

CHARTER SCHOOL ACCESS TO DISTRICT BONDS

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1. INTRODUCTION

All charter schools are public schools. But unfortunately, not all public schools have equal access to funding through school bonds. When Minnesota authorized the first charter schools in 1991, public schools in the United States had already been accessing general obligation school bonds for more than a century. Clear legal statutes at the federal, state, and local level, a highly professionalized legal and financial community to facilitate transactions, a well-defined universe of buyers, and a playbook for communities to mobilize voters to authorize and fund the debt are all testament to the popularity and common usage of school bonds. As a whole, educational institutions issued more than \$1 trillion in debt from 2009 to 2018.¹

However, only some of the bonds used by district public schools are available to their peers in the public charter school sector. Regardless of the reasons, the impact on public charter schools is the same—inadequate access to much-needed capital. While some states, notably Colorado, developed creative policies, or innovative district partnerships, like California, most states leave it to charter schools to overcome the significant policy and financial barriers to fund their capital projects.



2. SUMMARY AND FINDINGS

Charter school leaders and advocates have struggled to find suitable and affordable facilities for their students. State charter laws often place the responsibility for finding and paying for facilities with the charter schools themselves. However, states are increasingly updating their policies to help offset facilities costs for charter schools. One such policy provides charter schools with access to local school district bonds specified for and used by local school districts for capital purposes.

A handful of state statutes address charter schools and local school district bonds for facilities. For purposes of this paper, we describe those local tax mechanisms as school district bonds, recognizing that they go by many different names across state statutes. Four states specifically address charter access to school district bond revenues for facilities funding, though several implementation challenges limit their effectiveness, including:

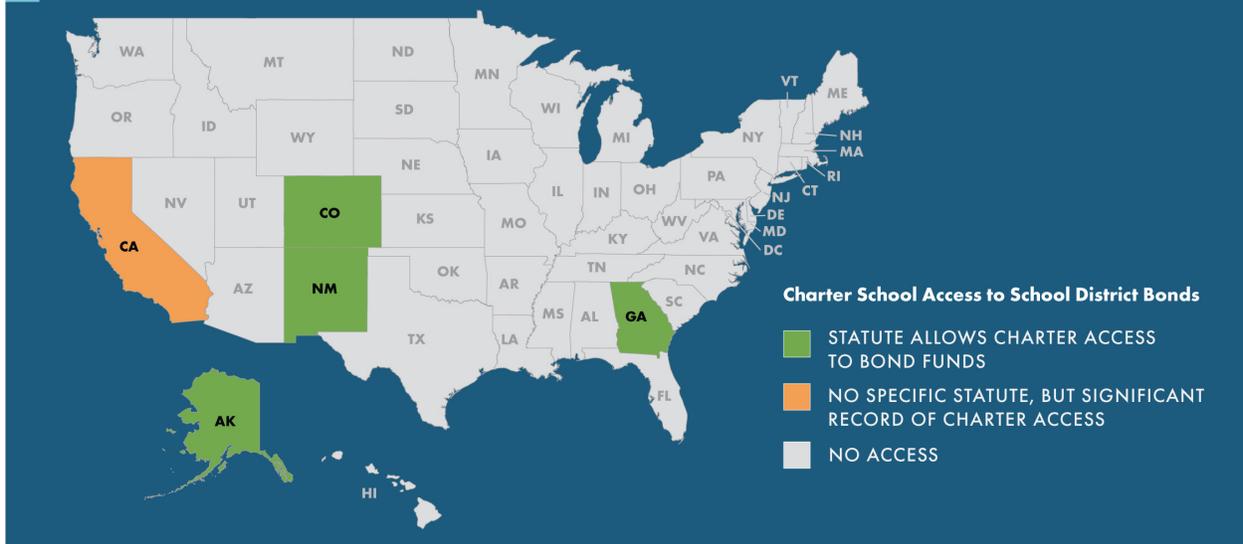
- ▶ Access to local tax revenue through elections requires explicit school district approval.
- ▶ Important steps in the process of accessing bond elections are incomplete or ambiguous.
- ▶ Inadequate state-level oversight or enforcement to ensure statutes providing charter school access to bond elections are implemented as intended.
- ▶ Complicated eligibility requirements can significantly limit the use of funds or qualifying facilities.
- ▶ Election timelines may not be conducive to charter school participation.

