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HOUSE BILL 03-1021

BY REPRESENTATIVE(S) King, Cadman, Crane, Fairbank, Harvey, Hefley, Lee, Mitchell, Rhodes, Rose, Schultheis, Stafford, Carroll, Marshall, May M., Paccione, Spence, and Wiens;
also SENATOR(S) Arnold, Chlouber, Hagedorn, Jones, Lamborn, and May R.

CONCERNING THE FINANCING OF CAPITAL CONSTRUCTION FOR QUALIFIED CHARTER SCHOOLS THAT HAVE BONDS ISSUED ON THEIR BEHALF BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 22-30.5-406, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-30.5-406. Direct payment of charter school bonds by the state treasurer and school districts. (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

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

A 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 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 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 2. 22-30.5-407, Colorado Revised Statutes, is amended to read:

22-30.5-407. State charter school debt reserve fund - creation - use of fund moneys - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The STATE charter school debt reserve fund created by this section is intended to enhance the ability of any QUALIFIED charter school that chooses to finance capital construction with revenues from bonds issued on behalf of the QUALIFIED charter school by the Colorado educational and cultural facilities authority created in section 23-15-104 (1) (a), C.R.S., to obtain such financing on favorable terms by providing a source of moneys that can be used to make bond payments if the QUALIFIED charter school fails to make such payments.

(b) It is appropriate for state education fund moneys to be appropriated to the STATE charter school debt reserve fund and it is also appropriate for those QUALIFIED charter schools that receive more favorable financing terms THAT RESULT IN INTEREST RATE SAVINGS due to the existence of AND RELIANCE UPON the STATE charter school debt reserve fund AND THE PROVISIONS OF SECTION 22-30.5-408 WITH RESPECT TO SUCH BONDS to pay a portion of their resulting savings to the STATE charter school debt reserve fund and for all charter schools to bear the risk of having charter school per pupil facilities aid program moneys withheld to replenish

the STATE charter school debt reserve fund in the event that moneys from the STATE charter school debt reserve fund are expended to make bond payments.

(2) (a) There is hereby created in the state treasury the STATE charter school debt reserve fund. The fund shall consist of the following moneys:

(I) One million dollars that are hereby appropriated from the state education fund to the STATE charter school debt reserve fund on July 1, 2002;

(II) Moneys credited to the STATE charter school interest savings account of the fund pursuant to subsection (3) of this section; and

(III) Moneys transferred from the state education fund to the STATE charter school debt reserve fund pursuant to paragraph (d) of subsection (4) of this section.

(b) There is hereby created within the STATE charter school debt reserve fund the STATE charter school interest savings account. The account shall consist of moneys credited to the account by the state treasurer pursuant to subsection (3) of this section and any interest and income derived from the deposit and investment of moneys in the account.

(c) All interest and income derived from the deposit and investment of moneys in the STATE charter school debt reserve fund shall be credited to the state education fund; except that all interest and income derived from the deposit and investment of moneys in the STATE charter school interest savings account shall be credited to the account in accordance with paragraph (b) of this subsection (2). At the end of any fiscal year, all unexpended and unencumbered moneys in the STATE charter school debt reserve fund and the account shall remain in the fund and the account respectively.

(d) All moneys credited to the STATE charter school debt reserve fund or expended from the fund, other than moneys credited to or expended from the STATE charter school interest savings account, are moneys originally credited to the state education fund and are therefore, in accordance with section 17 (3) of article IX of the state constitution and section 22-55-103 (5), exempt from:

(I) The limitation on state fiscal year spending set forth in section 20 (7) (a) of article X of the state constitution and section 24-77-103, C.R.S.; and

(II) The limitation on local government fiscal year spending set forth in section 20 (7) (b) of article X of the state constitution.

