

IN THE SENATE

SENATE BILL NO. 1042

BY EDUCATION COMMITTEE

AN ACT

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

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  
36 outstanding under the facilities program, plus the par amount of the  
37 bonds to be issued, would exceed the percentage of all Idaho public  
38 school students attending public charter schools multiplied by two (2)  
39 and then multiplied by the par amount of the bonds guaranteed under the  
40 Idaho school bond guaranty act.

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