In general, charter schools fare better where states provide specific statutory language as to how charter schools' capital needs are included in school district bond ballot questions. Regardless of statutory detail, charter school prospects improve where charter school families are perceived as important voting constituencies.

Notably, California charter schools have accessed significantly more school district bond funding than anywhere else—more than \$2 billion as of 2020—yet the state has no statutory provision supporting charter school access to bond ballot questions. School district bond elections in California require 55% voter approval to pass. The high approval requirement and strong charter school advocacy efforts appear to increase the potential impact that charter school families have on elections and make up for the lack of specific statutory language.



Figure 1. Map of States with Statutes Addressing Charter Schools in District Bond Elections



CHARTER SCHOOL ACCESS TO LOCAL FUNDING: MICHIGAN’S REGIONAL OPTION

Whether for facilities or general operating purposes, charter schools have traditionally struggled to access locally raised tax revenues. Some states, including Colorado,ⁱⁱ Ohio,ⁱⁱⁱ and Indiana,^{iv} have gradually addressed this discrepancy with provisions increasing charter school access to locally raised operating funds with varying level of success.

Michigan statute explicitly prohibits the inclusion of charter schools in school district bond elections. However, as of 2018, the “Statute for a Regional Enhancement Millage” states that charter schools are now automatically included when local Independent School Districts (ISDs) place regional property tax questions on an election ballot.

(Millage refers to the tax rate applied to property values).

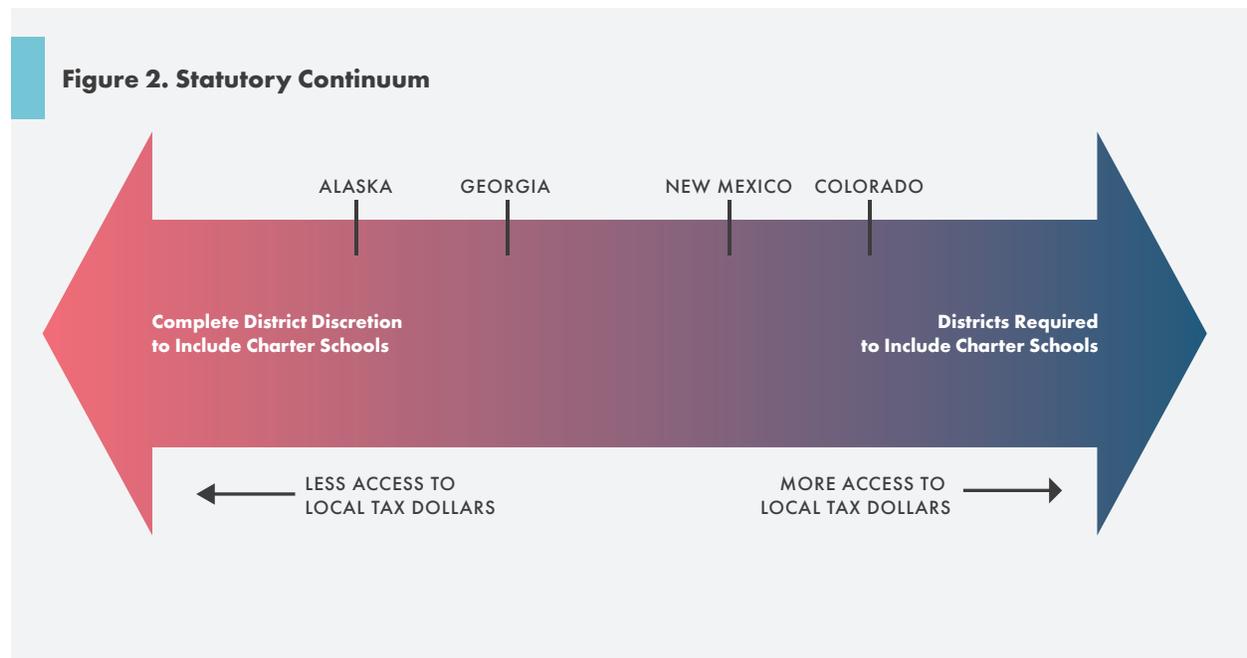
Under that statute, funding is dispersed on a per-pupil basis with few use restrictions and until recently, few ISDs used the regional millage; however, as many districts have hit the maximum amount they can borrow through school district bonds, regional enhancement millages are becoming more popular. Since 2018, five ISDs have had a regional millage pass and the charter schools in those intermediate districts have received over \$118 million (21% of the total dollars). This charter school total will continue to increase because at least four regional millages will be up for renewal in the next three to six years, along with any other new elections.

