

BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

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 LOCALLY CHARTERED OR STATE-CHARTERED 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

.197795.1

1 or other real property with an option to purchase for a price
2 that is reduced according to the payments made, which periodic
3 lease payments composed of principal and interest components
4 are to be paid to the holder of the agreement and pursuant to
5 which the owner of the building or other real property may
6 retain title to or a security interest in the building or other
7 real property and may agree to release the security interest or
8 transfer title to the building or other real property to the
9 school district for nominal consideration after payment of the
10 final periodic lease payment; and

11 ~~[B. except as limited by Section 19 of the Public~~
12 ~~School Lease Purchase Act, "local school board" includes the~~
13 ~~governing body of a locally chartered or state-chartered~~
14 ~~charter school; and~~

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

18 B. "governing body" means:

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

21 (2) a local school board as the governing
22 structure of a school district."

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

25 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE

.197795.1

1 ARRANGEMENT--APPROVAL OF DEPARTMENT.--

2 A. When a [~~local school board~~] governing body
3 determines, pursuant to Subsection B of Section 22-26A-6 NMSA
4 1978, that a lease purchase arrangement is in the best interest
5 of the school district or the charter school, the [~~board~~]
6 governing body shall forward to the department a copy of the
7 proposed lease purchase arrangement and the source of funds
8 that the [~~local school board~~] governing body has identified to
9 make payments due under the lease purchase arrangement.

10 B. A [~~local school board~~] governing body shall not
11 enter into a lease purchase arrangement without the approval of
12 the department."

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

15 "22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease
16 purchase arrangements:

17 A. may have payments payable annually or more
18 frequently as determined by the [~~local school board~~] governing
19 body;

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

25 C. may have a final payment date not exceeding

.197795.1

1 thirty years after the date of execution;

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

4 E. may be entered into between the [~~local school~~
5 ~~board~~] governing body and the owner of the building or other
6 real property who may be a trustee or other person that issues
7 or sells certificates of participation or other interests in
8 the payments to be made under the lease purchase arrangement,
9 the proceeds of which may be used to acquire the building or
10 other real property;

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

16 G. shall provide that, if the school district or
17 charter school makes capital improvements to the building or
18 other real property, there shall be no change in the lease
19 payments or final payment without a written amendment approved
20 by the department;

21 H. shall provide that, if state, [~~or~~] school
22 district or charter school funds, above those required for
23 lease payments, are used to construct or acquire improvements,
24 the cost of the improvements shall constitute a lien on the
25 real estate in favor of the school district or charter school

.197795.1

1 and then, if the lease purchase arrangement is terminated prior
2 to the final payment and the release of the security interest
3 or the transfer of title at the option of the school district
4 or charter school:

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

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

13 I. shall provide that there is no legal obligation
14 for the school district or charter school to continue the lease
15 purchase arrangement from year to year or to purchase the
16 building or other real property;

17 J. shall provide that the lease purchase
18 arrangement shall be terminated if sufficient money is not
19 available to meet any current lease payment;

20 K. shall provide that, with the prior approval of
21 the lessor, which shall not be unreasonably withheld, the lease
22 purchase arrangement is assignable, without cost to the school
23 district, [~~if the lessee is a charter school~~] and with all of
24 the rights and benefits of its predecessor in interest being
25 transferred to the assignee, to:

1 (1) a locally chartered or state-chartered
2 charter school, if the lessee is a charter school; or ~~[to]~~

3 (2) the state or one of its institutions,
4 instrumentalities or other political subdivisions ~~[The assignee~~
5 ~~shall acquire all rights and benefits of its predecessor in~~
6 ~~interest under the terms and conditions of the lease purchase~~
7 ~~arrangement]~~; and

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

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

15 "22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--
16 RESOLUTION.--

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

22 B. At a regular meeting or at a special meeting
23 called for the purpose of considering the acquisition of a
24 building or other real property through a lease purchase
25 arrangement, a ~~[local school board]~~ governing body shall:

.197795.1

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

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

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

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

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

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

20 C. After receiving department approval of the lease
21 purchase arrangement, the ~~[local school board]~~ governing body
22 may adopt a final resolution approving the lease purchase of
23 the building or other real property.

24 D. If ~~[the]~~ a local school board finds that
25 obtaining all or part of the funds needed for ~~[the]~~ a lease

1 purchase arrangement requires the imposition of a property tax,
2 the board may ~~[also]~~ adopt a resolution to be presented to the
3 voters pursuant to Section 22-26A-8 NMSA 1978. ~~[provided that]~~

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

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

20 ~~(a)]~~ shall include the tax revenue needed
21 by the charter school in the resolution if the ~~[charter school~~
22 ~~is a locally chartered or state-chartered charter school whose]~~
23 school's charter has been renewed at least once; and

24 ~~[(b)]~~ (2) may ~~[in its discretion]~~ include the
25 tax revenue needed by the charter school in the resolution if

1 the charter school is a locally chartered charter school prior
2 to its first renewal term. [~~and~~
3 ~~(2) if the tax revenue for a charter school is~~
4 ~~included in the resolution]~~

5 F. If a local school board adopts a resolution that
6 includes tax revenue for a charter school, and, if the tax is
7 approved in an election pursuant to Sections 22-26A-8 through
8 22-26A-12 NMSA 1978, the local school board shall distribute an
9 amount of the tax revenue, as established in its resolution, to
10 the charter school to be used in the lease purchase
11 arrangement.

