

CHAPTER 440

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 09-089

BY SENATOR(S) King K., Hudak, Kopp, Spence, Gibbs, Groff, Lundberg, Mitchell, Newell, Romer, Scheffel, Schultheis, White; also REPRESENTATIVE(S) Middleton, Gardner B., Massey, Murray, Summers, Tipton, Acree, Balmer, Gerou, Kerr J., Lambert, Looper, Marostica, Nikkel, Priola, Roberts, Schafer S., Stephens, Waller, Carroll T.

AN ACT

CONCERNING THE STATE CHARTER SCHOOL INSTITUTE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 24-101-105 (1), Colorado Revised Statutes, is amended to read:

24-101-105. Application of this code. (1) (a) This code shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except that this code shall not apply to:

(I) The procurement of bridge and highway construction or to contracts for unsolicited or comparable proposals for public-private initiatives under section 43-1-1203, C.R.S.;

(II) THE AWARDING OF GRANTS TO OR THE AWARDING OF CONTRACTS BETWEEN THE STATE AND ITS POLITICAL SUBDIVISIONS OR OTHER GOVERNMENTS, EXCEPT AS PROVIDED IN ARTICLE 110 OF THIS TITLE;

(III) THE PROCUREMENT OF PUBLIC PRINTING, AS DEFINED IN SECTION 24-70-201, EXCEPT FOR THE PROVISIONS OF ARTICLE 109 OF THIS TITLE;

(IV) THE PROCUREMENT OF PROFESSIONAL SERVICES, AS DEFINED IN SECTION 24-30-1402;

(V) THE COLORADO STATE FAIR AUTHORITY CREATED PURSUANT TO SECTION 35-65-401 (1), C.R.S.;

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

(VI) THE STATE BOARD OF LAND COMMISSIONERS IN CONNECTION WITH CONTRACT EXPENDITURES FROM THE STATE BOARD OF LAND COMMISSIONERS INVESTMENT AND DEVELOPMENT FUND CREATED IN SECTION 36-1-153 (1), C.R.S.

(b) The governing board of each institution of higher education, by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be exempt from the provisions of this code and may enter into contracts independent of the terms specified in this code.

(c) THE STATE CHARTER SCHOOL INSTITUTE, ESTABLISHED IN SECTION 22-30.5-503, C.R.S., MAY, BY FORMAL ACTION OF THE GOVERNING BOARD OF THE STATE CHARTER SCHOOL INSTITUTE, ELECT TO BE EXEMPT FROM THE PROVISIONS OF THIS CODE AND MAY ENTER INTO CONTRACTS INDEPENDENT OF THE TERMS SPECIFIED IN THIS CODE.

(d) Except as provided in section 24-111-103, this code shall also apply to contracts funded in whole or in part with federal assistance moneys. ~~However, this code shall not apply to the awarding of grants or to the awarding of contracts between the state and its political subdivisions or other governments, except as provided in article 110 of this title. It~~ THIS CODE shall apply to the transfer or disposal of state supplies. ~~Except for the provisions of article 109 of this title, this code shall not apply to the procurement of public printing, as defined in section 24-70-201. This code shall not apply to the procurement of professional services, as defined in section 24-30-1402. This code shall not apply to the Colorado state fair authority created pursuant to section 35-65-401 (1), C.R.S. This code shall not apply to the state board of land commissioners in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153 (1), C.R.S.~~

(e) Upon the request of a governmental body purchasing items for resale to the public, the head of a purchasing agency may, by written determination, provide that this code shall not apply to items acquired for such resale.

(f) Nothing in this code or in rules promulgated under this code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

SECTION 2. 24-101-301 (10), Colorado Revised Statutes, is amended to read:

24-101-301. Definitions. The terms defined in this section shall have the following meanings whenever they appear in this code, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular article or portion thereof:

(10) "Governmental body" means any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official, other than an elected official, of the executive branch of state government in this state; except that:

(a) The governing board of each institution of higher education, by formal action of the board, and the Colorado commission on higher education, by formal action

of the commission, may elect to be excluded from the meaning of "governmental body"; AND

(b) THE STATE CHARTER SCHOOL INSTITUTE, ESTABLISHED IN SECTION 22-30.5-503, C.R.S., MAY, BY FORMAL ACTION OF THE GOVERNING BOARD OF THE STATE CHARTER SCHOOL INSTITUTE, ELECT TO BE EXCLUDED FROM THE MEANING OF "GOVERNMENTAL BODY".

