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HOUSE BILL 10-1345

BY REPRESENTATIVE(S) Carroll T., Acree, Apuan, Kerr J., Labuda, Massey, Pace, Summers, Vigil, Gardner B., Lambert, Stephens; also SENATOR(S) Steadman and King K.

CONCERNING THE GRANTING OF EMERGENCY POWERS DURING EMERGENCY SITUATIONS AT CHARTER SCHOOLS.

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

SECTION 1. 22-2-113 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

22-2-113. Commissioner - powers. (1) Subject to the supervision of the state board, the commissioner has the following powers:

(i) TO ISSUE EMERGENCY ORDERS CONCERNING A CHARTER SCHOOL PURSUANT TO SECTION 22-30.5-703.

SECTION 2. Article 30.5 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 7
EMERGENCY POWERS

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

22-30.5-701. Short title. THIS PART 7 SHALL BE KNOWN AND MAY BE CITED AS THE "CHARTER SCHOOL EMERGENCY POWERS ACT".

22-30.5-702. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AUTHORIZER" MEANS A SCHOOL DISTRICT BOARD OF EDUCATION THAT AUTHORIZES A CHARTER SCHOOL PURSUANT TO PART 1 OF THIS ARTICLE OR THE STATE CHARTER SCHOOL INSTITUTE ESTABLISHED PURSUANT TO SECTION 22-30.5-503.

(2) "CHARTER MANAGEMENT ORGANIZATION" MEANS THE COLORADO OPERATIONS OF A FOR-PROFIT OR NONPROFIT ENTITY, AS DETERMINED UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986, THAT OPERATES ONE OR MORE CHARTER SCHOOLS.

(3) "CHARTER RESPONDENT" MEANS A CHARTER SCHOOL OR CHARTER MANAGEMENT ORGANIZATION THAT IS THE SUBJECT OF A REQUEST FOR OR AN ORDER GRANTING EMERGENCY POWERS PURSUANT TO THIS PART 7.

(4) "CHARTER SCHOOL" MEANS A CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-103 (2) OR AN INSTITUTE CHARTER SCHOOL AS DEFINED IN SECTION 22-30.5-502 (6).

(5) "COMMISSIONER" MEANS THE OFFICE OF THE COMMISSIONER OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 1 OF ARTICLE IX OF THE STATE CONSTITUTION.

(6) "EMERGENCY" MEANS A SITUATION THAT:

(a) PRESENTS A SIGNIFICANT THREAT, AS DETERMINED BY THE COMMISSIONER, TO THE HEALTH OR SAFETY OF THE STUDENTS, STAFF, OR OTHER INDIVIDUALS INVOLVED WITH A CHARTER SCHOOL;

(b) PRESENTS A SIGNIFICANT THREAT, AS DETERMINED BY THE COMMISSIONER, TO SUBSTANTIAL PROPERTY RIGHTS OF AN AUTHORIZER OR A SIGNIFICANT RISK, AS DETERMINED BY THE COMMISSIONER, TO A CHARTER RESPONDENT'S SOLVENCY;

(c) INDICATES A SUBSTANTIAL DIVERSION, AS DETERMINED BY THE COMMISSIONER, OF CHARTER SCHOOL MONEYS THROUGH ONE OR MORE EXCESS BENEFIT TRANSACTIONS; OR

(d) IS DEFINED BY RULE OF THE STATE BOARD AS ONE THAT JUSTIFIES ACTION PURSUANT TO THIS PART 7.