12 [~~E.~~] G. The local school board shall not adopt a
13 resolution for or approve a lease purchase arrangement for a
14 term that exceeds thirty years."

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

17 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A
18 school district or charter school may apply any legally
19 available funds to acquire or improve buildings or other real
20 property subject to a lease purchase arrangement or to the
21 payments due under a lease purchase arrangement, including any
22 combination of:

- 23 A. money from the school district's general fund;
24 B. investment income actually received from
25 investments;

.197795.1

1 C. proceeds from taxes imposed pursuant to the
2 Public School Capital Improvements Act or the Public School
3 Buildings Act;

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

7 E. state distributions to the school district
8 pursuant to the Public School Capital Improvements Act;

9 F. fees or assessments received by the school
10 district;

11 G. proceeds from the sale of real property and
12 rental income received from the rental or leasing of school
13 district property;

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

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

21 J. legislative appropriations."

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

24 "22-26A-13. PUBLICATION OF NOTICE--VALIDATION.--

25 A. After adoption of a resolution approving a lease

1 purchase arrangement, the ~~[local school board]~~ governing body
2 shall publish notice of the adoption of the resolution once in
3 a newspaper of general circulation in the school district in
4 which the governing body's school is located.

5 B. After the passage of thirty days from the
6 publication required by Subsection A of this section, any
7 action attacking the validity of the proceedings taken by the
8 ~~[local school board]~~ governing body preliminary to and in the
9 authorization of and entering into the lease purchase
10 arrangement described in the notice is perpetually barred."

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

13 "22-26A-14. REFUNDING OR REFINANCING LEASE PURCHASE
14 ARRANGEMENTS.--School districts and charter schools may enter
15 into lease purchase arrangements for the purpose of refunding
16 or refinancing any lease purchase arrangements then
17 outstanding, including the payment of any prepayment premiums
18 thereon and any interest accrued or to accrue to the date of
19 prepayment maturity of the outstanding lease purchase
20 arrangements. Until the proceeds of the lease purchase
21 arrangements issued for the purpose of refunding or refinancing
22 outstanding lease purchase arrangements are applied to the
23 prepayment or retirement of the outstanding lease purchase
24 arrangements, the proceeds may be placed in escrow and invested
25 and reinvested. The interest, income and profits, if any,

.197795.1

1 earned or realized on any such investment may, in the
2 discretion of the [~~local school board~~] governing body, also be
3 applied to the payment of the outstanding lease purchase
4 arrangements to be refunded or refinanced by prepayment or
5 retirement, as the case may be. After the terms of the escrow
6 have been fully satisfied and carried out, any balance of such
7 proceeds and interest, if any, earned or realized on the
8 investments thereof may be returned to the [~~local school board~~]
9 governing body to be used for payment of the refunding or
10 refinancing lease purchase arrangement. If the proceeds from a
11 tax imposed pursuant to Sections [~~8 through 12 of the Public~~
12 ~~School Lease Purchase Act~~] 22-26A-8 through 22-26A-12 NMSA 1978
13 were used as a source of payments for the refunded lease
14 purchase arrangement, the proceeds may continue to be used for
15 the refunding or refinancing lease purchase arrangements
16 without the requirement of an additional election on the
17 issue."

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

20 "22-26A-15. AGREEMENT OF THE STATE.--The state does
21 hereby pledge to and agree with the holders of any lease
22 purchase arrangement, certificates of participation or other
23 partial interest in a lease purchase arrangement entered into
24 under the Public School Lease Purchase Act that the state will
25 not limit or alter the rights vested in school districts or

1 charter schools to fulfill the terms of any lease purchase
2 arrangement or related sublease arrangement or in any way
3 impair the rights and remedies of the holders of lease purchase
4 arrangements, certificates of participation or other partial
5 interests in lease purchase arrangements until the payments due
6 thereon, and all costs and expenses in connection with any
7 action or proceedings by or on behalf of those holders, are
8 fully met and discharged. School districts and charter schools
9 are authorized to include this pledge and agreement of the
10 state in any lease purchase arrangement or related sublease
11 arrangement."

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

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

.197795.1

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

3 "22-26A-18. CUMULATIVE AND COMPLETE AUTHORITY.--The
4 Public School Lease Purchase Act shall be deemed to provide an
5 additional and alternative method for acquiring buildings and
6 other real property authorized thereby and shall be regarded as
7 supplemental and additional to powers conferred by other laws
8 and shall not be regarded as a derogation of any powers now
9 existing. The Public School Lease Purchase Act shall be deemed
10 to provide complete authority for acquiring buildings and other
11 real property and entering into lease purchase arrangements
12 contemplated thereby, and no other approval of any state agency
13 or officer, except as provided therein, shall be required with
14 respect to any lease purchase arrangements, and the [~~local~~
15 ~~school board~~] governing body acting thereunder need not comply
16 with the requirements of any other law applicable to the
17 issuance of debt by school districts."

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

20 **SECTION 12.** EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2015.