

## CHAPTER 177

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**EDUCATION - PUBLIC SCHOOLS**

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**SENATE BILL 12-121**

BY SENATOR(S) King K., Lambert, White;

also REPRESENTATIVE(S) Massey, Acree, Barker, Casso, Fields, Gardner B., Gerou, Holbert, Labuda, Nikkel, Summers, Todd, Waller, Young.

**AN ACT****CONCERNING CHARTER SCHOOLS.***Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 22-43.7-109, **amend** (3), (4) (f), and (9) (c); and **add** (12) as follows:

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

(3) A charter school shall notify its authorizer that it intends to apply for financial assistance at least ~~three~~ FOUR months prior to the application submission deadline. The charter school shall forward its application for financial assistance to its authorizer, which shall forward the application to the board together with a letter indicating the authorizer's position on the application. The Colorado school for the deaf and blind shall apply for financial assistance directly. Financial assistance awarded to a charter school as a matching cash grant shall be provided to the authorizer, which shall distribute all financial assistance received as a grant to the charter school and may not retain any portion of such moneys for any purpose. All other financial assistance shall be provided in the form of lease payments made by the board directly to a lessor or trustee as required by the terms of the applicable lease-purchase agreement.

(4) Applications for financial assistance submitted to the board shall be in a form prescribed by the board and shall include:

(f) A statement regarding the means by which the applicant intends to provide matching moneys required for the projects, including but not limited to means such as voter-approved multiple-fiscal year debt or other financial obligations, gifts,

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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.*

grants, donations, A LOAN OBTAINED PURSUANT TO SECTION 22-43.7-110.5, or any other means of financing permitted by law, or the intent of the applicant to seek a waiver of the matching moneys requirement pursuant to subsection (10) of this section. If an applicant that is a school district or a board of cooperative services with a participating school district intends to raise matching moneys by obtaining voter approval to enter into a sublease-purchase agreement that constitutes an indebtedness of the district as authorized by section 22-32-127, it shall indicate whether it has received the required voter approval or, if the election has not already been held, the anticipated date of the election.

(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:

~~(I) The amount of per pupil revenues that the charter school has budgeted to expend in order to meet its facilities obligations during the fiscal year for which an application is made relative to other charter schools in the state, measured both in terms of total dollars and as a percentage of the charter school's total per pupil revenues~~ THE WEIGHTED AVERAGE OF THE MATCH PERCENTAGES FOR THE SCHOOL DISTRICTS OF RESIDENCE FOR THE STUDENTS ENROLLED IN A DISTRICT CHARTER SCHOOL OR FIFTY PERCENT OF THE AVERAGE OF THE MATCH PERCENTAGES FOR ALL SCHOOL DISTRICTS IN THE STATE FOR AN INSTITUTE CHARTER SCHOOL;

~~(H) Repealed.~~

(II) WHETHER THE CHARTER SCHOOL'S AUTHORIZER RETAINS NO MORE THAN TEN PERCENT OF ITS CAPACITY TO ISSUE BONDS PURSUANT TO ARTICLE 42 OF THIS TITLE;

~~(III) The per pupil revenue received by the charter school from the state education fund for capital construction pursuant to section 22-30.5-112.3~~ WHETHER THE CHARTER SCHOOL IS OPERATING IN A DISTRICT-OWNED FACILITY AT THE TIME IT SUBMITS ITS APPLICATION;

~~(H.5) (IV) 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 assistance fund created in section 22-30.5-515.5 to assist the charter school in providing matching moneys~~ IN THE TEN YEARS PRECEDING THE YEAR IN WHICH THE CHARTER SCHOOL SUBMITS THE APPLICATION, THE NUMBER OF TIMES THE CHARTER SCHOOL HAS ATTEMPTED TO OBTAIN OR HAS OBTAINED:

(A) BOND PROCEEDS PURSUANT TO SECTION 22-30.5-404 THROUGH INCLUSION IN A BALLOT MEASURE SUBMITTED BY THE CHARTER SCHOOL'S AUTHORIZER TO THE REGISTERED ELECTORS OF THE SCHOOL DISTRICT;

(B) PROCEEDS FROM A SPECIAL MILL LEVY FOR CAPITAL NEEDS PURSUANT TO SECTION 22-30.5-405;