(7) "EXCESS BENEFIT" MEANS A FINANCIAL BENEFIT ARISING DIRECTLY OR INDIRECTLY FROM A TRANSACTION WITH A CHARTER SCHOOL THAT WOULD BE CONSIDERED AN EXCESS BENEFIT UNDER SECTION 4958 (c) (1) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND REGULATIONS ADOPTED THEREUNDER; EXCEPT THAT THE DEFINITION OF EXCESS BENEFIT SHALL EXTEND TO ALL CHARTER SCHOOLS REGARDLESS OF WHETHER THEY HAVE APPLIED FOR OR RECEIVED NONPROFIT STATUS UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THE SALARIES OF ADMINISTRATORS IN COMPARABLE POSITIONS AT OTHER COLORADO CHARTER SCHOOLS, CHARTER MANAGEMENT ORGANIZATIONS, BOARDS OF COOPERATIVE SERVICES, AND SCHOOL DISTRICTS SERVING A REASONABLY COMPARABLE NUMBER OF STUDENTS SHALL SERVE AS THE COMPARISON FOR DETERMINING WHETHER THE SALARIES OF CHARTER SCHOOL OR CHARTER MANAGEMENT ORGANIZATION ADMINISTRATORS ARE REASONABLE OR EXCESSIVE FOR THE PURPOSES OF THIS PART 7.

(8) "FIDUCIARY" MEANS A PERSON WHO MEETS THE REQUIREMENTS OF THE "UNIFORM FIDUCIARIES LAW", PART 1 OF ARTICLE 1 OF TITLE 15, C.R.S., AND ANY OTHER APPLICABLE LAW OR RULE.

(9) "ORGANIC DOCUMENTS" MEANS THE ARTICLES OF INCORPORATION, ARTICLES OF ORGANIZATION, CONSTITUTION, BYLAWS, OR OTHER DOCUMENTS, HOWEVER DENOMINATED, THAT DEFINE THE BASIC GOVERNANCE STRUCTURE FOR A CHARTER SCHOOL AND THE BODY OR BODIES THAT HAVE GOVERNING AUTHORITY FOR A CHARTER SCHOOL.

(10) "STATE BOARD" MEANS THE STATE BOARD OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 1 OF ARTICLE IX OF THE STATE CONSTITUTION.

22-30.5-703. Emergency powers - request - orders - process - rules. (1) AN AUTHORIZER MAY REQUEST THAT THE COMMISSIONER PERMIT

EXTERNAL CONTROL OVER CERTAIN FUNCTIONS OF A CHARTER SCHOOL OR CHARTER MANAGEMENT ORGANIZATION BY SUBMITTING TO THE COMMISSIONER AND THE CHARTER SCHOOL OR CHARTER MANAGEMENT ORGANIZATION A CONCISE WRITTEN STATEMENT IDENTIFYING THE EMERGENCY THAT JUSTIFIES EXTERNAL CONTROL AND THE FORM OR FORMS OF EXTERNAL CONTROL REQUESTED. THE AUTHORIZER SHALL STATE CLEARLY IF IT IS REQUESTING AN ORDER OF REORGANIZATION. THE COMMISSIONER MAY AUTHORIZE EXTERNAL CONTROL OVER A CHARTER SCHOOL OR CHARTER MANAGEMENT ORGANIZATION BY ISSUING A TEMPORARY ORDER AS PROVIDED IN SUBSECTION (2) OF THIS SECTION OR A PRELIMINARY ORDER AS PROVIDED IN SUBSECTION (3) OF THIS SECTION.

(2) THE COMMISSIONER MAY ISSUE A TEMPORARY ORDER IN THE EVENT THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE WILL RESULT FROM THE IDENTIFIED EMERGENCY BEFORE THE CHARTER RESPONDENT IS ABLE TO STATE ITS OPPOSITION AND BEFORE THE AUTHORIZER CERTIFIES IN WRITING OR IN PERSON TO THE COMMISSIONER THE EFFORTS THAT HAVE BEEN MADE TO GIVE NOTICE TO THE CHARTER RESPONDENT. A TEMPORARY ORDER ISSUED PURSUANT TO THIS SUBSECTION (2) SHALL STATE THE DATE AND HOUR OF ISSUANCE, DEFINE THE INJURY, STATE WHY THE INJURY IS IRREPARABLE, AND STATE WHY THE TEMPORARY ORDER WAS GIVEN WITHOUT NOTICE. A TEMPORARY ORDER ISSUED UNDER THIS SUBSECTION (2) SHALL BE VALID FOR TEN DAYS AND MAY BE EXTENDED FOR UP TO AN ADDITIONAL TEN DAYS FOR GOOD CAUSE SHOWN. THE AUTHORIZER SHALL IMMEDIATELY PROVIDE THE CHARTER RESPONDENT WITH A COPY OF ANY TEMPORARY ORDER ISSUED PURSUANT TO THIS SUBSECTION (2). A CHARTER RESPONDENT SHALL PROVIDE AN AUTHORIZER TWO BUSINESS DAYS' NOTICE PRIOR TO REQUESTING THAT THE COMMISSIONER DISSOLVE A TEMPORARY ORDER ISSUED PURSUANT TO THIS SUBSECTION (2).