SECTION 3. 22-30.5-505 (4) (j) and (4) (k), Colorado Revised Statutes, are amended, and the said 22-30.5-505 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

22-30.5-505. State charter school institute - institute board - appointment - powers and duties - rules. (4) In addition to any other powers granted by law to the institute board, the institute board shall have the following powers:

(j) To exercise the same powers retained by boards of cooperative services that are described in section 22-5-108; ~~and~~

(k) To promulgate rules in accordance with article 4 of title 24, C.R.S., for the administration of this part 5; AND

(l) TO AWARD GRANTS FROM THE INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION ASSISTANCE GRANT FUND AS PROVIDED IN SECTION 22-30.5-515.5.

SECTION 4. 22-30.5-513 (4) (a) and (5), Colorado Revised Statutes, are amended, and the said 22-30.5-513 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

22-30.5-513. Institute charter schools - definitions - funding. (4) (a) (I) For each institute charter school, the department shall withhold from the state equalization payments of the institute charter school's accounting district an amount equal to one hundred percent of the accounting district's adjusted per pupil revenues multiplied by the number of pupils enrolled in the institute charter school who are not on-line pupils plus an amount equal to one hundred percent of the accounting district's per pupil on-line funding multiplied by the number of on-line pupils enrolled in the institute charter school. The department shall forward to the institute the amount withheld minus an amount not to exceed ~~two~~ ONE percent of the amount withheld that ~~may be retained by~~ the department MAY RETAIN as reimbursement for the reasonable and necessary costs to the department to implement the provisions of this part 5.

(I.5) The institute shall forward to each institute charter school an amount equal to the institute charter school's pupil enrollment multiplied by the accounting district's adjusted per pupil revenues of the institute charter school's accounting district, minus:

(A) THE AMOUNT WITHHELD NOT TO EXCEED ONE PERCENT RETAINED BY THE DEPARTMENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a);

(B) AN AMOUNT EQUAL TO ONE PERCENT OF THE AMOUNT CALCULATED FOR THE

INSTITUTE CHARTER SCHOOL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), WHICH AMOUNT THE INSTITUTE SHALL TRANSFER TO THE STATE TREASURER FOR CREDIT TO THE INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED IN SECTION 22-30.5-515.5;

(C) ANY AMOUNT AGREED TO BY THE INSTITUTE AND THE INSTITUTE CHARTER SCHOOL FOR REPAYMENT OF A LOAN TO THE INSTITUTE CHARTER SCHOOL FROM THE INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED IN SECTION 22-30.5-515.5;

(D) ANY AMOUNT WITHHELD PURSUANT TO SECTION 22-30.5-406 FOR THE DIRECT PAYMENTS MADE BY THE STATE TREASURER OF PRINCIPAL AND INTEREST DUE ON BONDS ISSUED ON BEHALF OF THE INSTITUTE CHARTER SCHOOL BY A GOVERNMENTAL ENTITY FOR THE PURPOSE OF FINANCING INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION;

(E) The amount of the actual costs incurred by the institute in providing necessary administration, oversight, and management services to the institute charter school, not to exceed three percent of the amount withheld; and ~~minus~~

(F) The amount agreed to in the institute charter contract for any additional services, as provided in paragraph (b) of this subsection (4).

(II) Repealed.

~~(5) For the 2004-05 budget year and budget years thereafter, and in accordance with section 22-30.5-406, the funding provided by the institute to an institute charter school pursuant to this section shall be reduced by the amount of any direct payments of principal and interest due on bonds issued on behalf of an institute charter school by a governmental entity for the purpose of financing institute charter school capital construction that were made by the state treasurer on behalf of the institute charter school.~~

