nonprofit corporation pursuant to the "Colorado REVISED Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., which shall not affect its status as a public school for any purposes under Colorado law. NOTWITHSTANDING ORGANIZATION AS A NONPROFIT CORPORATION, A CHARTER SCHOOL SHALL ANNUALLY COMPLETE A GOVERNMENT AUDIT THAT COMPLIES WITH THE REQUIREMENTS OF THE DEPARTMENT OF EDUCATION.

(6) Pursuant to contract, a charter school may operate free from specified school district policies and state regulations; except that a charter school shall not, by contract or otherwise, operate free of the REQUIREMENTS CONTAINED IN THE "PUBLIC SCHOOL FINANCE ACT OF 1994", ARTICLE 54 OF THIS TITLE, OR THE requirements contained in the "Children's Internet Protection Act", article 87 of this title. Pursuant to contract, a local board of education may waive locally imposed school district requirements, without seeking approval of the state board. The state board may waive state statutory requirements or rules promulgated by the state board; except that the state board may not waive any statute or rule relating to the assessments required to be administered pursuant to section 22-7-409, any statute or rule necessary to prepare the school accountability reports pursuant to part 6 of article 7 of this title, ANY STATUTE OR RULE RELATING TO THE "PUBLIC SCHOOL FINANCE ACT OF 1994", ARTICLE 54 OF THIS TITLE, or any statute or rule relating to the "Children's Internet Protection Act", article 87 of this title. Upon request of the charter applicant, the state board and the local board of education shall provide summaries of such regulations and policies to use in preparing a charter school application. The department of education shall prepare the summary of state regulations within existing appropriations. Any waiver of state or local school district regulations made pursuant to this subsection (6) shall be for the term of the charter for which the waiver is made; except that a waiver of state statutes or regulations by the state board shall be subject to review every two years and may be revoked if the waiver is deemed no longer necessary by the state board.

**SECTION 10.** 22-30.5-105 (2) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**22-30.5-105. Charter schools - contract contents - regulations - repeal.** (2) (c) Any contract between a charter school and a local board of education approved on or after July 1, 2002, shall specify:

(IV) THE FINANCIAL INFORMATION, INCLUDING BUT NOT LIMITED TO DATA FROM AN ANNUAL GOVERNMENTAL AUDIT, THE CHARTER SCHOOL MUST REPORT TO THE SCHOOL DISTRICT, THE DEADLINE FOR REPORTING SUCH INFORMATION TO THE SCHOOL DISTRICT IN ORDER TO ENABLE THE SCHOOL DISTRICT TO COMPLY WITH THE REQUIREMENTS SPECIFIED IN THIS TITLE AND IN RULES PROMULGATED BY THE STATE BOARD PERTAINING TO REPORTING FINANCIAL INFORMATION TO THE DEPARTMENT OF EDUCATION, AND THE CIRCUMSTANCES UNDER WHICH THE SCHOOL DISTRICT MAY WITHHOLD A PORTION OF THE CHARTER SCHOOL'S MONTHLY PAYMENT AS PROVIDED

IN SECTION 22-30.5-112 (8) FOR FAILURE TO COMPLY WITH FINANCIAL REPORTING REQUIREMENTS SPECIFIED IN THE CONTRACT.

**SECTION 11.** 22-30.5-112, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**22-30.5-112. Charter schools - financing - guidelines.** (7) A CHARTER SCHOOL SHALL COMPLY WITH ALL OF THE STATE FINANCIAL AND BUDGET RULES, REGULATIONS, AND FINANCIAL REPORTING REQUIREMENTS WITH WHICH THE CHARTERING SCHOOL DISTRICT IS REQUIRED TO COMPLY, INCLUDING BUT NOT LIMITED TO ANNUAL COMPLETION OF A GOVERNMENTAL AUDIT THAT COMPLIES WITH THE REQUIREMENTS OF THE DEPARTMENT OF EDUCATION.

(8) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A SCHOOL DISTRICT, UNDER THE CIRCUMSTANCES SPECIFIED IN THE CONTRACT BETWEEN THE SCHOOL DISTRICT AND THE CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-105 (2) (c) (IV), MAY WITHHOLD A PORTION OF A CHARTER SCHOOL'S MONTHLY PAYMENT DUE PURSUANT TO THIS SECTION.