(3) (a) A QUALIFIED charter school that chooses to finance capital construction with revenues from bonds issued on behalf of the QUALIFIED charter school by the Colorado educational and cultural facilities authority created in section 23-15-104 (1) (a), C.R.S., ~~and that also chooses to rely upon the existence of the charter school debt reserve fund to obtain more favorable financing terms~~ shall pay to the state treasurer, ~~at the time any bond payment is due, an amount equal to ten percent of the reduction in the amount of the payment resulting from the more favorable financing terms. At the time the bonds are issued, the charter school shall obtain and provide to the state treasurer sufficient documentation of the savings resulting from the charter school's ability to obtain more favorable financing terms by relying upon the existence of the charter school debt reserve fund~~ ON AN ANNUAL BASIS, COMMENCING AND CALCULATED ON THE DATE OF ISSUANCE OF THE BONDS AND ON EACH ONE-YEAR ANNIVERSARY OF THE ISSUANCE OF THE BONDS THEREAFTER WHILE THE BONDS REMAIN OUTSTANDING, AN AMOUNT EQUAL TO TEN BASIS POINTS OF THE PRINCIPAL AMOUNT OF THE BONDS OUTSTANDING AS OF EACH CALCULATION DATE, AND SUCH AMOUNT SHALL BE DEEMED TO BE THE AMOUNT OF ANY INTEREST RATE SAVINGS RESULTING FROM MORE FAVORABLE FINANCING TERMS ATTRIBUTABLE TO THE RELIANCE UPON THE STATE CHARTER SCHOOL DEBT RESERVE FUND AND THE PROVISIONS OF SECTION 22-30.5-408 WITH RESPECT TO SUCH BONDS. EACH ANNUAL PAYMENT OF TEN BASIS POINTS SHALL BE PRORATED AND PAYABLE IN EQUAL INSTALLMENTS AMONG THE DEBT SERVICE PAYMENTS REQUIRED OF THE QUALIFIED CHARTER SCHOOL, WITH RESPECT TO THE QUALIFIED CHARTER SCHOOL BONDS ISSUED FOR ITS BENEFIT, DURING THE TWELVE MONTHS FOLLOWING THE ANNUAL COMPUTATION DATE. The state treasurer shall credit any payment received pursuant to this ~~subsection (3)~~ PARAGRAPH (a) to the STATE charter school interest savings account.

(b) THE STATE TREASURER MAY REQUIRE EACH QUALIFIED CHARTER SCHOOL THAT MAKES REQUIRED PAYMENTS TO THE STATE TREASURER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) TO PAY A FEE TO THE STATE TREASURER TO DEFRAY ANY DIRECT AND INDIRECT ADMINISTRATIVE COSTS INCURRED BY THE STATE TREASURER IN EXECUTING DUTIES REQUIRED

BY THIS SECTION. THE STATE TREASURER SHALL DEPOSIT ANY FEES RECEIVED INTO THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT OF THE STATE CHARTER SCHOOL DEBT RESERVE FUND.

(4) (a) Moneys in the STATE charter school debt reserve fund are hereby continuously appropriated to the state treasurer, who shall expend such moneys solely for the purpose of paying principal and interest on bonds issued on behalf of a QUALIFIED charter school by the Colorado educational and cultural facilities authority and only if:

(I) The state treasurer has been notified and has confirmed, in accordance with paragraph (b) of this subsection (4), that the QUALIFIED charter school has expended all moneys in its own debt service reserve fund or account that has been funded with proceeds derived from the issuance of the bonds and is unable to make bond payments; and

(II) The QUALIFIED charter school ~~has relied upon the existence of the charter school debt reserve fund to obtain more favorable financing terms for the bonds and~~ has made payments to the state treasurer as required by subsection (3) of this section.

(a.5) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4), FEES DEPOSITED INTO THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT OF THE STATE CHARTER SCHOOL DEBT RESERVE FUND PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION MAY BE EXPENDED BY THE STATE TREASURER FOR THE PURPOSE OF DEFRAYING ANY DIRECT AND INDIRECT ADMINISTRATIVE COSTS INCURRED BY THE STATE TREASURER IN EXECUTING DUTIES REQUIRED BY THIS SECTION.