(10) (a) ON OR BEFORE DECEMBER 1, 2009, AND ON OR BEFORE DECEMBER 1 EACH YEAR THEREAFTER, A REPRESENTATIVE FROM THE GOVERNING BOARD OF EACH INSTITUTE CHARTER SCHOOL AND THE INSTITUTE BOARD SHALL MEET TO REVIEW THE LEVEL OF FUNDING RECEIVED BY THE INSTITUTE AS A RESULT OF THE MONEYS WITHHELD BY THE INSTITUTE FOR THE AMOUNT OF ACTUAL COSTS INCURRED BY THE INSTITUTE IN PROVIDING NECESSARY ADMINISTRATION, OVERSIGHT, AND MANAGEMENT SERVICES TO THE INSTITUTE CHARTER SCHOOLS. THE INSTITUTE CHARTER SCHOOL REPRESENTATIVES AND THE INSTITUTE BOARD SHALL AT A MINIMUM REVIEW, FOR EACH BUDGET YEAR BEGINNING WITH THE 2004-05 BUDGET YEAR, THE AMOUNT OF MONEYS ANNUALLY APPROPRIATED TO THE INSTITUTE, THE AMOUNT OF COSTS INCURRED BY THE INSTITUTE, AND THE SERVICES PROVIDED BY THE INSTITUTE.

(b) ON OR BEFORE JANUARY 15, 2010, AND ON OR BEFORE JANUARY 15 EACH YEAR THEREAFTER, THE INSTITUTE BOARD SHALL SUBMIT TO THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, THE FINDINGS OF THE REVIEW DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (10) AND ANY RECOMMENDATIONS FOR LEGISLATIVE

CHANGES REGARDING THE OPERATIONS OF THE INSTITUTE.

(c) THE PROVISIONS OF THIS SUBSECTION (10) SHALL NOT BE INTERPRETED AS LIMITING THE AUTHORITY OF THE INSTITUTE OR THE INSTITUTE BOARD IN MAKING DECISIONS CONCERNING OPERATIONS OF THE INSTITUTE OR THE USE OF INSTITUTE MONEYS.

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

22-30.5-515.5. Institute charter school capital construction assistance fund - created - grants - loans - rules. (1) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND, REFERRED TO IN THIS SECTION AS THE "FUND", THAT SHALL CONSIST OF ONE PERCENT OF THE PER PUPIL FUNDING FOR INSTITUTE CHARTER SCHOOLS THAT THE STATE CHARTER SCHOOL INSTITUTE WITHHOLDS PURSUANT TO SECTION 22-30.5-513 (4) (a) (I.5) (B). THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE INSTITUTE FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH AWARDING GRANTS AND INTEREST-FREE LOANS PURSUANT TO THIS SECTION TO ASSIST INSTITUTE CHARTER SCHOOLS IN MEETING CAPITAL CONSTRUCTION NEEDS, INCLUDING BUT NOT LIMITED TO OBTAINING FINANCIAL ASSISTANCE FOR CAPITAL CONSTRUCTION THROUGH THE "BUILDING EXCELLENT SCHOOLS TODAY ACT", ARTICLE 43.7 OF THIS TITLE, OR REPAYING BONDS ISSUED BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, CREATED IN SECTION 23-15-104, C.R.S., FOR CONSTRUCTION OF INSTITUTE CHARTER SCHOOL BUILDINGS.

(b) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(2) AN INSTITUTE CHARTER SCHOOL THAT SEEKS A GRANT OR AN INTEREST-FREE LOAN PURSUANT TO THIS SECTION SHALL SUBMIT TO THE STATE CHARTER SCHOOL INSTITUTE, IN ACCORDANCE WITH THE TIMELINES AND PROCEDURES ADOPTED BY RULE OF THE INSTITUTE BOARD, AN APPLICATION THAT INCLUDES, AT A MINIMUM:

(a) FOR AN INSTITUTE CHARTER SCHOOL THAT SEEKS A GRANT OR AN INTEREST-FREE LOAN TO USE AS MATCHING MONEYS TO OBTAIN FINANCIAL ASSISTANCE FOR CAPITAL CONSTRUCTION THROUGH THE "BUILDING EXCELLENT SCHOOLS TODAY ACT", ARTICLE 43.7 OF THIS TITLE:

(I) EVIDENCE THAT THE INSTITUTE CHARTER SCHOOL MEETS THE DEFINITION OF A "CHARTER SCHOOL" SPECIFIED IN SECTION 22-43.7-103 (7);

(II) A COPY OF THE APPLICATION THAT THE INSTITUTE CHARTER SCHOOL HAS SUBMITTED OR IS PREPARING TO SUBMIT TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD PURSUANT TO SECTION 22-43.7-109;