(C) GRANT FUNDING FOR CAPITAL NEEDS FROM A SOURCE OTHER THAN THE ASSISTANCE FUND; AND

(D) FUNDING FOR CAPITAL CONSTRUCTION FROM BONDS ISSUED ON ITS BEHALF BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY CREATED AND EXISTING PURSUANT TO SECTION 23-15-104 (1) (a), C.R.S., OR FROM SOME OTHER SOURCE OF FINANCING;

(V) IF THE CHARTER SCHOOL IS A DISTRICT CHARTER SCHOOL, THE STUDENT ENROLLMENT OF THE CHARTER SCHOOL AS A PERCENTAGE OF THE STUDENT ENROLLMENT OF THE CHARTER SCHOOL'S AUTHORIZING SCHOOL DISTRICT;

~~(IV)~~ (VI) The percentage of ~~children~~ STUDENTS enrolled in the charter school who are eligible for the federal free and reduced-cost lunch program IN RELATION TO THE OVERALL PERCENTAGE OF STUDENTS ENROLLED IN THE PUBLIC SCHOOLS IN THE STATE WHO ARE ELIGIBLE FOR THE FEDERAL FREE AND REDUCED-COST LUNCH PROGRAM; ~~and~~

~~(V)~~ (VII) ~~The amount of effort put forth by the charter school during the ten years preceding the year in which the charter school submitted the application to meet its facilities needs by accessing vacant school district facilities or obtaining funding for capital construction by having the Colorado educational and cultural facilities authority created and existing pursuant to section 23-15-104 (1) (a), C.R.S., issue bonds on its behalf, seeking voter approval of a ballot question for bonded indebtedness or for a special mill levy authorized by section 22-30.5-405, or seeking inclusion of its capital construction needs in a school district's ballot question seeking voter approval for bonded indebtedness, which factor may be used only to reduce the percentage of matching moneys required from a charter school that has put forth such effort and not to increase the amount of matching moneys required from any charter school~~ THE PERCENTAGE OF THE PER PUPIL REVENUE RECEIVED BY THE CHARTER SCHOOL THAT THE CHARTER SCHOOL SPENDS ON FACILITY COSTS OTHER THAN FACILITIES OPERATIONS AND MAINTENANCE; AND

(VIII) THE CHARTER SCHOOL'S UNRESERVED FUND BALANCE AS A PERCENTAGE OF ITS ANNUAL BUDGET.

(12) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE MATCH PERCENTAGE FOR A CHARTER SCHOOL CALCULATED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (9) OF THIS SECTION SHALL NOT BE HIGHER THAN THE HIGHEST MATCH PERCENTAGE FOR A SCHOOL DISTRICT, OR LOWER THAN THE LOWEST MATCH PERCENTAGE FOR A SCHOOL DISTRICT, IN THE SAME GRANT CYCLE.

**SECTION 2.** In Colorado Revised Statutes, 22-43.7-110, **amend** (2) (b) as follows:

**22-43.7-110. Financial assistance - grants - lease-purchase agreements.**  
(2) Subject to the following requirements and limitations, the board may also instruct the state treasurer to enter into lease-purchase agreements on behalf of the state to provide financial assistance to applicants by financing public school facility capital construction projects for which the state board has authorized the provision of financial assistance pursuant to section 22-43.7-109 (7):

(b)(I) The state treasurer may enter into lease-purchase agreements for which the aggregate annual lease payments of principal or interest for any fiscal year exceed one-half of the maximum total amount of annual lease payments permitted for the fiscal year pursuant to paragraph (a) of this subsection (2) only if the aggregate amount of matching moneys expected to be credited to the assistance fund pursuant to paragraph (c) of this subsection (2) and section 22-43.7-104 (2) (b) (IV) and any interest or income derived from the deposit and investment of the matching moneys is at least equal to the annual lease payments of principal and interest that exceed one-half of said maximum total amount.

(II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), IN CALCULATING ONE-HALF THE MAXIMUM TOTAL AMOUNT OF ANNUAL LEASE PAYMENTS PERMITTED FOR THE FISCAL YEAR PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE STATE TREASURER SHALL NOT INCLUDE ANY AMOUNT OF ANNUAL LEASE PAYMENTS OF PRINCIPAL OR INTEREST THAT ARE ATTRIBUTABLE TO LOANS OF MATCHING MONEYS FOR ELIGIBLE CHARTER SCHOOLS THAT THE BOARD APPROVES PURSUANT TO SECTION 22-43.7-110.5.

