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HOUSE BILL 466

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Rick Miera

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING AND ENACTING
CERTAIN SECTIONS OF THE PUBLIC SCHOOL LEASE PURCHASE ACT;
CLARIFYING A PROPERTY TAX EXEMPTION; DELETING A PURPOSE FOR
WHICH SCHOOL DISTRICT GENERAL OBLIGATION BONDS MAY BE ISSUED.

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

Section 1. Section 7-36-7 NMSA 1978 (being Laws 1973,
Chapter 258, Section 15, as amended) is amended to read:

"7-36-7. PROPERTY SUBJECT TO VALUATION FOR PROPERTY
TAXATION PURPOSES.--

A. Except for the property listed in Subsection B
of this section or exempt pursuant to Section 7-36-8 NMSA 1978,
all property is subject to valuation for property taxation
purposes under the Property Tax Code if it has a taxable situs
in the state.

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1 B. The following property is not subject to
2 valuation for property taxation purposes under the Property Tax
3 Code:

4 (1) property exempt from property taxation
5 under the federal or state constitution, federal law, the
6 Property Tax Code or other laws, but:

7 (a) this does not include property all
8 or a part of the value of which is exempt because of the
9 application of the veteran, disabled veteran or head-of-family
10 exemption;

11 (b) this provision does not excuse an
12 owner from obligations to report the owner's property as
13 required by regulation of the department adopted under Section
14 7-38-8.1 NMSA 1978 or to claim its exempt status under
15 Subsection C of Section 7-38-17 NMSA 1978;

16 (c) this includes property of a museum
17 that: 1) has been granted exemption from the federal income
18 tax by the United States commissioner of internal revenue as an
19 organization described in Section 501(c)(3) of the Internal
20 Revenue Code of 1986, as amended or renumbered; 2) is used to
21 provide educational services; and 3) grants free admission to
22 each student who attends a public school in the county in which
23 the museum is located; [~~and~~]

24 (d) this includes property that: 1)
25 pursuant to a lease purchase agreement entered into under the

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1 Public School Lease Purchase Act, is leased to a school
2 district or a locally chartered or state-chartered charter
3 school; and 2) is used primarily for public school educational
4 purposes; and

5 [~~(d)~~] (e) this includes property that is
6 operated either as a community to which the Continuing Care Act
7 applies or as a facility licensed by the department of health
8 to operate as a nursing facility, a skilled nursing facility,
9 an adult residential care facility, an intermediate care
10 facility or an intermediate care facility for the
11 developmentally disabled; and is owned by a charitable nursing,
12 retirement or long-term care organization that: 1) has been
13 granted exemption from the federal income tax by the United
14 States commissioner of internal revenue as an organization
15 described in Section 501(c)(3) of the Internal Revenue Code of
16 1986, as amended or renumbered; 2) donates or renders
17 gratuitously a portion of its services or facilities; and 3)
18 uses all funds remaining after payment of its usual and
19 necessary expenses of operation, including the payment of liens
20 and encumbrances upon its property, to further its charitable
21 purpose, including the maintenance, improvement or expansion of
22 its facilities;

23 (2) oil and gas property subject to valuation
24 and taxation under the Oil and Gas Ad Valorem Production Tax
25 Act and the Oil and Gas Production Equipment Ad Valorem Tax

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1 Act; and

2 (3) productive copper mineral property subject
3 to valuation and taxation under the Copper Production Ad
4 Valorem Tax Act; for the purposes of this section, "copper
5 mineral property" means all mineral property and property held
6 in connection with mineral property when seventy-five percent
7 or more, by either weight or value, of the salable mineral
8 extracted from or processed by the mineral property is copper."

9 Section 2. Section 22-18-1 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 228, as amended) is amended to read:

11 "22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE.--

12 A. After consideration of the priorities for the
13 school district's capital needs as shown by the facility
14 assessment database maintained by the public school facilities
15 authority and subject to the provisions of Article 9, Section
16 11 of the constitution of New Mexico and Sections 6-15-1 and
17 6-15-2 NMSA 1978, a school district may issue general
18 obligation bonds for the purpose of:

19 (1) erecting, remodeling, making additions to
20 and furnishing school buildings;

21 (2) purchasing or improving school grounds;

22 (3) purchasing computer software and hardware
23 for student use in public schools;

24 (4) providing matching funds for capital
25 outlay projects funded pursuant to the Public School Capital

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1 Outlay Act; or

2 [~~(5)~~ making payments pursuant to a financing
3 agreement entered into by the school district or a charter
4 school located in the school district for the leasing of a
5 building or other real property with an option to purchase for
6 a price that is reduced according to payments made; or

7 ~~(6)~~] (5) any combination of these purposes.

