

AN ACT

RELATING TO THE PUBLIC SCHOOLS; ENACTING THE PUBLIC SCHOOL LEASE PURCHASE ACT; ALLOWING, UNDER CERTAIN CIRCUMSTANCES, PUBLIC SCHOOL FACILITIES TO BE ACQUIRED PURSUANT TO LEASE PURCHASE ARRANGEMENTS; AUTHORIZING ADDITIONAL PROPERTY TAXES FOR SCHOOL DISTRICTS UPON THE APPROVAL OF THE QUALIFIED ELECTORS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--Sections 1 through 20 of this act may be cited as the "Public School Lease Purchase Act"."

Section 2. A new section of the Public School Code is enacted to read:

"PURPOSE.--The purpose of the Public School Lease Purchase Act is to implement the provision of Article 9, Section 11 of the constitution of New Mexico, as approved by the voters of the state of New Mexico at the general election held in November 2006, which declares that a financing agreement entered into by a school district or a charter school for leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the school district or charter school pursuant to the financing agreement is not a debt if:

A. there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and

B. the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments."

Section 3. A new section of the Public School Code is enacted to read:

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

B. except as limited by Section 19 of the Public School Lease Purchase Act, "local school board" includes the governing body of a locally chartered or state-chartered

charter school; and

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

Section 4. A new section of the Public School Code is enacted to read:

"NOTICE OF PROPOSED LEASE PURCHASE ARRANGEMENT--APPROVAL OF DEPARTMENT.--

A. When a school district contemplates entering into a lease purchase arrangement for a building or other real property payable in whole or in part from ad valorem taxes, the local school board, before initiating any proceedings for approval of such a lease purchase arrangement, shall forward to the department a copy of the proposed lease purchase arrangement and the source of funds that the local school board has identified to make payments due under the lease purchase arrangement.

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

Section 5. A new section of the Public School Code is enacted to read:

"LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease purchase arrangements:

A. may have payments payable at intervals or at

maturity as may be determined by the local school board;

B. may be subject to prepayment at the option of the local school board at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the local school board;

C. may have a final payment date or mature at any time or times not exceeding twenty years after the date of execution;

D. may be payable at one time or in installments or may be in such other form as may be determined by the local school board;

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

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

G. shall provide that there is no legal obligation for the school district to continue the lease purchase arrangement from year to year or to purchase the building or other real property; and

H. shall provide that the lease purchase arrangement shall be terminated if sufficient money is not

available to meet any current lease payment."

Section 6. A new section of the Public School Code is enacted to read:

"AUTHORIZING LEASE PURCHASE ARRANGEMENTS--RESOLUTION.--

A. If a local school board proposes to acquire a building or other real property through a lease purchase arrangement, it shall comply with the requirements of this section.

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

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

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

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

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

(5) if obtaining all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes will be for real

property owners in the school district; and

(6) if the board agrees that the lease purchase arrangement is in the best interest of the school district, forward a copy of the arrangement to the department pursuant to Section 4 of the Public School Lease Purchase Act.

C. After receiving department approval of the lease purchase arrangement, the local school board may adopt a final resolution approving the lease purchase of the building or other real property. If the local school board finds that obtaining all or part of the funds needed for the lease purchase arrangement requires the imposition of a property tax, the board may also adopt a resolution to be presented to the voters pursuant to Section 8 of the Public School Lease Purchase Act, provided that, before adopting the resolution, the local school board shall consider, at a public meeting, requests by a charter school for funds needed for a lease purchase arrangement entered into by the charter school. If the local school board determines that the revenue from the proposed tax should also be used for the lease purchase arrangement entered into by the charter school, then, if the tax is approved in an election pursuant to Sections 8 through 12 of the Public School Lease Purchase Act, the local school board shall distribute an amount of the tax revenue, as established in its determination, to the charter school to be used in the lease purchase arrangement.

D. The local school board shall not adopt a resolution for or approve a lease purchase arrangement for a term that exceeds twenty years."

Section 7. A new section of the Public School Code is enacted to read:

"PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A school district may apply any legally available funds to the payments due on or any prepayment premium payable in connection with lease purchase arrangements as they become due, including any combination of:

- A. money from the school district's general fund;
- B. investment income actually received from investments;
- C. proceeds from taxes imposed to pay school district general obligation bonds or taxes imposed pursuant to the Public School Capital Improvements Act, the Public School Buildings Act or the Educational Technology Equipment Act;
- D. revenues received from the sale of bonds or notes pursuant to the School Revenue Bond Act or the School District Bond Anticipation Notes Act;
- E. loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act;
- F. state distributions to the school district pursuant to the Public School Improvements Act;

G. fees or assessments received by the school district;

H. proceeds from the sale of real property and rental income received from the rental or leasing of school district property;

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

J. revenues from the tax authorized pursuant to Sections 8 through 12 of the Public School Lease Purchase Act, if proposed by the local school board and approved by the voters."

