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SENATE BILL 130

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY
Mimi Stewart

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL LEASE
PURCHASE ACT TO CLARIFY THE DEFINITION OF "GOVERNING BODY";
ESTABLISHING THE RELATIONSHIP BETWEEN A GOVERNING BODY AND A
SCHOOL DISTRICT OR A CHARTER SCHOOL IN THE ACQUISITION OF
PUBLIC SCHOOL FACILITIES PURSUANT TO LEASE PURCHASE
ARRANGEMENTS; REPEALING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-26A-3 NMSA 1978 (being Laws 2007,
Chapter 173, Section 3) is amended to read:

"22-26A-3. DEFINITIONS.--As used in the Public School
Lease Purchase Act:

A. "financing agreement" or "lease purchase
arrangement" means an agreement for the leasing of a building
or other real property with an option to purchase for a price

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1 that is reduced according to the payments made, which periodic
2 lease payments composed of principal and interest components
3 are to be paid to the holder of the agreement and pursuant to
4 which the owner of the building or other real property may
5 retain title to or a security interest in the building or other
6 real property and may agree to release the security interest or
7 transfer title to the building or other real property to the
8 school district for nominal consideration after payment of the
9 final periodic lease payment; and

10 ~~[B. except as limited by Section 19 of the Public~~
11 ~~School Lease Purchase Act, "local school board" includes the~~
12 ~~governing body of a locally chartered or state-chartered~~
13 ~~charter school; and~~

14 ~~C. except as limited by Section 19 of the Public~~
15 ~~School Lease Purchase Act, "school district" includes a locally~~
16 ~~chartered or state-chartered charter school]~~

17 B. "governing body" means:

18 (1) the governing structure of a charter
19 school, as set forth in its approved charter; or

20 (2) a local school board as the governing
21 structure of a school district."

22 SECTION 2. Section 22-26A-4 NMSA 1978 (being Laws 2007,
23 Chapter 173, Section 4, as amended) is amended to read:

24 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE
25 ARRANGEMENT--APPROVAL OF DEPARTMENT.--

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1 A. When a [~~local school board~~] governing body
2 determines, pursuant to Subsection B of Section 22-26A-6 NMSA
3 1978, that a lease purchase arrangement is in the best interest
4 of the school district or the charter school, the [~~board~~]
5 governing body shall forward to the department a copy of the
6 proposed lease purchase arrangement and the source of funds
7 that the [~~local school board~~] governing body has identified to
8 make payments due under the lease purchase arrangement.

9 B. A [~~local school board~~] governing body shall not
10 enter into a lease purchase arrangement without the approval of
11 the department."

12 SECTION 3. Section 22-26A-5 NMSA 1978 (being Laws 2007,
13 Chapter 173, Section 5, as amended) is amended to read:

14 "22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease
15 purchase arrangements:

16 A. may have payments payable annually or more
17 frequently as determined by the [~~local school board~~] governing
18 body;

19 B. may be subject to prepayment at the option of
20 the [~~local school board~~] governing body at such time or times
21 and upon such terms and conditions with or without the payment
22 of such premium or premiums as determined by the [~~local school~~
23 ~~board~~] governing body;

24 C. may have a final payment date not exceeding
25 thirty years after the date of execution;

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1 D. may be acquired or executed at a public or
2 negotiated sale;

3 E. may be entered into between the [~~local school~~
4 ~~board~~] governing body and the owner of the building or other
5 real property who may be a trustee or other person that issues
6 or sells certificates of participation or other interests in
7 the payments to be made under the lease purchase arrangement,
8 the proceeds of which may be used to acquire the building or
9 other real property;

10 F. shall specify the principal and interest
11 component of each payment made under the lease purchase
12 arrangement; provided that the net effective interest rate
13 shall not exceed the maximum permitted by the Public Securities
14 Act;

15 G. shall provide that, if the school district or
16 charter school makes capital improvements to the building or
17 other real property, there shall be no change in the lease
18 payments or final payment without a written amendment approved
19 by the department;

20 H. shall provide that, if state, [~~or~~] school
21 district or charter school funds, above those required for
22 lease payments, are used to construct or acquire improvements,
23 the cost of the improvements shall constitute a lien on the
24 real estate in favor of the school district or charter school
25 and then, if the lease purchase arrangement is terminated prior

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1 to the final payment and the release of the security interest
2 or the transfer of title at the option of the school district
3 or charter school;

4 (1) the school district or charter school may
5 foreclose on the real estate lien; or

6 (2) the current market value of the building
7 or other real property at the time of termination, as
8 determined by an independent appraisal certified by the
9 taxation and revenue department, in excess of the outstanding
10 principal due under the lease purchase arrangement shall be
11 paid to the school district or charter school;

12 I. shall provide that there is no legal obligation
13 for the school district or charter school to continue the lease
14 purchase arrangement from year to year or to purchase the
15 building or other real property;

16 J. shall provide that the lease purchase
17 arrangement shall be terminated if sufficient money is not
18 available to meet any current lease payment;

19 K. shall provide that, with the prior approval of
20 the lessor, which shall not be unreasonably withheld, the lease
21 purchase arrangement is assignable, without cost to the school
22 district, [~~if the lessee is a charter school~~] and with all of
23 the rights and benefits of its predecessor in interest being
24 transferred to the assignee, to:

25 (1) a [~~locally chartered or state chartered~~]

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1 charter school, if the lessee is a charter school; or ~~[to]~~
2 (2) the state or one of its institutions,
3 instrumentalities or other political subdivisions ~~[The assignee~~
4 ~~shall acquire all rights and benefits of its predecessor in~~
5 ~~interest under the terms and conditions of the lease purchase~~
6 ~~arrangement]~~; and

7 L. shall provide that amendments to the lease
8 purchase arrangement, except amendments that would improve the
9 building or other real property without additional financial
10 obligations to the school district or charter school, shall be
11 approved by the department."

12 SECTION 4. Section 22-26A-6 NMSA 1978 (being Laws 2007,
13 Chapter 173, Section 6, as amended) is amended to read:

14 "22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--
15 RESOLUTION.--

16 A. If a ~~[local school board]~~ governing body
17 proposes to acquire a building or other real property through a
18 lease purchase arrangement, it shall comply with the
19 requirements of this section and the provisions of the Open
20 Meetings Act.

21 B. At a regular meeting or at a special meeting
22 called for the purpose of considering the acquisition of a
23 building or other real property through a lease purchase
24 arrangement, a ~~[local school board]~~ governing body shall:

25 (1) make a determination of the necessity for

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1 acquiring the building or other real property through a lease
2 purchase arrangement;

3 (2) determine the estimated cost of the
4 buildings or other real property needed;

5 (3) review a summary of the terms of the
6 proposed lease purchase arrangement;

7 (4) identify the source of funds for the lease
8 purchase payments;

9 (5) if obtaining all or part of the funds
10 needed requires or anticipates the imposition of a property
11 tax, determine the estimated rate of the tax and what, if any,
12 the percentage increase in property taxes will be for real
13 property owners in the school district; and

14 (6) if the [~~board~~] governing body determines
15 that the lease purchase arrangement is in the best interest of
16 the school district or charter school, forward a copy of the
17 arrangement to the department pursuant to Section 22-26A-4 NMSA
18 1978.

19 C. After receiving department approval of the lease
20 purchase arrangement, the [~~local school board~~] governing body
21 may adopt a final resolution approving the lease purchase of
22 the building or other real property.

23 D. If [~~the~~] a local school board finds that
24 obtaining all or part of the funds needed for [~~the~~] a lease
25 purchase arrangement requires the imposition of a property tax,

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1 the board may ~~[also]~~ adopt a resolution to be presented to the
2 voters pursuant to Section 22-26A-8 NMSA 1978. ~~[provided that]~~

3 E. If the governing body of a charter school finds
4 that obtaining all or part of the necessary funds requires the
5 imposition of a property tax, the local school board of the
6 school district in which the charter school is located may
7 adopt a resolution to be presented to the voters, pursuant to
8 Section 22-26A-8 NMSA 1978; provided that the governing body
9 has notified the local school board that the charter school has
10 been approved to enter into a lease purchase arrangement and
11 has identified revenue from the proposed tax as a necessary
12 source of funds. The local school board:

13 (1) ~~[if a charter school that is located~~
14 ~~within the school district has notified the local school board~~
15 ~~that the charter school has been approved to enter into a lease~~
16 ~~purchase arrangement and has identified revenue from the~~
17 ~~proposed tax as a source of needed funds, the local school~~
18 ~~board:~~

19 (a)] shall include the tax revenue needed
20 by the charter school in the resolution if the ~~[charter school~~
21 ~~is a locally chartered or state-chartered charter school whose]~~
22 school's charter has been renewed at least once; and

23 ~~[(b)]~~ (2) may ~~[in its discretion]~~ include the
24 tax revenue needed by the charter school in the resolution if
25 the charter school is a locally chartered charter school prior

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1 to its first renewal term. [~~and~~

2 ~~(2) if the tax revenue for a charter school is~~
3 ~~included in the resolution]~~

4 F. If a local school board adopts a resolution that
5 includes tax revenue for a charter school, and, if the tax is
6 approved in an election pursuant to Sections 22-26A-8 through
7 22-26A-12 NMSA 1978, the local school board shall distribute an
8 amount of the tax revenue, as established in its resolution, to
9 the charter school to be used in the lease purchase
10 arrangement.

11 [~~E.~~] G. The local school board shall not adopt a
12 resolution for or approve a lease purchase arrangement for a
13 term that exceeds thirty years."

14 SECTION 5. Section 22-26A-7 NMSA 1978 (being Laws 2007,
15 Chapter 173, Section 7, as amended) is amended to read:

16 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A
17 school district or charter school may apply any legally
18 available funds to acquire or improve buildings or other real
19 property subject to a lease purchase arrangement or to the
20 payments due under a lease purchase arrangement, including any
21 combination of:

- 22 A. money from the school district's general fund;
- 23 B. investment income actually received from
- 24 investments;
- 25 C. proceeds from taxes imposed pursuant to the

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1 Public School Capital Improvements Act or the Public School
2 Buildings Act;

3 D. loans, grants or lease payments received from
4 the public school capital outlay council pursuant to the Public
5 School Capital Outlay Act;

6 E. state distributions to the school district
7 pursuant to the Public School Capital Improvements Act;

8 F. fees or assessments received by the school
9 district;

10 G. proceeds from the sale of real property and
11 rental income received from the rental or leasing of school
12 district property;

13 H. grants from the federal government as assistance
14 to those areas affected by federal activity authorized in
15 accordance with Title 20 of the United States Code, commonly
16 known as "PL 874 funds" or "impact aid";

17 I. revenues from the tax authorized pursuant to
18 Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by
19 the local school board and approved by the voters; and

20 J. legislative appropriations."

21 SECTION 6. Section 22-26A-13 NMSA 1978 (being Laws 2007,
22 Chapter 173, Section 13) is amended to read:

23 "22-26A-13. PUBLICATION OF NOTICE--VALIDATION.--

24 A. After adoption of a resolution approving a lease
25 purchase arrangement, the [~~local school board~~] governing body

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1 shall publish notice of the adoption of the resolution once in
2 a newspaper of general circulation in the school district in
3 which the governing body's school is located.

4 B. After the passage of thirty days from the
5 publication required by Subsection A of this section, any
6 action attacking the validity of the proceedings taken by the
7 [~~local school board~~] governing body preliminary to and in the
8 authorization of and entering into the lease purchase
9 arrangement described in the notice is perpetually barred."

10 SECTION 7. Section 22-26A-14 NMSA 1978 (being Laws 2007,
11 Chapter 173, Section 14) is amended to read:

12 "22-26A-14. REFUNDING OR REFINANCING LEASE PURCHASE
13 ARRANGEMENTS.--School districts and charter schools may enter
14 into lease purchase arrangements for the purpose of refunding
15 or refinancing any lease purchase arrangements then
16 outstanding, including the payment of any prepayment premiums
17 thereon and any interest accrued or to accrue to the date of
18 prepayment maturity of the outstanding lease purchase
19 arrangements. Until the proceeds of the lease purchase
20 arrangements issued for the purpose of refunding or refinancing
21 outstanding lease purchase arrangements are applied to the
22 prepayment or retirement of the outstanding lease purchase
23 arrangements, the proceeds may be placed in escrow and invested
24 and reinvested. The interest, income and profits, if any,
25 earned or realized on any such investment may, in the

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1 discretion of the [~~local school board~~] governing body, also be
2 applied to the payment of the outstanding lease purchase
3 arrangements to be refunded or refinanced by prepayment or
4 retirement, as the case may be. After the terms of the escrow
5 have been fully satisfied and carried out, any balance of such
6 proceeds and interest, if any, earned or realized on the
7 investments thereof may be returned to the [~~local school board~~]
8 governing body to be used for payment of the refunding or
9 refinancing lease purchase arrangement. If the proceeds from a
10 tax imposed pursuant to Sections [~~8 through 12 of the Public~~
11 ~~School Lease Purchase Act~~] 22-26A-8 through 22-26A-12 NMSA 1978
12 were used as a source of payments for the refunded lease
13 purchase arrangement, the proceeds may continue to be used for
14 the refunding or refinancing lease purchase arrangements
15 without the requirement of an additional election on the
16 issue."

17 **SECTION 8.** Section 22-26A-15 NMSA 1978 (being Laws 2007,
18 Chapter 173, Section 15, as amended) is amended to read:

19 "22-26A-15. AGREEMENT OF THE STATE.--The state does
20 hereby pledge to and agree with the holders of any lease
21 purchase arrangement, certificates of participation or other
22 partial interest in a lease purchase arrangement entered into
23 under the Public School Lease Purchase Act that the state will
24 not limit or alter the rights vested in school districts or
25 charter schools to fulfill the terms of any lease purchase

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1 arrangement or related sublease arrangement or in any way
2 impair the rights and remedies of the holders of lease purchase
3 arrangements, certificates of participation or other partial
4 interests in lease purchase arrangements until the payments due
5 thereon, and all costs and expenses in connection with any
6 action or proceedings by or on behalf of those holders, are
7 fully met and discharged. School districts and charter schools
8 are authorized to include this pledge and agreement of the
9 state in any lease purchase arrangement or related sublease
10 arrangement."

11 SECTION 9. Section 22-26A-17 NMSA 1978 (being Laws 2007,
12 Chapter 173, Section 17, as amended) is amended to read:

13 "22-26A-17. TAX EXEMPTION.--The state covenants with the
14 original holder and all subsequent holders and transferees of
15 lease purchase arrangements entered into by [~~the local school~~
16 ~~boards~~] governing bodies, in consideration of the acceptance of
17 and payment for the lease purchase arrangements entered into
18 pursuant to the Public School Lease Purchase Act, that lease
19 purchase arrangements, certificates of participation and other
20 partial interests in lease purchase arrangements and the
21 interest income from the lease purchase arrangements,
22 certificates of participation and other partial interests shall
23 at all times be free from taxation by the state, except for
24 estate or gift taxes and taxes on transfers."

25 SECTION 10. Section 22-26A-18 NMSA 1978 (being Laws 2007,

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1 Chapter 173, Section 18) is amended to read:

2 "22-26A-18. CUMULATIVE AND COMPLETE AUTHORITY.--The
3 Public School Lease Purchase Act shall be deemed to provide an
4 additional and alternative method for acquiring buildings and
5 other real property authorized thereby and shall be regarded as
6 supplemental and additional to powers conferred by other laws
7 and shall not be regarded as a derogation of any powers now
8 existing. The Public School Lease Purchase Act shall be deemed
9 to provide complete authority for acquiring buildings and other
10 real property and entering into lease purchase arrangements
11 contemplated thereby, and no other approval of any state agency
12 or officer, except as provided therein, shall be required with
13 respect to any lease purchase arrangements, and the [~~local~~
14 ~~school board~~] governing body acting thereunder need not comply
15 with the requirements of any other law applicable to the
16 issuance of debt by school districts."

17 SECTION 11. REPEAL.--Section 22-26A-19 NMSA 1978 (being
18 Laws 2007, Chapter 173, Section 19, as amended) is repealed.

19 SECTION 12. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2015.