

IN THE SENATE

SENATE BILL NO. 1042, As Amended

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE PUBLIC CHARTER SCHOOL FACILITIES PROGRAM; AMENDING SECTION
2 33-5218, IDAHO CODE, TO PROVIDE AN EXEMPTION, TO REVISE A LIMITATION,
3 AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PRO-
4 VIDING AN EFFECTIVE DATE.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 33-5218, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 33-5218. PUBLIC CHARTER SCHOOL FACILITIES PROGRAM. (1) Legislative
10 intent. It is the intent of the legislature, in recognition that providing
11 Idaho students with a thorough education is an essential public purpose of
12 the state, to support public charter schools by providing a mechanism to
13 obtain favorable financing on bonds so that less money is obligated toward
14 interest payments and more money remains in public charter schools for the
15 benefit of Idaho's students. There is hereby created the public charter
16 school facilities program to assist qualifying charter schools in obtaining
17 favorable financing on bonds for facility improvements and construction.

18 (2) Eligibility. A public charter school seeking to use the public
19 charter school facilities program must receive approval from the Idaho
20 housing and finance association pursuant to requirements for issuance of
21 nonprofit facility bonds and to satisfaction of the criteria set forth in
22 this section. To qualify, a public charter school must submit the following
23 documentation to the Idaho housing and finance association:

24 (a) A letter of commitment from one (1) of the following:

25 (i) A national or state chartered financial institution;

26 (ii) A community development financial institution; or

27 (iii) A qualified underwriter or an investment firm;

28 (b) Evidence that the public charter school has been in academic, op-
29 erational, and financial good standing according to its authorizer for
30 each of the previous three (3) years;

31 (c) Annual budgets and cash flow statements projecting that the cost
32 to operate the proposed facility, including future debt service, future
33 occupancy cost, and facility operating expenses, will not exceed twenty
34 percent (20%) of ongoing revenues;

35 (d) Evidence that the school has operating reserves greater than sixty
36 (60) days of cash on hand and a debt service coverage ratio equal to or
37 greater than one and two-tenths (1.2);

38 (e) An audit opinion or opinions demonstrating:

39 (i) An unqualified audit opinion, or a qualified opinion quali-
40 fied only on the basis of not reporting the actuarial value of the
41 PERSI sick leave plan pursuant to statement no. 45 of the govern-
42 mental accounting standards board;

1 (ii) An audit devoid of significant findings and conditions, ma-
2 terial weakness, or significant internal control weakness; and

3 (iii) An audit that does not include a going concern disclosure in
4 the notes or an explanatory paragraph within the audit report for
5 three (3) consecutive years;

6 (f) Certification from a public charter school's board chair or trea-
7 surer that projected future budgets and cash flows are based on reason-
8 able assumptions related to level or increasing projected enrollment or
9 waitlist and projected total income, including any matching funds and
10 donations contingent on receipt of a loan under this section;

11 (g) Evidence of strong academic results, including above state average
12 growth or proficiency on the Idaho standards achievement test. A public
13 charter school with enrollment comprised of one hundred percent (100%)
14 at-risk students as defined by section 33-1001(3), Idaho Code, is ex-
15 empt from this requirement; and

16 (h) Any additional information requested by the Idaho housing and fi-
17 nance association.

18 (3) Approval to participate. Upon receipt of documentation satisfy-
19 ing the criteria set forth in subsection (2) of this section, the Idaho hous-
20 ing and finance association shall notify the public charter school and the
21 state treasurer that the school has been approved to participate in the pub-
22 lic charter school facilities program if:

23 (a) The public charter school complies with the requirements set forth
24 in subsection (4) of this section; and

25 (b) The public charter school's participation would not cause a viola-
26 tion of the limitations set forth in subsection (8) of this section.

27 Additional requirements and security interests may be imposed by agreement
28 of the school and bondholder or trustee.

29 (4) Restricted debt service reserve account.

30 (a) A school participating in the public charter school facilities pro-
31 gram shall agree to have deposited a minimum of twelve (12) months' pay-
32 ment on principal and interest in a restricted debt service reserve ac-
33 count established and held by the bondholder or trustee.

34 (b) Except as provided in paragraph (c) of this subsection, money in a
35 participating public charter school's restricted debt service reserve
36 account may not be withdrawn if the amount withdrawn would reduce the
37 level of money in the account to less than twelve (12) months' payment on
38 principal and interest.

39 (c) As long as applicable bonds issued under the facilities program re-
40 main outstanding, money in a restricted debt service reserve account
41 may be withdrawn in an amount that would reduce the level to less than
42 twelve (12) months' payment on principal and interest, if the money is
43 withdrawn for the purpose of:

44 (i) Paying the principal, redemption price, or interest on a bond
45 when due if the state payments intercepted pursuant to subsection

46 (5) of this section, plus funded grants and other revenues pledged
47 by the participating public charter school for payment of the
48 bond, are insufficient to make the payment; or

1 (ii) Paying any redemption premium required to be paid when the
2 bonds are redeemed prior to maturity if no bonds will remain out-
3 standing.

4 (5) Intercept. As a requirement to participate in the public charter
5 school facilities program, a participating public charter school shall pro-
6 vide a directive to the Idaho department of education that all payments to
7 the school pursuant to the state educational support program shall be paid
8 directly to the bond trustee to set aside funds in accordance with the bond
9 indenture. All remaining funds shall be forwarded to the public charter
10 school. The payment directive required in this subsection may not be revoked
11 or amended.

12 (6) Public charter school facilities program fund. There is hereby es-
13 tablished in the state treasury the public charter school facilities program
14 fund, which shall consist of moneys made available through appropriations,
15 fees, grants, gifts, or any other source to fulfill the purposes of this
16 section. Moneys in the fund are hereby continuously appropriated for the
17 purposes of this section and shall only be expended for the purposes stated
18 herein. Any interest earned on the investment of idle moneys in the pub-
19 lic charter school facilities program fund shall be returned to the public
20 charter school facilities program fund. Schools participating in the pub-
21 lic charter school facilities program shall pay a onetime fee in an amount
22 equal to one-half percent (0.5%) of par at the time of issuance and an annual
23 fee in an amount equal to seventy-five thousandths percent (0.075%) on the
24 outstanding balance, which shall be deposited in the public charter school
25 facilities program fund.

26 (7) Nonpayment.

27 (a) If a public charter school participating in the public charter
28 school facilities program has defaulted on its obligation to pay, a draw
29 on its restricted debt service reserve account shall be made, then the
30 following shall occur:

31 (i) The bond trustee shall exercise its remedies under the bond
32 indenture and loan agreement.

33 (ii) Within ten (10) days following the withdrawal from the re-
34 stricted debt service account, the ~~bond holder~~ bondholder or
35 trustee shall notify the Idaho housing and finance association,
36 the state treasurer, and the state controller of the shortfall in
37 the school's restricted debt service reserve account.

38 (iii) Within fifteen (15) days of the notice provided pursuant to
39 subparagraph (ii) of this paragraph, the controller shall trans-
40 fer, from the public charter school facilities program fund set
41 forth in subsection (6) of this section, to the public school in-
42 come fund and then to the school's restricted debt service reserve
43 account an amount equal to one (1) month's interest on the bonds
44 based on the interest payments for which the draw on the restricted
45 debt service reserve account occurred. Moneys transferred to the
46 public school income fund pursuant to this subparagraph shall be
47 continuously appropriated for such purposes.

48 (iv) By December 1 of each year, the treasurer shall submit to
49 the governor a letter certifying the amount, if any, required to
50 restore amounts on deposit in the restricted debt service reserve

1 accounts of participating public charter schools and the public
 2 charter school facilities program fund. The governor shall send
 3 to the legislature a statement of the expenditure of moneys from
 4 the public charter school facilities program fund as specified
 5 in section 8, article IV of the Idaho constitution and report the
 6 amount needed to restore funds in the restricted debt service
 7 reserve accounts to the amount required in subsection (4) (b) of
 8 this section. The legislature may appropriate money to restore
 9 amounts on deposit in the restricted debt service reserve account
 10 of a defaulting public charter school to the amounts required in
 11 subsection (4) (b) of this section or to redeem all outstanding
 12 bonds issued for a defaulting public charter school, the source of
 13 which may be the public charter school facilities program fund or
 14 any other available funds. The legislature may also appropriate
 15 money to restore amounts withdrawn from the public charter school
 16 facilities program fund.

17 (b) Repayment. If money has been withdrawn from the public charter
 18 school facilities program fund pursuant to paragraph (a) of this sub-
 19 section, the school shall repay the fund from the school's allocation of
 20 facilities funds pursuant to section 33-5208(5), Idaho Code, at a time
 21 agreed to by the superintendent of public instruction over a period of
 22 years until the amount so withdrawn has been repaid to the public char-
 23 ter school facilities program fund, as long as the repayment does not
 24 cause an event of default on a facility lease or loan.

25 (8) Limitations.

26 (a) Bonds issued for the benefit of public charter schools using the
 27 public charter school facilities program shall not be indebtedness of
 28 the state, but are special obligations payable solely from:

29 (i) Revenues or other funds pledged by the qualifying public
 30 charter school; and

31 (ii) Amounts appropriated by the legislature pursuant to subsec-
 32 tion (7) of this section.

33 (b) The Idaho housing and finance association may not use the pub-
 34 lic charter school facilities program when issuing bonds for a public
 35 charter school under the facilities program if the total par amount out-
 36 standing under the facilities program as of the proposed closing date
 37 of the bonds to be issued, plus the par amount of the bonds to be issued,
 38 would exceed the percentage of all Idaho public school students at-
 39 tending public charter schools as of July 15 of the prior calendar year
 40 multiplied by two (2) and then multiplied by the par amount of the bonds
 41 guaranteed under the Idaho school bond guaranty act as of June 30 of the
 42 prior calendar year.

43 (c) Bonds issued under the public charter school facilities program
 44 shall not be subordinate to any other obligations used to finance the
 45 same project.

46 SECTION 2. An emergency existing therefor, which emergency is hereby
 47 declared to exist, this act shall be in full force and effect on and after
 48 July 1, 2023.