(III) AN ESTIMATE OF THE AMOUNT OF MATCHING MONEYS, AS DEFINED IN SECTION 22-43.7-103 (11), THAT THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD WILL REQUIRE, IF KNOWN; AND

(IV) INFORMATION CONCERNING ANY OTHER SOURCES OF FUNDING AVAILABLE TO THE INSTITUTE CHARTER SCHOOL;

(b) FOR AN INSTITUTE CHARTER SCHOOL THAT SEEKS A GRANT OR AN INTEREST-FREE LOAN TO USE IN REPAYING BONDS OR NOTES ISSUED ON THE INSTITUTE CHARTER SCHOOL'S BEHALF BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY PURSUANT TO ARTICLE 15 OF TITLE 23, C.R.S.:

(I) COPIES OF THE DOCUMENTS THE INSTITUTE CHARTER SCHOOL HAS SUBMITTED OR WILL SUBMIT TO THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY TO REQUEST ISSUANCE OF THE BONDS OR NOTES;

(II) THE AMOUNT OF BONDS OR NOTES ISSUED OR TO BE ISSUED AND THE TOTAL AMOUNT THE INSTITUTE CHARTER SCHOOL IS REQUIRED TO REPAY; AND

(III) INFORMATION CONCERNING ANY OTHER SOURCE OF FUNDING AVAILABLE TO THE INSTITUTE CHARTER SCHOOL; AND

(c) FOR AN INSTITUTE CHARTER SCHOOL THAT SEEKS A GRANT OR AN INTEREST-FREE LOAN TO ASSIST IN MEETING OTHER CAPITAL CONSTRUCTION COSTS:

(I) A DESCRIPTION OF THE INSTITUTE CHARTER SCHOOL'S CAPITAL CONSTRUCTION NEEDS;

(II) A DESCRIPTION OF THE CAPITAL CONSTRUCTION PROJECT THE INSTITUTE CHARTER SCHOOL HAS UNDERTAKEN OR WILL UNDERTAKE TO MEET ITS NEEDS, INCLUDING THE ESTIMATED COST TO COMPLETE THE PROJECT; AND

(III) INFORMATION CONCERNING ANY OTHER SOURCE OF FUNDING AVAILABLE TO THE INSTITUTE CHARTER SCHOOL.

(3) THE STATE CHARTER SCHOOL INSTITUTE SHALL REVIEW EACH APPLICATION RECEIVED PURSUANT TO SUBSECTION (2) OF THIS SECTION AND SHALL RECOMMEND TO THE INSTITUTE BOARD THOSE INSTITUTE CHARTER SCHOOLS THAT SHOULD RECEIVE MONEYS PURSUANT TO THIS SECTION, WHETHER THE MONEYS SHOULD BE AWARDED IN THE FORM OF GRANTS OR INTEREST-FREE LOANS, AND THE AMOUNTS OF THE GRANTS OR INTEREST-FREE LOANS. IN MAKING ITS RECOMMENDATIONS, THE INSTITUTE SHALL APPLY CRITERIA ADOPTED BY RULE OF THE INSTITUTE BOARD, WHICH CRITERIA SHALL PRIORITIZE APPLICATIONS BASED ON THE APPLICANT'S LEVEL OF ECONOMIC NEED AND THE VIABILITY AND MERIT OF THE CAPITAL CONSTRUCTION PROJECT.

(4) (a) THE INSTITUTE BOARD SHALL CONSIDER THE STATE CHARTER SCHOOL INSTITUTE'S RECOMMENDATIONS AND AWARD GRANTS AND INTEREST-FREE LOANS PURSUANT TO THIS SECTION TO ASSIST INSTITUTE CHARTER SCHOOLS BASED ON THE LEVEL OF ECONOMIC NEED DEMONSTRATED BY AN APPLICANT AND THE VIABILITY AND MERIT OF THE CAPITAL CONSTRUCTION PROJECT PROPOSED IN THE APPLICATION.

(b) IF THE INSTITUTE BOARD AWARDS AN INTEREST-FREE LOAN TO AN INSTITUTE CHARTER SCHOOL PURSUANT TO THIS SECTION, IT SHALL SET THE TERMS OF REPAYMENT WITH THE INSTITUTE CHARTER SCHOOL.