(9) (a) IF A CHARTER SCHOOL DETERMINES THAT ITS SCHOOL DISTRICT HAS NOT FORWARDED TO THE CHARTER SCHOOL THE AMOUNT DUE TO THE CHARTER SCHOOL IN ACCORDANCE WITH THE TERMS OF THE CHARTER CONTRACT AND THE PROVISIONS OF THIS SECTION, THE CHARTER SCHOOL MAY SEEK A DETERMINATION FROM THE STATE BOARD REGARDING WHETHER THE DISTRICT IMPROPERLY WITHHELD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER SCHOOL. A CHARTER SCHOOL THAT CHOOSES TO REQUEST A DETERMINATION PURSUANT TO THIS SUBSECTION (9) SHALL SUBMIT THE REQUEST WITHIN THE NEXT FISCAL YEAR FOLLOWING THE FISCAL YEAR IN WHICH THE DISTRICT MAY HAVE IMPROPERLY WITHHELD FUNDING.

(b) UPON RECEIPT FROM A CHARTER SCHOOL OF A REQUEST FOR A DETERMINATION OF WHETHER THE SCHOOL DISTRICT HAS IMPROPERLY WITHHELD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER SCHOOL, THE STATE BOARD SHALL DIRECT THE DEPARTMENT OF EDUCATION TO REVIEW THE TERMS OF THE CHARTER CONTRACT AND THE FINANCIAL INFORMATION OF THE CHARTER SCHOOL AND THE DISTRICT AND MAKE A RECOMMENDATION TO THE STATE BOARD REGARDING WHETHER THE DISTRICT IMPROPERLY WITHHELD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER SCHOOL. THE DEPARTMENT SHALL REQUEST FROM THE DISTRICT AND THE CHARTER SCHOOL ALL INFORMATION NECESSARY TO MAKE THE RECOMMENDATION, INCLUDING BUT NOT LIMITED TO AUDITED FINANCIAL DATA. THE DISTRICT AND THE CHARTER SCHOOL SHALL PROVIDE THE REQUESTED INFORMATION AS SOON AS POSSIBLE FOLLOWING THE REQUEST, BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER COMPLETION OF THE ANNUAL AUDIT. THE DEPARTMENT SHALL FORWARD ITS RECOMMENDATION TO THE STATE BOARD WITHIN SIXTY DAYS AFTER RECEIVING ALL OF THE REQUESTED INFORMATION FROM THE DISTRICT AND THE CHARTER SCHOOL.

(c) AT THE NEXT STATE BOARD MEETING FOLLOWING RECEIPT OF THE RECOMMENDATION OF THE DEPARTMENT OF EDUCATION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (9), THE STATE BOARD SHALL ISSUE ITS DECISION REGARDING WHETHER THE SCHOOL DISTRICT IMPROPERLY WITHHELD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER SCHOOL. IF THE STATE BOARD FINDS THAT THE DISTRICT IMPROPERLY WITHHELD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER

SCHOOL, THE STATE BOARD SHALL ISSUE AN ORDER DIRECTING THE DISTRICT TO PAY TO THE CHARTER SCHOOL, WITHIN THIRTY DAYS AFTER ISSUANCE OF THE DECISION, THE AMOUNT IMPROPERLY WITHHELD. IN ADDITION, THE DISTRICT SHALL PAY THE COSTS INCURRED BY THE DEPARTMENT IN REVIEWING THE NECESSARY INFORMATION TO MAKE ITS RECOMMENDATION. IF THE STATE BOARD FINDS THAT THE DISTRICT DID NOT IMPROPERLY WITHHOLD ANY PORTION OF THE AMOUNT DUE TO THE CHARTER SCHOOL, THE CHARTER SCHOOL SHALL PAY THE COSTS INCURRED BY THE DEPARTMENT IN REVIEWING THE NECESSARY INFORMATION TO MAKE ITS RECOMMENDATION.

(d) IF THE SCHOOL DISTRICT FAILS WITHIN THE THIRTY-DAY PERIOD TO PAY THE FULL AMOUNT THAT WAS IMPROPERLY WITHHELD, THE CHARTER SCHOOL MAY NOTIFY THE DEPARTMENT OF EDUCATION, AND THE DEPARTMENT SHALL WITHHOLD FROM THE DISTRICT'S STATE EQUALIZATION PAYMENT THE UNPAID PORTION OF THE AMOUNT IMPROPERLY WITHHELD BY THE DISTRICT FROM THE CHARTER SCHOOL AND PAY THE UNPAID PORTION DIRECTLY TO THE CHARTER SCHOOL.

