STATE OF NEW YORK

6150

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

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

AN ACT to amend the state finance law and the public authorities law, in relation to establishing the New York state education equity fund and authorizing the dormitory authority of the state of New York to invest to cover capital costs for the construction and improvements of public charter schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The state finance law is amended by adding section 99-qq to read as follows:

§ 99-qq. New York state education equity fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a fund to be known as the "New York state education equity fund". Such fund may be known and cited as the "education equity fund".

2. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Applicant" shall mean an education corporation, applying for financing of capital costs pursuant to this section.

(b) "Authority" shall mean the dormitory authority of the state of New York.

(c) "Capital costs" shall mean costs associated with establishing or operating education corporation facilities including, but not limited to, all costs, including closely related ancillary costs, related to the financing, refinancing, leasing, planning, design, construction, reconstruction, rehabilitation, improvement, and equipping of facilities to be leased or owned by education corporations.

(d) "Education corporation" shall mean a charter school education corporation formed pursuant to article fifty-six of the education law,

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

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which is not in probationary status, does not have an expired charter, whose charter has not been non-renewed, or whose charter has not been revoked.

(e) "Education equity fund" shall mean the New York state education equity fund authorized to be established pursuant to this section.

(f) "Low educational outcomes" shall mean racial disparities in educational outcomes, low kindergarten through grade twelve academic achievement, low high school graduation rates, or low college attendance, persistence, and graduation rates as demonstrated by data available from the state education department or United States department of education.

(g) "Minority-led education corporation" shall mean an education corporation:

(i) governed by a board of trustees of which at least fifty-one percent of the trustees are minority group members; and

(ii) the highest ranking officer or employee of the education corporation is a minority group member.

(h) "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Caribbean, Cuban, Central or South American of either Native American or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

(iv) Asian and Pacific Islander persons having origins in any of the far east countries, south east Asia, the Indian subcontinent or the Pacific islands.

(i) "Private debt or equity fund" shall mean a private debt or equity fund formed pursuant to subdivision thirty-five of section sixteen hundred seventy-eight of the public authorities law.

(j) "Not-for-profit loan fund" shall mean a not-for-profit entity exempt from taxation pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986, authorized to do business in the state, and which can demonstrate the ability to provide private funds in an amount equal to or greater than the amount of any grant or loan received from the education equity fund to be used for the same purposes as such grant or loan established with a mission to support education corporations.

3. Such fund shall consist of all moneys made available pursuant to appropriation and all other moneys credited or transferred thereto from any other fund or source, including payments on loans made from the fund. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

4. (a) The moneys in such fund shall be expended for the following purposes:

(i) Actual and necessary costs incurred by the dormitory authority of the state of New York related to implementing and administering the fund.

(ii) Subject to available appropriations and providing that no more than seventy-five million dollars in funding shall be made available, whether directly or indirectly, for investment in a private debt or equity fund formed pursuant to subdivision thirty-five of section

sixteen hundred seventy-eight of the public authorities law or in a not-for-profit loan fund to cover capital costs associated with establishing or operating public charter school facilities pursuant to this section. Additionally, no more than one hundred twenty-five million dollars shall be made available for direct grants to eligible applicants to cover capital costs associated with establishing or operating public charter school facilities pursuant to this section. Such capital costs shall include all costs, including closely related ancillary costs, related to the financing, refinancing, leasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing, and equipping of such public charter school facilities, to the extent such work has been undertaken or costs for such work has been or will be incurred by:

(A) eligible charter schools or education corporations;

(B) the dormitory authority of the state of New York, or any subsidiary thereof, under agreement with the private debt or equity fund formed pursuant to subdivision thirty-five of section sixteen hundred seventy-eight of the public authorities law or not-for-profit loan fund; or

(C) the private debt or equity fund or not-for-profit loan fund formed pursuant to subdivision thirty-five of section sixteen hundred seventy-eight of the public authorities law.

