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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3076

03/14/2016 Authored by Slocum and Bly

The bill was read for the first time and referred to the Committee on Education Finance

1.1 A bill for an act
1.2 relating to education finance; providing for charter school facilities; authorizing
1.3 appropriation bonds; establishing charter school facilities authority; amending
1.4 Minnesota Statutes 2015 Supplement, sections 124E.13, subdivision 3, by
1.5 adding subdivisions; 124E.22; proposing coding for new law in Minnesota
1.6 Statutes, chapters 16A; 124E; repealing Minnesota Statutes 2015 Supplement,
1.7 section 124E.26.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. **[16A.966] CHARTER FACILITIES APPROPRIATION BONDS.**

1.10 Subdivision 1. **Definitions.** (a) The definitions in this subdivision and in chapter
1.11 124E apply to this section.

1.12 (b) "Appropriation bond" means a bond, note, or other similar instrument of the state
1.13 payable during a biennium from one or more of the following sources:

1.14 (1) money appropriated by law from the general fund in any biennium for debt
1.15 service due:

1.16 (i) as the portion of facilities aid under section 124E.22 calculated to pay the
1.17 obligations described in subdivision 2, paragraph (b); or

1.18 (ii) as the portion of long-term maintenance revenue under section 123B.595
1.19 calculated to pay the obligations described in subdivision 2, paragraph (b);

1.20 (2) proceeds of the sale of obligations described in subdivision 2, paragraph (b);

1.21 (3) payments received for that purpose under agreements and ancillary arrangements
1.22 described in subdivision 2, paragraph (d); and

1.23 (4) investment earnings on amounts in clauses (1) to (3).

1.24 (c) "Debt service" means the amount payable in any biennium of principal, premium,
1.25 if any, and interest on appropriation bonds.

2.1 Subd. 2. **Authorization to issue appropriation bonds.** (a) Subject to the
2.2 limitations of this subdivision, the commissioner may sell and issue appropriation bonds
2.3 of the state under this section for public purposes as provided by law, including, in
2.4 particular, the financing of all or a portion of the acquisition, construction, improving, and
2.5 equipping of charter school facilities authorized by the Charter School Facilities Authority
2.6 under section 124E.30. Proceeds of the appropriation bonds must be credited to a special
2.7 appropriation charter facilities bond proceeds fund in the state treasury. Net income from
2.8 investment of the proceeds, as estimated by the commissioner, must be credited to the
2.9 special appropriation charter facilities bond proceeds fund.

2.10 (b) The commissioner of management and budget shall sell and issue bonds of the
2.11 state in an amount up to \$...... plus the amount necessary to pay the costs of issuing the
2.12 bonds in the manner, upon the terms, and with the effect prescribed in this section. As the
2.13 total outstanding amount of appropriation bonds under this section is reduced by payments
2.14 required under section 124E.22, the commissioner may sell and issue additional bonds of
2.15 the state in an amount up to the difference between \$...... and the total outstanding amount
2.16 of appropriation bonds under this section.

2.17 (c) Appropriation bonds may be issued from time to time in one or more series on
2.18 the terms and conditions the commissioner determines to be in the best interests of the
2.19 state, but the term on any series of appropriation bonds may not exceed 30 years. The
2.20 appropriation bonds of each issue and series thereof shall be dated and bear interest,
2.21 and may be includable in or excludable from the gross income of the owners for federal
2.22 income tax purposes.

2.23 (d) At the time of, or in anticipation of, issuing the appropriation bonds, and at any
2.24 time thereafter, so long as the appropriation bonds are outstanding, the commissioner may
2.25 enter into agreements and ancillary arrangements relating to the appropriation bonds,
2.26 including but not limited to trust indentures, grant agreements, lease or use agreements,
2.27 operating agreements, management agreements, liquidity facilities, remarketing or
2.28 dealer agreements, letter of credit agreements, insurance policies, guaranty agreements,
2.29 reimbursement agreements, indexing agreements, or interest exchange agreements. Any
2.30 payments made or received according to the agreement or ancillary arrangement shall be
2.31 made from or deposited as provided in the agreement or ancillary arrangement. The
2.32 determination of the commissioner included in an interest exchange agreement that the
2.33 agreement relates to an appropriation bond shall be conclusive.