(c) THE STATE CHARTER SCHOOL INSTITUTE SHALL NOT PAY A GRANT OR AN INTEREST-FREE LOAN AWARDED PURSUANT TO THIS SECTION FOR USE AS MATCHING MONEYS TO OBTAIN FINANCIAL ASSISTANCE FOR CAPITAL CONSTRUCTION THROUGH THE "BUILDING EXCELLENT SCHOOLS TODAY ACT", ARTICLE 43.7 OF THIS TITLE, UNTIL THE RECIPIENT INSTITUTE CHARTER SCHOOL PROVIDES PROOF THAT THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD HAS SELECTED IT TO RECEIVE FINANCIAL ASSISTANCE PURSUANT TO ARTICLE 43.7 OF THIS TITLE.

(d) THE STATE CHARTER SCHOOL INSTITUTE SHALL NOT PAY A GRANT OR AN INTEREST-FREE LOAN AWARDED PURSUANT TO THIS SECTION FOR USE IN REPAYING BONDS OR NOTES ISSUED BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY UNTIL THE RECIPIENT INSTITUTE CHARTER SCHOOL PROVIDES PROOF THAT THE BONDS OR NOTES HAVE BEEN ISSUED ON THE INSTITUTE CHARTER SCHOOL'S BEHALF.

(5) THE INSTITUTE BOARD SHALL PROMULGATE RULES PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., FOR THE IMPLEMENTATION OF THIS SECTION, INCLUDING BUT NOT LIMITED TO RULES SPECIFYING ANY INFORMATION TO BE INCLUDED IN AN APPLICATION IN ADDITION TO THE INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION.

(6) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS CREATING AN ENTITLEMENT IN AN INSTITUTE CHARTER SCHOOL FOR RECEIPT OF A GRANT OR AN INTEREST-FREE LOAN FROM THE FUND, BUT AWARDS OF GRANTS AND INTEREST-FREE LOANS SHALL BE AT THE SOLE DISCRETION OF THE INSTITUTE BOARD.

SECTION 6. 22-30.5-403 (4) and (5), Colorado Revised Statutes, are amended, and the said 22-30.5-403 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

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

(5) "Charter school per pupil facilities aid program moneys" means state education fund moneys to be distributed to charter schools AND INSTITUTE CHARTER SCHOOLS for capital construction pursuant to section 22-54-124.

(5.5) "INSTITUTE CHARTER SCHOOL" MEANS A CHARTER SCHOOL AUTHORIZED BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF THIS ARTICLE, AND ALSO INCLUDES A NONPROFIT CORPORATION EXEMPT FROM TAXATION UNDER

SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THAT OWNS, ON BEHALF OF AN INSTITUTE CHARTER SCHOOL, A FACILITY USED FOR OCCUPANCY BY PUPILS ENROLLED OR TO BE ENROLLED IN THE INSTITUTE CHARTER SCHOOL, WHICH NONPROFIT CORPORATION WAS CREATED FOR THE SOLE PURPOSE OF HOLDING TITLE TO THE FACILITY.

SECTION 7. 22-30.5-406, Colorado Revised Statutes, is amended to read:

22-30.5-406. Direct payment of charter school bonds by the state treasurer and school districts. (1) (a) For the purpose of enhancing the ability of a charter school OR AN INSTITUTE CHARTER SCHOOL to obtain favorable financing terms on bonds issued on behalf of the charter school OR INSTITUTE CHARTER SCHOOL by a governmental entity other than a school district for the purpose of financing charter school capital construction, a charter school that is entitled to receive moneys from the state public school fund pursuant to part 1 of this article, OR AN INSTITUTE CHARTER SCHOOL THAT IS ENTITLED TO RECEIVE MONEYS FROM THE STATE PUBLIC SCHOOL FUND PURSUANT TO PART 5 OF THIS ARTICLE, may request that the state treasurer make direct payments of principal and interest on the bonds on behalf of the charter school OR INSTITUTE CHARTER SCHOOL. The charter school OR INSTITUTE CHARTER SCHOOL shall specify the amount of each payment to be made.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), if the state treasurer concludes that the amount of moneys from the state public school fund that a charter school OR AN INSTITUTE CHARTER SCHOOL will receive pursuant to part 1 OR PART 5 of this article for any given budget year will be less than the amount of the payments specified by the charter school OR INSTITUTE CHARTER SCHOOL pursuant to paragraph (a) of this subsection (1) that will be due during the budget year, the state treasurer shall not agree to make direct payments on behalf of the charter school OR INSTITUTE CHARTER SCHOOL.