**SECTION 3.** In Colorado Revised Statutes, **add** 22-43.7-110.5 as follows:

**22-43.7-110.5. Charter school matching moneys loan program - rules.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ELIGIBLE CHARTER SCHOOL" MEANS A CHARTER SCHOOL THAT IS:

(I) A QUALIFIED CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-408 (1) (c);  
AND

(II) AUTHORIZED TO RECEIVE FINANCIAL ASSISTANCE PURSUANT TO SECTION 22-43.7-109 (7).

(b) "LOAN PROGRAM" MEANS THE CHARTER SCHOOL MATCHING MONEYS LOAN PROGRAM CREATED IN THIS SECTION.

(2) (a) THERE IS HEREBY CREATED THE CHARTER SCHOOL MATCHING MONEYS LOAN PROGRAM TO ASSIST ELIGIBLE CHARTER SCHOOLS IN OBTAINING THE MATCHING MONEYS REQUIRED FOR AN AWARD OF FINANCIAL ASSISTANCE PURSUANT TO SECTION 22-43.7-109. THROUGH THE LOAN PROGRAM, THE BOARD MAY APPROVE A LOAN FOR AN ELIGIBLE CHARTER SCHOOL IN AN AMOUNT THAT DOES NOT EXCEED FIFTY PERCENT OF THE AMOUNT OF MATCHING MONEYS CALCULATED FOR THE ELIGIBLE CHARTER SCHOOL PURSUANT TO SECTION 22-43.7-109 (9) (c).

(b) THE BOARD SHALL DIRECT THE STATE TREASURER TO INCLUDE THE AMOUNT OF A LOAN APPROVED PURSUANT TO THIS SECTION IN THE LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) TO PROVIDE FINANCIAL ASSISTANCE TO THE ELIGIBLE CHARTER SCHOOL FOR WHICH THE LOAN IS APPROVED.

(3) AN ELIGIBLE CHARTER SCHOOL THAT CHOOSES TO SEEK A LOAN THROUGH THE LOAN PROGRAM SHALL APPLY TO THE BOARD TO RECEIVE A LOAN. THE BOARD SHALL PROMULGATE RULES PURSUANT TO THE "STATE ADMINISTRATIVE

PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., ESTABLISHING THE CONTENTS OF A LOAN APPLICATION AND THE TIMELINES AND PROCEDURES FOR APPLYING FOR A LOAN THROUGH THE LOAN PROGRAM.

(4) TO RECEIVE A LOAN THROUGH THE LOAN PROGRAM, AN ELIGIBLE CHARTER SCHOOL SHALL:

(a) AUTHORIZE THE STATE TREASURER TO WITHHOLD MONEYS PAYABLE TO THE ELIGIBLE CHARTER SCHOOL IN THE AMOUNT OF THE LOAN PAYMENTS PURSUANT TO THE PROCEDURE DESCRIBED IN SECTION 22-30.5-406;

(b) PAY AN INTEREST RATE ON THE LOAN THAT IS EQUAL TO THE INTEREST RATE PAID BY THE STATE TREASURER ON THE LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 TO PROVIDE FINANCIAL ASSISTANCE TO THE ELIGIBLE CHARTER SCHOOL FOR WHICH THE LOAN IS APPROVED;

(c) AMORTIZE THE LOAN PAYMENTS OVER THE SAME PERIOD IN YEARS AS THE LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 TO PROVIDE FINANCIAL ASSISTANCE TO THE ELIGIBLE CHARTER SCHOOL FOR WHICH THE LOAN IS APPROVED; EXCEPT THAT THE ELIGIBLE CHARTER SCHOOL MAY PAY THE FULL AMOUNT OF THE LOAN EARLY WITHOUT INCURRING A PREPAYMENT PENALTY; AND

(d) CREATE AN ESCROW ACCOUNT FOR THE BENEFIT OF THE STATE WITH A BALANCE IN THE AMOUNT OF SIX MONTHS OF LOAN PAYMENTS.

