

9485

I N   A S S E M B L Y

(PREFILED)

January 6, 2010

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Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to allowing BOCES to enter into certain contracts with charter schools, extending the number of charters issued for charter schools, expanding the function of charter schools, and the financing of charter schools; to amend the public authorities law, in relation to establishing the charter school loan and lease program; and to amend the state finance law, in relation to expanding the purpose of the charter school stimulus fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph h of subdivision 4 of section 1950 of the educa-  
2     tion law is amended by adding two new subparagraphs 8 and 9 to read as  
3     follows:  
4     (8) TO ENTER INTO CONTRACTS AS NECESSARY TO CARRY OUT THE PURPOSES OF  
5     THE BOARD OF COOPERATIVE EDUCATIONAL SERVICES AS OUTLINED IN THIS  
6     SECTION.  
7     (9) TO ENTER INTO CONTRACTS WITH CHARTER SCHOOLS AUTHORIZED BY ARTICLE  
8     FIFTY-SIX OF THIS CHAPTER, TO PROVIDE SERVICES AS AUTHORIZED BY THIS  
9     SECTION.  
10    S 2. Subdivision 9 of section 2852 of the education law, as amended by  
11    section 2 of part D-2 of chapter 57 of the laws of 2007, is amended to  
12    read as follows:  
13    9. The total number of charters issued pursuant to this article shall  
14    not exceed [two] FOUR hundred. [One] TWO hundred of such charters shall  
15    be issued on the recommendation of the charter entity described in para-  
16    graph (b) of subdivision three of section twenty-eight hundred fifty-one  
17    of this article, and [one] TWO hundred of such charters shall be issued  
18    on the recommendation of the other charter entities set forth in subdi-  
19    vision three of section twenty-eight hundred fifty-one of this article,  
20    provided that up to fifty of the additional charters authorized to be  
21    issued by [the] chapter FIFTY-SEVEN of the laws of two thousand seven  
22    [which amended this subdivision effective July first, two thousand

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD15293-02-0

seven] shall be reserved for a city school district of a city having a population of one million or more. The failure of any body to issue the regulations authorized pursuant to this article shall not [effect] AFFECT the authority of a charter entity to propose a charter to the board of regents or the board of regents' authority to grant such charter. A conversion of an existing public school to a charter school or the renewal or extension of a charter shall not be counted toward the numerical limits established by this subdivision.

S 3. Paragraph (b-1) of subdivision 1 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(b-1) An education corporation operating a charter school shall not be authorized to operate more than one school [or] BUT MAY BE AUTHORIZED TO house any grade at more than one site[, provided that:

(A) a]. A CHARTER SCHOOL HOUSING TWO OR MORE GRADES AT MORE THAN ONE SITE SHALL HAVE EACH SUCH ADDITIONAL SITE DEEMED AS A CHARTER ISSUED FOR THE PURPOSES OF SUBDIVISION NINE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, APPROVAL OF REVISIONS TO A CHARTER OR CHARTERS TO AUTHORIZE AN EDUCATION CORPORATION TO HOUSE ANY GRADE OR GRADES AT MORE THAN ONE SITE, INCLUDING THE MERGER OR CONSOLIDATION OF EXISTING EDUCATION CORPORATIONS OPERATING CHARTER SCHOOLS TO A SINGLE EDUCATION CORPORATION, SHALL BE MADE IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. UPON SUCH MERGER OR CONSOLIDATION, THE SURVIVING OR CONSOLIDATED EDUCATION CORPORATION, PLUS ANY SUCH ADDITIONAL SITES, SHALL CONTINUE TO EACH BE COUNTED AS A CHARTER ISSUED FOR THE PURPOSES OF SUBDIVISION NINE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. IF A CHARTER SCHOOL HAS EMPLOYEES WHO ARE MEMBERS OF A COLLECTIVE BARGAINING ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW THAT MERGES OR CONSOLIDATES WITH A CHARTER SCHOOL WHOSE EMPLOYEES ARE NOT MEMBERS OF A COLLECTIVE BARGAINING ORGANIZATION, EMPLOYEES OF THE MERGED OR CONSOLIDATED CHARTER SCHOOL SHALL BE MEMBERS OF THE COLLECTIVE BARGAINING ORGANIZATION THAT REPRESENTED LIKE POSITIONS, IF ANY, PRIOR TO THE MERGER OR CONSOLIDATION. A charter school may operate in more than one building at a single site; and

