

SENATE BILL 322

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

John M. Sapien

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO HIGHER EDUCATION; AMENDING THE COLLEGE DISTRICT TAX ACT; ADDING DEFINITIONS; PROVIDING FOR LEASE-PURCHASE ARRANGEMENTS FOR COLLEGE DISTRICTS; PROVIDING FOR LIBERAL INTERPRETATION AND SEVERABILITY; DECLARING AN EMERGENCY.

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

SECTION 1. Section 21-2A-2 NMSA 1978 (being Laws 1995, Chapter 224, Section 8) is amended to read:

"21-2A-2. DEFINITIONS.--As used in the College District Tax Act:

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A. "board" means the governing board of the college district;

B. "college" means a two-year, public post-secondary educational institution organized pursuant to the provisions of the Community College Act, Chapter 21, Article 14 NMSA 1978, the Technical and Vocational Institute Act [~~Chapter 21, Article 17 NMSA 1978~~] or the Off-Campus Instruction Act; [~~and~~]

C. "college district" means a district in which a college is located or is proposed to be located, the exterior boundaries of which are determined pursuant to the statutory provisions under which the college is organized;

D. "debt" means an obligation payable from ad valorem property tax revenues or the general fund of a college district and that may be secured by the full faith and credit of a college district and a pledge of its taxing powers;

E. "education technology equipment" means tools used in the educational process that constitute learning and administrative resources and may include:

(1) closed-circuit television systems; educational television and radio broadcasting; cable television, satellite, copper and fiber-optic transmission; computer, network connection devices; digital communications equipment, including voice, video and data; servers; switches; portable media such as discs and drives to contain data for

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electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in colleges and related facilities;

(2) improvements, alterations and modifications to, or expansions of, existing buildings or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection; and

(3) expenditures for technical support and training expenses of college district employees who administer education technology projects funded by a lease-purchase arrangement and may include training by contractors; and

F. "lease-purchase arrangement" means a financing arrangement constituting debt of a college district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the college district for nominal consideration after payment of the final periodic lease payment. "Lease-purchase arrangement" also means any debt of the college district incurred for the

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purpose of acquiring educational technology equipment whether designated as a general obligation lease, note or other instrument evidencing a debt of the college district."

SECTION 2. A new section of the College District Tax Act is enacted to read:

"[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE ARRANGEMENTS--NOTICE--PROCESS FOR APPROVING LEASE-PURCHASE ARRANGEMENTS--LIMITATION OF ACTION.--

A. When a college district contemplates entering into a lease-purchase arrangement payable in whole or in part from ad valorem taxes, the board, before initiating any proceedings for approval of such lease-purchase arrangement, shall forward to the higher education department a written notice of the proposed lease-purchase arrangement.

B. The higher education department, upon the receipt of the notice provided for in Subsection A of this section, shall furnish all necessary information with reference to the valuation, present outstanding bonded indebtedness, present outstanding lease-purchase arrangements and limitations as to tax rates and debt contracting power and other information useful to the board in the consideration of a proposed lease-purchase arrangement. Upon entering into a lease-purchase arrangement, the board shall prepare two true and complete transcripts of proceedings relating to the lease-purchase arrangement, one to be immediately filed with the

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higher education department and one to be kept by the board.

C. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement, a board shall:

(1) make a determination of the necessity for lease-purchasing the educational technology equipment;

(2) determine the estimated cost of the equipment needed;

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

(4) identify the source of funds for the payment of debt;

(5) if all or part of the funds needed require or anticipate the imposition of SFC→**and** **an**←SFC ad valorem tax, determine the estimated rate of the ad valorem tax and what, if any, the percentage increase in ad valorem taxes for all taxable property in the college district would be;

(6) set a date for a meeting to consider a resolution granting final approval to the lease-purchase arrangement; and

(7) direct that notice of the meeting provided for in Paragraph (6) of this subsection be published once each week for the two weeks immediately preceding the meeting in a newspaper having general circulation in the college district and that the notice include the information required in

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Paragraphs (1) through (5) of this subsection.

D. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement as set forth in Subsection C of this section, a board may adopt an authorizing instrument in compliance with the requirements of Section 6-14-10.2 NMSA 1978. The requirements of Paragraphs (6) and (7) of Subsection C of this section shall not apply if the board adopts such an authorizing instrument.

E. At a meeting scheduled pursuant to Paragraph (6) of Subsection C of this section, the board may adopt a final resolution approving the lease-purchase arrangement only by an affirmative vote of a majority of all members of the board.

F. After the adoption by the board of a final resolution approving the lease-purchase arrangement or after the final approval of a lease-purchase arrangement by delegation as provided for in Subsection D of this section, the board shall publish notice of the adoption of the resolution or the approval of the lease-purchase arrangement once in a newspaper SFC→~~of~~ **having**←SFC general circulation in the college district. After the passage of thirty days from the publication required by this subsection, any action attacking the validity of the proceedings taken by the board preliminary to, in the authorization of and entering into the lease-purchase arrangement described in the notice is perpetually barred."