8 B. The bonds shall be fully negotiable and
9 constitute negotiable instruments within the meaning and for
10 all purposes of the Uniform Commercial Code."

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

13 "22-26A-1. SHORT TITLE.--~~[Sections 1 through 20 of this~~
14 ~~act]~~ Chapter 22, Article 26A NMSA 1978 may be cited as the
15 "Public School Lease Purchase Act".

16 Section 4. Section 22-26A-4 NMSA 1978 (being Laws 2007,
17 Chapter 173, Section 4) is amended to read:

18 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE ARRANGEMENT--
19 APPROVAL OF DEPARTMENT.--

20 A. When a [~~school district contemplates entering~~
21 ~~into a lease purchase arrangement for a building or other real~~
22 ~~property payable in whole or in part from ad valorem taxes, the~~
23 ~~local school board, before initiating any proceedings for~~
24 ~~approval of such a lease purchase arrangement]~~ local school
25 board determines, pursuant to Subsection B of Section 22-26A-6

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1 NMSA 1978, that a lease purchase arrangement is in the best
2 interest of the school district, the board shall forward to the
3 department a copy of the proposed lease purchase arrangement
4 and the source of funds that the local school board has
5 identified to make payments due under the lease purchase
6 arrangement.

7 B. A local school board shall not enter into a
8 lease purchase arrangement without the approval of the
9 department."

10 Section 5. Section 22-26A-5 NMSA 1978 (being Laws 2007,
11 Chapter 173, Section 5) is amended to read:

12 "22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease
13 purchase arrangements:

14 A. may have payments payable [~~at intervals or at~~
15 ~~maturity as may be~~] annually or more frequently as determined
16 by the local school board;

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

22 C. may have a final payment date [~~or mature at any~~
23 ~~time or times~~] not exceeding [~~twenty~~] thirty years after the
24 date of execution;

25 [~~D. may be payable at one time or in installments~~

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1 ~~or may be in such other form as may be determined by the local~~
2 ~~school board;~~

3 ~~E. may be priced at, above or below par and at a~~
4 ~~price that results in a net effective interest rate that does~~
5 ~~not exceed the maximum permitted by the Public Securities Act;~~

6 ~~F. may be acquired or executed by public bid, by~~
7 ~~negotiated sale or placement or directly negotiated or placed~~
8 ~~with the owner of the building or other real property subject~~
9 ~~to the lease purchase arrangement;]~~

10 D. may be acquired or executed at a public or
11 negotiated sale;

12 E. may be entered into between the local school
13 board and the owner of the building or other real property who
14 may be a trustee or other person that issues or sells
15 certificates of participation or other interests in the
16 payments to be made under the lease purchase arrangement, the
17 proceeds of which may be used to acquire the building or other
18 real property;

19 F. shall specify the principal and interest
20 component of each payment made under the lease purchase
21 arrangement; provided that the net effective interest rate
22 shall not exceed the maximum permitted by the Public Securities
23 Act;

24 G. shall provide that, if the school district makes
25 capital improvements to the building or other real property,

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1 there shall be no change in the lease payments or final payment
2 without a written amendment approved by the department;

3 H. shall provide that, if state or school district
4 funds, above those required for lease payments, are used to
5 construct or acquire improvements, the cost of the improvements
6 shall constitute a lien on the real estate in favor of the
7 school district and then, if the lease purchase arrangement is
8 terminated prior to the final payment and the release of the
9 security interest or the transfer of title at the option of the
10 school district:

11 (1) the school district may foreclose on the
12 real estate lien; or

13 (2) the current market value of the building
14 or other real property at the time of termination, as
15 determined by an independent appraisal, in excess of the
16 outstanding principal due under the lease purchase arrangement
17 shall be paid to the school district;

18 ~~[G.]~~ I. shall provide that there is no legal
19 obligation for the school district to continue the lease
20 purchase arrangement from year to year or to purchase the
21 building or other real property; ~~[and~~

