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SENATE BILL 140

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Sander Rue

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE ENTERING INTO A LEASE AGREEMENT OR LEASE-PURCHASE AGREEMENT FOR SCHOOL FACILITIES OR BEFORE APPLYING FOR A GRANT FOR LEASE PAYMENTS; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

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

Section 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1, as amended by Laws 2003, Chapter 142, Section 3 and by Laws 2003, Chapter 349, Section 22) is amended to read:

"13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF FINANCE APPROVAL.--

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1 A. Except as provided in Section 13-6-3 NMSA 1978,
2 for state agencies, any sale, trade or lease for a period of
3 more than five years of real property belonging to a state
4 agency, local public body or school district or any sale, trade
5 or lease of such real property for a consideration of more than
6 twenty-five thousand dollars (\$25,000) shall not be valid
7 unless it is approved prior to its effective date by the state
8 board of finance.

9 B. The provisions of this section shall not be
10 applicable [~~as~~] to:

11 (1) those institutions specifically enumerated
12 in Article 12, Section 11 of the constitution of New Mexico;

13 (2) the state land office;

14 (3) the state transportation commission; [~~or~~]

15 (4) the economic development department when
16 disposing of property acquired pursuant to the Statewide
17 Economic Development Finance Act; or

18 (5) a school district when leasing facilities
19 to a locally chartered or state-chartered charter school."

20 Section 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
21 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
22 as amended) is amended to read:

23 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

24 A. The facilities of a charter school that is
25 approved on or after July 1, 2005 and before July 1, 2015 shall

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1 meet educational occupancy standards required by applicable New
2 Mexico construction codes.

3 B. The facilities of a charter school whose charter
4 has been renewed at least once shall be evaluated, prioritized
5 and eligible for grants pursuant to the Public School Capital
6 Outlay Act in the same manner as all other public schools in
7 the state; provided that for charter school facilities in
8 leased facilities, grants may be used to provide additional
9 lease payments for leasehold improvements made by the lessor.

10 C. On or after July 1, 2010, a new charter school
11 shall not open and an existing charter school shall not
12 relocate unless the facilities of the new or relocated charter
13 school, as measured by the New Mexico condition index, receive
14 a condition rating equal to or better than the average
15 condition for all New Mexico public schools for that year.

16 [~~G.~~] D. On or after July 1, 2015, a new charter
17 school shall not open and an existing charter shall not be
18 renewed unless the charter school:

19 (1) is housed in a building that is:

20 (a) owned by the charter school, the
21 school district, the state, an institution of the state,
22 another political subdivision of the state, the federal
23 government or one of its agencies or a tribal government; or

24 (b) subject to a lease-purchase
25 arrangement that has been entered into and approved pursuant to

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1 the Public School Lease Purchase Act; or

2 (2) if it is not housed in a building
3 described in Paragraph (1) of this subsection, demonstrates
4 that:

5 (a) the facility in which the charter
6 school is housed meets the statewide adequacy standards
7 developed pursuant to the Public School Capital Outlay Act and
8 the owner of the facility is contractually obligated to
9 maintain those standards at no additional cost to the charter
10 school or the state; and

11 (b) either: 1) public buildings are not
12 available or adequate for the educational program of the
13 charter school; or 2) the owner of the facility is a nonprofit
14 entity specifically organized for the purpose of providing the
15 facility for the charter school.

16 E. A charter school shall not enter into a lease
17 agreement or lease-purchase agreement and shall not apply for a
18 lease payment grant pursuant to Subsection I of Section 22-24-4
19 NMSA 1978 without the approval of the public school facilities
20 authority under Section 22-20-1 NMSA 1978.

21 [~~D.~~] F. The public school capital outlay council:

22 (1) shall determine whether facilities of a
23 charter school meet the educational occupancy standards
24 pursuant to the requirements of Subsection A of this section
25 or the requirements of Subsections B, [~~and~~] C and D of this

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1 section, as applicable; and

2 (2) upon a determination that specific
3 requirements are not appropriate or reasonable for a charter
4 school, may grant a variance from those requirements for that
5 charter school."

6 Section 3. Section 22-20-1 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 270, as amended) is amended to read:

8 "22-20-1. SCHOOL CONSTRUCTION--LEASE AGREEMENTS--LEASE-
9 PURCHASE AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL
10 OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH
11 STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE
12 STANDARDS APPLICABLE.--

13 A. Except as provided in Subsection [D] G of this
14 section, each local school board or governing body of a charter
15 school shall secure the approval of the director of the public
16 school facilities authority or the director's designee prior
17 to:

18 (1) the construction or letting of contracts
19 for construction of any school building or related school
20 structure; [~~or before~~]

21 (2) entering into a lease agreement or a
22 lease-purchase agreement for a building to be used as a school
23 building or a related school structure;

24 (3) submitting an application for a lease
25 payment grant pursuant to Subsection I of Section 22-24-4 NMSA

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1 1978, provided that, upon the initial approval of an
2 application for a lease payment grant, approval is not required
3 for subsequent annual applications unless the lease payment
4 grant is to be used for different facilities; or

5 (4) reopening an existing structure that was
6 [~~formerly used as a school building but that has not been used~~
7 ~~for that purpose~~] not used as a school building during the
8 previous year.