(c) (I) In the case of a charter school authorized by a school district board of education, the state treasurer shall withhold the amount of any direct payments made on behalf of a charter school plus administrative costs associated with the making of direct payments in an amount agreed upon by the state treasurer and the charter school from the payments to the chartering district of the state share of the district's total program made pursuant to article 54 of this title. The state treasurer shall notify the chief financial officers of the chartering district and the charter school of any amount of moneys withheld and the chartering district shall reduce the amount of funding it provides to the charter school by said amount. Any administrative costs withheld by the state treasurer pursuant to this subparagraph (I) shall be credited to the charter school financing administrative cash fund, which fund is hereby created. Moneys in the fund shall be continuously appropriated to the state treasurer for the direct and indirect costs of the administration of this section. Moneys in the charter school financing administrative cash fund shall remain in the fund and shall not revert to the general fund at the end of any fiscal year.

(II) In the case of an institute charter school, the state treasurer shall withhold the amount of any direct payments made on behalf of an institute charter school plus administrative costs associated with the making of direct payments in an amount agreed upon by the state treasurer and the institute charter school from the payments to the state charter school institute made by the department of education pursuant

to article 54 of this title. The state treasurer shall notify the department of education, the state charter school institute, and the chief financial officer of the institute charter school of any amount of moneys withheld. Any administrative costs withheld by the state treasurer pursuant to this subparagraph (II) shall be credited to the charter school financing administrative cash fund created pursuant to subparagraph (I) of this paragraph (c).

(d) The state treasurer shall establish the procedures necessary to implement this subsection (1) and may promulgate rules for that purpose. Any rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(e) This subsection (1) shall not be construed to require the state to continue the payment of state assistance to any school district OR TO THE STATE CHARTER SCHOOL INSTITUTE or to limit or prohibit the state from repealing or amending any law relating to the amount of state assistance to school districts OR THE STATE CHARTER SCHOOL INSTITUTE or the manner or timing of the payment of such assistance. This subsection (1) shall not be construed to create a debt of the state or any state financial obligation whatsoever with respect to any bonds issued on behalf of a charter school OR AN INSTITUTE CHARTER SCHOOL by a governmental entity other than a school district for the purpose of financing charter school capital construction within the meaning of any state constitutional provision or to create any liability except to the extent provided in this subsection (1).

(2) (a) If the state treasurer does not agree to make direct payments of principal and interest on bonds on behalf of a charter school OR AN INSTITUTE CHARTER SCHOOL pursuant to subsection (1) of this section because the charter school OR INSTITUTE CHARTER SCHOOL is not entitled to receive moneys from the state public school fund pursuant to part 1 OR PART 5 of this article or because the state treasurer has concluded that the amount of moneys from the state public school fund that the charter school OR INSTITUTE CHARTER SCHOOL will receive pursuant to part 1 OR PART 5 of this article for any given budget year will be less than the amount of the direct payment specified by the charter school OR INSTITUTE CHARTER SCHOOL that will be due during the budget year, the charter school may request that its chartering district, OR THE INSTITUTE CHARTER SCHOOL MAY REQUEST THAT THE STATE CHARTER SCHOOL INSTITUTE, make direct payments of principal and interest on the bonds on behalf of the charter school OR THE INSTITUTE CHARTER SCHOOL. The charter school OR THE INSTITUTE CHARTER SCHOOL shall specify the amount of each payment to be made.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (2), if the board of education of a chartering district concludes that the total amount of moneys that a charter school will receive for any given budget year from the district pursuant to the operating contract between the district and the charter school will be less than the amount of the payments specified by the charter school pursuant to paragraph (a) of this subsection (2) that will be due during the budget year, the chartering district shall not agree to make direct payments on behalf of the charter school.