(3) THE COMMISSIONER SHALL ISSUE A PRELIMINARY ORDER ONLY IF:

(a) THE CHARTER RESPONDENT RECEIVED TWO BUSINESS DAYS' WRITTEN NOTICE THAT THE AUTHORIZER HAS REQUESTED EXTERNAL CONTROL OVER CERTAIN FUNCTIONS OF THE CHARTER RESPONDENT AND THE BASIS FOR THE REQUEST;

(b) IN THE CASE OF A CHARTER RESPONDENT THAT IS A CHARTER MANAGEMENT ORGANIZATION, AUTHORIZERS OF EACH OF THE AFFECTED

CHARTER SCHOOLS HAVE RECEIVED TWO BUSINESS DAYS' WRITTEN NOTICE OF THE REQUEST FOR EXTERNAL CONTROL;

(c) THE AUTHORIZER REQUESTING EXTERNAL CONTROL AND ALL PARTIES THAT RECEIVED NOTICE HAVE HAD THE OPPORTUNITY TO MEET WITH THE COMMISSIONER TO PRESENT SUCH EVIDENCE AND ARGUMENT AS THE COMMISSIONER FINDS APPROPRIATE UNDER THE CIRCUMSTANCES. IN ANY MEETING HELD BEFORE ISSUING A PRELIMINARY ORDER PURSUANT TO THIS SUBSECTION (3), THE COMMISSIONER MAY ACCEPT EVIDENCE AND ARGUMENTS FROM THE PARTIES INVOLVED AS HE OR SHE DEEMS APPROPRIATE, BUT NEITHER A FORMAL ADVERSARIAL HEARING NOR APPLICATION OF THE RULES OF EVIDENCE SHALL BE REQUIRED.

(d) FOLLOWING A MEETING HELD PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (3), THE COMMISSIONER FINDS AND DETERMINES THAT THE AUTHORIZER HAS DEMONSTRATED AN EMERGENCY AND THE RISK OF IRREPARABLE INJURY RESULTING FROM THE EMERGENCY JUSTIFIES AN INTRUSION ON THE INTERNAL OPERATIONS OF THE CHARTER RESPONDENT.

(4) THE COMMISSIONER MAY DEMAND PRODUCTION OF INFORMATION FROM THE CHARTER RESPONDANT THAT MAY BE NECESSARY TO CONDUCT AN INVESTIGATION PURSUANT TO THIS SECTION, MAY ISSUE SUBPOENAS AS OTHERWISE PROVIDED FOR IN SECTION 24-4-105 (5), C.R.S., AND MAY DRAW APPROPRIATE INFERENCES FROM FAILURE OF ANY PARTY TO PROMPTLY COMPLY WITH SUCH REQUESTS.

(5) A PRELIMINARY ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE VALID FOR ONE HUNDRED TWENTY DAYS AND MAY BE EXTENDED FOR UP TO AN ADDITIONAL ONE HUNDRED TWENTY DAYS, UPON GOOD CAUSE SHOWN.