**SECTION 12.** 22-54-117 (1.7) (a), Colorado Revised Statutes, is amended to read:

**22-54-117. Contingency reserve - capital construction expenditures reserve.** (1.7) (a) In addition to any amount annually appropriated by the general assembly to the state public school fund as a contingency reserve and any amount appropriated from the general fund to the state public school fund as a school capital construction expenditures reserve in accordance with section 24-75-201.1 (4) (b), C.R.S., and subsection (1.5) of this section, for the 2001-02 budget year, and for the ~~2004-05 budget year~~ 2005-06 BUDGET YEAR and budget years thereafter, an amount equal to the amount appropriated for the budget year from the state education fund created in section 17 (4) of article IX of the state constitution to the department of education pursuant to section 22-54-124 (4) shall be appropriated from the state education fund to the school capital construction expenditures reserve created in said subsection (1.5) to be used only as provided in said subsection (1.5).

**SECTION 13.** 24-75-201.1 (4) (a.5) (I) and (4) (a.5) (II), Colorado Revised Statutes, are amended, and the said 24-75-201.1 (4) (a.5) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

**24-75-201.1. Restriction on state appropriations - legislative declaration - definitions.** (4) (a.5) The general assembly hereby finds, determines, and declares that:

(I) For fiscal years 2002-03, ~~and~~ 2003-04, AND 2004-05, general fund revenues will not exceed general fund obligations and the moneys required to be allocated to the highway users tax fund by more than eighty million dollars, as required in paragraph (c) of this subsection (4), and, therefore, the general assembly is not obligated to appropriate general fund moneys for fiscal years 2002-03, ~~and~~ 2003-04, AND 2004-05 as would otherwise be required by subparagraph (III) of paragraph (b) of this subsection (4);

(II) Despite the fact that the state is not obligated to appropriate general fund moneys for fiscal years 2002-03, ~~and~~ 2003-04, AND 2004-05 for school district



capital construction pursuant to this subsection (4), the general assembly recognizes the importance of assisting school districts in providing safe, adequate, and necessary buildings and classrooms for school children;

(V) IN ADDITION TO THE MONEYS APPROPRIATED FOR THE 2003-04 FISCAL YEAR PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a.5), THE GENERAL ASSEMBLY MADE THREE MILLION SIX HUNDRED NINETY THOUSAND THREE HUNDRED SEVENTY-SEVEN DOLLARS AVAILABLE PURSUANT TO SECTION 22-54-117 (1.6) (a), C.R.S., TO SCHOOL DISTRICTS TO PROVIDE SUPPLEMENTAL ASSISTANCE FOR CAPITAL EXPENDITURES TO ADDRESS IMMEDIATE SAFETY HAZARDS OR HEALTH CONCERNS WITHIN SCHOOL FACILITIES.

(VI) TO ASSIST SCHOOL DISTRICTS WITH CAPITAL CONSTRUCTION FUNDING TO THE GREATEST EXTENT POSSIBLE UNDER THE CURRENT FISCAL RESTRAINTS AND LIMITATIONS FACING THE STATE, THE GENERAL ASSEMBLY SHALL APPROPRIATE FIVE MILLION DOLLARS FOR THE 2004-05 FISCAL YEAR, WHICH EQUALS TWENTY-FIVE PERCENT OF THE AMOUNT OF GENERAL FUND APPROPRIATIONS THAT WOULD OTHERWISE BE REQUIRED TO BE APPROPRIATED FOR THE 2004-05 FISCAL YEAR PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (b) OF THIS SUBSECTION (4), BUT FOR THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (4), FROM MONEYS THAT WOULD HAVE OTHERWISE BEEN CREDITED TO THE GENERAL FUND EXCEPT FOR INITIATED AND REFERRED MEASURES APPROVED BY THE VOTERS AT THE 2000 GENERAL ELECTION THAT DIVERTED SUCH GENERAL FUND MONEYS TO OTHER STATE FUNDS, BY APPROPRIATING:

(A) TWO MILLION FIVE HUNDRED THOUSAND DOLLARS FROM THE STATE EDUCATION FUND TO THE SCHOOL CONSTRUCTION AND RENOVATION FUND CREATED IN SECTION 22-43.7-103 (1), C.R.S.; AND

(B) TWO MILLION FIVE HUNDRED THOUSAND DOLLARS FROM THE STATE EDUCATION FUND TO THE SCHOOL CAPITAL CONSTRUCTION EXPENDITURES RESERVE CREATED IN SECTION 22-54-117 (1.5) (a), C.R.S.