9 B. A written application shall be submitted to the
10 director requesting approval of the construction, lease
11 agreement, lease-purchase agreement, lease payment grant
12 application or reopening, and, upon receipt, the director shall
13 forward a copy of the application to the secretary. The
14 director shall prescribe the form of the application, which
15 shall include the following:

- 16 (1) a statement of need;
17 (2) the anticipated number of students
18 affected [~~by the construction~~];
19 (3) the estimated cost;
20 (4) for approval of construction, a
21 description of the proposed construction project;
22 (5) for approval of a lease agreement, a
23 lease-purchase agreement, a lease payment grant application or
24 a reopening of an existing structure, a description of the
25 structure to be leased or reopened, including its location,

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1 square footage, interior layout and facilities, such as
2 bathrooms, kitchens and handicap access, a description of the
3 prior use of the structure and a description of how the
4 facility and supplemental shared facilities and resources will
5 fulfill the functions necessary to support the educational
6 programs of the school district or charter school;

7 [~~(5)~~] (6) a map of the area showing existing
8 school attendance centers within a five-mile radius and any
9 obstructions to attending the attendance centers, such as
10 railroad tracks, rivers and limited-access highways; and

11 [~~(6)~~] (7) other information as may be required
12 by the director.

13 [~~B-~~] C. With respect to an application for the
14 approval of construction, the director or the director's
15 designee shall give approval to an application if the director
16 or designee reasonably determines that:

17 (1) the construction will not cause an
18 unnecessary proliferation of school construction;

19 (2) the construction is needed in the school
20 district or by the charter school;

21 (3) the construction is feasible;

22 (4) the cost of the construction is
23 reasonable;

24 (5) the school district or charter school has
25 submitted a five-year facilities plan that includes:

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- 1 (a) enrollment projections;
- 2 (b) a current preventive maintenance
- 3 plan;
- 4 (c) the capital needs of charter schools
- 5 chartered by the school district, if applicable, or the capital
- 6 needs of the charter school if it is state-chartered; and
- 7 (d) projections for the facilities
- 8 needed in order to maintain a full-day kindergarten program;
- 9 (6) the construction project:
- 10 (a) is in compliance with the statewide
- 11 adequacy standards adopted pursuant to the Public School
- 12 Capital Outlay Act; and
- 13 (b) is appropriately integrated into the
- 14 school district or charter school five-year facilities plan;
- 15 (7) the school district or charter school is
- 16 financially able to pay for the construction; and
- 17 (8) the secretary has certified that the
- 18 construction will support the educational program of the school
- 19 district or charter school.
- 20 D. With respect to an application for the approval
- 21 of a lease agreement or lease payment grant application, the
- 22 director or the director's designee shall give approval to an
- 23 application if the director reasonably determines that the
- 24 buildings to be leased meet educational occupancy standards
- 25 required by applicable New Mexico construction codes.

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1 E. With respect to an application for the approval
2 of a lease-purchase agreement or for the reopening of an
3 existing structure, the director or the director's designee
4 shall give approval to an application if the director or
5 designee reasonably determines that:

6 (1) the buildings to be reopened or leased for
7 purchase meet the applicable statewide adequacy standards
8 adopted pursuant to the Public School Capital Outlay Act or the
9 buildings can be brought into compliance with those standards
10 within a reasonable time and at a reasonable cost and that
11 money is available to the school district or charter school to
12 bring the buildings up to those standards; and

13 (2) the buildings to be reopened or leased for
14 purchase have, as measured by the New Mexico condition index, a
15 condition rating equal to or better than the average condition
16 for all New Mexico public schools for that year.

17 ~~[E.]~~ F. Within thirty days after the receipt of an
18 application filed pursuant to this section, the director or the
19 director's designee shall in writing notify the local school
20 board or governing body of a charter school making the
21 application and the department of approval or disapproval of
22 the application.

23 ~~[D.]~~ G. By rule, the public school capital outlay
24 council may:

25 (1) exempt classes or types of construction

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1 from the application and approval requirements of this section;
2 or

3 (2) exempt classes or types of construction
4 from the requirement of approval but, if the council determines
5 that information concerning the construction is necessary for
6 the maintenance of the facilities assessment database, require
7 a description of the proposed construction project and related
8 information to be submitted to the public school facilities
9 authority.

10 [~~E.~~] H. A local school board or governing body of a
11 charter school shall not enter into a contract for the
12 construction of a public school facility, including contracts
13 funded with insurance proceeds, unless the contract contains
14 provisions requiring the construction to be in compliance with
15 the statewide adequacy standards adopted pursuant to the Public
16 School Capital Outlay Act, provided that, for a contract funded
17 in whole or in part with insurance proceeds:

18 (1) the cost of settlement of any insurance
19 claim shall not be increased by inclusion of the insurance
20 proceeds in the construction contract; and

21 (2) insurance claims settlements shall
22 continue to be governed by insurance policies, memoranda of
23 coverage and rules related to them.

24 [~~F.~~] I. Public school facilities shall be
25 constructed pursuant to state standards or codes promulgated

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1 pursuant to the Construction Industries Licensing Act and rules
2 adopted pursuant to Section 59A-52-15 NMSA 1978 for the
3 prevention and control of fires in public occupancies.
4 Building standards or codes adopted by a municipality or county
5 do not apply to the construction of public school facilities,
6 except those structures constructed as a part of an educational
7 program of a school district or charter school.

8 ~~[G.]~~ J. The provisions of Subsection ~~[F]~~ I of this
9 section relating to fire protection shall not be effective
10 until the public regulation commission has adopted the
11 International Fire Code and all standards related to that code.

12 ~~[H.]~~ K. As used in this section, "construction"
13 means any project for which the construction industries
14 division of the regulation and licensing department requires
15 permitting and for which the estimated total cost exceeds two
16 hundred thousand dollars (\$200,000)."

17 Section 4. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2010.