(b) Whenever the trustee responsible for making payments to the holders of any QUALIFIED CHARTER SCHOOL bonds, AS DEFINED IN SECTION 22-30.5-408 (1) (c), issued on behalf of a QUALIFIED charter school by the Colorado educational and cultural facilities authority ~~for which the charter school has obtained more favorable financing terms by relying on the existence of the charter school debt reserve fund~~ has not received payment of principal or interest on the bonds on the TENTH business day immediately prior to the date on which such payment is due AND THE DEBT SERVICE RESERVE FUND FOR THE QUALIFIED CHARTER SCHOOL HAS BEEN DEPLETED, the trustee shall so notify the state treasurer and the QUALIFIED charter school by telephone, facsimile, or other similar communication, followed by written verification, of such payment status. The state treasurer shall

immediately contact the QUALIFIED charter school and determine whether the QUALIFIED charter school will make the payment by the date on which it is due and, if the state treasurer confirms that the QUALIFIED charter school will not make the payment, the state treasurer shall make the payment.

(c) The state treasurer shall expend all moneys in the STATE charter school interest savings account before expending any other moneys in the STATE charter school debt reserve fund. IF A QUALIFIED CHARTER SCHOOL DEFAULTS ON A PAYMENT WITH RESPECT TO OUTSTANDING QUALIFIED CHARTER SCHOOL BONDS, AS DEFINED IN SECTION 22-30.5-408 (1) (c), AND THE AMOUNTS OF SUCH PAYMENT DEFAULTS EXCEED THE AMOUNTS AVAILABLE IN THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT AND THE STATE CHARTER SCHOOL DEBT RESERVE FUND, MONEYS FROM THE ACCOUNT AND THE FUND SHALL BE ALLOCATED PRO RATA AMONG THE QUALIFIED CHARTER SCHOOL BONDS THAT WILL HAVE A DEFAULT IN THE PAYMENT OF PRINCIPAL OR INTEREST BASED ON THE RATIO THAT THE PAYMENT DEFAULT ON EACH SERIES OF SUCH BONDS BEARS TO THE TOTAL PAYMENT DEFAULTS ON ALL SERIES OF SUCH QUALIFIED CHARTER SCHOOL BONDS.

(d) If the state treasurer expends moneys from the portion of the STATE charter school debt reserve fund that is not the STATE charter school interest savings account, the state treasurer shall withhold charter school per pupil facilities aid program moneys to the extent necessary to restore that portion of the STATE charter school debt reserve fund, by the transfer of all withheld amounts from the state education fund to that portion of the STATE charter school debt reserve fund, to a one million dollar balance in accordance with the following requirements:

(I) Each QUALIFIED charter school that has ~~relied upon the existence of the charter school debt reserve fund to obtain more favorable financing terms for~~ HAD bonds issued on its behalf by the Colorado educational and cultural facilities authority THAT HAVE RELIED UPON THE STATE CHARTER SCHOOL DEBT RESERVE FUND AND THE PROVISIONS OF SECTION 22-30.5-408, shall have its payments reduced by the same percentage and by a maximum of fifty percent.

(II) If, in any given fiscal year, the state treasurer determines that after withholding of the maximum amount of charter school per pupil facilities aid program moneys that may be withheld pursuant to

subparagraph (I) of this paragraph (d) the portion of the STATE charter school debt reserve fund that is not the STATE charter school interest savings account will not be restored to a one million dollar balance, each charter school that ~~has not relied upon the existence of the charter school debt reserve fund to obtain more favorable financing terms for~~ IS NOT RELYING UPON THE STATE CHARTER SCHOOL DEBT RESERVE FUND AND THE PROVISIONS OF SECTION 22-30.5-408 WITH RESPECT TO bonds issued ON ITS BEHALF by the Colorado educational and cultural facilities authority shall have its payment reduced by the same percentage and by a maximum of ten percent.

(5) This section shall not be construed to create any state debt, to require the state to make any bond payments on behalf of any QUALIFIED charter school from any source of state moneys other than the STATE charter school debt reserve fund, or to require the state to fully pay off any outstanding bonds of a QUALIFIED charter school that cannot make scheduled bond payments.

(6) FOR PURPOSES OF THIS SECTION, "QUALIFIED CHARTER SCHOOL" MEANS A QUALIFIED CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-408 (1) (b).