[(B)] a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site; AND A CHARTER SCHOOL OPERATING AT MORE THAN ONE SITE BUT WHICH HOUSES EACH GRADE AT A SINGLE SITE SHALL BE DEEMED TO BE OPERATING AT A SINGLE SITE.

S 3-a. Paragraph (p) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(p) The term of the proposed charter, which shall not exceed five SCHOOL years IN WHICH INSTRUCTION IS PROVIDED TO PUPILS, PLUS THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE CHARTER AND ENDING WITH THE OPENING OF THE SCHOOL FOR INSTRUCTION.

S 4. Paragraph (a) of subdivision 1 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(a) Upon the approval of a charter by the board of regents, the board of regents shall incorporate the charter school as an education corporation for a term not to exceed five SCHOOL years IN WHICH INSTRUCTION IS PROVIDED TO PUPILS, PLUS THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE CHARTER AND ENDING WITH THE OPENING OF THE SCHOOL FOR

1 INSTRUCTION. Such certificate of incorporation shall not modify or  
2 limit any terms of the charter approved by the board of regents. Upon  
3 approval of an application to renew a charter, the board of regents  
4 shall extend the certificate of incorporation for a term not to exceed  
5 five SCHOOL years, PLUS THE PERIOD, IF ANY, COMMENCING WITH THE EFFEC-  
6 TIVE DATE OF THE RENEWAL CHARTER AND ENDING WITH THE FIRST DAY OF THE  
7 FIRST FULL SCHOOL YEAR IN WHICH INSTRUCTION IS PROVIDED UNDER THE  
8 RENEWAL CHARTER. Upon termination or nonrenewal of the charter of a  
9 charter school pursuant to section twenty-eight hundred fifty-five of  
10 this article, the certificate of incorporation of the charter school  
11 shall be revoked by the board of regents pursuant to section two hundred  
12 nineteen of this chapter, provided that compliance with the notice and  
13 hearing requirements of such section twenty-eight hundred fifty-five of  
14 this article shall be deemed to satisfy the notice and hearing require-  
15 ments of such section two hundred nineteen. It shall be the duty of the  
16 trustees of the charter school to obtain federal tax-exempt status no  
17 later than one year following approval of a charter school by the board  
18 of regents. For purposes of this article, "certificate of incorporation"  
19 shall mean the provisional charter issued by the board of regents to  
20 form the charter school as an educational corporation pursuant to  
21 sections two hundred sixteen and two hundred seventeen of this chapter.

22 S 5. Paragraph (a) of subdivision 2 of section 2854 of the education  
23 law, as amended by section 5 of part D-2 of chapter 57 of the laws of  
24 2007, is amended to read as follows:

25 (a) A charter school shall be nonsectarian in its programs, admission  
26 policies, employment practices, and all other operations and shall not  
27 charge tuition or fees; provided that a charter school may require the  
28 payment of fees on the same basis and to the same extent as other public  
29 schools. A charter school shall not discriminate against any student,  
30 employee or any other person on the basis of ethnicity, national origin,  
31 gender, or disability or any other ground that would be unlawful if done  
32 by a school. Admission of students shall not be limited on the basis of  
33 intellectual ability, measures of achievement or aptitude, athletic  
34 ability, disability, race, creed, gender, national origin, religion, or  
35 ancestry; provided, however, that nothing in this article shall be  
36 construed to prevent the establishment of a single-sex charter school or  
37 a charter school designed to provide expanded learning opportunities for  
38 students at-risk of academic failure WHICH MAY INCLUDE, BUT NOT BE  
39 LIMITED TO, STUDENTS WITH DISABILITIES AND LIMITED ENGLISH PROFICIENT  
40 STUDENTS; and provided, further, that the charter school shall demon-  
41 strate good faith efforts to attract and retain a comparable or greater  
42 enrollment of students with disabilities and limited English proficient  
43 students when compared to the enrollment figures for such students in  
44 the school district in which the charter school is located. A charter  
45 shall not be issued to any school that would be wholly or in part under  
46 the control or direction of any religious denomination, or in which any  
47 denominational tenet or doctrine would be taught.