**SECTION 14.** 22-32-119 (1), Colorado Revised Statutes, is amended to read:

**22-32-119. Kindergartens.** (1) A board of education may establish and maintain kindergartens in connection with the schools of its district for the instruction of children one year prior to the year in which such children would be eligible for admission to the first grade. ~~On and after May 29, 2001, but prior to July 1, 2006, such kindergarten educational programs may be half-day or full-day educational programs.~~ Said board may prescribe courses of training, study, and discipline and rules and regulations governing such kindergarten programs. Said kindergartens shall be a part of the public school system, and the cost of establishing and maintaining them may be paid from the general school fund.

**SECTION 15.** 22-20-109 (4) and (5), Colorado Revised Statutes, are amended, and the said 22-20-109 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**22-20-109. Tuition.** (4) (a) When a child with a disability enrolls and attends a school in a district other than the child's district of residence pursuant to the

provisions of section 22-36-101, AND THE SCHOOL DOES NOT PROVIDE THE CHILD AN ON-LINE PROGRAM PURSUANT TO SECTION 22-33-104.6, the district of residence shall be responsible for paying the tuition charge for educating the child to the district of attendance. THE DISTRICT OF ATTENDANCE SHALL NOT CHARGE THE DISTRICT OF RESIDENCE TUITION FOR THE EXCESS COSTS INCURRED IN EDUCATING A CHILD WITH A DISABILITY WHO RECEIVES EDUCATIONAL SERVICES FROM THE DISTRICT OF ATTENDANCE FOR LESS THAN A PERCENTAGE OF TIME SPECIFIED BY RULE OF THE STATE BOARD. THE DISTRICT OF ATTENDANCE SHALL PROVIDE NOTICE TO THE DISTRICT OF RESIDENCE IN ACCORDANCE WITH STATE BOARD RULES ADOPTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4) WHEN A CHILD WITH A DISABILITY APPLIES TO ENROLL IN A SCHOOL IN THE DISTRICT OF ATTENDANCE. The amount of the tuition charge shall be determined pursuant to a contract entered into between the two districts pursuant to subsection (1) of this section. Under the circumstances described in this subsection (4), the provisions of section 22-20-108 (8) shall not apply.

(b) FOR THE 2004-05 BUDGET YEAR AND BUDGET YEARS THEREAFTER, THE STATE BOARD SHALL ADOPT RULES TO SPECIFY THE CONTENT, MANNER, AND TIMING OF THE NOTICE THAT A DISTRICT OF ATTENDANCE SHALL GIVE A DISTRICT OF RESIDENCE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4).

(5) (a) When a child with a disability enrolls in and attends a charter school pursuant to the provisions of part 1 of article 30.5 of this title, INCLUDING A CHARTER SCHOOL THAT PROVIDES AN ON-LINE PROGRAM PURSUANT TO SECTION 22-33-104.6, the district of residence shall be responsible for paying to the charter school the tuition charge for the excess costs incurred in educating the child. THE TUITION RESPONSIBILITY SHALL BE REFLECTED IN A CONTRACT BETWEEN THE CHARTER SCHOOL AND THE DISTRICT OF RESIDENCE IN A FORM APPROVED BY THE CHARTERING DISTRICT. THE CHARTER SCHOOL SHALL PROVIDE NOTICE TO THE DISTRICT OF RESIDENCE IN ACCORDANCE WITH STATE BOARD RULES ADOPTED PURSUANT TO SUBSECTION (7) OF THIS SECTION WHEN A CHILD WITH A DISABILITY APPLIES TO ENROLL IN THE CHARTER SCHOOL. The amount of the tuition charge shall be determined pursuant to ~~guidelines developed by the department~~ RULES ADOPTED BY THE STATE BOARD PURSUANT TO SUBSECTION (7) OF THIS SECTION. Under the circumstances described in this subsection (5), the provisions of section 22-20-108 (8) shall not apply.

(b) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO APPLY TO THE CHARTER CONTRACT ENTERED INTO BETWEEN A CHARTER SCHOOL AND THE CHARTERING LOCAL BOARD OF EDUCATION PURSUANT TO PART 1 OF ARTICLE 30.5 OF THIS TITLE.