(6) (a) A TEMPORARY OR PRELIMINARY ORDER MAY APPOINT THE AUTHORIZER OR ANOTHER ENTITY OR PERSON TO ACT AS A FIDUCIARY; EXCEPT THAT, IF MORE THAN ONE AUTHORIZER IS A PARTY TO THE PROCEEDING OR IF THE AUTHORIZER IS REQUESTING AN ORDER OF REORGANIZATION, THE COMMISSIONER SHALL APPOINT A SEPARATE PERSON OR ENTITY THAT IS NOT A PARTY TO THE PROCEEDING TO ACT AS A FIDUCIARY. THE FIDUCIARY MAY EXERCISE, SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (6), THE POWERS OVER AND FOR THE CHARTER RESPONDENT THAT ARE ORDINARILY EXERCISED BY

THE CHARTER RESPONDENT'S BOARD OF DIRECTORS AND MAY TAKE ACTION RESPECTING EXCESS BENEFITS AS AUTHORIZED PURSUANT TO SECTION 22-30.5-704.

(b) A TEMPORARY OR PRELIMINARY ORDER SHALL NOT AUTHORIZE, NOR BE CONSTRUED TO PERMIT, A FIDUCIARY TO:

(I) CONCLUDE, DISSOLVE, RELINQUISH, OR SURRENDER THE CHARTER CONTRACT;

(II) EFFECT NONRENEWAL OR REVOCATION OF THE CHARTER CONTRACT;

(III) NEGOTIATE, RENEGOTIATE, OR AMEND THE CHARTER CONTRACT;

(IV) EXERCISE THE LEGAL STANDING OF THE CHARTER RESPONDENT IN ANY ADMINISTRATIVE OR COURT PROCEEDING OTHER THAN ONE BROUGHT PURSUANT TO THIS SECTION; EXCEPT THAT THE FIDUCIARY MAY SEEK RECOVERY OF UNPAID MONEYS DUE TO THE CHARTER RESPONDENT FROM AN AUTHORIZER;

(V) TRANSFER INTO A TRUST THE ASSETS OF THE CHARTER RESPONDENT;

(VI) REPEAL, ALTER, AMEND, RESTATE, OR IN ANY FASHION MODIFY THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS;

(VII) REMOVE, RECALL, OR APPOINT ANY MEMBER OF THE CHARTER RESPONDENT'S GOVERNING BOARD OR OFFICERS;

(VIII) TAKE ANY ACTION THAT IS RESERVED FOR THE MEMBERSHIP OF A CHARTER RESPONDENT THAT IS ORGANIZED AS A MEMBERSHIP ORGANIZATION; OR

(IX) TAKE ANY ACTION THAT IS NOT WITHIN THE POWER OF THE CHARTER RESPONDENT'S GOVERNING BOARD.

(7) THE COMMISSIONER MAY REQUIRE A FIDUCIARY TO PROVIDE EVIDENCE OF APPROPRIATE INSURANCE COVERAGE, INCLUDING BUT NOT

LIMITED TO APPROPRIATE CERTIFICATES OF INSURANCE. THE INSURANCE COVERAGE SHALL BE REASONABLY ADEQUATE TO PROTECT AGAINST RISKS OF LIABILITY FOR ANY ACTIONS TAKEN UNDER AN ORDER GRANTED PURSUANT TO THIS SECTION.

(8) (a) IF AN AUTHORIZER HAS REQUESTED AN ORDER OF REORGANIZATION AND THE COMMISSIONER, AFTER APPROPRIATE PROCEEDINGS PURSUANT TO THIS SECTION, HAS APPOINTED A FIDUCIARY OTHER THAN THE AUTHORIZER TO EXERCISE CERTAIN POWERS, THE FIDUCIARY SHALL INDEPENDENTLY DETERMINE WHETHER TO CONTINUE TO REQUEST THE ORDER OF REORGANIZATION. AN ORDER OF REORGANIZATION SHALL BE AUTHORIZED ONLY IF IT IS ISSUED IN COMPLIANCE WITH THE PROCESSES, STANDARDS, AND PURPOSES SET FORTH IN THIS SECTION.