2.34 (e) The commissioner may enter into written agreements or contracts relating to the
2.35 continuing disclosure of information necessary to comply with, or facilitate the issuance
2.36 of, appropriation bonds in accordance with federal securities laws, rules, and regulations,

including Securities and Exchange Commission rules and regulations in Code of Federal Regulations, title 17, section 240.15c 2-12. An agreement may be in the form of covenants with purchasers and holders of appropriation bonds set forth in the order or resolution authorizing the issuance of the appropriation bonds, or a separate document authorized by the order or resolution.

(f) The appropriation bonds are not subject to chapter 16C.

Subd. 3. **Form; procedure.** (a) Appropriation bonds may be issued in the form of bonds, notes, or other similar instruments, and in the manner provided in section 16A.672. In the event that any provision of section 16A.672 conflicts with this section, this section shall control.

(b) Every appropriation bond shall include a conspicuous statement of the limitation established in subdivision 6.

(c) Appropriation bonds may be sold at either public or private sale upon such terms as the commissioner shall determine are not inconsistent with this section and may be sold at any price or percentage of par value. Any bid received may be rejected.

(d) Appropriation bonds must bear interest at a fixed or variable rate.

(e) Notwithstanding any other law, appropriation bonds issued under this section shall be fully negotiable.

Subd. 4. **Refunding bonds.** The commissioner from time to time may issue appropriation bonds for the purpose of refunding any appropriation bonds then outstanding, including the payment of any redemption premiums on the bonds, any interest accrued or to accrue to the redemption date, and costs related to the issuance and sale of the refunding bonds. The proceeds of any refunding bonds may, in the discretion of the commissioner, be applied to the purchase or payment at maturity of the appropriation bonds to be refunded, to the redemption of the outstanding appropriation bonds on any redemption date, or to pay interest on the refunding bonds and may, pending application, be placed in escrow to be applied to the purchase, payment, retirement, or redemption. Any escrowed proceeds, pending such use, may be invested and reinvested in obligations that are authorized investments under section 11A.24. The income earned or realized on the investment may also be applied to the payment of the appropriation bonds to be refunded or interest or premiums on the refunded appropriation bonds, or to pay interest on the refunding bonds. After the terms of the escrow have been fully satisfied, any balance of the proceeds and any investment income may be returned to the general fund or, if applicable, the special appropriation charter facilities bond proceeds fund for use in any lawful manner. All refunding bonds issued under this subdivision must be prepared, executed, delivered, and secured by appropriations in the same manner as the appropriation bonds to be refunded.

4.1 Subd. 5. **Appropriation bonds as legal investments.** Any of the following entities
4.2 may legally invest any sinking funds, money, or other funds belonging to them or under
4.3 their control in any appropriation bonds issued under this section:

4.4 (1) the state, the investment board, public officers, municipal corporations, political
4.5 subdivisions, and public bodies;

4.6 (2) banks and bankers, savings and loan associations, credit unions, trust companies,
4.7 savings banks and institutions, investment companies, insurance companies, insurance
4.8 associations, and other persons carrying on a banking or insurance business; and

4.9 (3) personal representatives, guardians, trustees, and other fiduciaries.

4.10 Subd. 6. **No full faith and credit; state not required to make appropriations.** The
4.11 appropriation bonds are not public debt of the state, and the full faith, credit, and taxing
4.12 powers of the state are not pledged to the payment of the appropriation bonds or to any
4.13 payment that the state agrees to make under this section. Appropriation bonds shall not be
4.14 obligations paid directly, in whole or in part, from a tax of statewide application on any
4.15 class of property, income, transaction, or privilege. Appropriation bonds shall be payable
4.16 in each fiscal year only from amounts that the legislature may appropriate for debt service
4.17 for any fiscal year as a portion of charter school facilities aid under section 124E.22 and
4.18 long-term maintenance revenue under section 123B.595, provided that nothing in this
4.19 section shall be construed to require the state to appropriate funds sufficient to make debt
4.20 service payments with respect to the appropriation bonds in any fiscal year. Appropriation
4.21 bonds shall be canceled and shall no longer be outstanding on the earlier of (1) the first day
4.22 of a fiscal year for which the legislature shall not have appropriated amounts sufficient for
4.23 debt service based on both the prior and current February forecast under section 16A.103,
4.24 or (2) the date of final payment of the principal of and interest on the appropriation bonds.

4.25 Subd. 7. **Appropriation of proceeds.** The proceeds of appropriation bonds and
4.26 interest credited to the special appropriation charter facilities bond proceeds fund are
4.27 appropriated to the commissioner for payment of capital expenses including capitalized
4.28 interest, debt service on outstanding indebtedness of the state, and for the operating and
4.29 capital reserves of the authority, each as permitted by state and federal law, and nonsalary
4.30 expenses incurred in conjunction with the sale of the appropriation bonds, and such
4.31 proceeds may be granted, loaned, or otherwise provided to the authority for the public
4.32 purpose provided by subdivision 2, paragraph (a).