**SECTION 4.** In Colorado Revised Statutes, 22-30.5-104, **amend** (11) (a) as follows:

**22-30.5-104. Charter school - requirements - authority.** (11) (a) If a charter school chooses to apply, ALONE OR WITH A CONSORTIUM OF CHARTER SCHOOLS, for a grant through a nonformulaic, competitive grant program created by a federal or state statute or program, the charter school OR CONSORTIUM OF CHARTER SCHOOLS, pursuant to the provisions of section 22-30.5-503 (3.5), may request that the state charter school institute act as a local education agency and fiscal agent for the charter school OR CONSORTIUM OF CHARTER SCHOOLS for purposes of ~~the~~ grant MANAGEMENT AND LIABILITY. The charter school OR CONSORTIUM OF CHARTER SCHOOLS shall pay the fee, if any, imposed by the state charter school institute board as provided in section 22-30.5-503 (3.5).

**SECTION 5.** In Colorado Revised Statutes, 22-30.5-503, **amend** (3.5) as follows:

**22-30.5-503. State charter school institute - establishment - rules.** (3.5) (a) The state charter school institute may act as the local education agency and fiscal agent FOR PURPOSES OF GRANT MANAGEMENT AND LIABILITY for a district charter school, ~~or~~ an institute charter school, OR A CONSORTIUM OF CHARTER SCHOOLS that chooses to apply for a grant through a nonformulaic, competitive grant program created by a federal or state statute or program; except that the provisions of this subsection (3.5) shall not apply to an application for:

(I) A grant program created in the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended, or in its implementing regulations.

(II) (Deleted by amendment, L. 2011, (HB11-1089), ch. 55, p. 147, § 1, effective March 25, 2011.)

(b) In acting as a local education agency and fiscal agent FOR PURPOSES OF GRANT MANAGEMENT AND LIABILITY pursuant to this subsection (3.5), the institute shall treat district charter schools and institute charter schools equally.

(c) The institute board, by rule, may establish a fee that a district charter school, ~~or~~ an institute charter school, OR A CONSORTIUM OF CHARTER SCHOOLS shall pay if it requests that the institute act as the local education agency and fiscal agent FOR PURPOSES OF GRANT MANAGEMENT AND LIABILITY for the charter school OR CONSORTIUM OF CHARTER SCHOOLS pursuant to this subsection (3.5). The amount of the fee shall not exceed the direct costs incurred by the institute in implementing the provisions of this subsection (3.5). Any amount received by the institute from fees paid pursuant to this subsection (3.5) is continuously appropriated to the institute for the costs incurred in implementing this subsection (3.5). The institute board shall adopt rules as necessary to implement the provisions of this subsection (3.5).

(d) The state board shall promulgate rules to establish processes, guidelines, and eligibility for a single school or consortium of schools to apply for grants and programs pursuant to this section.

**SECTION 6.** In Colorado Revised Statutes, 22-30.5-502, **amend** (1) as follows:

**22-30.5-502. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "At-risk student" means a student:

(a) Who is eligible to receive free or reduced-cost lunch pursuant to the provisions of the federal "National School Lunch Act", 42 U.S.C. sec. 1751 et seq.; or

(b) Who has performed at the proficiency level of ~~"low"~~ or "unsatisfactory" OR "PARTIALLY PROFICIENT" on a statewide assessment.

**SECTION 7.** In Colorado Revised Statutes, 22-30.5-507, **amend** (7) as follows:

**22-30.5-507. Institute charter school - requirements - authority - rules.**

(7) (a) Pursuant to the charter contract, an institute charter school may operate free from specified statutes and state board rules. THE STATE BOARD SHALL PROMULGATE RULES IDENTIFYING STATE STATUTES AND STATE RULES THAT ARE AUTOMATICALLY WAIVED FOR ALL CHARTER SCHOOLS, INCLUDING INSTITUTE CHARTER SCHOOLS.

(b) AN INSTITUTE CHARTER SCHOOL MAY APPLY TO THE STATE BOARD, THROUGH THE INSTITUTE, FOR A WAIVER OF STATE STATUTES AND STATE RULES THAT ARE NOT

AUTOMATICALLY WAIVED. 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 school accountability committees as described in section 22-11-401, any state statute or rule relating to the assessments required to be administered pursuant to section 22-7-409, any state statute or rule necessary to prepare the school performance reports pursuant to part 5 of article 11 of this title, or any statute or rule necessary to implement the provisions of the "Public School Finance Act of 1994", article 54 of this title, or any state statute or rule relating to the "Children's Internet Protection Act", article 87 of this title.

(c) Any waiver of state statute or state board rule made pursuant to this subsection (7) shall be for the term of the contract for which the waiver is made. A request for a waiver may be submitted to the institute as a part of the application for an institute charter school.