Given the unique nature of these regional millages, and that they are not restricted to facility use, the resulting totals are not included in the report summaries.



3. STATUTORY CONTINUUM

Charter school access to bonds supported by local taxes varies from state to state. Aside from California’s unique experience of charters accessing school district bonds without statutory provisions, state laws supporting charter access span a continuum. At one end, statutes provide little guidance, and charter school access is entirely at the local district’s discretion. At the other end, districts are required to include charter schools in local tax questions, and so far, that’s further than states have been willing to go.



Alaska occupies the far end of the district discretion side, with no record of any Alaska bond money making it to charter schools. While no state statute reaches the level of mandatory inclusion in school district bonds, statutes in Georgia, New Mexico, and Colorado require districts to inform or include charters in upcoming bond ballot questions. As a result, these states have produced funding for charter facilities through bond elections, ranging from a few instances in Georgia to dozens of schools benefiting from hundreds of millions of dollars in Colorado.



4. NATIONAL SCOPE AND STATE OUTCOMES

An analysis of election records across the country through December 1, 2020,^v identifies 76 instances of local school district bond elections that include charter schools, benefiting 365 individual schools.^{vi} This represents approximately 5% of all the nation's charter schools.

The total value of local school district bond proceeds made available to charter schools is \$2.6 billion distributed as follows:

Alaska: There is no record of charter schools and district bond elections to determine the impact or effectiveness of Alaska's statute.

California: Over the last decade, at least 167 charter schools received more than \$2.4 billion of school district bond proceeds. The total amount raised by those bond elections was \$36.8 billion, meaning charter schools received 7% of the total bond proceeds, even though charter schools represent 21% of total enrollment in the in the city or town that encompasses the issuing school districts.

Colorado: Since the early 2000s, at least 79 charter schools benefited from inclusion in district bond elections, resulting in more than \$309 million in facilities funding. The total par amount of the school bonds that included charter schools was \$5.3 billion; charter schools received 6% of the total bond proceeds. Charter schools represent 14% of total enrollment in the issuing school districts.

Georgia: Since 2008, at least 16 charter schools received more than \$62 million through school district bond funding. The total par amount of the school bonds that included charter schools was \$2.7 billion. Charter schools received 2% of the resulting bond proceeds and represent 10% of total enrollment across the issuing school districts.

New Mexico: Since 2012, 103 charter schools received approximately \$87 million in bond proceeds from district bond elections producing a total of \$1.18 billion. Charter schools received 7% of the total bond proceeds and represent 8% of enrollment across the districts involved.

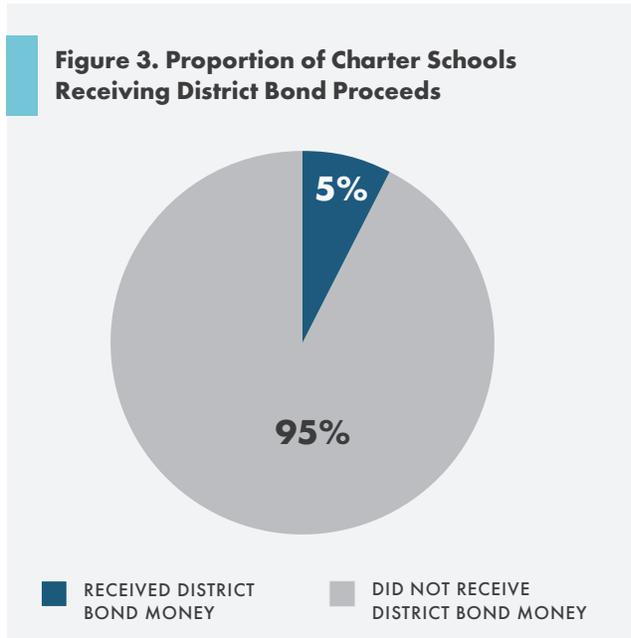
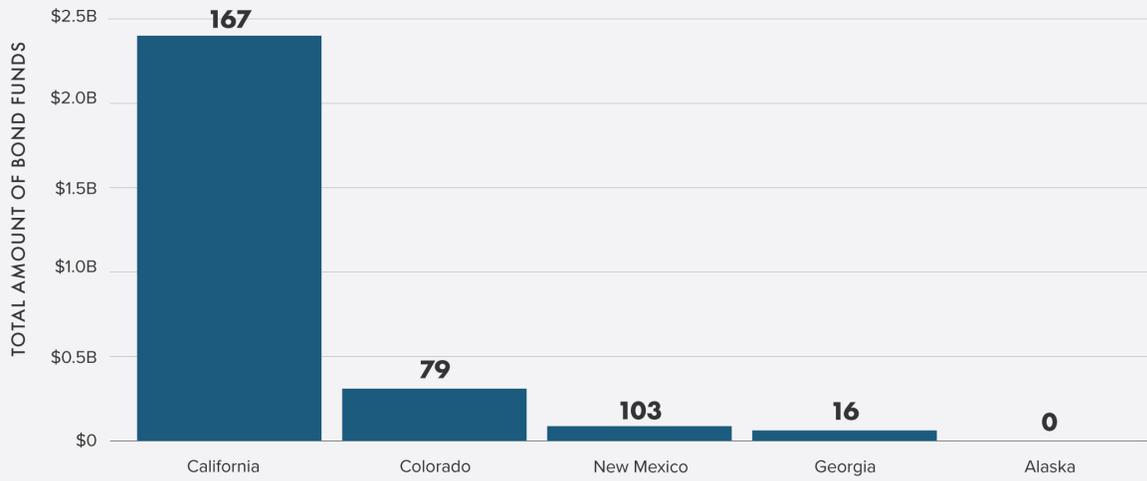




Figure 4. Distribution of School District Bond Funds to Charter Schools, by Total Amount and Number of Schools





5. VIEWS FROM THE FIELD

The authors of this report gathered input from a panel of charter school policy experts, practitioners, and advocates to provide additional perspective on the various statutes. The panel's input included the following observations:

- 1. The Authorizer Matters:** Most charters accessing district bond funds are authorized by the district, but not all. Nondistrict authorized charters in California, Colorado (as of November 2020), and New Mexico have also accessed bond funds. Perhaps not surprisingly, the states addressing charter access to bond funds are those with the highest percentage of district-authorized charter schools.

PERCENT OF DISTRICT AUTHORIZED CHARTERS	
ALASKA	100%
GEORGIA	93%
CALIFORNIA	86%
COLORADO	83%
NATIONAL	53%
NEW MEXICO	49%

- 2. Modest Legislation Can Be More Effective:** Charter advocates may prefer sweeping state mandates that require charter inclusion, but these bills are challenging to pass (and perhaps, to implement). By contrast, relatively modest directives and encouraging language, including relatively simple provisions for enabling and transparency, may prove surprisingly useful. The record also suggests the benefit increases with more complete statutory arrangements, featuring more of the enabling provisions. Examples include the following:

- ▶ **Inserting Enabling Language:** The simple step of stating that districts *may* share bond proceeds with charter schools is important. It opens a door that may not have been so apparent and creates a space where creative options and ideas can take shape.
- ▶ **Requiring a Facility Plan May Help:** Provisions requiring charter schools to submit a facility plan to meet written district expectations or standards might on the surface sound like a burden on the charter schools, but they can have the effect of requiring school districts to put inclusion standards in writing. With specific standards in writing, schools that meet those standards are hard to subsequently keep off the ballot.
- ▶ **Requiring Advance Notice:** The charter school's facility development and life cycle does not often align with district bond election timing. That misalignment can impact a school's ability to take advantage of the opportunity to participate in a bond offering. While some aspects of that challenge are difficult to address, the more advance notice schools have of an upcoming election, the better positioned they are to become a part of it. Requiring districts to officially notify local charter schools of an upcoming bond election by a set date (explicit in the



statute language) or number of days prior to the deadline for filing the language is a simple step with significant upside.

- ▶ **Participating in Long-range Planning:** Ensure charter schools can participate in school district long-range facilities and planning efforts. See the profile in the next section on a 2020 Durango, Colorado, bond election for further illustration.
- ▶ **Requesting a Written Response:** Require districts to provide a written explanation for excluding charters if they choose not to include local charters in a bond question.
- ▶ **Addressing Long-term Facility Ownership:** Whether of a legal or political nature, questions about the long-term ownership of assets paid for (in part or full) with bond proceeds can be an important hurdle to overcome. District officials may ask whether taxpayer dollars can or should be used for charter-owned facilities, and while there may be a preference for bond proceeds to benefit buildings currently owned by the district, it can also be enough to provide the district (or other upstream public body) with reversionary rights to the property. This seems to be an appropriate approach for physical buildings; however, when the funds are used for assets within a charter-owned facility (e.g., heating, and cooling systems), it is harder to separate the charter-owned facility from the taxpayer-funded asset.

Most of the above provisions are hard for opponents to argue against in policy conversations, especially those with a good neighbor or good government feel to them, and most especially in the context of requesting tax increases. These minor revisions are a commonsense way to enhance district transparency and voter confidence while simultaneously increasing the likelihood of charter inclusion.

3. **Advocacy and Technical Assistance Help:** Working without the benefit of a state statute, the California Charter School Association has played an influential role in bringing charter schools together with a unified voice and message and in spearheading advocacy efforts. Once a charter school becomes involved in the process, CCSA has provided expertise in strategy and negotiations as needed. These efforts resulted in significant funding.



6. STATE-BY-STATE LEGISLATIVE BREAKDOWN AND EXPERIENCE

Alaska

Alaska has statutory language (Alaska Stat. § 14.03.260) speaking to districts' potential to provide local tax proceeds to charters. According to the Alaska Department of Education, "if a facility is needed to operate a charter school, a district can utilize an existing asset, lease space, or submit for state aid for construction if eligible for space (and wait its turn for funding). The operating costs of charters are funded from a combination of state-aid and local resources as prescribed in statute. Capital funding for educational facilities, including charter, can be utilized for district-owned assets (not leased) through AS 14.11 programs, with a local share between 2-35% typically matched from either the district or local municipality's capital fund."

There is not enough data available to determine the effectiveness of this statute.

California

There is no specific statute governing bond inclusion in California. Since 2002, however, charter schools have had access to state bond funds through the Charter School Facilities Program. More recently, charter schools gained access to general obligation bond funding through local school district bond elections. Charter schools first gained this access through bond program partnerships instead of through policy, starting with the Los Angeles Unified School District in 2008. These ad hoc partnerships have also been successful in a handful of other school districts. After the success of these partnerships, some of these school districts changed their policies to now include charter schools in district bond offerings. Other school districts are still less receptive.