(b) A FIDUCIARY OTHER THAN AN AUTHORIZER MAY REQUEST AN ORDER OF REORGANIZATION AT ANY TIME WHILE A PRELIMINARY ORDER OR AN EXTENSION OF A PRELIMINARY ORDER IS PENDING, SO LONG AS THE FIDUCIARY PROVIDES AT LEAST TEN DAYS' NOTICE TO THE CHARTER RESPONDENT, THE AUTHORIZER, AND THE COMMISSIONER. THE FIDUCIARY SHALL SPECIFICALLY STATE IN THE NOTICE THE POWERS OF REORGANIZATION HE OR SHE IS REQUESTING AND THE REASONS JUSTIFYING THE REQUEST. NOTWITHSTANDING THE LIMITATIONS PLACED ON THE POWERS OF A FIDUCIARY ACTING UNDER A TEMPORARY OR PRELIMINARY ORDER, AS SET FORTH IN SUBSECTION (6) OF THIS SECTION, THE POWERS OF REORGANIZATION SHALL ONLY INCLUDE ONE OR MORE OF THE FOLLOWING POWERS:

(I) TO FILL ONE OR MORE BOARD VACANCIES, NOTWITHSTANDING THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS;

(II) TO REMOVE ONE OR MORE BOARD DIRECTORS OR OFFICERS, NOTWITHSTANDING THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS; OR

(III) TO MAKE SPECIFIC, STATED MODIFICATIONS TO THE CHARTER RESPONDENT'S ORGANIC DOCUMENTS, NOTWITHSTANDING THE PROCESS FOR AMENDMENT OR RESTATEMENT OTHERWISE PRESCRIBED IN THOSE DOCUMENTS.

(c) THE COMMISSIONER MAY ISSUE AN ORDER OF REORGANIZATION ONLY AFTER GIVING THE AUTHORIZER AND THE CHARTER RESPONDENT A

REASONABLE OPPORTUNITY TO BE HEARD, AND THEN ONLY IF THE COMMISSIONER FINDS THAT THE RISKS CREATED BY THE EMERGENCY TO THE CHARTER RESPONDENT AND THE AUTHORIZER CANNOT BE RESOLVED BY ANY LESS RESTRICTIVE MEANS. IN ANY MEETING HELD BEFORE ISSUING AN ORDER OF REORGANIZATION, THE COMMISSIONER MAY ACCEPT EVIDENCE AND ARGUMENT FROM THE PARTIES INVOLVED AS HE OR SHE DEEMS APPROPRIATE, BUT NEITHER A FORMAL ADVERSARIAL HEARING NOR APPLICATION OF THE RULES OF EVIDENCE SHALL BE REQUIRED.

(d) AN ORDER OF REORGANIZATION SHALL BE VALID FOR THE BALANCE OF THE TERM OF ANY PENDING PRELIMINARY ORDER OR FOR SIXTY DAYS, WHICHEVER IS GREATER, AND MAY BE RENEWED FOR AN ADDITIONAL THIRTY DAYS UPON GOOD CAUSE SHOWN. AN ORDER OF REORGANIZATION SHALL BE VALID FOR NO MORE THAN NINETY DAYS.

(9) THE FIDUCIARY SHALL SUBMIT APPROPRIATE FINANCIAL INFORMATION TO THE COMMISSIONER AND THE DIRECTOR OF PUBLIC SCHOOL FINANCE WITHIN THE DEPARTMENT OF EDUCATION AND PROVIDE COPIES TO THE CHARTER RESPONDENT AND AUTHORIZER. THE CHARTER RESPONDENT AND AUTHORIZER MAY SUBMIT ADDITIONAL INFORMATION TO THE DIRECTOR OF PUBLIC SCHOOL FINANCE. AFTER RECEIPT OF ALL PERTINENT FINANCIAL INFORMATION, THE DIRECTOR OF PUBLIC SCHOOL FINANCE SHALL MAKE A WRITTEN RECOMMENDATION TO THE COMMISSIONER.