(b) Any repayment of the state's investment by the fund, as authorized in this section shall be deposited in the education equity fund.

5. The organizational structure and investment policy of the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund of funds and the provisions of the grant or loan agreement or agreements shall satisfy, but not be limited to, the following parameters and requirements:

(a) The dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds shall not charge an education corporation a fee to apply for capital cost financing.

(b) A description of how the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds will preference minority-led education corporation applicants and how such applicants will be encouraged to apply for capital cost financing.

(c) A description of how the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds will actively promote: (i) applicants from communities disproportionately impacted by racial disparities in educational outcomes, low educational outcomes, or high rates of economically disadvantaged students; and (ii) racial and ethnic diversity in its financing decisions.

(d) A financing equity plan to promote diversity in commerce, employment, and opportunities for education equity in the communities in which education corporation facilities are located, which plan shall establish a goal to award sixty percent of the funding awarded or sixty percent of the awardees selected each fiscal year, whichever is greater, to applications that demonstrate that an applicant:

(i) is an education corporation located in, or serving predominately students who are members of, a community disproportionately impacted by racial disparities in educational outcomes, low educational outcomes, or high rates of economically disadvantaged students; and

(ii) is a minority-led education corporation or will directly benefit a minority-led education corporation; and

(iii) operates or manages or will operate or manage ten or fewer charter schools, provided however, that applicants that operate or manage or will operate or manage more than three schools are not eligible for grant funding.

(e) The dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds shall actively encourage applicants that foster racial and ethnic diversity in their workforce.

(f) A general description of the other criteria the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds will use in making applicant financing determinations.

(g) The dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds' investment policy statement.

(h) The dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds strategic plan including investor classes and the establishment, management, and liquidation of investments by the fund.

(i) A plan by the dormitory authority of the state of New York to:

(i) monitor the subsidiary of the dormitory authority of the state of New York, not-for-profit loan fund, or private debt or equity fund or funds' risk profile, investment activity, and performance, which the subsidiary of the dormitory authority of the state of New York, not-for-profit loan fund, or private debt or equity fund or funds shall provide on an agreed upon schedule; and

(ii) confirm that any real property leases, loan agreements, and other financing arrangement using educational equity fund proceeds are being provided to qualified education corporations in accordance with this subdivision.

(j) A description of the maximum amount of promised return on investment, financing, or management fees or charges of the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds to be paid by education corporations, and any other compensation of the subsidiary of the dormitory authority of the state of New York, not-for-profit loan fund, or private debt or equity fund or funds, which must be reasonable when compared to similar school financing fees or charges.

(k) An annual accounting of the private funds invested or expended by the dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds, which, by the end of the education equity fund grant or loan term, shall be equal to or greater than the amount of said grant or loan received.

(l) The subsidiary of the dormitory authority of the state of New York, not-for-profit loan fund, or private debt or equity fund or funds shall report to the dormitory authority of the state of New York changes to the use and distribution of investment funds, and its organizational structure or management on a quarterly basis.

(m) The dormitory authority of the state of New York, or any subsidiary thereof, not-for-profit loan fund, or private debt or equity fund or funds must take reasonable steps, to provide geographic equity and representation in financing charter school facilities, to the extent

practicable, in support of the public purpose of the educational equity fund.

(n) The subsidiary of the dormitory authority of the state of New York, not-for-profit loan fund, or private debt or equity fund or funds' conflict of interest policy with respect to grants, investments or loans of fund money.

6. The dormitory authority of the state of New York, in accordance with the provisions of this section and in consultation with the commissioner of education, chancellor of the state university of New York, New York city chancellor of education, the president of the urban development corporation, the budget director, and the state comptroller, shall promulgate rules and regulations for the implementation, administration, and operation of the education equity fund, including but not limited to:

(a) the eligibility of applicants for financing from the education equity fund, including excluding applicants with outstanding loans for which payments are in arrears; provided, however, nothing in this section shall be construed to require the authority to allow applicants with existing loans to apply for additional loans;

(b) promoting equity and racial and ethnic diversity by, including but not limited to establishing a goal to award sixty percent of the funding awarded or sixty percent of the awardees selected each fiscal year, whichever is greater, to applications that demonstrate that an applicant:

(i) is an education corporation located in, or serving predominately students who are members of, a community disproportionately impacted by racial disparities in educational outcomes, low educational outcomes, or high rates of economically disadvantaged students; and

(ii) is a minority-led education corporation or will directly benefit a minority-led education corporation; and

(iii) operates or manages or will operate or manage ten or fewer charter schools and encouraging such applicants to apply for financing;

(c) minimum and maximum financing limits; and

(d) the procedure and information necessary for submission, acceptance, review, and communication of determinations of applications.

7. In the event an applicant seeks to transfer or sell facilities to a person or entity that does not qualify as an applicant, the transfer agreement shall require the new owner to pay to the education equity fund any outstanding amount owed by the transferor to the equity education fund, private debt or equity fund, or not-for-profit loan fund as repayment of any loan issued by the fund as well as any other fee or assessment as determined by the dormitory authority of the state of New York, or any subsidiary thereof, private debt or equity fund, or not-for-profit loan fund. Sales or transfers are not permitted within ten years of the award unless the education corporation's charter for such facility is surrendered, revoked or terminated.

8. Any law, rule, or regulation conflicting with any provision of this section is, to the extent of said conflict only, deemed to be superseded by the provisions of this section.

9. Upon the dormitory authority of the state of New York, or any subsidiary thereof, providing any grant or loan to any applicant, subsidiary of the dormitory authority of the state of New York, not-for-loan fund, or private debt or equity fund or funds pursuant to this section, the authority shall prepare an annual report beginning on December thirtieth the first year of funding and annually thereafter, as

required by section sixteen hundred seventy-eight of the public authorities law.

10. Consistent with the state constitution, the comptroller may audit the expenditure of monies from the fund and any account holding such monies.

11. Nothing in this section shall be construed to impose any liabilities, obligations, or responsibilities of such private debt or equity fund upon the dormitory authority of the state of New York and the authority shall have no liability or responsibility therefor unless the authority expressly agrees to assume the same.

§ 2. Section 1678 of the public authorities law is amended by adding four new subdivisions 33, 34, 35 and 36 to read as follows:

33. To enter into one or more agreements with the private debt or equity fund or not-for-profit loan fund, selected pursuant to subdivision thirty-five of this section, in which the state or any state agency, public authority, public benefit corporation, or division thereof has invested and is formed for the limited purpose of funding the capital costs associated with establishing or operating public charter school facilities pursuant to section ninety-nine-qq of the state finance law, for the following purposes:

(a) (i) To acquire by lease or sublease such real property or any interest therein as may be necessary or convenient for the construction, reconstruction, rehabilitation, or improvement of public charter school facilities, and

(ii) To acquire by purchase or other agreement, personal property or interest therein as may be necessary for the acquisition, construction, reconstruction, rehabilitation, improvement or provision of such dispensaries, whether as principal or agent;

(b) To prepare or cause to be prepared, whether as principal or agent, plans, specifications, designs, and estimates of costs for the design, construction, reconstruction, rehabilitation, improvement, furnishing or equipping of public charter school facilities;

(c) To design, construct, reconstruct, rehabilitate, or to cause the design, construction, rehabilitation or improvement of, whether as principal or agent, public charter school facilities and to enter into contracts to cause such facilities to be designed, constructed, reconstructed, rehabilitated, improved, furnished, or equipped;

(d) To enter, as lessor or as agent for the lessor, into leases, subleases, or other agreements with the public charter schools; provided that the authority shall only enter in lease agreements as agent of the private debt or equity fund or not-for-profit loan fund, selected pursuant to subdivision thirty-five of this section; and

(e) To enter, as lender or as agent to the lender, into a non-recourse loan or other agreements with public charter schools, provided that the terms of the non-recourse loan agreement do not include a penalty for early termination but will allow for the inclusion of a make-whole provision and shall not, at the time the loan is established, exceed the prime lending rate plus one-half the interest rate specified under subdivision one of section fourteen-a of the banking law, nor include terms or conditions that would entitle a share in, or claim to, any charter school tuition pursuant to section twenty-eight hundred fifty-six of the education law.