(II) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), IF THE GOVERNING BOARD OF THE STATE CHARTER SCHOOL INSTITUTE CONCLUDES THAT THE TOTAL AMOUNT OF MONEYS THAT AN INSTITUTE CHARTER

SCHOOL WILL RECEIVE FOR ANY GIVEN BUDGET YEAR FROM THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO THE CHARTER CONTRACT BETWEEN THE STATE CHARTER SCHOOL INSTITUTE AND THE INSTITUTE CHARTER SCHOOL WILL BE LESS THAN THE AMOUNT OF THE PAYMENTS SPECIFIED BY THE INSTITUTE CHARTER SCHOOL PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) THAT WILL BE DUE DURING THE BUDGET YEAR, THE GOVERNING BOARD SHALL NOT AGREE TO MAKE DIRECT PAYMENTS ON BEHALF OF THE INSTITUTE CHARTER SCHOOL.

(c) (I) A chartering district shall withhold the amount of any direct payments made on behalf of a charter school plus administrative costs associated with the making of direct payments in an amount agreed upon by the chartering district and the charter school from the funding provided by the district to the charter school pursuant to part 1 of this article.

(II) THE STATE CHARTER SCHOOL INSTITUTE SHALL WITHHOLD THE AMOUNT OF ANY DIRECT PAYMENTS MADE ON BEHALF OF AN INSTITUTE CHARTER SCHOOL PLUS ADMINISTRATIVE COSTS ASSOCIATED WITH THE MAKING OF DIRECT PAYMENTS IN AN AMOUNT AGREED UPON BY THE STATE CHARTER SCHOOL INSTITUTE AND THE INSTITUTE CHARTER SCHOOL FROM THE FUNDING PROVIDED BY THE INSTITUTE TO THE INSTITUTE CHARTER SCHOOL PURSUANT TO PART 5 OF THIS ARTICLE.

(d) This subsection (2) shall not be construed to create a debt of any chartering district OR THE STATE CHARTER SCHOOL INSTITUTE or any district OR INSTITUTE obligation whatsoever with respect to any lease agreement or installment purchase agreement entered into by a charter school OR INSTITUTE CHARTER SCHOOL within the meaning of any state constitutional provision or to create any liability except to the extent provided in this subsection (2).

(3) In accordance with section 11 of article II of the state constitution, the state hereby covenants with the purchasers of any outstanding bonds issued on behalf of a charter school OR AN INSTITUTE CHARTER SCHOOL by a governmental entity in reliance upon this section that it will not repeal, revoke, or rescind the provisions of this section or modify or amend the same so as to limit or impair the rights and remedies granted by this section. However, nothing in this subsection (3) shall be deemed or construed to require the state to continue the payment of state assistance received by charter schools OR INSTITUTE CHARTER SCHOOLS or to limit or prohibit the state from repealing, amending, or modifying any law relating to the amount of state assistance received by charter schools OR INSTITUTE CHARTER SCHOOLS or the manner of payment or timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to such bonds or other obligations within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

SECTION 8. 22-43.7-109 (9) (c), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

22-43.7-109. Financial assistance for public school capital construction - application requirements - evaluation criteria - local match requirements.

(9) Except as otherwise provided in subsection (10) of this section, the board shall recommend and the state board shall approve financial assistance for a public school facility capital construction project only if the applicant provides matching moneys

in an amount equal to a percentage of the total financing for the project determined by the board after consideration of the applicant's financial capacity, as determined by the following factors:

(c) With respect to a charter school's application for financial assistance:

(III.5) IF THE CHARTER SCHOOL IS AN INSTITUTE CHARTER SCHOOL, WHETHER THE CHARTER SCHOOL HAS APPLIED FOR OR RECEIVED A GRANT FROM THE INSTITUTE CHARTER SCHOOL CAPITAL CONSTRUCTION ASSISTANCE GRANT FUND CREATED IN SECTION 22-30.5-515.5 TO ASSIST THE CHARTER SCHOOL IN PROVIDING MATCHING MONEYS;

SECTION 9. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the institute charter school capital construction assistance grant fund created in section 22-30.5-515.5, Colorado Revised Statutes, not otherwise appropriated, to the department of education, for allocation to the state charter school institute, for the fiscal year beginning July 1, 2009, the sum of three hundred sixty-five thousand two hundred twenty-six dollars (\$365,226) cash funds, or so much thereof as may be necessary, for the implementation of this act.

SECTION 10. 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: June 4, 2009