(10) A TEMPORARY OR PRELIMINARY ORDER OR AN ORDER FOR REORGANIZATION GRANTED PURSUANT TO THIS SECTION SHALL STATE THE REASONS FOR ISSUANCE; BE SPECIFIC IN ITS TERMS; AND DESCRIBE IN REASONABLE DETAIL, WITHOUT REFERENCE TO THE REQUEST OR OTHER DOCUMENTS, THE ACT OR ACTS AUTHORIZED. AN ORDER GRANTED PURSUANT TO THIS SECTION IS BINDING ONLY UPON THE CHARTER SCHOOL AND ITS EMPLOYEES. AN ORDER APPOINTING A FIDUCIARY MAY SPECIFY OR LIMIT THE FIDUCIARY'S POWERS AND MAY DIRECT THE FIDUCIARY TO ACT ONLY UPON PARTICULAR ISSUES OR ONLY TO EXERCISE CERTAIN POWERS.

(11) EXPENSES INCURRED BY AN AUTHORIZER IN PURSUING A PROCEEDING PURSUANT TO THIS SECTION SHALL BE BORNE BY THE AUTHORIZER, AND EXPENSES INCURRED BY A CHARTER RESPONDENT IN DEFENDING ANY PROCEEDING PURSUANT TO THIS SECTION SHALL BE BORNE BY THE CHARTER RESPONDENT. EXPENSES INCURRED BY THE DEPARTMENT SHALL BE BORNE EQUALLY BY THE AUTHORIZER AND THE CHARTER

RESPONDENT. EXPENSES INCURRED BY A FIDUCIARY SHALL BE SUBMITTED TO THE CHARTER RESPONDENT AND COMMISSIONER FOR APPROVAL AND, AFTER THE COMMISSIONER RESOLVES ANY DISPUTED CHARGES, SHALL BE BORNE BY THE CHARTER RESPONDENT.

(12) NOTWITHSTANDING ANY OTHER PROVISION OF COLORADO LAW, INCLUDING BUT NOT LIMITED TO THE "COLORADO REVISED NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S., OR ANY PROVISION OF A CHARTER CONTRACT TO THE CONTRARY, THE POWERS GRANTED PURSUANT TO THIS PART 7 SHALL BE EFFECTIVE AND VALID AS A MATTER OF LAW.

(13) NOTHING IN THIS PART 7 SHALL LIMIT THE AUTHORITY OF AN AUTHORIZER TO EXERCISE ANY CONTRACTUAL RIGHTS, INCLUDING ANY REMEDIES, EMERGENCY OR OTHERWISE, FOR BREACH OF A CHARTER CONTRACT. A CHARTER CONTRACT PROVISION THAT PURPORTS TO GRANT AUTHORITY TO AN AUTHORIZER TO EXERCISE EMERGENCY POWERS AS DESCRIBED IN THIS PART 7 SHALL BE CONSTRUED, IF POSSIBLE, TO BE CONSISTENT WITH THIS PART 7. A PROVISION CONSTRUED TO BE INCONSISTENT WITH THIS PART 7 SHALL BE DEEMED CONTRARY TO PUBLIC POLICY, VOID, UNENFORCEABLE, AND OF NO LEGAL EFFECT. THE BURDEN SHALL BE ON THE PARTY ASSERTING AN INCONSISTENCY TO DEMONSTRATE THAT SUCH A PROVISION IS INCONSISTENT WITH THIS PART 7.

(14) AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE FINAL AND BINDING AND NOT SUBJECT TO APPEAL. A CHARTER RESPONDENT MAY SEEK JUDICIAL REVIEW OF AN ORDER ISSUED PURSUANT TO THIS SECTION UNDER RULE 106 (a) (4) OF THE COLORADO RULES OF CIVIL PROCEDURE; EXCEPT THAT A TEMPORARY ORDER SHALL NOT BE SUBJECT TO JUDICIAL REVIEW. A CHARTER RESPONDENT MAY FILE AN ACTION FOR JUDICIAL REVIEW IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER OR THE DISTRICT COURT IN THE COUNTY IN WHICH THE CHARTER RESPONDENT IS LOCATED.

(15) AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL NOT BE DEEMED TO BE AN APPOINTMENT OF A TRUSTEE OR RECEIVER UNDER THE TERMS OF ANY FINANCING OF A CHARTER SCHOOL FACILITY OR OTHER INSTRUMENT.