34. (a) To form one or more subsidiaries for the purpose of limiting the potential liability of the authority when exercising the powers and duties conferred upon the authority by subdivision thirty-three of this section in connection with certain work performed on behalf of the

private debt or equity fund or not-for-profit loan fund as defined in section ninety-nine-qq of the state finance law, in which the state or any state agency, public authority, public benefit corporation, or division thereof has invested and has been selected pursuant to subdivision thirty-five of this section. Such subsidiary created pursuant to this subdivision may exercise and perform one or more of the purposes, powers, duties, functions, rights and responsibilities of the authority other than the issuance of indebtedness, in connection with real and personal property with respect to which the authority holds title or a leasehold interest, in its own name or as agent for the titleholder or leaseholder including, but not limited to:

(i) entering into leases, subleases, or other arrangements with regard to such property and acting in a manner consistent with the rights, obligations or responsibilities of the owner, landlord or tenant of such property pursuant to such lease or sublease agreements;

(ii) servicing non-recourse loan payments;

(iii) furnishing property management services; and

(iv) providing general operational and administrative support services.

(b) Such subsidiary authorized by paragraph (a) of this subdivision shall be established in the form of a public benefit corporation by executing and filing with the secretary of state a certificate of incorporation which shall identify the authority as the entity organizing such subsidiary and set forth the name of such subsidiary public benefit corporation, its duration, the location of its principal office and its corporate purposes as provided in this subdivision and which certificate may be amended from time to time by the filing of amendments thereto with the secretary of state. Such subsidiary shall be organized as a public benefit corporation, shall be a body politic and corporate, and shall have all the privileges, immunities, tax exemptions and other exemptions of the authority. The members of such subsidiary shall be the same as the members of the authority and the provisions of subdivision two of section sixteen hundred ninety-one of this title shall in all respects apply to such members when acting in such capacity.

(c) Nothing in this subdivision shall be construed to impose any liabilities, obligations, or responsibilities of such subsidiary upon the authority and the authority shall have no liability or responsibility therefor unless the authority expressly agrees to assume the same.

(d) Such subsidiary created pursuant to this subdivision shall be subject to any other provision of this chapter pertaining to subsidiaries of public authorities.

35. (a) (i) To select a private debt or equity fund or a not-for-profit loan fund, formed for the sole purpose of funding the capital costs, including closely related ancillary and administrative costs, associated with establishing or operating public charter school facilities pursuant to section ninety-nine-qq of the state finance law deemed to be eligible by the fund and the authority for financing through such fund or related costs, provided that any partnership agreement between the fund and the authority, shall be subject to the written approval or resolution of the board of the dormitory authority, and the director of the division of the budget;

(ii) The organizational structure and investment policy of the selected fund and the provisions of the partnership agreement shall satisfy the following parameters and requirements:

(A) The general partner and the fund shall to the extent allowable by section one of article five of the state constitution, authorize the

comptroller of the state, or the comptroller's legally authorized representatives, to access, examine, or audit the accounts and books of the fund including its receipts, disbursements, contracts, investments, and any other items directly relating to its financial standing and cooperate with any such financial examination or financial audit on an annual basis. The general partner shall agree to cause the key officers to be available to discuss the fund and the partnership and its activities at the time of the audit;

(B) The general partner shall agree to cause the key officers to be available to discuss the fund and the partnership and its activities at the request of the board of the dormitory authority or the director of the budget;

(C) Any real property subleased out by the fund to a public charter school shall be at the same rate on which the fund has leased such property;

(D) The fund shall not be voluntarily terminated early without the prior consent of the board of the dormitory authority;

(E) The fund shall have a conflict-of-interest policy approved by the board of the dormitory authority;

(F) Any loan agreement the fund enters into with public charter schools shall be a non-recourse loan and shall allow prepayment of the debt without any penalty imposed by the fund but will allow for the inclusion of a make-whole provision and shall not, at the time that the non-recourse loan is established, exceed the prime lending rate plus one-half the maximum interest rate specified under subdivision one of section fourteen-a of the banking law;

(G) The state's contribution to the fund shall not exceed seventy-five million dollars;

(H) The fund shall not take any equity positions in, issue equity loans to, or enter into revenue or profit sharing agreements with any public charter school or charter management organization or include any terms and conditions in an agreement with such entities to that effect; the fund shall also not include any excessive penalties within the loan agreements; and

(I) Any other requirement as the authority may deem appropriate, in consultation with the commissioner of education, chancellor of the state university of New York, New York city chancellor of education, the president of the urban development corporation, the director of the budget and the state comptroller.

(b) (i) After the funding of the private debt or equity fund or not-for-profit loan, as provided pursuant to this subdivision, the authority shall prepare an annual report beginning on December thirtieth, two thousand twenty-three and annually thereafter, which report shall include, but not be limited to:

(A) the number of applications received and the financing amount requested by the applicant;

(B) the number of applications approved, denied, or withdrawn;

(C) the amount and type of financing awarded to each awardee and whether the awardee:

(1) is an education corporation located in, or serving predominately students who are members of, a community disproportionately impacted by racial disparities in educational outcomes, low educational outcomes, or high rates of economically disadvantaged students; and

(2) is a minority-led education corporation or will directly benefit a minority-led education corporation; and

(3) the number of charter schools the awardee operates or manages or will operate or manage;

(D) whether the goal of awarding sixty percent of the funding awarded or sixty percent of the awardees selected each fiscal year, whichever is greater, was met and if such goal was not met, a detailed analysis of the reasons the goal was not met and plans to meet the goal for the next fiscal year;

(E) the geographic distribution of charter school facilities sites established or operated by education corporations assisted by the fund;

(F) any other such data and information as determined by the dormitory authority of the state of New York; and

(G) for the first report, the authority shall report on the procurement and selection of the general partner.

(ii) Such report shall be published on the authority's website and presented to the governor, the temporary president of the senate and the speaker of the assembly, no later than December thirtieth, two thousand twenty-three and annually thereafter; and

(iii) The authority shall further submit a copy of the partnership agreement between the fund and the authority, to the governor, the temporary president of the senate, and the speaker of the assembly no later than fifteen days after such agreement has been fully executed.

36. To make grants pursuant to section ninety-nine-qq of the state finance law.

§ 3. Paragraph (b) of subdivision 2 of section 1676 of the public authorities law is amended by adding two new undesignated paragraphs to read as follows:

Public charter schools pursuant to section ninety-nine-qq of the state finance law.

The private debt or equity fund or not-for-profit loan fund, in which the state or any state agency, public authority or public benefit corporation, or division thereof, has invested and is selected pursuant to subdivision thirty-five of section sixteen hundred seventy-eight of this title to the extent authorized in subdivision thirty-three of such section.

§ 4. Subdivision 1 of section 1680 of the public authorities law is amended by adding two new undesignated paragraphs to read as follows:

Public charter schools pursuant to section ninety-nine-qq of the state finance law.

The private debt or equity fund or not-for-profit loan, in which the state or any agency, authority or division thereof has invested and is selected pursuant to subdivision thirty-five of section sixteen hundred seventy-eight of this title to the extent authorized in subdivision thirty-three of such section.

§ 5. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 6. This act shall take effect immediately.