**SECTION 8.** In Colorado Revised Statutes, 22-30.5-506, **amend** (1); and **add** (4) as follows:

**22-30.5-506. State charter school institute fund - created.** (1) The state charter school institute is authorized to receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this part 5, subject to the terms and conditions under which given; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the use or expenditure thereof in a manner contrary to law. Any gifts, grants, or donations received pursuant to this subsection (1) shall be transmitted to the state treasurer who shall credit the same to the state charter school institute fund, hereinafter referred to as the "fund", which fund is hereby created in the state treasury. ~~Except as otherwise provided in subsection (3) of this section,~~ Moneys in the fund ~~shall be subject to annual appropriation by the general assembly~~ ARE CONTINUOUSLY APPROPRIATED to the institute, to offset the actual and reasonable costs incurred by the institute in implementing this part 5. All investment earnings derived from the deposit and investment of the moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(4) THE STATE CHARTER SCHOOL INSTITUTE SHALL CREATE IN THE FUND AN ACCOUNT FOR PAYMENT OF THE INSTITUTE'S ADMINISTRATIVE OVERHEAD COSTS, AS DEFINED IN SECTION 22-30.5-513 (1) (h), WHICH ACCOUNT CONSISTS SOLELY OF MONEYS RETAINED BY THE INSTITUTE FROM THE INSTITUTE CHARTER SCHOOLS' ADJUSTED PER PUPIL REVENUES AND PER-PUPIL ON-LINE FUNDING PURSUANT TO SECTION 22-30.5-513 (4) (a) (I.5) (E). AT THE END OF A BUDGET YEAR, IF THE AMOUNT OF UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE ACCOUNT EXCEEDS TEN PERCENT OF THE TOTAL ADJUSTED PER PUPIL REVENUES AND PER-PUPIL ON-LINE FUNDING FOR INSTITUTE CHARTER SCHOOLS FOR THE APPLICABLE BUDGET YEAR, THE INSTITUTE SHALL REFUND TO THE INSTITUTE CHARTER SCHOOLS THE AMOUNT OF THE EXCESS. THE INSTITUTE SHALL ALLOCATE THE REFUND TO EACH INSTITUTE CHARTER SCHOOL ON A PER-PUPIL BASIS BY DIVIDING THE EXCESS AMOUNT BY THE TOTAL PUPIL ENROLLMENT OF THE INSTITUTE CHARTER SCHOOLS FOR THE APPLICABLE BUDGET YEAR.

**SECTION 9.** In Colorado Revised Statutes, 22-30.5-513, **amend** (2) (b), (2) (d) (I), and (4) (a) (I.5) (E) as follows:

**22-30.5-513. Institute charter schools - definitions - funding.** (2) (b) For budget year 2004-05 and budget years thereafter, each institute charter school and the institute shall negotiate funding under the charter contract at a minimum of ninety-five percent of the institute charter school's accounting district's adjusted per pupil revenues for each pupil enrolled in the institute charter school who is not an on-line pupil and ninety-five percent of the institute charter school's accounting district's per pupil on-line funding for each on-line pupil enrolled in the institute charter school. The institute may retain ~~the actual amount of the institute charter school's per pupil share of the administrative overhead costs for services actually provided to the institute charter school; except that the institute may retain no more than the actual cost of the administrative overhead costs not to exceed~~ three percent of the accounting district's adjusted per pupil revenues for each pupil, who is not an on-line pupil, enrolled in the institute charter school and three percent of the accounting district's per pupil on-line funding for each on-line pupil enrolled in the institute charter school.

(d) (I) Within ninety days after the end of each fiscal year, the institute shall provide to each institute charter school an itemized accounting of all the institute's administrative overhead costs. ~~The actual administrative overhead costs shall be the amount charged to the institute charter school. Any difference, within the limitations of this subsection (2), between the amount initially charged to the institute charter school and the actual cost shall be reconciled and paid to the owed party.~~

(4) (a) (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:

(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~~ AN AMOUNT EQUAL TO three percent of the amount ~~withheld~~ CALCULATED FOR THE INSTITUTE CHARTER SCHOOL PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), WHICH AMOUNT SHALL BE CREDITED TO THE ACCOUNT CREATED PURSUANT TO SECTION 22-30.5-506 (4) AND USED TO OFFSET ADMINISTRATIVE OVERHEAD COSTS; and

**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: May 11, 2012