(7) A QUALIFIED CHARTER SCHOOL THAT CHOOSES TO FINANCE CAPITAL CONSTRUCTION WITH REVENUES FROM BONDS ISSUED ON BEHALF OF THE QUALIFIED CHARTER SCHOOL BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY CREATED IN SECTION 23-15-104 (1) (a), C.R.S., SHALL REQUEST THAT THE STATE TREASURER MAKE DIRECT PAYMENTS OF PRINCIPAL AND INTEREST ON THE BONDS ON BEHALF OF THE QUALIFIED CHARTER SCHOOL IN ACCORDANCE WITH SECTION 22-30.5-406 (1). IF THE STATE TREASURER DOES NOT AGREE TO MAKE DIRECT PAYMENTS, THE QUALIFIED CHARTER SCHOOL SHALL REQUEST THAT ITS CHARTERING DISTRICT MAKE DIRECT PAYMENTS IN ACCORDANCE WITH SECTION 22-30.5-406 (2).

(8) THIS SECTION SHALL ONLY APPLY TO BONDS ISSUED BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY IN RELIANCE UPON THE PROVISIONS OF SECTION 22-30.5-408 (2).

(9) THIS SECTION IS IN ADDITION TO AND NOT IN LIMITATION OF, THE POWERS GRANTED TO THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY PURSUANT TO ARTICLE 15 OF TITLE 23, C.R.S., TO

FINANCE THE COSTS OF FACILITIES OF CHARTER SCHOOLS.

(10) IN ACCORDANCE WITH SECTION 11 OF ARTICLE II OF THE STATE CONSTITUTION, THE STATE HEREBY COVENANTS WITH THE PURCHASERS OF ANY OUTSTANDING BONDS ISSUED IN RELIANCE UPON THE EXISTENCE OF THE STATE CHARTER SCHOOL INTEREST SAVINGS ACCOUNT THAT THE STATE WILL NOT REPEAL, REVOKE, OR RESCIND THE PROVISIONS OF THIS PART 4 CONCERNING THE ACCOUNT OR MODIFY OR RESCIND THE SAME SO AS TO LIMIT OR IMPAIR THE RIGHTS AND REMEDIES GRANTED BY THIS SECTION TO THE PURCHASERS OF SUCH BONDS AND THAT ANY MONEYS IN THE ACCOUNT SHALL NOT REVERT TO THE GENERAL FUND.

SECTION 3. 22-30.5-408 (1) (b), (1) (c), (1) (d), (1) (e), and (2) (a), Colorado Revised Statutes, are amended, and the said 22-30.5-408 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

22-30.5-408. Replenishment of qualified charter school debt service reserve funds. (1) As used in this section:

(b) "Qualified charter school" means a charter school ~~whose debt is rated at least investment grade by a nationally recognized rating agency prior to the~~ THAT HAS A STAND-ALONE CREDIT ASSESSMENT OR RATING OF AT LEAST INVESTMENT GRADE BY A NATIONALLY RECOGNIZED RATING AGENCY AT THE TIME OF issuance of any qualified charter school bonds on behalf of the charter school by the Colorado educational and cultural facilities authority pursuant to the "Colorado Educational and Cultural Facilities Authority Act", article 15 of title 23, C.R.S., AND THAT HAS BEEN CERTIFIED AS A QUALIFIED CHARTER SCHOOL BY THE STATE TREASURER.

(c) "Qualified charter school bonds" means bonds that are issued by the Colorado educational and cultural facilities authority for the purpose of financing a facility to be used for occupancy by pupils enrolled in a QUALIFIED charter school AND ARE SECURED BY THE STATE CHARTER SCHOOL DEBT RESERVE FUND CREATED BY SECTION 22-30.5-407 (2) AND THE PROVISIONS OF THIS SECTION.

(c.5) "CHARTER SCHOOL DEBT SERVICE RESERVE FUND" MEANS A REASONABLY REQUIRED DEBT SERVICE RESERVE FUND OR ACCOUNT THAT HAS BEEN FUNDED WITH PROCEEDS DERIVED FROM THE ISSUANCE OF

QUALIFIED CHARTER SCHOOL BONDS OR OTHER MONEYS OF THE QUALIFIED CHARTER SCHOOL.