48 S 6. Paragraph (c) of subdivision 2 of section 2854 of the education  
49 law, as added by chapter 4 of the laws of 1998, is amended to read as  
50 follows:

51 (c) A charter school shall serve one or more of the grades [one]  
52 KINDERGARTEN through twelve, and shall limit admission to pupils within  
53 the grade levels served. Nothing herein shall prohibit a charter school  
54 from establishing a [kindergarten] PRE-KINDERGARTEN program, PROVIDED  
55 HOWEVER, THAT THE STUDENTS ENROLLED IN SUCH PRE-KINDERGARTEN PROGRAM  
56 SHALL NOT BE INCLUDED IN THE ENROLLMENT FOR PURPOSES OF PARAGRAPHS (A)

1 AND (B) OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-SIX OF  
2 THIS ARTICLE; AND PROVIDED FURTHER, HOWEVER, THAT SUCH PRE-KINDERGARTEN  
3 PROGRAM SHALL BE ELIGIBLE FOR FUNDING IN ACCORDANCE WITH PARAGRAPH (D)  
4 OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-SIX OF THIS  
5 ARTICLE.

6 S 7. Subdivision 1 of section 2856 of the education law is amended by  
7 adding two new paragraphs (d) and (e) to read as follows:

8 (D) THE COMMISSIONER SHALL PAY EACH CHARTER SCHOOL OPERATING A  
9 PRE-KINDERGARTEN PROGRAM A GRANT AMOUNT IN PROPORTION TO THE AMOUNT  
10 COMPUTED FOR THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED  
11 PURSUANT TO SUBDIVISION TEN OF SECTION THIRTY-SIX HUNDRED TWO-E OF THIS  
12 CHAPTER BASED ON THE PROJECTED NUMBER OF PRE-KINDERGARTEN PUPILS TO BE  
13 SERVED BY THE CHARTER SCHOOL. PAYMENTS PURSUANT TO THIS PARAGRAPH SHALL  
14 BE MADE BY THE COMMISSIONER IN SIX SUBSTANTIALLY EQUAL INSTALLMENTS EACH  
15 YEAR BEGINNING ON THE FIRST BUSINESS DAY OF JULY AND EVERY TWO MONTHS  
16 THEREAFTER. PAYMENTS MADE PURSUANT TO THIS PARAGRAPH SHALL BE MADE BY  
17 THE COMMISSIONER FROM MONEYS APPROPRIATED BY THE STATE LEGISLATURE FOR  
18 THE SUPPORT OF PUBLIC SCHOOLS. AMOUNTS PAYABLE TO A CHARTER SCHOOL IN  
19 ITS FIRST YEAR OF OPERATION OF A PRE-KINDERGARTEN PROGRAM SHALL BE BASED  
20 ON THE PROJECTIONS OF INITIAL-YEAR ENROLLMENT SET FORTH IN THE CHARTER  
21 UNTIL ACTUAL ENROLLMENT DATA IS REPORTED TO THE COMMISSIONER BY THE  
22 CHARTER SCHOOL. SUCH PROJECTIONS SHALL BE RECONCILED WITH THE ACTUAL  
23 ENROLLMENT AS ACTUAL ENROLLMENT DATA IS SO REPORTED AND AT THE END OF  
24 THE SCHOOL'S FIRST YEAR OF OPERATION AND EACH SUBSEQUENT YEAR BASED ON A  
25 FINAL REPORT OF ACTUAL ENROLLMENT BY THE CHARTER SCHOOL, AND ANY NECES-  
26 SARY ADJUSTMENTS RESULTING FROM SUCH FINAL REPORT SHALL BE MADE TO  
27 PAYMENTS DURING THE SCHOOL'S FOLLOWING YEAR OF OPERATION.

