

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL LEASE
PURCHASE ACT TO CLARIFY THE DEFINITION OF "GOVERNING BODY";
ESTABLISHING THE RELATIONSHIP BETWEEN A GOVERNING BODY AND A
SCHOOL DISTRICT OR A CHARTER SCHOOL IN THE ACQUISITION OF
PUBLIC SCHOOL FACILITIES PURSUANT TO LEASE PURCHASE
ARRANGEMENTS; REPEALING A SECTION OF THE NMSA 1978.

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

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

"22-26A-3. 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

1 payment; and

2 B. "governing body" means:

3 (1) the governing structure of a charter
4 school, as set forth in its approved charter; or

5 (2) a local school board as the governing
6 structure of a school district."

7 SECTION 2. Section 22-26A-4 NMSA 1978 (being Laws 2007,
8 Chapter 173, Section 4, as amended) is amended to read:

9 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE
10 ARRANGEMENT--APPROVAL OF DEPARTMENT.--

11 A. When a governing body determines, pursuant to
12 Subsection B of Section 22-26A-6 NMSA 1978, that a lease
13 purchase arrangement is in the best interest of the school
14 district or the charter school, the governing body shall
15 forward to the department a copy of the proposed lease
16 purchase arrangement and the source of funds that the
17 governing body has identified to make payments due under the
18 lease purchase arrangement.

19 B. A governing body shall not enter into a lease
20 purchase arrangement without the approval of the department."

21 SECTION 3. Section 22-26A-5 NMSA 1978 (being Laws 2007,
22 Chapter 173, Section 5, as amended) is amended to read:

23 "22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease
24 purchase arrangements:

25 A. may have payments payable annually or more

1 frequently as determined by the governing body;

2 B. may be subject to prepayment at the option of
3 the governing body at such time or times and upon such terms
4 and conditions with or without the payment of such premium or
5 premiums as determined by the governing body;

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

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

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

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

22 G. shall provide that, if the school district or
23 charter school makes capital improvements to the building or
24 other real property, there shall be no change in the lease
25 payments or final payment without a written amendment

1 approved by the department;

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

11 (1) the school district or charter school
12 may foreclose on the 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 certified by the
16 taxation and revenue department, in excess of the outstanding
17 principal due under the lease purchase arrangement shall be
18 paid to the school district or charter school;

19 I. shall provide that there is no legal obligation
20 for the school district or charter school to continue the
21 lease purchase arrangement from year to year or to purchase
22 the building or other real property;

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

1 K. shall provide that, with the prior approval of
2 the lessor, which shall not be unreasonably withheld, the
3 lease purchase arrangement is assignable, without cost to the
4 school district, or charter school and with all of the rights
5 and benefits of its predecessor in interest being transferred
6 to the assignee, to:

7 (1) a school district or charter school; or

8 (2) the state or one of its institutions,
9 instrumentalities or other political subdivisions; and

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

15 SECTION 4. Section 22-26A-6 NMSA 1978 (being Laws 2007,
16 Chapter 173, Section 6, as amended) is amended to read:

17 "22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--
18 RESOLUTION.--

19 A. If a governing body proposes to acquire a
20 building or other real property through a lease purchase
21 arrangement, it shall comply with the requirements of this
22 section and the provisions of the Open Meetings Act.

23 B. At a regular meeting or at a special meeting
24 called for the purpose of considering the acquisition of a
25 building or other real property through a lease purchase

1 arrangement, a governing body shall:

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

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

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

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

11 (5) if obtaining all or part of the funds
12 needed requires or anticipates the imposition of a property
13 tax, determine the estimated rate of the tax and what, if
14 any, the percentage increase in property taxes will be for
15 real property owners in the school district; and

16 (6) if the governing body determines that
17 the lease purchase arrangement is in the best interest of the
18 school district or charter school, forward a copy of the
19 arrangement to the department pursuant to Section 22-26A-4
20 NMSA 1978.

21 C. After receiving department approval of the
22 lease purchase arrangement, the governing body may adopt a
23 final resolution approving the lease purchase of the building
24 or other real property.

25 D. If a local school board finds that obtaining

1 all or part of the funds needed for a lease purchase
2 arrangement requires the imposition of a property tax, the
3 board may adopt a resolution to be presented to the voters
4 pursuant to Section 22-26A-8 NMSA 1978.

5 E. If the governing body of a charter school finds
6 that obtaining all or part of the necessary funds requires
7 the imposition of a property tax, the local school board of
8 the school district in which the charter school is located
9 may adopt a resolution to be presented to the voters,
10 pursuant to Section 22-26A-8 NMSA 1978; provided that the
11 governing body of the charter school has notified the local
12 school board that the charter school has been approved to
13 enter into a lease purchase arrangement and has identified
14 revenue from the proposed tax as a necessary source of funds.
15 The local school board:

16 (1) shall include the tax revenue needed by
17 the charter school in the resolution if the school's charter
18 has been renewed at least once; and

19 (2) may include the tax revenue needed by
20 the charter school in the resolution if the charter school is
21 a locally chartered charter school prior to its first renewal
22 term.

23 F. If a local school board adopts a resolution
24 that includes tax revenue for a charter school, and, if the
25 tax is approved in an election pursuant to Sections 22-26A-8

1 through 22-26A-12 NMSA 1978, the local school board shall
2 distribute an amount of the tax revenue, as established in
3 its resolution, to the charter school to be used in the lease
4 purchase arrangement.

