

IN THE SENATE

SENATE BILL NO. 1103

BY EDUCATION COMMITTEE

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING CHAPTER 52, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-5218, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING A PUBLIC CHARTER SCHOOL FACILITIES PROGRAM.

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

SECTION 1. That Chapter 52, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-5218, Idaho Code, and to read as follows:

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

(2) Eligibility. A public charter school seeking to use the public charter school facilities program must receive approval from the Idaho housing and finance association pursuant to satisfaction of the criteria set forth in this section. To qualify, a public charter school must submit the following documentation to the Idaho housing and finance association:

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

- (i) A national or state chartered financial institution;
- (ii) A community development financial institution; or
- (iii) A qualified underwriter or an investment firm;

(b) Evidence that the public charter school is in academic, operational, and financial good standing according to its authorizer's most recent review;

(c) Annual budgets and cash flow statements projecting that the cost to operate the proposed facility, including future debt service, future occupancy cost, and facility operating expenses, will not exceed twenty percent (20%) of revenue with the benefit of the facilities program included;

(d) An audit opinion or opinions demonstrating:

- (i) An unqualified audit opinion, or a qualified opinion qualified only on the basis of not reporting the actuarial value of the PERSI sick leave plan pursuant to statement no. 45 of the governmental accounting standards board;
- (ii) An audit devoid of significant findings and conditions, material weakness, or significant internal control weakness; and

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

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

9 (f) Evidence of strong academic results, including above state average
 10 growth or proficiency on the Idaho standards achievement test; and

11 (g) Any additional information requested by the Idaho housing and fi-
 12 nance association.

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

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

20 (b) The public charter school's participation would not cause a viola-
 21 tion of the limitations set forth in subsection (7) (b) of this section.

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

24 (4) Restricted debt service reserve account.

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

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

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

39 (i) Paying the principal, redemption price, or interest on a bond
 40 when due if the state payments intercepted pursuant to subsection
 41 (6)(b) of this section, plus funded grants and other revenues
 42 pledged by the participating public charter school for payment of
 43 the bond, are insufficient to make the payment; or

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

47 (5) Public charter school facilities program fund. There is hereby es-
 48 tablished in the state treasury the public charter school facilities program
 49 fund, which shall consist of moneys made available through appropriations,
 50 fees, grants, gifts, or any other source to fulfill the purposes of this

1 section. Moneys in the fund are hereby continuously appropriated for the
 2 purposes of this section and shall only be expended for the purposes stated
 3 herein. Any interest earned on the investment of idle moneys in the public
 4 charter school facilities program fund shall be returned to the public char-
 5 ter school facilities program fund. Schools participating in the public
 6 charter school facilities program shall pay a one-time fee in an amount equal
 7 to two (2) basis points of the principal amount of the bond for which it qual-
 8 ified to use the public charter school facilities program, which shall be
 9 deposited into the public charter school facilities program fund.

10 (6) Nonpayment.

11 (a) If a public charter school participating in the public charter
 12 school facilities program defaults on an outstanding bond for which it
 13 used the facilities program after any applicable notice and cure pe-
 14 riod, then the following shall occur:

15 (i) If payment is thirty (30) days or more late, moneys shall be
 16 withdrawn from the public charter school's restricted debt ser-
 17 vice reserve account set forth in subsection (4) of this section to
 18 make the payment.

19 (ii) If the draw on the restricted debt service reserve account
 20 reduces the account below the requirement set forth in subsec-
 21 tion (4) (b) of this section, within ten (10) days following the
 22 withdrawal made pursuant to subparagraph (i) of this paragraph,
 23 the bond holder or trustee shall notify the Idaho housing and fi-
 24 nance association, the state treasurer, and the state controller
 25 of the shortfall in the school's restricted debt service reserve
 26 account.

27 (iii) Within fifteen (15) days of the notice provided pursuant to
 28 subparagraph (ii) of this paragraph, the controller shall trans-
 29 fer, from the public charter school facilities program fund set
 30 forth in subsection (5) of this section, to the public school in-
 31 come fund and then to the school's debt service reserve account,
 32 the lesser of:

33 1. The amount necessary to replenish the restricted debt
 34 service account to the requirement set forth in subsection
 35 (4) (b) of this section; or

36 2. Twelve (12) months' principal, redemption price, or in-
 37 terest on the outstanding bond, less any prior transfers to
 38 the participating public charter school's restricted debt
 39 service account made pursuant to this subsection.

40 Moneys transferred to the public school income fund pursuant to
 41 this subparagraph shall be continuously appropriated for such
 42 purposes.

43 (iv) The treasurer shall annually submit to the governor a let-
 44 ter certifying the amount required to restore amounts on deposit
 45 in the public charter school facilities program fund. The gover-
 46 nor shall send to the legislature a statement of the expenditure of
 47 moneys from the public charter school facilities program fund as
 48 specified in section 8, article IV of the Idaho constitution. The
 49 legislature may appropriate money to restore amounts on deposit in
 50 the public charter school facilities program fund.

1 (b) Intercept. As a requirement to participate in the public char-
2 ter school facilities program, a participating public charter school
3 shall provide a directive to the Idaho department of education that all
4 amounts due and payable to the participating public charter school un-
5 der this chapter shall be paid directly to the bond trustee to be applied
6 first to satisfy all current and past due payment obligations under the
7 bond indenture and loan agreement, and second, if there are funds re-
8 maining, to repayment of the public charter school facilities program
9 fund pursuant to paragraph (c) of this subsection unless otherwise pro-
10 hibited by law. All remaining funds shall be forwarded to the public
11 charter school. The payment directive required in this paragraph may
12 not be revoked or amended.

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

21 (7) Limitations.

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

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

27 (ii) Amounts appropriated by the legislature pursuant to subsec-
28 tion (6) of this section.

29 (b) The Idaho housing and finance association may not use the pub-
30 lic charter school facilities program when issuing bonds for a public
31 charter school under the facilities program if the total par amount out-
32 standing under the facilities program would:

33 (i) Exceed an amount equal to twelve (12) months' payment on prin-
34 cipal and interest multiplied by twenty (20) on debt covered by the
35 facilities program; or

36 (ii) Exceed five percent (5%) of the state's total nontaxable or
37 taxable bond and bank debt for all public district schools plus
38 debt covered under the facilities program.

39 (c) In the event of dissolution, assets shall be distributed in accor-
40 dance with the requirements set forth in section 33-5212, Idaho Code.