28 (E) SUBJECT TO APPROPRIATION BY THE STATE LEGISLATURE, FOR EACH  
29 STUDENT ENROLLED IN A CHARTER SCHOOL, AN AMOUNT UP TO FIFTEEN PER CENTUM  
30 OF THE AMOUNT CALCULATED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION  
31 SHALL BE PAID BY THE COMMISSIONER DIRECTLY TO EACH CHARTER SCHOOL  
32 RECEIVING PAYMENTS IN ACCORDANCE WITH SUCH PARAGRAPH. PAYMENTS PURSUANT  
33 TO THIS PARAGRAPH SHALL BE MADE BY THE COMMISSIONER FOR THE PURPOSES OF  
34 SECURING FACILITIES INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION OF ANY  
35 NEW BUILDING, PURCHASE OF AN EXISTING BUILDING, OR REFINANCING OF AN  
36 EXISTING BUILDING IN ORDER TO FACILITATE IMPROVEMENTS THERETO; THE  
37 FINANCING OF REAL PROPERTY DEEMED ESSENTIAL FOR THE CONDUCT OF A CHARTER  
38 SCHOOL, THE EXTENSION OR PROVISION OF UTILITIES AND ANY OTHER APPURTEN-  
39 ANT FACILITIES TO BE USED BY ANY CHARTER SCHOOL; AND PERIODIC PAYMENTS  
40 CALLED FOR UNDER THE TERMS OF A LOAN WHICH MAY INCLUDE BUT IS NOT LIMIT-  
41 ED TO, INTEREST, INSTALLMENTS OF PRINCIPAL, TAXES AND ASSESSMENTS, LOAN  
42 INSURANCE PREMIUMS AND HAZARD INSURANCE PREMIUMS. PAYMENTS PURSUANT TO  
43 THIS PARAGRAPH SHALL BE MADE IN SIX SUBSTANTIALLY EQUAL INSTALLMENTS  
44 EACH YEAR BEGINNING ON THE FIRST BUSINESS DAY OF JULY AND EVERY TWO  
45 MONTHS THEREAFTER.

46 S 8. Subdivision 1 of section 3602-e of the education law is amended  
47 by adding a new paragraph a-1 to read as follows:

48 A-1. "CHARTER SCHOOL" SHALL MEAN A SCHOOL AUTHORIZED BY ARTICLE  
49 FIFTY-SIX OF THIS CHAPTER. NOTWITHSTANDING ANY PROVISION OF THIS SECTION  
50 TO THE CONTRARY, APPROVAL OF PRE-KINDERGARTEN PROGRAMS OPERATED BY A  
51 CHARTER SCHOOL SHALL BE MADE IN ACCORDANCE WITH SECTION TWENTY-EIGHT  
52 HUNDRED FIFTY-TWO OF THIS CHAPTER.

53 S 9. Paragraph a of subdivision 9 of section 3602-e of the education  
54 law, as amended by section 21 of part B of chapter 57 of the laws of  
55 2008, is amended to read as follows:

1 a. Each year, the commissioner shall determine the maximum allocation  
2 that each district AND CHARTER SCHOOL would be eligible to receive  
3 pursuant to this section in the following school year based on pupil  
4 data on file with the commissioner on a date prescribed by the commis-  
5 sioner, and applying the formula specified in subdivision ten of this  
6 section. No later than April thirtieth of the base year, the commis-  
7 sioner shall notify districts AND CHARTER SCHOOLS of the maximum allocations  
8 they may be eligible for pursuant to this section in the following  
9 school year, and such maximum allocations shall be deemed final and not  
10 subject to change thereafter, EXCEPT AS PROVIDED IN PARAGRAPH (D) OF  
11 SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-SIX OF THIS CHAP-  
12 TER.

13 S 10. The public authorities law is amended by adding a new section  
14 1689-j to read as follows:

15 S 1689-J. CHARTER SCHOOL LOAN AND LEASE GUARANTEE PROGRAM. 1. DEFINI-  
16 TIONS. (A) "AUTHORITY" SHALL MEAN THE DORMITORY AUTHORITY CREATED BY  
17 SECTION SIXTEEN HUNDRED SEVENTY-SEVEN OF THIS CHAPTER.

18 (B) "CHARTER SCHOOL" SHALL MEAN A SCHOOL AUTHORIZED BY ARTICLE FIFTY-  
19 SIX OF THE EDUCATION LAW.

20 (C) "CHARTER SCHOOL PROJECT" SHALL MEAN CONSTRUCTION OF ANY NEW BUILD-  
21 ING, PURCHASE OF AN EXISTING BUILDING, OR REFINANCING OF AN EXISTING  
22 BUILDING IN ORDER TO FACILITATE SUBSTANTIAL IMPROVEMENT THERETO, THE  
23 FINANCING OF REAL PROPERTY DEEMED ESSENTIAL FOR THE CONDUCT OF A CHARTER  
24 SCHOOL, THE EXTENSION OR PROVISION OF UTILITIES AND ANY OTHER APPURTEN-  
25 ANT FACILITIES TO BE USED BY ANY CHARTER SCHOOL APPROVED PURSUANT TO  
26 SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THE EDUCATION LAW.

27 (D) "LENDING INSTITUTION" SHALL MEAN THE ORIGINAL LENDER UNDER THE  
28 LOAN AGREEMENT OF PARTICIPANTS THEREIN AND ITS SUCCESSORS AND ASSIGNS,  
29 AND MAY INCLUDE BUT IS NOT LIMITED TO, AN INDIVIDUAL LENDER, CORPO-  
30 RATION, INSURANCE COMPANY, BANK, INVESTMENT COMPANY, EXECUTOR, TRUSTEE  
31 OR OTHER FIDUCIARY, PENSION, PROFIT SHARING, AND RETIREMENT FUND.

32 (E) "PAYMENTS" SHALL MEAN PERIODIC PAYMENTS CALLED FOR UNDER THE TERMS  
33 OF A LOAN, AND MAY INCLUDE, BUT IS NOT LIMITED TO, INTEREST, INSTALL-  
34 MENTS OF PRINCIPAL, TAXES AND ASSESSMENTS, LOAN INSURANCE PREMIUMS AND  
35 HAZARD INSURANCE PREMIUMS.

36 2. POWERS AND LIMITATIONS. THE AUTHORITY SHALL HAVE POWER TO:

37 (A) GUARANTEE LOAN AND LEASE REPAYMENTS TO A LENDING INSTITUTION THAT  
38 HAS PROVIDED THE FUNDING FOR A CHARTER SCHOOL, AS DEFINED HEREIN, NOT TO  
39 EXCEED EIGHTY PER CENTUM OF THE AMOUNT OF SUCH LOAN, UPON SUCH TERMS AND  
40 CONDITIONS AS THE FUND MAY PRESCRIBE, AND FOR SUCH PURPOSES, THE FUND  
41 MAY ENTER INTO SUCH AGREEMENT OR AGREEMENTS WITH LENDING INSTITUTIONS OR  
42 OTHER PERSONS AS REQUIRED.

43 (B) ACCEPT GIFTS, GRANTS OR LOANS FROM, AND ENTER INTO CONTRACT OR  
44 OTHER TRANSACTION WITH, ANY FEDERAL OR STATE AGENCY, ANY MUNICIPALITY,  
45 ANY PRIVATE ORGANIZATION OR ANY OTHER SOURCE.

46 (C) ENTER INTO AGREEMENTS WITH PROSPECTIVE LENDING INSTITUTIONS AND  
47 BORROWERS FOR THE PURPOSE OF PLANNING, DESIGNING, CONSTRUCTING, ACQUIR-  
48 ING, ALTERING AND FINANCING PROJECTS.