Section 8. A new section of the Public School Code is enacted to read:

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

A. specify the rate of the proposed tax, which



shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

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

C. limit the imposition of the proposed tax to no more than twenty property tax years."

Section 9. A new section of the Public School Code is enacted to read:

"AUTHORIZING RESOLUTION--TIME LIMITATION.--The resolution authorized under Section 8 of the Public School Lease Purchase Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed."

Section 10. A new section of the Public School Code is enacted to read:

"CONDUCT OF ELECTION--NOTICE--BALLOT.--

A. An election on the question of imposing a tax under Sections 8 through 12 of the Public School Lease Purchase Act may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law

for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding twenty years upon the net taxable value of all property allocated to the school district for payments due under lease purchase arrangements.

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

Section 11. A new section of the Public School Code is enacted to read:

"ELECTION RESULTS--CERTIFICATION.--The certification of the results of an election held on the question of imposition of a lease purchase tax shall be made in accordance with the School Election Law, and a copy of the certificate of results shall be mailed immediately to the secretary."

Section 12. A new section of the Public School Code is enacted to read:

"IMPOSITION OF TAX--LIMITATIONS.--If as a result of an election held in accordance with Sections 8 through 11 of the

Public School Lease Purchase Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code. The revenue produced by the tax shall be expended only for payments due under lease purchase arrangements, as specified in the authorizing resolution."

Section 13. A new section of the Public School Code is enacted to read:

"PUBLICATION OF NOTICE--VALIDATION.--

A. After adoption of a resolution approving a lease purchase arrangement, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the local school board preliminary to and in the authorization of and entering into the lease purchase arrangement described in the notice is perpetually barred."

Section 14. A new section of the Public School Code is

enacted to read:

"REFUNDING OR REFINANCING LEASE PURCHASE ARRANGEMENTS.--  
School districts may enter into lease purchase arrangements for the purpose of refunding or refinancing any lease purchase arrangements then outstanding, including the payment of any prepayment premiums thereon and any interest accrued or to accrue to the date of prepayment maturity of the outstanding lease purchase arrangements. Until the proceeds of the lease purchase arrangements issued for the purpose of refunding or refinancing outstanding lease purchase arrangements are applied to the prepayment or retirement of the outstanding lease purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the local school board, also be applied to the payment of the outstanding lease purchase arrangements to be refunded or refinanced by prepayment or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the local school board to be used for payment of the refunding or refinancing lease purchase arrangement. If the proceeds from a tax imposed pursuant to Sections 8 through 12 of the Public School Lease Purchase Act were used as a source of payments for the

refunded lease purchase arrangement, the proceeds may continue to be used for the refunding or refinancing lease purchase arrangements without the requirement of an additional election on the issue."

Section 15. A new section of the Public School Code is enacted to read:

"AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any lease purchase arrangement entered into under the Public School Lease Purchase Act that the state will not limit or alter the rights hereby vested in school districts to fulfill the terms of any lease purchase arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. School districts are authorized to include this pledge and agreement of the state in any lease purchase arrangement."

Section 16. A new section of the Public School Code is enacted to read:

"LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND FIDUCIARIES.--Lease purchase arrangements entered into under the authority of the Public School Lease Purchase Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the

state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds."

Section 17. A new section of the Public School Code is enacted to read:

"TAX EXEMPTION.--The state covenants with the original holder and all subsequent holders and transferees of lease purchase arrangements entered into by the local school boards, in consideration of the acceptance of and payment for the lease purchase arrangements entered into pursuant to the Public School Lease Purchase Act, that lease purchase arrangements and the income from the lease purchase arrangements shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers."

Section 18. A new section of the Public School Code is enacted to read:

"CUMULATIVE AND COMPLETE AUTHORITY.--The Public School Lease Purchase Act shall be deemed to provide an additional and alternative method for acquiring buildings and other real property authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The Public School Lease Purchase Act shall be deemed to provide complete authority for acquiring buildings

and other real property and entering into lease purchase arrangements contemplated thereby, and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease purchase arrangements, and the local school board acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts."

Section 19. A new section of the Public School Code is enacted to read:

"LEASE PURCHASE ARRANGEMENTS FOR CHARTER SCHOOLS.--A locally chartered or state-chartered charter school may enter into a lease purchase arrangement pursuant to the Public School Lease Purchase Act, provided that a governing body of a charter school shall not propose a tax or conduct an election pursuant to Sections 8 through 12 of that act, but nothing in this section prevents a charter school from receiving revenue from a tax proposed by the local school board for the district in which the charter school is located and approved by the voters."

Section 20. A new section of the Public School Code is enacted to read:

"LIBERAL INTERPRETATION.--The Public School Lease Purchase Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes."

Section 21. Section 22-18-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 228, as amended) is amended to read:

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

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

- (1) erecting, remodeling, making additions to and furnishing school buildings;
- (2) purchasing or improving school grounds;
- (3) purchasing computer software and hardware for student use in public schools;
- (4) providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act;
- (5) making payments pursuant to a financing agreement entered into by the school district or a charter school located in the school district for the leasing of a building or other real property with an option to purchase for a price that is reduced according to payments made; or
- (6) any combination of these purposes.



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