

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 Assem-
bly, do enact as follows:

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

3 § 99-qq. New York state education equity fund. 1. There is hereby
4 established in the joint custody of the state comptroller and the
5 commissioner of taxation and finance a fund to be known as the "New York
6 state education equity fund". Such fund may be known and cited as the
7 "education equity fund".

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

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

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

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

21 (d) "Education corporation" shall mean a charter school education
22 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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1 which is not in probationary status, does not have an expired charter,
2 whose charter has not been non-renewed, or whose charter has not been
3 revoked.

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

6 (f) "Low educational outcomes" shall mean racial disparities in educa-
7 tional outcomes, low kindergarten through grade twelve academic achieve-
8 ment, low high school graduation rates, or low college attendance,
9 persistence, and graduation rates as demonstrated by data available from
10 the state education department or United States department of education.

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

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

15 (ii) the highest ranking officer or employee of the education corpo-
16 ration is a minority group member.

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) eligible charter schools or education corporations;

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

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

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

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

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

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

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

46 (d) A financing equity plan to promote diversity in commerce, employ-
47 ment, and opportunities for education equity in the communities in which
48 education corporation facilities are located, which plan shall establish
49 a goal to award sixty percent of the funding awarded or sixty percent of
50 the awardees selected each fiscal year, whichever is greater, to appli-
51 cations that demonstrate that an applicant:

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

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

3 (iii) operates or manages or will operate or manage ten or fewer char-
4 ter schools, provided however, that applicants that operate or manage or
5 will operate or manage more than three schools are not eligible for
6 grant funding.

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

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

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

18 (h) The dormitory authority of the state of New York, or any subsid-
19 iary thereof, not-for-profit loan fund, or private debt or equity fund
20 or funds strategic plan including investor classes and the establish-
21 ment, management, and liquidation of investments by the fund.

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

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

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

33 (j) A description of the maximum amount of promised return on invest-
34 ment, financing, or management fees or charges of the dormitory authori-
35 ty of the state of New York, or any subsidiary thereof, not-for-profit
36 loan fund, or private debt or equity fund or funds to be paid by educa-
37 tion corporations, and any other compensation of the subsidiary of the
38 dormitory authority of the state of New York, not-for-profit loan fund,
39 or private debt or equity fund or funds, which must be reasonable when
40 compared to similar school financing fees or charges.

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

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

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

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

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

7 6. The dormitory authority of the state of New York, in accordance
8 with the provisions of this section and in consultation with the commis-
9 sioner of education, chancellor of the state university of New York, New
10 York city chancellor of education, the president of the urban develop-
11 ment corporation, the budget director, and the state comptroller, shall
12 promulgate rules and regulations for the implementation, administration,
13 and operation of the education equity fund, including but not limited
14 to:

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

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

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

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

31 (iii) operates or manages or will operate or manage ten or fewer char-
32 ter schools and encouraging such applicants to apply for financing;

33 (c) minimum and maximum financing limits; and

34 (d) the procedure and information necessary for submission, accept-
35 ance, review, and communication of determinations of applications.

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

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

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

1 required by section sixteen hundred seventy-eight of the public authori-
2 ties law.

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

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

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

13 33. To enter into one or more agreements with the private debt or
14 equity fund or not-for-profit loan fund, selected pursuant to subdivi-
15 sion thirty-five of this section, in which the state or any state agen-
16 cy, public authority, public benefit corporation, or division thereof
17 has invested and is formed for the limited purpose of funding the capi-
18 tal costs associated with establishing or operating public charter
19 school facilities pursuant to section ninety-nine-qq of the state
20 finance law, for the following purposes:

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

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

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

33 (c) To design, construct, reconstruct, rehabilitate, or to cause the
34 design, construction, rehabilitation or improvement of, whether as prin-
35 cipal or agent, public charter school facilities and to enter into
36 contracts to cause such facilities to be designed, constructed, recon-
37 structed, rehabilitated, improved, furnished, or equipped;

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

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

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

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

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

16 (ii) servicing non-recourse loan payments;

17 (iii) furnishing property management services; and

18 (iv) providing general operational and administrative support
19 services.

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

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

39 (d) Such subsidiary created pursuant to this subdivision shall be
40 subject to any other provision of this chapter pertaining to subsid-
41 iaries of public authorities.

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

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

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

1 comptroller of the state, or the comptroller's legally authorized repre-
2 sentatives, to access, examine, or audit the accounts and books of the
3 fund including its receipts, disbursements, contracts, investments, and
4 any other items directly relating to its financial standing and cooper-
5 ate with any such financial examination or financial audit on an annual
6 basis. The general partner shall agree to cause the key officers to be
7 available to discuss the fund and the partnership and its activities at
8 the time of the audit;

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

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

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

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

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

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

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

35 (I) Any other requirement as the authority may deem appropriate, in
36 consultation with the commissioner of education, chancellor of the state
37 university of New York, New York city chancellor of education, the pres-
38 ident of the urban development corporation, the director of the budget
39 and the state comptroller.

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

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

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

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

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

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

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

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

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

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

12 (G) for the first report, the authority shall report on the procure-
13 ment and selection of the general partner.

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

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

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

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

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

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

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

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

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

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

50 § 6. This act shall take effect immediately.