(6) WHEN A CHILD WITH A DISABILITY ENROLLS IN AND ATTENDS AN ON-LINE PROGRAM PURSUANT TO SECTION 22-33-104.6 THAT IS NOT PROVIDED BY A CHARTER SCHOOL, THE DISTRICT OF RESIDENCE SHALL BE RESPONSIBLE FOR PAYING TO THE PROVIDER OF THE ON-LINE PROGRAM THE TUITION CHARGE FOR THE EXCESS COSTS INCURRED IN EDUCATING THE CHILD. THE TUITION RESPONSIBILITY SHALL BE REFLECTED IN A CONTRACT BETWEEN THE DISTRICT OF ATTENDANCE AND THE DISTRICT OF RESIDENCE IN A FORM APPROVED BY THE STATE BOARD. THE ON-LINE PROVIDER SHALL PROVIDE NOTICE TO THE DISTRICT OF RESIDENCE IN ACCORDANCE WITH STATE BOARD RULES ADOPTED PURSUANT TO SUBSECTION (7) OF THIS SECTION

WHEN A CHILD WITH A DISABILITY APPLIES TO ENROLL IN THE ON-LINE PROGRAM. THE AMOUNT OF THE TUITION CHARGE SHALL BE DETERMINED PURSUANT TO RULES ADOPTED BY THE STATE BOARD PURSUANT TO SUBSECTION (7) OF THIS SECTION. UNDER THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION (6), THE PROVISIONS OF SECTION 22-20-108 (8) SHALL NOT APPLY.

(7) FOR THE 2004-05 BUDGET YEAR AND BUDGET YEARS THEREAFTER, THE STATE BOARD SHALL ADOPT RULES PERTAINING TO THE EDUCATION OF CHILDREN WITH DISABILITIES IN CHARTER SCHOOLS AND RULES PERTAINING TO THE EDUCATION OF CHILDREN WITH DISABILITIES THROUGH ON-LINE PROGRAMS. BOTH SETS OF RULES SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, RULES TO:

(a) SPECIFY THE CONTENT, MANNER, AND TIMING OF THE NOTICE THAT A CHARTER SCHOOL OR ON-LINE PROVIDER SHALL GIVE A DISTRICT OF RESIDENCE PURSUANT TO SUBSECTIONS (5) AND (6) OF THIS SECTION, RESPECTIVELY;

(b) DEFINE THE TYPES AND AMOUNTS OF ALLOWABLE COSTS IN EXCESS OF THE PER PUPIL FUNDING FOR THE CHILD WITH A DISABILITY, AS DETERMINED PURSUANT TO ARTICLE 54 OF THIS TITLE, AND ANY OTHER STATE AND FEDERAL REVENUES RECEIVED FOR EDUCATING THE CHILD, THAT A CHARTER SCHOOL OR ON-LINE PROGRAM MAY CHARGE AS TUITION TO A DISTRICT OF RESIDENCE;

(c) DEFINE OTHER APPLICABLE REVENUES THAT A DISTRICT OF RESIDENCE OF A CHILD WITH A DISABILITY SHALL APPLY IN PAYING THE TUITION CHARGE FOR EXCESS COSTS INCURRED IN EDUCATING THE CHILD AT A CHARTER SCHOOL OR THROUGH AN ON-LINE PROGRAM;

(d) SPECIFY THE LIMITATIONS ON THE NUMBER OF STAFF MEMBERS PER NUMBER OF STUDENTS THAT A CHARTER SCHOOL OR ON-LINE PROGRAM SHALL PROVIDE IN EDUCATING CHILDREN WITH DISABILITIES;

(e) SPECIFY THE AMOUNT AND TYPES OF EQUIPMENT NECESSARY FOR INSTRUCTION OF CHILDREN WITH DISABILITIES;

(f) SPECIFY THE MINIMUM NUMBER OF HOURS OF EDUCATIONAL INSTRUCTION THAT A CHARTER SCHOOL OR ON-LINE PROGRAM SHALL PROVIDE TO CHILDREN WITH DISABILITIES;

(g) SPECIFY THE METHODS OF DELIVERY OF EDUCATIONAL SERVICES PROVIDED TO CHILDREN WITH DISABILITIES BY A CHARTER SCHOOL OR AN ON-LINE PROGRAM;

(h) IDENTIFY ANY OTHER EXPENSES INVOLVED IN THE PROVISION OF EDUCATIONAL SERVICES TO CHILDREN WITH DISABILITIES IN ACCORDANCE WITH EACH CHILD'S INDIVIDUAL EDUCATION PROGRAM;

(i) ESTABLISH A DISPUTE RESOLUTION PROCESS FOR DISAGREEMENTS RESULTING FROM CONTRACTS ENTERED INTO PURSUANT TO SUBSECTION (5) OR (6) OF THIS SECTION; AND

(j) SPECIFY ELEMENTS TO BE INCLUDED IN A CONTRACT BETWEEN A CHARTER SCHOOL AND A DISTRICT OF RESIDENCE AS DESCRIBED IN PARAGRAPH (a) OF

SUBSECTION (5) OF THIS SECTION.