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SECTION 3. A new section of the College District Tax Act is enacted to read:

"[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE ARRANGEMENTS--TAX LEVY--TERMS OF LEASE-PURCHASE ARRANGEMENTS--REFUNDING OR REFINANCING.--

A. The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Annual payments due on lease-purchase arrangements may be combined with other college district general obligation debt when determining the annual debt service tax levy pursuant to Section 7-37-8 NMSA 1978 and the College District Tax Act. This annual debt service tax levy shall not exceed five dollars (\$5.00) per one thousand dollars (\$1,000) of taxable value; provided, however, that this limitation may be exceeded in any year in which the valuation of property in the college district declines to a level lower than the valuation of property in the year in which the applicable debt was issued. Nothing in the College District Tax Act shall be so construed as to prevent a college district from applying any other legally available funds, including funds that may be in its general fund or investment income actually received from investments, to the payments due on or any prepayment premium payable in connection with such lease-

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purchase arrangements as the same become due, and, upon such payments, the levy or levies provided for in this section may, to that extent, be reduced.

B. Lease-purchase arrangements may:

(1) have interest, appreciated principal value, or any part thereof, payable at intervals or at maturity as may be determined by the board;

(2) be subject to prior redemption or prepayment at the option of the 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 board;

(3) have a final payment date or mature at any time or times not exceeding five years after the date of issuance;

(4) be payable at one time or in installments or may be in such other form as may be determined by the board;

(5) 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; and

(6) be sold or issued at public sale, negotiated sale or private sale to the New Mexico finance authority.

C. The board shall not adopt a resolution for or approve a lease-purchase arrangement that exceeds five years or

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creates a total general obligation indebtedness in the college district which, when combined with other outstanding college district general obligation debt, exceeds three percent of the assessed valuation of the taxable property within the college district as shown in the preceding general assessment SFC→, ~~which debt limitation is to be in excess of other existing debt limitations.~~ ←SFC

D. College districts are authorized to enter into lease-purchase arrangements for the purpose of refunding or refinancing any lease-purchase arrangements then outstanding, including the payment of any prepayment of redemption premiums thereon and any interest accrued or to accrue to the date of purchase, prepayment, redemption or 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 purchase, prepayment, redemption 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 board, also be applied to the payment of the outstanding lease-purchase arrangements to be refunded or refinanced by purchase, prepayment, redemption or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any

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balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the board to be used for payment of the refunding or refinancing lease-purchase arrangement. All such refunding or refinancing lease-purchase arrangements shall be entered into under, secured and subject to the provisions of the College District Tax Act in the same manner and to the same extent as any other lease-purchase arrangements entered into pursuant to that act."

SECTION 4. A new section of the College District Tax Act is enacted to read:

"[NEW MATERIAL] COLLEGE DISTRICT LEASE-PURCHASE ARRANGEMENTS--AGREEMENT OF THE STATE--LEGAL INVESTMENTS--TAX EXEMPTION--CUMULATIVE AND COMPLETE AUTHORITY.--

A. The state does hereby pledge to and agree with the holders of any lease-purchase arrangement entered into pursuant to the College District Tax Act that the state will not limit or alter the rights hereby vested in college 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. College districts are authorized to include this pledge and agreement of the state in any lease-purchase arrangement.

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B. Lease-purchase arrangements entered into pursuant to the College District Tax 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.

C. The state covenants with the purchasers and all subsequent holders and transferees of lease-purchase arrangements entered into by boards, in consideration of the acceptance of and payment for the lease-purchase arrangements entered into pursuant to the College District Tax 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.

D. The College District Tax Act shall be deemed to provide an additional and alternative method for acquiring educational technology equipment 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 College District Tax Act shall be deemed to provide complete authority for acquiring educational technology equipment and entering into lease-purchase arrangements. No other approval of any state agency or officer, except as

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provided in that act, shall be required with respect to any lease-purchase arrangements, and the board acting pursuant to provisions of that act need not comply with the requirements of any other law applicable to the issuance of debt by college districts; provided, however, that a board may submit to a vote of qualified electors of the college district the question of creating debt by entering into a lease-purchase arrangement; and provided further that the board shall abide by the vote of the majority of those persons voting on the question."

SECTION 5. A new section of the College District Tax Act is enacted to read:

"[NEW MATERIAL] LIBERAL INTERPRETATION.--The College District Tax Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to the effect of the purposes of the act."

SECTION 6. A new section of the College District Tax Act is enacted to read:

"[NEW MATERIAL] SEVERABILITY.--If any part or application of the College District Tax Act is held invalid, the remainder or its application to other situations or persons shall not be affected."

SECTION 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.