The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 106

SENATE BILL 130, as amended

Introduced by
SENATOR MIMI STEWART

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE
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
payment; and

B. "governing body" means:
   (1) the governing structure of a charter
   school, as set forth in its approved charter; or
   (2) a local school board as the governing
   structure of a school district."

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

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

   A. When a governing body 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 or the charter school, the governing body shall
forward to the department a copy of the proposed lease
purchase arrangement and the source of funds that the
governing body has identified to make payments due under the
lease purchase arrangement.

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

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

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

   A. may have payments payable annually or more  "SB 130
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frequently as determined by the governing body;

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

   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 governing body
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 or
charter school 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, school district
or charter school 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 or charter school 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
or charter school:

(1) the school district or charter school
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 or charter school;

I. shall provide that there is no legal obligation
for the school district or charter school 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, or charter school and with all of the rights
and benefits of its predecessor in interest being transferred
to the assignee, to:

(1) a school district or charter school; or
(2) the state or one of its institutions,
instrumentalities or other political subdivisions; 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 or charter
school, shall be approved by the department."

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

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

A. If a governing body 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 governing body 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 governing body determines that the lease purchase arrangement is in the best interest of the school district or charter school, 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 governing body may adopt a final resolution approving the lease purchase of the building or other real property.

D. If a local school board finds that obtaining
all or part of the funds needed for a lease purchase
arrangement requires the imposition of a property tax, the
board may adopt a resolution to be presented to the voters
pursuant to Section 22-26A-8 NMSA 1978.

E. If the governing body of a charter school finds
that obtaining all or part of the necessary funds requires
the imposition of a property tax, the local school board of
the school district in which the charter school is located
may adopt a resolution to be presented to the voters,
pursuant to Section 22-26A-8 NMSA 1978; provided that the
governing body of the charter school 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 necessary source of funds.
The local school board:

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

(2) may 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.

F. If a local school board adopts a resolution
that includes tax revenue for a charter school, 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.

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

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

"22-26A-7. PAYMENTS UNDER LEASE PURCHASE
ARRANGEMENTS.--A school district or charter school 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 or charter
school'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 or charter school pursuant to the Public School Capital 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 or charter school 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 6. Section 22-26A-13 NMSA 1978 (being Laws 2007, Chapter 173, Section 13) is amended to read:

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

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

B. After the passage of thirty days from the
publication required by Subsection A of this section, any
action attacking the validity of the proceedings taken by the
governing body preliminary to and in the authorization of and
entering into the lease purchase arrangement described in the
notice is perpetually barred."
SECTION 7. Section 22-26A-14 NMSA 1978 (being Laws
2007, Chapter 173, Section 14) is amended to read:
"22-26A-14. REFUNDING OR REFINANCING LEASE PURCHASE
ARRANGEMENTS.--School districts and charter schools may enter
into lease purchase arrangements for the purpose of refunding
or refinancing any lease purchase arrangements then
outstanding, including the payment of any prepayment premiums
thereon and any interest accrued or to accrue to the date of
prepayment 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 prepayment 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 governing body, also be applied
to the payment of the outstanding lease purchase arrangements
to be refunded or refinanced by prepayment or retirement, as
the case may be. After the terms of the escrow have been
fully satisfied and carried out, any balance of such proceeds
and interest, if any, earned or realized on the investments
thereof may be returned to the governing body to be used for
payment of the refunding or refinancing lease purchase
arrangement. If the proceeds from a tax imposed pursuant to
Sections 22-26A-8 through 22-26A-12 NMSA 1978 were used as a
source of payments for the refunded lease purchase
arrangement, the proceeds may continue to be used for the
refunding or refinancing lease purchase arrangements without
the requirement of an additional election on the issue."

SECTION 8. Section 22-26A-15 NMSA 1978 (being Laws
2007, Chapter 173, Section 15, as amended) 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
or charter schools 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 and charter schools are authorized to include this pledge and agreement of the state in any lease purchase arrangement or related sublease arrangement."

SECTION 9. Section 22-26A-17 NMSA 1978 (being Laws 2007, Chapter 173, Section 17, as amended) 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 governing bodies, 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 10. Section 22-26A-18 NMSA 1978 (being Laws 2007, Chapter 173, Section 18) is amended to read:

"22-26A-18. CUMULATIVE AND COMPLETE AUTHORITY.--The Public School Lease Purchase Act shall be deemed to provide an additional and alternative method for acquiring buildings..."
and other real property authorized thereby 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 Public School Lease Purchase Act shall be deemed to provide complete authority for acquiring buildings and other real property and entering into lease purchase arrangements contemplated thereby, and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease purchase arrangements, and the governing body acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts."

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

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 9th day of April, 2015

Governor Susana Martinez
State of New Mexico