STATE PROFILE: CALIFORNIA

General obligation bonds are California's primary funding and finance mechanism for school construction and modernization. These are issued at both the state and district level. While state-level bonds generally get more attention, most funds come from district-level ballot initiatives. Since the Leroy Greene School Facilities Act of 1998 became law, five major statewide bonds have passed for K-12 education totaling \$42.3 billion. In comparison, local school districts authorized more than \$113 billion in bonds from 1998 to 2016.¹

The most recent statewide bond measure, Proposition 51, was approved by voters in 2016 to provide \$9 billion for school construction statewide, \$500 million of which was



set aside for charter school projects. That same year, local school districts sought and gained voter approval for the issuance of more than \$20 billion in bonds.

Although the state of California has provided funding to charter schools through the state bond program since 2002, no current legal provision requires school districts to share the proceeds of local bond measures with charter schools. Proposition 39, a statewide voter initiative approved in 2000, lowered the approval threshold for some bond measures from two-thirds to 55%. It also instituted a requirement that school districts share existing school facilities equitably with charter schools. But again, neither provision requires charter school inclusion in local bond measures.

In response, the California Charter Schools Association (CCSA) and their affiliate, CCSA Advocates, have spent the past decade engaged in coordinated efforts with charter school communities and supporters around the state to advocate at the school district level for equitable charter school funding under local bond measures.

In 2008 and 2012, these efforts reached important milestones when two of the largest school districts in the state, Los Angeles Unified and San Diego Unified, agreed to set aside large charter school allocations from local bond measures.

Colorado

Colorado charter schools are entitled to per-pupil facilities aid from the state education fund. In addition, school districts are required to invite district-authorized charter schools to discuss their capital construction needs prior to the district's approving a tax question for voter consideration. While the district is not ultimately required to accommodate requests from charter schools, if they deny a charter school's request to be included, the requesting school has the option to place their own question on the ballot.

While there has been little success among the charter specific questions to date, school district concerns about voter confusion over multiple ballot questions create an additional incentive to take charter requests seriously. Combined with a general sense that charter school supporters can impact ballot questions, Colorado has seen dozens of charter schools across multiple districts receive bond funding through locally approved questions since the early 2000s.

DISTRICT PROFILE: DURANGO, COLORADO, 2020

The Durango School District included all three local charter schools (one authorized by the district and two by Colorado's state authorizer) in its 2020 bond election. This was a significant step as it marked the first time non-district authorized charter schools in Colorado had been included in a ballot question.

From the planning process to the campaign, the collaboration between charter schools and the district was meaningful. All three charter schools were invited to participate in the district's long-range planning committee 18 months before the bond election. Sean



Woytek of Animas High School participated as part of the committee for 18 months up to the creation of the campaign committee for the November 2020 bond election. Voters overwhelmingly approved the ballot question with 72% of the vote.

Sean noted that being on the long-range planning committee gave Animas a seat at the table. This allowed the larger community to gain a better understanding of charter schools, along with accompanying support. Serving on the committee also had the benefits of developing a better overall master strategic plan to the benefit of the overall community.

COMPONENTS OF THE COLORADO STATUTE

1. Specific statute enabling and by extension, encouraging charter inclusion in local ballot questions for facilities funding	Yes	Citations: Colo. Rev. Stat. Ann. § 22-30.5-404 to Colo. Rev. Stat. Ann. § 22-30.5-406; Colo. Rev. Stat. Ann. § 22-30.5-104
2. Specific guidance regarding election and charter request involvement timing and notice requirements	Yes	
3. Specific system for evaluating and prioritizing schools, including charters, for potential inclusion	Yes	
4. Consequences or recourse for aggrieved charter proponent	<i>Somewhat</i>	
5. Real or perceived impact on local elections influencing school district decisions	<i>Somewhat</i>	



Georgia

Georgia law allows school districts to levy taxes for charter schools. In 2008, the Georgia legislature attempted to clarify the existing statute by adding, “Nothing in this paragraph shall be construed to prevent a local board from including a local charter school in projects specified in the ballot language of a local option sales tax or bond referendum” to the definition of local revenue in the Charter Schools Act.

In the decade since the amendment, there are a handful of examples of locally approved charter schools receiving local tax-generated facility funding. These examples are circumstantial, and charter advocates do not believe local districts have much desire to make any accommodations for the charter schools they oversee.

COMPONENTS OF THE GEORGIA STATUTE

1. Specific statute enabling and by extension, encouraging charter inclusion in local ballot questions for facilities funding	Yes	Citations: Georgia Stat. § 20-2-2062.8; Georgia Stat. § 20-2-2068.1
2. Specific guidance regarding election and charter request involvement timing and notice requirements	<i>Inconsequential</i>	
3. Specific system for evaluating and prioritizing schools, including charters, for potential inclusion	<i>No</i>	
4. Consequences or recourse for aggrieved charter proponent	<i>No</i>	
5. Real or perceived impact on local elections influencing school district decisions	<i>Inconsequential</i>	



New Mexico

New Mexico charter schools have access to facilities funding grants and capital outlay funding. In addition, New Mexico allows for charter school access to local school district bond funding. This access is primarily granted through two different provisions: The Public School Buildings Act (HB 33) and Public School Capital Improvements Act (SB 9). Both HB 33 and SB 9 require school districts to allocate funding to charter schools if the charter school provides the necessary information to be included on the resolution in a timely manner. HB 33 also requires all capital improvement projects to be part of a five-year facilities plan. Many charter schools have gained access to taxpayer dollars through HB 33 and SB 9—far more than through the general obligation bond provision, which has had minimal successes. Both provisions require funding to be dispersed to the participating charter schools based on their proportion of enrollment. Charter school inclusion for both HB 33 and SB 9 has increased since 2013. Every district but one has SB 9 funding, and as of 2018, 82% of charter schools had access to those funds.

COMPONENTS OF THE NEW MEXICO STATUTE

1. Specific statute enabling and by extension, encouraging charter inclusion in local ballot questions for facilities funding	Yes	Citations: N.M. Stat. Ann. § 22-25-1 to § 22-25-11; N.M. Stat. Ann. § 22-26-1 to § 22-26-10; N.M. Stat. Ann. § 4-59-1
2. Specific guidance regarding election and charter request involvement timing and notice requirements	<i>Somewhat</i>	
3. Specific system for evaluating and prioritizing schools, including charters, for potential inclusion	Yes	
4. Consequences or recourse for aggrieved charter proponent	<i>Inconsequential</i>	
5. Real or perceived impact on local elections influencing school district decisions	<i>Somewhat</i>	



ENDNOTES

ⁱ <http://www.msrb.org/Market-Topics/~media/6C4DDF98D4074C83AECD80A2DA5C93B2.ashx?>

ⁱⁱ In 2014, Colorado charter schools were granted access to locally raised operational funds through the Mill Levy Override statute.

ⁱⁱⁱ In 2012, Ohio added statutory language giving districts the option to include charter schools in the distribution of locally generated funds; however, these funds can be used for any purpose (not facility-specific), and there has been no charter inclusion to date.

^{iv} In the 2020 session, Indiana legislators approved a measure that allows districts to voluntarily direct referendum dollars to local charter schools. Depending on the referendum, these funds can be used for any purpose or specifically for safety updates or training and are not facility-specific. The impact these changes will have on Indiana charter schools is unknown. <https://legiscan.com/IN/bill/HB1065/2020>

^v Totals reflect information gathered from California, Colorado, New Mexico, and Georgia. Thanks to Nicolas Watson and the California Charter School Association, Dan Schaller and the Colorado League of Charter Schools, Patty Mathews for New Mexico information, and Andrew Lewis for Georgia information.

^{vi} The figures reflect documented allocations of bond proceeds to charter school projects. However, not all election records specifically identify all recipient schools, including charter schools. For instance, a question might specify that “all district buildings with substandard AC systems will be replaced,” which may or may not result in charter schools with substandard AC systems benefiting. As a result, there are inevitably additional instances of charter schools receiving bond election proceeds.