49 (D) WHEN IT BECOMES DESIRABLE FOR THE FUND TO SAFEGUARD ITSELF FROM  
50 LOSSES, IT MAY ACQUIRE, PURCHASE, MANAGE AND OPERATE, HOLD AND DISPOSE  
51 OF REAL AND PERSONAL PROPERTY, TAKE ASSIGNMENTS OF RENTALS AND LEASES  
52 AND MAKE AND ENTER INTO ALL CONTRACTS, LEASES, AGREEMENTS AND ARRANGE-  
53 MENTS NECESSARY OR INCIDENTAL TO THE PERFORMANCE OF ITS DUTIES.

54 (E) IN ORDER TO FURTHER THE PURPOSES OF THIS ACT, OR TO SAFEGUARD THE  
55 LOAN GUARANTEE FUND, PURCHASE, ACQUIRE AND TAKE ASSIGNMENTS OF NOTES,  
56 MORTGAGES, AND OTHER FORMS OF SECURITY AND EVIDENCES OF INDEBTEDNESS,

PURCHASE, ACQUIRE, ATTACH, SEIZE, ACCEPT OR TAKE TITLE TO ANY PROJECT BY CONVEYANCE, OR WHEN AN INSURED LOAN THEREON IS IN DEFAULT, FORECLOSE, SELL, LEASE OR RENT THE SUBJECT MATTER PROVIDED FOR BY THE LOAN.

(F) PRESCRIBE STANDARDS AND CRITERIA BY WHICH APPLICATIONS FOR LOAN GUARANTEES FOR CHARTER SCHOOLS WILL BE JUDGED, INsofar AS SUCH STANDARDS AND CRITERIA ARE NOT INCONSISTENT WITH THE PURPOSES OF THIS ARTICLE.

(G) GUARANTEE TO ANY BONDING AGENCY AUTHORIZED TO DO BUSINESS IN THIS STATE ANY BOND NECESSARY TO THE ACTIVITY OF THE CHARTER SCHOOL OR FOR THE UNDERTAKING OF A CHARTER SCHOOL PROJECT. SUCH GUARANTEE SHALL NOT EXCEED EIGHTY PER CENTUM OF THE FACE AMOUNT OF ANY LOSS INCURRED BY THE BONDING AGENCY.

(H) ISSUE AND SELL ITS DEBENTURES, BEARING SUCH INTEREST RATES AND HAVING SUCH MATURITIES AND OTHER TERMS AND PROVISIONS AS MAY BE DETERMINED BY THE AUTHORITY.

(I) TO DO ANY AND ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT ITS PURPOSES AND EXERCISE THE POWERS GIVEN AND GRANTED UNDER THIS SECTION, OR UNDER ANY OTHER LAW, SPECIAL, GENERAL OR LOCAL.

3. LOAN AND LEASE GUARANTEE FUND. THE AUTHORITY SHALL ESTABLISH A LOAN GUARANTEE FUND. THE LOAN GUARANTEE FUND SHALL BE A NON-LAPSING, REVOLVING FUND TO BE USED FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF THIS SECTION. TO SUCH LOAN GUARANTEE FUND SHALL BE CHARGED PAYMENTS REQUIRED BY LOAN DEFAULTS. TO SUCH LOAN GUARANTEE FUND SHALL BE CREDITED ALL RECEIPTS OF THE FUND, OTHER THAN RECEIPTS ALLOCATED FOR THE PAYMENT OF CURRENT OPERATING EXPENSES, INCLUDING LOAN GUARANTEE PREMIUMS, GIFTS, GRANTS OR LOANS, PROCEEDS OF THE SALE OF DEBENTURES BY THE FUND, TRANSFERS FROM THE CHARTER SCHOOLS STIMULUS FUND CREATED BY SECTION NINETY-SEVEN-SSS OF THE STATE FINANCE LAW, AND PROCEEDS FROM THE SALE, DISPOSAL, LEASE OR RENTAL OF REAL OR PERSONAL PROPERTY WHICH THE FUND MAY RECEIVE UNDER THE PROVISIONS OF THIS SECTION. MONIES OF THE LOAN GUARANTEE FUND, NOT NEEDED TO MEET CURRENT OBLIGATIONS OF THE FUND, SHALL BE DEPOSITED TO THE CREDIT OF SUCH LOAN GUARANTEE FUND AND MAY BE INVESTED AS THE DIRECTORS OF THE FUND SHALL DETERMINE.

4. GUARANTEE OF LOANS AND LEASES. THE AUTHORITY IS AUTHORIZED TO GUARANTEE REPAYMENTS OF A LOAN MADE BY A LENDING INSTITUTION TO PROVIDE FUNDING FOR CHARTER SCHOOL PROJECTS AS DEFINED HEREIN, NOT TO EXCEED EIGHTY PER CENTUM OF THE PRINCIPAL AMOUNT OF THE OBLIGATION, UPON SUCH TERMS AND CONDITIONS AS THE AUTHORITY MAY PRESCRIBE, PROVIDED THAT THE AGGREGATE AMOUNT OF THE UNPAID BALANCE OF ALL OBLIGATIONS SO GUARANTEED AND OUTSTANDING AT ANY ONE TIME SHALL NOT EXCEED TEN MILLION DOLLARS DURING THE FIRST FISCAL YEAR OF OPERATIONS OF THE FUND, AND IN ANY SUCCEEDING FISCAL YEAR, FIVE TIMES THE AVERAGE ANNUAL BALANCE IN THE LOAN GUARANTEE FUND FOR THE PRECEDING FISCAL YEAR, AND PROVIDED FURTHER, HOWEVER, THAT THE TOTAL POTENTIAL LIABILITY OF THE FUND TO A LENDING INSTITUTION ON BEHALF OF ANY ONE BORROWER SHALL NOT EXCEED FIVE MILLION DOLLARS.

5. CONDITIONS FOR GUARANTEE. IN ORDER FOR A LOAN TO BE GUARANTEED UNDER THE PROVISIONS OF THIS SECTION, THE LOAN TO BE GUARANTEED MUST BE EXECUTED BY A BORROWER TO WHOM CREDIT IS NOT REASONABLY AVAILABLE AND PROVIDE FINANCING FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR REHABILITATION OF A FACILITY FOR A CHARTER SCHOOL.

6. LOAN GUARANTEE PREMIUM. THE AUTHORITY IS AUTHORIZED BUT NOT REQUIRED TO FIX PREMIUMS FOR THE GUARANTEE OF LOAN REPAYMENTS UNDER THE PROVISIONS OF THIS ACT, SUCH PREMIUMS TO BE COMPUTED AS A PERCENTAGE, WHICH SHALL NOT EXCEED ONE PER CENTUM PER ANNUM ON THAT PORTION OF THE PRINCIPAL OBLIGATION GUARANTEED HEREUNDER AS THE FUND SHALL DETERMINE ON THE BASIS OF ALL PERTINENT AVAILABLE DATA. SUCH PREMIUMS SHALL BE PAYA-

1 BLE BY THE BORROWER IN SUCH MANNER AS SHALL BE PRESCRIBED BY THE AUTHOR-  
2 ITY. THE AMOUNT OF PREMIUM IS NOT REQUIRED TO BE UNIFORM AMONG THE VARI-  
3 OUS LOANS INSURED.

4 7. EXPENSES. THE AUTHORITY MAY IN ITS DISCRETION EXPEND SUCH MONIES AS  
5 MAY BE NECESSARY FOR ANY OF ITS EXPENSES, INCLUDING ADMINISTRATIVE,  
6 LEGAL, ACTUARIAL AND OTHER SERVICES.

7 8. OBLIGATIONS ELIGIBLE FOR INVESTMENT. OBLIGATIONS GUARANTEED BY THE  
8 AUTHORITY UNDER THIS SECTION AND PARTICIPATIONS THEREIN ARE HEREBY MADE  
9 LEGAL INVESTMENTS FOR ALL INSURANCE COMPANIES, TRUST COMPANIES, BANKS,  
10 INVESTMENT COMPANIES, SAVINGS BANKS, BUILDING AND LOAN ASSOCIATIONS,  
11 CREDIT UNIONS, SAVINGS AND LOAN ASSOCIATIONS, EXECUTORS, ADMINISTRATORS,  
12 GUARDIANS, CONSERVATORS, TRUSTEES AND OTHER FIDUCIARIES, PENSION,  
13 PROFIT-SHARING AND RETIREMENT FUNDS.