(16) THE COMMISSIONER MAY FILL ANY VACANCY CREATED BY THE

DEATH OR INABILITY OF A FIDUCIARY OR, FOR GOOD CAUSE SHOWN, MAY REMOVE A FIDUCIARY THAT IS EXERCISING POWERS PURSUANT TO A PRELIMINARY ORDER OR ORDER OF REORGANIZATION AND APPOINT A NEW FIDUCIARY.

(17) A MEETING CONDUCTED BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE OPEN TO ALL PARTIES TO THE PROCEEDING. AN ORDER OF THE COMMISSIONER ISSUED PURSUANT TO THIS SECTION AND ALL REQUESTS FOR ORDERS, BY ANY PARTY, SHALL BE CONSIDERED PUBLIC DOCUMENTS.

(18) THE STATE BOARD IS AUTHORIZED TO ADOPT RULES, PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., FOR THE IMPLEMENTATION OF THIS SECTION.

22-30.5-704. Excess benefits - cancellation of contracts - civil action and penalty. (1) IF A FIDUCIARY OTHER THAN AN AUTHORIZER, OPERATING UNDER THE AUTHORITY OF A PRELIMINARY ORDER OR AN ORDER FOR REORGANIZATION, DETERMINES THAT A CHARTER RESPONDENT HAS ENGAGED IN AN EXCESS BENEFIT TRANSACTION, THE FIDUCIARY MAY:

(a) CANCEL IN WRITING AND WITHOUT PENALTY ANY CONTRACT ENTERED INTO BY THE CHARTER SCHOOL THAT AWARDS THE EXCESS BENEFIT TO AN INDIVIDUAL OR ANOTHER ENTITY AND CANCEL ANY FURTHER COMPENSATION TO THE PARTY THAT RECEIVED THE EXCESS BENEFIT. THE FIDUCIARY MAY DEMAND THE RETURN, WITHIN TEN BUSINESS DAYS, TO THE CHARTER RESPONDENT OF ALL EXCESS BENEFITS PAID WITHIN THE PRECEDING THREE YEARS OR, IF THE EXCESSIVE PAYMENT HAS BEEN CONCEALED FROM THE CHARTER RESPONDENT'S FULL GOVERNING BOARD, THE PRECEDING SIX YEARS.

(b) IF PAYMENT IS NOT MADE AS DEMANDED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), FILE IN THE NAME OF THE CHARTER RESPONDENT, A CIVIL ACTION FOR RECOVERY OF THE EXCESS BENEFIT AND IMPOSITION OF A CIVIL PENALTY. IF THE COURT FINDS THAT THE CHARTER RESPONDENT PAID THE EXCESS BENEFIT AND THE PERSON RECEIVING THE EXCESS BENEFIT DID NOT REPAY THE AMOUNT WITHIN TEN BUSINESS DAYS FOLLOWING THE DEMAND FOR REPAYMENT, THE COURT SHALL DEEM THE EXCESS BENEFIT AN UNAUTHORIZED PAYMENT OF CHARTER SCHOOL MONEYS AND AWARD THE CHARTER RESPONDENT, THROUGH THE FIDUCIARY, AN

AMOUNT FIXED IN THE COURT'S DISCRETION AND BASED ON ALL THE CIRCUMSTANCES. HOWEVER, THE AMOUNT SHALL NOT BE LESS THAN THE EXCESS BENEFIT PAID AND SHALL NOT BE MORE THAN DOUBLE THE EXCESS BENEFIT PAID PLUS ALL REASONABLE ATTORNEY FEES AND COSTS. IF THE COURT FINDS THAT THE FIDUCIARY DID NOT HAVE A REASONABLE BASIS IN LAW AND FACT FOR CLAIMING AN EXCESS BENEFIT AND FILING THE ACTION, IT MAY AWARD THE PARTY DEFENDING THE ACTION ATTORNEY FEES AND COSTS.

SECTION 3. 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.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO