

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL LEASE PURCHASE ACT; 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 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; or

(5) 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."

Section 2. Section 22-26A-1 NMSA 1978 (being Laws 2007, Chapter 173, Section 1) is amended to read:

"22-26A-1. SHORT TITLE.--Chapter 22, Article 26A NMSA 1978 may be cited as the "Public School Lease Purchase Act"."

Section 3. Section 22-26A-4 NMSA 1978 (being Laws 2007, Chapter 173, Section 4) is amended to read:

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

A. When a local school board determines, pursuant to Subsection B of Section 22-26A-6 NMSA 1978, that a lease purchase arrangement is in the best interest of the school district, the board 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 4. Section 22-26A-5 NMSA 1978 (being Laws 2007, Chapter 173, Section 5) is amended to read:

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

A. may have payments payable annually or more frequently as 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 determined by the local school board;

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

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

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

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

G. shall 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 the department;

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

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

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

I. 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;

J. shall provide that the lease purchase

arrangement shall be terminated if sufficient money is not available to meet any current lease payment;

K. shall provide that, with the prior approval of the lessor, which shall not be unreasonably withheld, the lease purchase arrangement is assignable without cost to the school district, if the lessee is a charter school, to a locally chartered or state-chartered charter school or to the state or one of its institutions, instrumentalities or other political subdivisions. The assignee shall acquire all rights and benefits of its predecessor in interest under the terms and conditions of the lease purchase arrangement; and

L. shall provide 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, shall be approved by the department."

Section 5. A new section of the Public School Lease Purchase Act, Section 22-26A-5.1 NMSA 1978, is enacted to read:

"22-26A-5.1. TRANSFER OR ASSIGNMENT OF LEASE PURCHASE ARRANGEMENT--DESIGNATION AS PUBLIC PROPERTY.--

A. A holder of a lease purchase arrangement, including any public entity holding a lease purchase arrangement, may secure financing by issuing certificates of participation or otherwise assigning or transferring all or a

portion of the lease purchase arrangement.

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

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

"22-26A-6. 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 and the provisions of the Open Meetings Act.

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 determines 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 22-26A-4 NMSA 1978.

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.

D. 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 22-26A-8 NMSA 1978, provided that:

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

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

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

(2) if the tax revenue for a charter school is included in the resolution and, if the tax is approved in an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, the local school board shall distribute an amount of the tax revenue, as established in its resolution, to the charter school to be used in the lease purchase arrangement.

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

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

"22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A school district may apply any legally available funds 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, 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 pursuant to the Public School Capital Improvements Act or the Public School Buildings Act;
- D. loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act;
- E. state distributions to the school district pursuant to the Public School Improvements Act;
- F. fees or assessments received by the school district;
- G. proceeds from the sale of real property and rental income received from the rental or leasing of school district property;
- H. 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";
- I. revenues from the tax authorized pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local school board and approved by the voters; and
- J. legislative appropriations."

Section 8. Section 22-26A-8 NMSA 1978 (being Laws 2007,

Chapter 173, Section 8) is amended to read:

"22-26A-8. 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 lease purchase arrangements. The resolution shall:

A. specify the maximum 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 thirty property tax years."

Section 9. Section 22-26A-10 NMSA 1978 (being Laws 2007, Chapter 173, Section 10) is amended to read:

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

A. An election on the question of imposing a tax under Sections 22-26A-8 through 22-26A-12 NMSA 1978 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 thirty 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 10. Section 22-26A-12 NMSA 1978 (being Laws 2007, Chapter 173, Section 12) is amended to read:

"22-26A-12. IMPOSITION OF TAX--LIMITATIONS.--If as a result of an election held in accordance with Sections 22-26A-8 through 22-26A-11 NMSA 1978 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 or at a lower rate directed by the local school board 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 11. Section 22-26A-15 NMSA 1978 (being Laws 2007, Chapter 173, Section 15) is amended to read:

"22-26A-15. AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any lease purchase arrangement, certificates of participation or other partial interest in a lease purchase arrangement entered into under the Public School Lease Purchase Act that the state will not limit or alter the rights vested in school districts to fulfill the terms of any lease purchase arrangement or related sublease arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements, certificates of participation or other partial interests in 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 or related sublease arrangement."

Section 12. Section 22-26A-16 NMSA 1978 (being Laws 2007, Chapter 173, Section 16) is amended to read:

"22-26A-16. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND FIDUCIARIES.--Lease purchase arrangements entered into under the authority of the Public School Lease Purchase Act, including certificates of participation and other partial interests in such lease purchase arrangements, 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 13. Section 22-26A-17 NMSA 1978 (being Laws 2007, Chapter 173, Section 17) is amended to read:

"22-26A-17. 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, certificates of participation and other partial interests in lease purchase arrangements and the

interest income from the lease purchase arrangements, certificates of participation and other partial interests shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers."

Section 14. Section 22-26A-19 NMSA 1978 (being Laws 2007, Chapter 173, Section 19) is amended to read:

"22-26A-19. 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 adopt a resolution pursuant to Subsection D of Section 22-26A-6 NMSA 1978 and shall not propose a tax or conduct an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, 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."
