

IN THE SENATE

SENATE BILL NO. 1180

BY STATE AFFAIRS 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 requirements for issuance of nonprofit facility bonds and 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 has been in academic, operational, and financial good standing according to its authorizer for each of the previous three (3) years;

(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 ongoing revenues;

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

(e) 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;

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; and

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

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

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

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

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

26 (4) Restricted debt service reserve account.

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

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33 account may not be withdrawn if the amount withdrawn would reduce the  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

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38 may be withdrawn in an amount that would reduce the level to less than  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

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

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

49 (5) Intercept. As a requirement to participate in the public charter  
50 school facilities program, a participating public charter school shall pro-

1 vide a directive to the Idaho department of education that all payments to  
2 the school pursuant to the state educational support program shall be paid  
3 directly to the bond trustee to set aside funds in accordance with the bond  
4 indenture. All remaining funds shall be forwarded to the public charter  
5 school. The payment directive required in this subsection may not be revoked  
6 or amended.

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

21 (7) Nonpayment.

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

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

28 (ii) Within ten (10) days following the withdrawal from the re-  
29 stricted debt service account, the bond holder or trustee shall  
30 notify the Idaho housing and finance association, the state trea-  
31 surer, and the state controller of the shortfall in the school's  
32 restricted debt service reserve account.

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

43 (iv) By December 1 of each year, the treasurer shall submit to  
44 the governor a letter certifying the amount, if any, required to  
45 restore amounts on deposit in the restricted debt service reserve  
46 accounts of participating public charter schools and the public  
47 charter school facilities program fund. The governor shall send  
48 to the legislature a statement of the expenditure of moneys from  
49 the public charter school facilities program fund as specified  
50 in section 8, article IV of the Idaho constitution and report the

1 amount needed to restore funds in the restricted debt service  
2 reserve accounts to the amount required in subsection (4) (b) of  
3 this section. The legislature may appropriate money to restore  
4 amounts on deposit in the restricted debt service reserve account  
5 of a defaulting public charter school to the amounts required in  
6 subsection (4) (b) of this section or to redeem all outstanding  
7 bonds issued for a defaulting public charter school, the source of  
8 which may be the public charter school facilities program fund or  
9 any other available funds. The legislature may also appropriate  
10 money to restore amounts withdrawn from the public charter school  
11 facilities program fund.

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

20 (8) Limitations.

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

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

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

28 (b) The Idaho housing and finance association may not use the pub-  
29 lic charter school facilities program when issuing bonds for a public  
30 charter school under the facilities program if the total par amount out-  
31 standing under the facilities program, plus the par amount of the bonds  
32 to be issued, would exceed the percentage of all Idaho public school  
33 students attending public charter schools multiplied by the par amount  
34 of the bonds guaranteed under the Idaho school bond guaranty act.