

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 466a

49th Legislature, 1st Session, 2009

Short Title: Public School Lease Purchase

Sponsor(s): Representatives Rick Miera and Henry “Kiki” Saavedra

Analyst: Peter B. van Moorsel

Date: March 19, 2009

AS AMENDED

The Senate Judiciary Committee amendment strikes from the bill the section that amends provisions of the *Property Tax Code* to exempt from property tax a property that is leased to a public school district, public school, or charter school; and used exclusively for educational purposes.

The House Taxation and Revenue Committee amendment adds language to require the Taxation and Revenue Department to certify the independent appraisal of a building or other real property that is required if a lease-purchase arrangement is terminated after state or school district funds have been used to make capital improvements to the property.

Original Bill Summary:

HB 466 amends the *Public School Lease Purchase Act* and other related sections of law as follows:

Section 1 amends provisions of the *Property Tax Code* to exempt from property tax a property that is:

- leased to a public school district, public school, or charter school; and
- used exclusively for educational purposes.

Section 2 amends the *Public School Code* to delete language authorizing a school district to issue a general obligation (GO) bond to make payments pursuant to a lease-purchase arrangement.

HB 466 also makes the following amendments to the *Public School Lease Purchase Act*:

- **Section 3** – amends the short title to clarify that all of Chapter 22, Article 26A NMSA 1978 may be cited as the *Public School Lease Purchase Act*.
- **Section 4** – requires a local school board, upon determining that a lease-purchase arrangement is in the district’s best interest, to forward to the Public Education Department (PED) a copy of the proposed lease-purchase arrangement and the source of funds that the board will use to make the payments.

- **Section 5** – amends the terms governing lease-purchase arrangements to:
 - allow payments for lease-purchase arrangements to be payable annually or more frequently, as determined by the local school board;
 - extend the maximum allowable final payment date from 20 to 30 years;
 - provide that the arrangements may be acquired or executed at a public or negotiated sale;
 - allow a lease-purchase arrangement to be entered into between the local school board and the owner of the building or other real property. The bill indicates that the owner may issue or sell certificates of participation or to acquire the building or property that is the subject of the lease-purchase arrangement;
 - require that the arrangements specify the principal and interest component of each payment made, provided that the net effective interest rate shall not exceed the maximum permitted by the *Public Securities Act*;
 - provide that, if the school district makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by PED;
 - provide that, if state or school district funds are used to make capital improvements to the building or other real property, those costs shall constitute a lien on the property and if the lease-purchase arrangement is terminated prior to acquisition, the district may foreclose on that lien or require that the property’s fair market value in excess of the outstanding principal due under the lease-purchase be paid to district;
 - provide that, with the prior approval of the lessor, the lease-purchase arrangement is assignable without cost to the school district, to a locally chartered or state-chartered charter school, or to the state. The assignee would acquire all rights and benefits of its predecessor in interest under the terms and conditions of the lease-purchase arrangement; and
 - require that amendments to the lease-purchase arrangement, except amendments that would improve the building or other real property without additional financial obligations to the school district, be approved by PED.

- **Section 6** – adds a new section to:
 - allow a holder of a lease-purchase arrangement to secure financing by issuing certificates of participation or otherwise assigning or transferring all or part of the lease-purchase arrangement; and
 - specify that a building or other real property subject to an approved lease-purchase arrangement is considered to be a public property.

- **Section 7** amends the *Public School Lease Purchase Act* to:
 - require a local school board, in proposing to acquire a building or other real property through a lease-purchase arrangement, to comply with the provisions of the *Open Meetings Act*;
 - require a local school board, when adopting a resolution to impose a property tax, to include in the resolution the tax revenue needed by the charter school for an approved lease-purchase arrangement if the charter school’s charter has been renewed at least once and allow a school board to include in the resolution a charter school prior to its first renewal term;
 - require, if the tax is approved, that the local school board distribute to the charter school the amount included for the charter school in the property tax resolution; and