(d) "Qualified charter school debt service reserve fund requirement" means the level of funding required for a qualified charter school debt service reserve fund as specified in the trust indenture or resolution pursuant to which qualified charter school bonds have been issued, WHICH LEVEL OF FUNDING SHALL BE NO LESS THAN THE MAXIMUM ANNUAL PRINCIPAL AND INTEREST REQUIREMENT FOR THE ALLOCABLE PORTION OF THE QUALIFIED CHARTER SCHOOL BONDS ISSUED FOR THE BENEFIT OF THE QUALIFIED CHARTER SCHOOL; EXCEPT THAT AN AMOUNT EQUAL TO THE QUALIFIED CHARTER SCHOOL DEBT SERVICE RESERVE FUND MAY BE SUBTRACTED FROM THE FINAL PRINCIPAL PAYMENT FOR THE ALLOCABLE PORTION OF THE QUALIFIED CHARTER SCHOOL BONDS ISSUED FOR THE BENEFIT OF THE QUALIFIED CHARTER SCHOOL WHEN DETERMINING THE MAXIMUM ANNUAL PRINCIPAL AND INTEREST REQUIREMENT AMOUNT.

~~(e) "Qualified charter school debt service reserve requirement" means a reasonably required debt service reserve fund or account that has been funded with proceeds derived from the issuance of qualified charter school bonds.~~

(2) (a) ~~No later than January 15, 2003, and no later than January 15 of each succeeding year,~~ If the Colorado educational and cultural facilities authority has issued qualified charter school bonds on behalf of any QUALIFIED charter school that ~~has failed during the prior calendar year~~ FAILS IMMEDIATELY to restore its qualified charter school debt service reserve fund to the applicable qualified charter school debt service reserve fund requirement, the board of directors of the Colorado educational and cultural facilities authority shall submit to the governor a certificate certifying any amount of moneys required to restore the qualified charter school debt service reserve fund to the applicable qualified charter school debt service reserve fund requirement. The governor ~~may, in the governor's discretion,~~ SHALL submit a request for appropriations in an amount sufficient to restore any or all qualified charter school debt reserve funds to their respective qualified charter school debt service reserve fund requirements and the general assembly may, but shall not be required to, appropriate moneys for said purpose. If, in its sole discretion, the general assembly appropriates any moneys for said purpose, the aggregate ~~amount of moneys that~~ OUTSTANDING PRINCIPAL AMOUNT OF BONDS FOR WHICH MONEYS may be appropriated for said purpose shall not exceed two hundred million dollars.

SECTION 4. 22-30.5-408, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-30.5-408. Replenishment of qualified charter school debt service reserve funds. (3) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT ITS INTENT IN ENACTING THIS SECTION IS TO SUPPORT CHARTER SCHOOLS AND CHARTER SCHOOL CAPITAL CONSTRUCTION BY HELPING QUALIFIED CHARTER SCHOOLS THAT CHOOSE TO HAVE THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY ISSUE QUALIFIED CHARTER SCHOOL BONDS ON THEIR BEHALF OBTAIN MORE FAVORABLE FINANCING TERMS FOR THE BONDS.

SECTION 5. The introductory portion to 22-30.5-409 (1) and 22-30.5-409 (1) (i), Colorado Revised Statutes, are amended to read:

22-30.5-409. Annual reports on bonds issued on behalf of charter schools - review by state auditor. (1) Prior to January 30, 2003, and prior to January 30 of each year thereafter, the Colorado educational and cultural facilities authority created in section 23-15-104 (1) (a), C.R.S., shall submit a report to the state auditor that includes information concerning the issuance of qualified charter school bonds, as defined in section 22-30.5-408 (1) (c), that have resulted in charter schools obtaining more favorable financing terms by reliance on the existence of the STATE charter school debt reserve fund created in section 22-30.5-407 (2) (a) and the potential replenishment of the STATE charter school debt reserve fund pursuant to section 22-30.5-408 (2) (a). Such report shall include, but need not be limited to:

(i) The total amount, if any, of moneys expended from the STATE charter school debt reserve fund during the most recently completed calendar year for the purpose of paying principal and interest on such qualified charter school bonds.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state charter school interest savings account of the state charter school debt reserve fund, created in section 22-30.5-407 (2) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of the treasury, for the fiscal year beginning July 1, 2003, the sum of twenty thousand dollars (\$20,000), or so much thereof as may be necessary, for the implementation

of this act.

SECTION 7. 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.

Lola Spradley
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John Andrews
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Mona Heustis
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO