

1 SENATE BILL 322

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO HIGHER EDUCATION; AMENDING THE COLLEGE DISTRICT TAX
12 ACT; ADDING DEFINITIONS; PROVIDING FOR LEASE-PURCHASE
13 ARRANGEMENTS FOR COLLEGE DISTRICTS; PROVIDING FOR LIBERAL
14 INTERPRETATION AND SEVERABILITY; DECLARING AN EMERGENCY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 21-2A-2 NMSA 1978 (being Laws 1995,
18 Chapter 224, Section 8) is amended to read:

19 "21-2A-2. DEFINITIONS.--As used in the College District
20 Tax Act:

21 A. "board" means the governing board of the college
22 district;

23 B. "college" means a two-year, public post-
24 secondary educational institution organized pursuant to the
25 provisions of the Community College Act, Chapter 21, Article 14

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1 NMSA 1978, the Technical and Vocational Institute Act [~~Chapter~~
2 ~~21, Article 17 NMSA 1978~~] or the Off-Campus Instruction Act;
3 [~~and~~]

4 C. "college district" means a district in which a
5 college is located or is proposed to be located, the exterior
6 boundaries of which are determined pursuant to the statutory
7 provisions under which the college is organized;

8 D. "debt" means an obligation payable from ad
9 valorem property tax revenues or the general fund of a college
10 district and that may be secured by the full faith and credit
11 of a college district and a pledge of its taxing powers;

12 E. "education technology equipment" means tools
13 used in the educational process that constitute learning and
14 administrative resources and may include:

15 (1) closed-circuit television systems;
16 educational television and radio broadcasting; cable
17 television, satellite, copper and fiber-optic transmission;
18 computer, network connection devices; digital communications
19 equipment, including voice, video and data; servers; switches;
20 portable media such as discs and drives to contain data for
21 electronic storage and playback; and purchase or lease of
22 software licenses or other technologies and services,
23 maintenance, equipment and computer infrastructure information,
24 techniques and tools used to implement technology in colleges
25 and related facilities;

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1 (2) improvements, alterations and
2 modifications to, or expansions of, existing buildings or
3 personal property necessary or advisable to house or otherwise
4 accommodate any of the tools listed in Paragraph (1) of this
5 subsection; and

6 (3) expenditures for technical support and
7 training expenses of college district employees who administer
8 education technology projects funded by a lease-purchase
9 arrangement and may include training by contractors; and

10 F. "lease-purchase arrangement" means a financing
11 arrangement constituting debt of a college district pursuant to
12 which periodic lease payments composed of principal and
13 interest components are to be paid to the holder of the lease-
14 purchase arrangement and pursuant to which the owner of the
15 education technology equipment may retain title to or a
16 security interest in the equipment and may agree to release the
17 security interest or transfer title to the equipment to the
18 college district for nominal consideration after payment of the
19 final periodic lease payment. "Lease-purchase arrangement"
20 also means any debt of the college district incurred for the
21 purpose of acquiring educational technology equipment whether
22 designated as a general obligation lease, note or other
23 instrument evidencing a debt of the college district."

24 SECTION 2. A new section of the College District Tax Act
25 is enacted to read:

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1 "[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE

2 ARRANGEMENTS--NOTICE--PROCESS FOR APPROVING LEASE-PURCHASE

3 ARRANGEMENTS--LIMITATION OF ACTION.--

4 A. When a college district contemplates entering
5 into a lease-purchase arrangement payable in whole or in part
6 from ad valorem taxes, the board, before initiating any
7 proceedings for approval of such lease-purchase arrangement,
8 shall forward to the higher education department a written
9 notice of the proposed lease-purchase arrangement.

10 B. The higher education department, upon the
11 receipt of the notice provided for in Subsection A of this
12 section, shall furnish all necessary information with reference
13 to the valuation, present outstanding bonded indebtedness,
14 present outstanding lease-purchase arrangements and limitations
15 as to tax rates and debt contracting power and other
16 information useful to the board in the consideration of a
17 proposed lease-purchase arrangement. Upon entering into a
18 lease-purchase arrangement, the board shall prepare two true
19 and complete transcripts of proceedings relating to the lease-
20 purchase arrangement, one to be immediately filed with the
21 higher education department and one to be kept by the board.

22 C. At a regular or special meeting called for the
23 purpose of considering a lease-purchase arrangement, a board
24 shall:

- 25 (1) make a determination of the necessity for

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1 lease-purchasing the educational technology equipment;

2 (2) determine the estimated cost of the
3 equipment needed;

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

6 (4) identify the source of funds for the
7 payment of debt;

8 (5) if all or part of the funds needed require
9 or anticipate the imposition of and ad valorem tax, determine
10 the estimated rate of the ad valorem tax and what, if any, the
11 percentage increase in ad valorem taxes for all taxable
12 property in the college district would be;

13 (6) set a date for a meeting to consider a
14 resolution granting final approval to the lease-purchase
15 arrangement; and

16 (7) direct that notice of the meeting provided
17 for in Paragraph (6) of this subsection be published once each
18 week for the two weeks immediately preceding the meeting in a
19 newspaper having general circulation in the college district
20 and that the notice include the information required in
21 Paragraphs (1) through (5) of this subsection.

22 D. At a regular or special meeting called for the
23 purpose of considering a lease-purchase arrangement as set
24 forth in Subsection C of this section, a board may adopt an
25 authorizing instrument in compliance with the requirements of

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1 Section 6-14-10.2 NMSA 1978. The requirements of Paragraphs
2 (6) and (7) of Subsection C of this section shall not apply if
3 the board adopts such an authorizing instrument.

4 E. At a meeting scheduled pursuant to Paragraph (6)
5 of Subsection C of this section, the board may adopt a final
6 resolution approving the lease-purchase arrangement only by an
7 affirmative vote of a majority of all members of the board.

8 F. After the adoption by the board of a final
9 resolution approving the lease-purchase arrangement or after
10 the final approval of a lease-purchase arrangement by
11 delegation as provided for in Subsection D of this section, the
12 board shall publish notice of the adoption of the resolution or
13 the approval of the lease-purchase arrangement once in a
14 newspaper of general circulation in the college district.
15 After the passage of thirty days from the publication required
16 by this subsection, any action attacking the validity of the
17 proceedings taken by the board preliminary to, in the
18 authorization of and entering into the lease-purchase
19 arrangement described in the notice is perpetually barred."

20 SECTION 3. A new section of the College District Tax Act
21 is enacted to read:

22 "[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE
23 ARRANGEMENTS--TAX LEVY--TERMS OF LEASE-PURCHASE ARRANGEMENTS--
24 REFUNDING OR REFINANCING.--

25 A. The officials charged by law with the duty of

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1 levying ad valorem taxes for the payment of bonds and interest
2 shall, in the manner provided by law, make an annual levy
3 sufficient to meet the payments due on lease-purchase
4 arrangements. Annual payments due on lease-purchase
5 arrangements may be combined with other college district
6 general obligation debt when determining the annual debt
7 service tax levy pursuant to Section 7-37-8 NMSA 1978 and the
8 College District Tax Act. This annual debt service tax levy
9 shall not exceed five dollars (\$5.00) per one thousand dollars
10 (\$1,000) of taxable value; provided, however, that this
11 limitation may be exceeded in any year in which the valuation
12 of property in the college district declines to a level lower
13 than the valuation of property in the year in which the
14 applicable debt was issued. Nothing in the College District
15 Tax Act shall be so construed as to prevent a college district
16 from applying any other legally available funds, including
17 funds that may be in its general fund or investment income
18 actually received from investments, to the payments due on or
19 any prepayment premium payable in connection with such lease-
20 purchase arrangements as the same become due, and, upon such
21 payments, the levy or levies provided for in this section may,
22 to that extent, be reduced.

23 B. Lease-purchase arrangements may:

24 (1) have interest, appreciated principal
25 value, or any part thereof, payable at intervals or at maturity

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1 as may be determined by the board;

2 (2) be subject to prior redemption or
3 prepayment at the option of the board at such time or times and
4 upon such terms and conditions with or without the payment of
5 such premium or premiums as may be determined by the board;

6 (3) have a final payment date or mature at any
7 time or times not exceeding five years after the date of
8 issuance;

9 (4) be payable at one time or in installments
10 or may be in such other form as may be determined by the board;

11 (5) be priced at, above or below par and at a
12 price that results in a net effective interest rate that does
13 not exceed the maximum permitted by the Public Securities Act;
14 and

15 (6) be sold or issued at public sale,
16 negotiated sale or private sale to the New Mexico finance
17 authority.

18 C. The board shall not adopt a resolution for or
19 approve a lease-purchase arrangement that exceeds five years or
20 creates a total general obligation indebtedness in the college
21 district which, when combined with other outstanding college
22 district general obligation debt, exceeds three percent of the
23 assessed valuation of the taxable property within the college
24 district as shown in the preceding general assessment, which
25 debt limitation is to be in excess of other existing debt

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1 limitations.

2 D. College districts are authorized to enter into
3 lease-purchase arrangements for the purpose of refunding or
4 refinancing any lease-purchase arrangements then outstanding,
5 including the payment of any prepayment of redemption premiums
6 thereon and any interest accrued or to accrue to the date of
7 purchase, prepayment, redemption or maturity of the outstanding
8 lease-purchase arrangements. Until the proceeds of the lease-
9 purchase arrangements issued for the purpose of refunding or
10 refinancing outstanding lease-purchase arrangements are applied
11 to the purchase, prepayment, redemption or retirement of the
12 outstanding lease-purchase arrangements, the proceeds may be
13 placed in escrow and invested and reinvested. The interest,
14 income and profits, if any, earned or realized on any such
15 investment may, in the discretion of the board, also be applied
16 to the payment of the outstanding lease-purchase arrangements
17 to be refunded or refinanced by purchase, prepayment,
18 redemption or retirement, as the case may be. After the terms
19 of the escrow have been fully satisfied and carried out, any
20 balance of such proceeds and interest, if any, earned or
21 realized on the investments thereof may be returned to the
22 board to be used for payment of the refunding or refinancing
23 lease-purchase arrangement. All such refunding or refinancing
24 lease-purchase arrangements shall be entered into under,
25 secured and subject to the provisions of the College District

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1 Tax Act in the same manner and to the same extent as any other
2 lease-purchase arrangements entered into pursuant to that act."

3 SECTION 4. A new section of the College District Tax Act
4 is enacted to read:

5 "[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE
6 ARRANGEMENTS--AGREEMENT OF THE STATE--LEGAL INVESTMENTS--TAX
7 EXEMPTION--CUMULATIVE AND COMPLETE AUTHORITY.--

8 A. The state does hereby pledge to and agree with
9 the holders of any lease-purchase arrangement entered into
10 pursuant to the College District Tax Act that the state will
11 not limit or alter the rights hereby vested in college
12 districts to fulfill the terms of any lease-purchase
13 arrangement or in any way impair the rights and remedies of the
14 holders of lease-purchase arrangements until the payments due
15 thereon, and all costs and expenses in connection with any
16 action or proceedings by or on behalf of those holders, are
17 fully met and discharged. College districts are authorized to
18 include this pledge and agreement of the state in any lease-
19 purchase arrangement.

20 B. Lease-purchase arrangements entered into
21 pursuant to the College District Tax Act shall be legal
22 investments in which all insurance companies, banks and savings
23 and loan associations organized under the laws of the state,
24 public officers and public bodies and all administrators,
25 guardians, executors, trustees and other fiduciaries may

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1 properly and legally invest funds.

2 C. The state covenants with the purchasers and all
3 subsequent holders and transferees of lease-purchase
4 arrangements entered into by boards, in consideration of the
5 acceptance of and payment for the lease-purchase arrangements
6 entered into pursuant to the College District Tax Act, that
7 lease-purchase arrangements and the income from the lease-
8 purchase arrangements shall at all times be free from taxation
9 by the state, except for estate or gift taxes and taxes on
10 transfers.

11 D. The College District Tax Act shall be deemed to
12 provide an additional and alternative method for acquiring
13 educational technology equipment and shall be regarded as
14 supplemental and additional to powers conferred by other laws
15 and shall not be regarded as a derogation of any powers now
16 existing. The College District Tax Act shall be deemed to
17 provide complete authority for acquiring educational technology
18 equipment and entering into lease-purchase arrangements. No
19 other approval of any state agency or officer, except as
20 provided in that act, shall be required with respect to any
21 lease-purchase arrangements, and the board acting pursuant to
22 provisions of that act need not comply with the requirements of
23 any other law applicable to the issuance of debt by college
24 districts; provided, however, that a board may submit to a vote
25 of qualified electors of the college district the question of

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1 creating debt by entering into a lease-purchase arrangement;
2 and provided further that the board shall abide by the vote of
3 the majority of those persons voting on the question."

4 SECTION 5. A new section of the College District Tax Act
5 is enacted to read:

6 "[NEW MATERIAL] LIBERAL INTERPRETATION.--The College
7 District Tax Act, being necessary for the welfare of the state
8 and its inhabitants, shall be liberally construed to the effect
9 of the purposes of the act."

10 SECTION 6. A new section of the College District Tax Act
11 is enacted to read:

12 "[NEW MATERIAL] SEVERABILITY.--If any part or application
13 of the College District Tax Act is held invalid, the remainder
14 or its application to other situations or persons shall not be
15 affected."

16 SECTION 7. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.