22 ~~H.]~~ J. shall provide that the lease purchase
23 arrangement shall be terminated if sufficient money is not
24 available to meet any current lease payment;

25 K. shall provide that, with the prior approval of

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1 the lessor, which shall not be unreasonably withheld, the lease
2 purchase arrangement is assignable without cost to the school
3 district, if the lessee is a charter school, to a locally
4 chartered or state-chartered charter school or to the state or
5 one of its institutions, instrumentalities or other political
6 subdivisions. The assignee shall acquire all rights and
7 benefits of its predecessor in interest under the terms and
8 conditions of the lease purchase arrangement; and

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

14 Section 6. A new section of the Public School Lease
15 Purchase Act, Section 22-26A-5.1 NMSA 1978, is enacted to read:

16 "22-26A-5.1. [NEW MATERIAL] TRANSFER OR ASSIGNMENT OF
17 LEASE PURCHASE ARRANGEMENT--DESIGNATION AS PUBLIC PROPERTY.--

18 A. A holder of a lease purchase arrangement,
19 including any public entity holding a lease purchase
20 arrangement, may secure financing by issuing certificates of
21 participation or otherwise assigning or transferring all or a
22 portion of the lease purchase arrangement.

23 B. A building or other real property subject to a
24 lease purchase arrangement that has been entered into and
25 approved pursuant to the Public School Lease Purchase Act shall

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1 be considered to be a public property."

2 Section 7. Section 22-26A-6 NMSA 1978 (being Laws 2007,
3 Chapter 173, Section 6) is amended to read:

4 "22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--
5 RESOLUTION.--

6 A. If a local school board proposes to acquire a
7 building or other real property through a lease purchase
8 arrangement, it shall comply with the requirements of this
9 section and the provisions of the Open Meetings Act.

10 B. At a regular meeting or at a special meeting
11 called for the purpose of considering the acquisition of a
12 building or other real property through a lease purchase
13 arrangement, a local school board shall:

14 (1) make a determination of the necessity for
15 acquiring the building or other real property through a lease
16 purchase arrangement;

17 (2) determine the estimated cost of the
18 buildings or other real property needed;

19 (3) review a summary of the terms of the
20 proposed lease purchase arrangement;

21 (4) identify the source of funds for the lease
22 purchase payments;

23 (5) if obtaining all or part of the funds
24 needed requires or anticipates the imposition of a property
25 tax, determine the estimated rate of the tax and what, if any,

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1 the percentage increase in property taxes will be for real
2 property owners in the school district; and

3 (6) if the board [~~agrees~~] determines that the
4 lease purchase arrangement is in the best interest of the
5 school district, forward a copy of the arrangement to the
6 department pursuant to Section [~~4 of the Public School Lease~~
7 ~~Purchase Act~~] 22-26A-4 NMSA 1978.

8 C. After receiving department approval of the lease
9 purchase arrangement, the local school board may adopt a final
10 resolution approving the lease purchase of the building or
11 other real property.

12 D. If the local school board finds that obtaining
13 all or part of the funds needed for the lease purchase
14 arrangement requires the imposition of a property tax, the
15 board may also adopt a resolution to be presented to the voters
16 pursuant to Section [~~8 of the Public School Lease Purchase Act~~]
17 22-26A-8 NMSA 1978, provided that: [~~before adopting the~~
18 ~~resolution, the local school board shall consider, at a public~~
19 ~~meeting, requests by a charter school for funds needed for a~~
20 ~~lease purchase arrangement entered into by the charter school.~~
21 ~~If the local school board determines that the revenue from the~~
22 ~~proposed tax should also be used for the lease purchase~~
23 ~~arrangement entered into by the charter school, then]~~

24 (1) if a charter school that is located within
25 the school district has notified the local school board that

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1 the charter school has been approved to enter into a lease
2 purchase arrangement and has identified revenue from the
3 proposed tax as a source of needed funds, the local school
4 board:

5 (a) shall include the tax revenue needed
6 by the charter school in the resolution if the charter school
7 is a locally chartered or state-chartered charter school whose
8 charter has been renewed at least once; and

9 (b) may, in its discretion, include the
10 tax revenue needed by the charter school in the resolution if
11 the charter school is a locally chartered charter school prior
12 to its first renewal term; and

13 (2) if the tax revenue for a charter school is
14 included in the resolution and, if the tax is approved in an
15 election pursuant to Sections [8 through 12 of the Public
16 School Lease Purchase Act] 22-26A-8 through 22-26A-12 NMSA
17 1978, the local school board shall distribute an amount of the
18 tax revenue, as established in its [determination] resolution,
19 to the charter school to be used in the lease purchase
20 arrangement.

21 ~~[D.]~~ E. The local school board shall not adopt a
22 resolution for or approve a lease purchase arrangement for a
23 term that exceeds ~~[twenty]~~ thirty years."

24 Section 8. Section 22-26A-7 NMSA 1978 (being Laws 2007,
25 Chapter 173, Section 7) is amended to read:

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1 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A
2 school district may apply any legally available funds to [~~the~~
3 ~~payments due on or any prepayment premium payable in connection~~
4 ~~with lease purchase arrangements as they become due]~~ acquire or
5 improve buildings or other real property subject to a lease
6 purchase arrangement or to the payments due under a lease
7 purchase arrangement, including any combination of:

8 A. money from the school district's general fund;

9 B. investment income actually received from
10 investments;

11 C. proceeds from [~~taxes imposed to pay school~~
12 ~~district general obligation bonds or]~~ taxes imposed pursuant to
13 the Public School Capital Improvements Act or the Public School
14 Buildings Act; [~~or the Educational Technology Equipment Act;~~

15 ~~D. revenues received from the sale of bonds or~~
16 ~~notes pursuant to the School Revenue Bond Act or the School~~
17 ~~District Bond Anticipation Notes Act;~~

18 ~~E.]~~ D. loans, grants or lease payments received
19 from the public school capital outlay council pursuant to the
20 Public School Capital Outlay Act;

21 [~~F.]~~ E. state distributions to the school district
22 pursuant to the Public School Improvements Act;

23 [~~G.]~~ F. fees or assessments received by the school
24 district;

25 [~~H.]~~ G. proceeds from the sale of real property and

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1 rental income received from the rental or leasing of school
2 district property;

3 ~~[F.]~~ H. grants from the federal government as
4 assistance to those areas affected by federal activity
5 authorized in accordance with Title 20 of the United States
6 Code, commonly known as "PL 874 funds" or "impact aid"; ~~[and~~

7 ~~J.]~~ I. revenues from the tax authorized pursuant to
8 Sections ~~[8 through 12 of the Public School Lease Purchase Act]~~
9 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local
10 school board and approved by the voters; and

11 J. legislative appropriations."

12 Section 9. Section 22-26A-8 NMSA 1978 (being Laws 2007,
13 Chapter 173, Section 8) is amended to read:

14 "22-26A-8. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
15 QUESTION OF LEASE PURCHASE TAX.--A local school board may adopt
16 a resolution to submit to the qualified electors of the school
17 district the question of whether a property tax at a rate not
18 to exceed the rate specified in the resolution should be
19 imposed upon the net taxable value of property allocated to the
20 school district under the Property Tax Code for the purpose of
21 making payments under ~~[a specific]~~ lease purchase ~~[arrangement]~~
22 arrangements. The resolution shall:

23 A. specify the maximum rate of the proposed tax,
24 which shall not exceed ten dollars (\$10.00) on each one
25 thousand dollars (\$1,000) of net taxable value of property

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1 allocated to the school district under the Property Tax Code;

2 B. specify the date an election will be held to
3 submit the question of imposition of the tax to the qualified
4 electors of the district; and

5 C. limit the imposition of the proposed tax to no
6 more than [~~twenty~~] thirty property tax years."

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

9 "22-26A-10. CONDUCT OF ELECTION--NOTICE--BALLOT.--

10 A. An election on the question of imposing a tax
11 under Sections [~~8 through 12 of the Public School Lease~~
12 ~~Purchase Act~~] 22-26A-8 through 22-26A-12 NMSA 1978 may be held
13 in conjunction with a regular school district election or may
14 be conducted as or held in conjunction with a special school
15 district election, but the election shall be held prior to July
16 1 of the property tax year in which the tax is proposed to be
17 imposed. Conduct of the election shall be as prescribed in the
18 School Election Law for regular and special school district
19 elections.

20 B. The resolution required to be published as
21 notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978
22 shall include as the question to be submitted to the voters
23 whether a property tax at a rate not to exceed the rate
24 specified in the authorizing resolution should be imposed for
25 the specified number of property tax years not exceeding

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1 ~~[twenty]~~ thirty years upon the net taxable value of all
2 property allocated to the school district for payments due
3 under lease purchase arrangements.