- extend to 30 years the length of the lease-purchase arrangement that a school board may approve.
- **Section 8** amends the act to:
 - provide that a school district may apply any legally available funds, including legislative appropriations, to acquire or improve buildings or other real property subject to a lease-purchase arrangement or to the payments due under a lease-purchase arrangement; and
 - except the following funds from the above provision:
 - proceeds from taxes imposed to pay school district GO bonds or taxes imposed pursuant to the *Educational Technology Equipment Act*; and
 - revenues received from the sale of bonds or notes pursuant to the *School Revenue Bond Act* or the *School District Bond Anticipation Notes Act*.
- **Section 9** – extends to 30 years the maximum time that a tax for making lease-purchase arrangement payments may be imposed.
- **Section 10** – requires notices of elections of property tax imposition to reflect the above extension of the time that a property tax may be imposed.
- **Section 11** – allows a local school board to direct the Department of Finance and Administration (DFA) to certify a tax for making lease-purchase arrangement payments at a lower rate than that that specified in the authorizing resolution.
- **Section 12** – amends the state’s recognition of district rights regarding lease-purchase arrangements to include certificates of participation or other partial interest in a lease-purchase arrangement or related sublease agreements.
- **Section 13** – provides that certificates of participation and other partial interests in lease-purchase arrangements are legal investments in which funds may be invested.
- **Section 14** – provides that certificates of participation and other partial interests in lease-purchase arrangements and the interest income from certificates of participation and other partial interests are free from taxation by the state.
- **Section 15** – provides that the governing board of a charter school may not adopt a resolution to impose or conduct an election to impose a tax for making lease-purchase arrangement payments.

Original Fiscal Impact:

HB 466 does not contain an appropriation.

The Taxation and Revenue Department (TRD) reports that the exemption made in Section 1 would impose a minimal fiscal impact on the state and local governments. According to TRD, “reductions in net taxable value caused by the exemption would, for the most part, be offset by very minor property tax rate increases applicable to essentially all taxpayers.”

Original Issues:

The Public School Facilities Authority (PSFA) reports that, to date, no school district or charter school has entered into a lease-purchase arrangement for a school facility under the *Public School Lease Purchase Act*. PSFA adds, however, that a number of agreements are currently being developed.

PSFA reports that the lease-purchase option is viewed as the primary option for a charter school to meet the statutory requirement that after July 1, 2010¹, to have its charter approved or renewed, a charter school must be located in a public building or in a facility that meets adequacy standards and is under a lease-purchase agreement.

TRD's analysis of HB 466 identifies a potential constitutional issue in **Section 1** pertaining to Article 8, Section 3 of the New Mexico Constitution, which reads:

“The property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation.”

Citing this section, the TRD analysis states:

- “if property is not exempt under the state Constitution, Article VIII, Sec. 3, the Legislature cannot by statute make it exempt”; and
- “the Constitution only allows the Legislature to make personal property exempt by statute. Property leased, but not owned, by a school district is not exempt under Article VIII, Sec. 3 because it is not the ‘property of’ the school district.”

However, there may be another interpretation more in line with the intention of HB 466. That is, because the constitutional provision exempts from taxation “all property used for educational or charitable purposes” [emphasis added] – and not all property owned by educational or charitable organizations – the exemption may be based upon use rather than ownership. If that is the case, then HB 466 might be said to clarify the application of the tax exemption provided by the state constitution.

The Office of the Attorney General (AG) identifies a potential issue with **Sections 5 and 8** of HB 466, stating that public funds in New Mexico may not be used to improve property owned by a private entity. According to the AG:

- **Section 5** would authorize a school district to expend public funds to improve a building or other real property owned by a private entity that is the subject of a lease-purchase agreement; and
- **Section 8** would allow public funds for this purpose.

¹ SB 378, *Public School Capital Outlay Amendments*, proposes to extend this deadline to 2015.

According to the AG, the provision in **Section 6** specifying that a building or other real property subject to an approved lease-purchase arrangement is considered to be a public property “appears to be an uncompensated taking and thus would violate the due process clause of the New Mexico Constitution (Art. II, Sec. 18) and Amendment XIV of the U.S. Constitution.”

Background:

Passed during the 2005 legislative session, House Joint Resolution 9 (HJR 9) proposed an amendment to the Constitution of New Mexico to allow the state and school districts, including charter schools, to enter into agreements for the leasing of buildings and other real property with an option to purchase. The constitutional amendment proposed in HJR 9 was approved by voters in the 2006 General Election.

Enacted in 2007, the *Public School Lease Purchase Act* allows the state, school districts, and charter schools to enter into arrangements for leasing buildings or other real property with an option to purchase for a price that is reduced according to the payments made.

Related Bills:

HB 132 *Educational Property Tax Exemptions*

SB 115a *Leased School Property Tax Exemptions*

*CS/SB 378 *Public School Capital Outlay Amendments*