**SECTION 16.** 22-54-114, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**22-54-114. State public school fund.** (2.3) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, OF THE TOTAL AMOUNT APPROPRIATED BY THE GENERAL ASSEMBLY IN THE ANNUAL APPROPRIATION BILL FOR EACH BUDGET YEAR TO MEET THE STATE'S SHARE OF THE TOTAL PROGRAM OF ALL DISTRICTS, THE DEPARTMENT OF EDUCATION MAY TRANSFER AN AMOUNT SPECIFIED BY THE GENERAL ASSEMBLY IN THE ANNUAL GENERAL APPROPRIATION BILL FOR THAT BUDGET YEAR TO OFFSET THE DIRECT AND INDIRECT ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT IN IMPLEMENTING THE PROVISIONS OF THIS ARTICLE. THE TOTAL PROGRAM OF EACH DISTRICT THAT RECEIVES STATE AID SHALL BE REDUCED BY A PERCENTAGE DETERMINED BY DIVIDING THE AMOUNT OF THE TRANSFER BY THE TOTAL PROGRAM OF ALL DISTRICTS THAT RECEIVE STATE AID. THE STATE AID OF EACH DISTRICT SHALL BE REDUCED BY THE AMOUNT OF THE REDUCTION IN THE DISTRICT'S TOTAL PROGRAM OR THE AMOUNT OF STATE AID, WHICHEVER IS LESS. THE DEPARTMENT OF EDUCATION SHALL ENSURE THAT THE REDUCTION IN STATE AID REQUIRED BY THIS SUBSECTION (2.3) IS ACCOMPLISHED PRIOR TO THE END OF THE BUDGET YEAR. THE REDUCTION IN TOTAL PROGRAM DESCRIBED IN THIS SUBSECTION (2.3) SHALL BE IN ADDITION TO ANY REDUCTION THAT MAY BE REQUIRED PURSUANT TO SECTION 22-54-106 (4) (c).

**SECTION 17. Appropriation - adjustments to the 2004 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state education fund created in section 17 (4) of article IX of the state constitution, not otherwise appropriated, to the school construction and renovation fund created in section 22-43.7-103 (1), Colorado Revised Statutes, for the fiscal year beginning July 1, 2004, the sum of two million five hundred thousand dollars (\$2,500,000), and such sum, or so much thereof as may be necessary, is hereby appropriated to the department of education for the purpose of providing matching grants for eligible capital construction projects in accordance with article 43.7 of title 22, Colorado Revised Statutes.

(2) For the implementation of this act, appropriations made in the annual general appropriation act, to the department of education, for the fiscal year beginning July 1, 2004, shall be adjusted as follows:

(a) The appropriation for assistance to public schools, public school finance, state share of districts' total program funding, is decreased by eighteen million fifty-six thousand two hundred forty-four dollars (\$18,056,244). Of said sum, sixteen million ninety-one thousand two hundred seven dollars (\$16,091,207) shall be from the general fund and one million nine hundred sixty-five thousand thirty-seven dollars (\$1,965,037) shall be from the state education fund created in section 17 (4) of article IX of the state constitution.

(b) The cash funds exempt appropriation for assistance to public schools, grant programs and other distributions, state public school fund, school capital construction expenditures reserve, is decreased by five million dollars (\$5,000,000). Of said sum, two million five hundred thousand dollars (\$2,500,000) shall be from the state

education fund created in section 17 (4) of article IX of the state constitution, and two million five hundred thousand dollars (\$2,500,000) shall be from the school capital construction expenditures reserve established in section 22-54-117 (1.5), Colorado Revised Statutes.

**SECTION 18. Effective date.** (1) Except as otherwise provided in subsection (2) of this section, this act shall take effect upon passage.

(2) Sections 9 through 11 of this act shall not take effect if House Bill 04-1141 is enacted at the second regular session of the sixty-fourth general assembly and becomes law.

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

Approved: May 28, 2004