4 C. The ballot shall include the information
5 specified in Subsection B of this section and shall present the
6 voter the choice of voting "for the lease purchase tax" or
7 "against the lease purchase tax".

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

10 "22-26A-12. IMPOSITION OF TAX--LIMITATIONS.--If as a
11 result of an election held in accordance with Sections [8
12 ~~through 11 of the Public School Lease Purchase Act~~] 22-26A-8
13 through 22-26A-11 NMSA 1978 a majority of the qualified
14 electors voting on the question votes in favor of the
15 imposition of the tax, the tax rate shall be certified, unless
16 the local school board directs that the tax levy not be made
17 for the year, by the department of finance and administration
18 at the rate specified in the authorizing resolution or at a
19 lower rate directed by the local school board and the tax shall
20 be imposed at the rate certified in accordance with the
21 provisions of the Property Tax Code. The revenue produced by
22 the tax shall be expended only for payments due under lease
23 purchase arrangements, as specified in the authorizing
24 resolution."

25 Section 12. Section 22-26A-15 NMSA 1978 (being Laws 2007,
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1 Chapter 173, Section 15) is amended to read:

2 "22-26A-15. AGREEMENT OF THE STATE.--The state does
3 hereby pledge to and agree with the holders of any lease
4 purchase arrangement, certificates of participation or other
5 partial interest in a lease purchase arrangement entered into
6 under the Public School Lease Purchase Act that the state will
7 not limit or alter the rights [~~hereby~~] vested in school
8 districts to fulfill the terms of any lease purchase
9 arrangement or related sublease arrangement or in any way
10 impair the rights and remedies of the holders of lease purchase
11 arrangements, certificates of participation or other partial
12 interests in lease purchase arrangements until the payments due
13 thereon, and all costs and expenses in connection with any
14 action or proceedings by or on behalf of those holders, are
15 fully met and discharged. School districts are authorized to
16 include this pledge and agreement of the state in any lease
17 purchase arrangement or related sublease arrangement."

18 Section 13. Section 22-26A-16 NMSA 1978 (being Laws 2007,
19 Chapter 173, Section 16) is amended to read:

20 "22-26A-16. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND
21 FIDUCIARIES.--Lease purchase arrangements entered into under
22 the authority of the Public School Lease Purchase Act,
23 including certificates of participation and other partial
24 interests in such lease purchase arrangements, shall be legal
25 investments in which all insurance companies, banks and savings

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1 and loan associations organized under the laws of the state,
2 public officers and public bodies and all administrators,
3 guardians, executors, trustees and other fiduciaries may
4 properly and legally invest funds."

5 Section 14. Section 22-26A-17 NMSA 1978 (being Laws 2007,
6 Chapter 173, Section 17) is amended to read:

7 "22-26A-17. TAX EXEMPTION.--The state covenants with the
8 original holder and all subsequent holders and transferees of
9 lease purchase arrangements entered into by the local school
10 boards, in consideration of the acceptance of and payment for
11 the lease purchase arrangements entered into pursuant to the
12 Public School Lease Purchase Act, that lease purchase
13 arrangements, certificates of participation and other partial
14 interests in lease purchase arrangements and the interest
15 income from the lease purchase arrangements, certificates of
16 participation and other partial interests shall at all times be
17 free from taxation by the state, except for estate or gift
18 taxes and taxes on transfers."

19 Section 15. Section 22-26A-19 NMSA 1978 (being Laws 2007,
20 Chapter 173, Section 19) is amended to read:

21 "22-26A-19. LEASE PURCHASE ARRANGEMENTS FOR CHARTER
22 SCHOOLS.--A locally chartered or state-chartered charter school
23 may enter into a lease purchase arrangement pursuant to the
24 Public School Lease Purchase Act, provided that a governing
25 body of a charter school shall not adopt a resolution pursuant

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1 to Subsection D of Section 22-26A-6 NMSA 1978 and shall not
2 propose a tax or conduct an election pursuant to Sections [~~8~~
3 ~~through 12 of that act]~~ 22-26A-8 through 22-26A-12 NMSA 1978,
4 but nothing in this section prevents a charter school from
5 receiving revenue from a tax proposed by the local school board
6 for the district in which the charter school is located and
7 approved by the voters."

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