14 9. CONTRACTS OF GUARANTEE; WAIVERS. (A) THE AUTHORITY SHALL ARRANGE BY  
15 CONTRACT WITH THE LENDING INSTITUTION OR THE BORROWER OR BOTH TO SAFE-  
16 GUARD THE INTEREST OF THE FUND IN THE EVENT OF DEFAULT BY THE BORROWER,  
17 INCLUDING, AT THE DISCRETION OF THE FUND, PROVISION FOR NOTICE TO THE  
18 FUND OF DEFAULT BY THE BORROWER, FOR FORECLOSURE OR OTHER REALIZATION  
19 UPON ANY SECURITY FOR THE LOAN, FOR THE TIME AND CONDITIONS FOR PAYMENT  
20 TO THE LENDING INSTITUTION BY THE FUND OF THE AMOUNT OF ANY LOSS TO THE  
21 LENDING INSTITUTION GUARANTEED BY THE FUND, AND FOR THE DISPOSITION OF  
22 THE PROCEEDS REALIZED FROM ANY SECURITY FOR THE LOAN GUARANTEED. WHEN IT  
23 APPEARS DESIRABLE FOR A TEMPORARY PERIOD UPON DEFAULT OR THREATENED  
24 DEFAULT BY THE BORROWER, THE FUND MAY ITSELF MAKE PAYMENTS OF INSTALL-  
25 MENTS OF PRINCIPAL OR INTEREST OR BOTH, TO THE LENDING INSTITUTION, AND  
26 OF TAXES AND INSURANCE, WHICH PAYMENTS SHALL BE REPAID, UNDER SUCH  
27 CONDITIONS AS THE FUND MAY PRESCRIBE, AND THE FUND MAY ALSO AGREE TO  
28 REVISED TERMS OF FINANCING WHEN SUCH APPEAR PRUDENT.

29 (B) UPON REQUEST OF THE LENDING INSTITUTION, THE FUND MAY AT ANY TIME,  
30 UNDER SUCH EQUITABLE TERMS AND CONDITIONS AS IT MAY PRESCRIBE, CONSENT  
31 TO THE RELEASE OF THE BORROWER FROM HIS LIABILITY UNDER THE LOAN OR  
32 CONSENT TO THE RELEASE OF PARTS OF ANY SECURED PROPERTY FROM THE LIEN OF  
33 THE LENDING INSTITUTION.

34 S 11. Section 97-sss of the state finance law, as added by chapter 4  
35 of the laws of 1998, is amended to read as follows:

36 S 97-sss. Charter schools stimulus fund. There is hereby established  
37 in the joint custody of the comptroller and the commissioner of taxation  
38 and finance a fund to be known as the charter schools stimulus fund.  
39 Such fund shall consist of all monies made available pursuant to appro-  
40 priation for this purpose, all monies transferred to such fund pursuant  
41 to law, and grants, gifts and devises and donations from any public or  
42 private source. The purpose of such fund is to provide discretionary  
43 financial support, including grants [and], loans, LOAN AND LEASE GUARAN-  
44 TEES, AND FOR CREDIT ENHANCEMENT PURPOSES to charter school applicants  
45 and to charter schools for start-up costs and for costs associated with  
46 the acquisition, renovation, or construction of school facilities AND  
47 COSTS ASSOCIATED WITH OPERATING PRE-KINDERGARTEN PROGRAMS.

48 S 12. This act shall take effect the first of July next succeeding the  
49 date on which it shall have become a law, provided however, that the  
50 amendments to subdivision 1 of section 2856 of the education law made by  
51 section seven of this act shall not affect the expiration of such subdi-  
52 vision and shall be deemed to expire therewith.