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

8 SECTION 5. Section 22-26A-7 NMSA 1978 (being Laws 2007,
9 Chapter 173, Section 7, as amended) is amended to read:

10 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE

11 ARRANGEMENTS.--A school district or charter school may apply
12 any legally available funds to acquire or improve buildings
13 or other real property subject to a lease purchase
14 arrangement or to the payments due under a lease purchase
15 arrangement, including any combination of:

16 A. money from the school district's or charter
17 school's general fund;

18 B. investment income actually received from
19 investments;

20 C. proceeds from taxes imposed pursuant to the
21 Public School Capital Improvements Act or the Public School
22 Buildings Act;

23 D. loans, grants or lease payments received from
24 the public school capital outlay council pursuant to the
25 Public School Capital Outlay Act;

1 E. state distributions to the school district or
2 charter school pursuant to the Public School Capital
3 Improvements Act;

4 F. fees or assessments received by the school
5 district;

6 G. proceeds from the sale of real property and
7 rental income received from the rental or leasing of school
8 district or charter school property;

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

13 I. revenues from the tax authorized pursuant to
14 Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by
15 the local school board and approved by the voters; and

16 J. legislative appropriations."

17 SECTION 6. Section 22-26A-13 NMSA 1978 (being Laws
18 2007, Chapter 173, Section 13) is amended to read:

19 "22-26A-13. PUBLICATION OF NOTICE--VALIDATION.--

20 A. After adoption of a resolution approving a
21 lease purchase arrangement, the governing body shall publish
22 notice of the adoption of the resolution once in a newspaper
23 of general circulation in the school district in which the
24 governing body's school is located.

25 B. After the passage of thirty days from the

1 publication required by Subsection A of this section, any
2 action attacking the validity of the proceedings taken by the
3 governing body preliminary to and in the authorization of and
4 entering into the lease purchase arrangement described in the
5 notice is perpetually barred."

6 SECTION 7. Section 22-26A-14 NMSA 1978 (being Laws
7 2007, Chapter 173, Section 14) is amended to read:

8 "22-26A-14. REFUNDING OR REFINANCING LEASE PURCHASE
9 ARRANGEMENTS.--School districts and charter schools may enter
10 into lease purchase arrangements for the purpose of refunding
11 or refinancing any lease purchase arrangements then
12 outstanding, including the payment of any prepayment premiums
13 thereon and any interest accrued or to accrue to the date of
14 prepayment maturity of the outstanding lease purchase
15 arrangements. Until the proceeds of the lease purchase
16 arrangements issued for the purpose of refunding or
17 refinancing outstanding lease purchase arrangements are
18 applied to the prepayment or retirement of the outstanding
19 lease purchase arrangements, the proceeds may be placed in
20 escrow and invested and reinvested. The interest, income and
21 profits, if any, earned or realized on any such investment
22 may, in the discretion of the governing body, also be applied
23 to the payment of the outstanding lease purchase arrangements
24 to be refunded or refinanced by prepayment or retirement, as
25 the case may be. After the terms of the escrow have been

1 fully satisfied and carried out, any balance of such proceeds
2 and interest, if any, earned or realized on the investments
3 thereof may be returned to the governing body to be used for
4 payment of the refunding or refinancing lease purchase
5 arrangement. If the proceeds from a tax imposed pursuant to
6 Sections 22-26A-8 through 22-26A-12 NMSA 1978 were used as a
7 source of payments for the refunded lease purchase
8 arrangement, the proceeds may continue to be used for the
9 refunding or refinancing lease purchase arrangements without
10 the requirement of an additional election on the issue."

11 SECTION 8. Section 22-26A-15 NMSA 1978 (being Laws
12 2007, Chapter 173, Section 15, as amended) is amended to
13 read:

14 "22-26A-15. AGREEMENT OF THE STATE.--The state does
15 hereby pledge to and agree with the holders of any lease
16 purchase arrangement, certificates of participation or other
17 partial interest in a lease purchase arrangement entered into
18 under the Public School Lease Purchase Act that the state
19 will not limit or alter the rights vested in school districts
20 or charter schools to fulfill the terms of any lease purchase
21 arrangement or related sublease arrangement or in any way
22 impair the rights and remedies of the holders of lease
23 purchase arrangements, certificates of participation or other
24 partial interests in lease purchase arrangements until the
25 payments due thereon, and all costs and expenses in

1 connection with any action or proceedings by or on behalf of
2 those holders, are fully met and discharged. School
3 districts and charter schools are authorized to include this
4 pledge and agreement of the state in any lease purchase
5 arrangement or related sublease arrangement."

6 SECTION 9. Section 22-26A-17 NMSA 1978 (being Laws
7 2007, Chapter 173, Section 17, as amended) is amended to
8 read:

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

21 SECTION 10. Section 22-26A-18 NMSA 1978 (being Laws
22 2007, Chapter 173, Section 18) is amended to read:

23 "22-26A-18. CUMULATIVE AND COMPLETE AUTHORITY.--The
24 Public School Lease Purchase Act shall be deemed to provide
25 an additional and alternative method for acquiring buildings

1 and other real property authorized thereby and shall be
2 regarded as supplemental and additional to powers conferred
3 by other laws and shall not be regarded as a derogation of
4 any powers now existing. The Public School Lease Purchase
5 Act shall be deemed to provide complete authority for
6 acquiring buildings and other real property and entering into
7 lease purchase arrangements contemplated thereby, and no
8 other approval of any state agency or officer, except as
9 provided therein, shall be required with respect to any lease
10 purchase arrangements, and the governing body acting
11 thereunder need not comply with the requirements of any other
12 law applicable to the issuance of debt by school districts."

13 SECTION 11. REPEAL.--Section 22-26A-19 NMSA 1978 (being
14 Laws 2007, Chapter 173, Section 19, as amended) is repealed.

15 SECTION 12. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2015. _____