4.33 Subd. 8. **Appropriation for debt service and other purposes.** The amount
4.34 needed to pay principal and interest on appropriation bonds issued under this section
4.35 is appropriated as a portion of charter school facilities aid under section 124E.22 and
4.36 long-term maintenance revenue under section 123B.595 each fiscal year from the general

5.1 fund to the commissioner of education for transfer to the commissioner of management and
5.2 budget, subject to repeal, unallotment under section 16A.152, or cancellation, otherwise
5.3 pursuant to subdivision 6, for deposit into the bond payments account established for such
5.4 purpose in the special appropriation charter facilities bond proceeds fund.

5.5 Subd. 9. **Waiver of immunity.** The waiver of immunity by the state provided for
5.6 by section 3.751, subdivision 1, shall be applicable to the appropriation bonds and any
5.7 ancillary contracts to which the commissioner is a party.

5.8 Sec. 2. Minnesota Statutes 2015 Supplement, section 124E.13, subdivision 3, is
5.9 amended to read:

5.10 Subd. 3. **Affiliated nonprofit building corporation.** (a) A charter school may
5.11 organize an affiliated nonprofit building corporation (1) to purchase, expand, or renovate
5.12 an existing facility to serve as a school or (2) to construct a new school facility if the
5.13 charter school:

5.14 (i) has been in operation for at least six consecutive years;

5.15 (ii) as of June 30 has a net positive unreserved general fund balance in the preceding
5.16 three fiscal years;

5.17 (iii) has long-range strategic and financial plans that include enrollment projections
5.18 for at least five years;

5.19 (iv) completes a feasibility study of facility options that outlines the benefits and
5.20 costs of the options; and

5.21 (v) has a plan for purchase, renovation, or new construction which describes project
5.22 parameters and budget.

5.23 (b) An affiliated nonprofit building corporation under this subdivision must:

5.24 (1) be incorporated under section 317A;

5.25 (2) comply with applicable Internal Revenue Service regulations, including
5.26 regulations for "supporting organizations" as defined by the Internal Revenue Service;

5.27 (3) post on the school Web site the name, mailing address, bylaws, minutes of board
5.28 meetings, and the names of the current board of directors of the affiliated nonprofit
5.29 building corporation;

5.30 (4) submit to the commissioner a copy of its annual audit by December 31 of each
5.31 year; and

5.32 (5) comply with government data practices law under chapter 13.

5.33 (c) An affiliated nonprofit building corporation must not serve as the leasing agent
5.34 for property or facilities it does not own. A charter school that leases a facility from an
5.35 affiliated nonprofit building corporation that does not own the leased facility is ineligible

to receive charter school lease aid. The state is immune from liability resulting from a contract between a charter school and an affiliated nonprofit building corporation.

~~(d) Once an affiliated nonprofit building corporation is incorporated under this subdivision, the authorizer of the school must oversee the efforts of the school's board of directors to ensure the affiliated nonprofit building corporation complies with all legal requirements governing the affiliated nonprofit building corporation. A school's board of directors that fails to ensure the affiliated nonprofit building corporation's compliance violates its responsibilities and an authorizer must factor the failure into the authorizer's evaluation of the school.~~

(d) An affiliated nonprofit building corporation created before May 31, 2018, may continue to exist until any charter school facility bonds issued before May 31, 2018, are renegotiated, refunded, or redeemed. Upon any of those bonds being renegotiated, refunded, or redeemed, the facility must be transferred to the direct ownership of the school nonprofit corporation. A school renegotiating or refunding a facility owned by an affiliated building company may seek financing through the Charter School Facilities Authority or from other sources other than the authority.

(e) The authorizer of the school must oversee the efforts of the school's board of directors to ensure the affiliated nonprofit building corporation complies with all legal requirements governing the affiliated nonprofit building corporation. A school's board of directors that fails to ensure the affiliated nonprofit building corporation's compliance violates its responsibilities. The authorizer must factor this violation into the authorizer's evaluation of the school.

(f) Affiliated nonprofit building corporations formed by charter schools after May 31, 2018, are ineligible to receive public funds.

Sec. 3. Minnesota Statutes 2015 Supplement, section 124E.13, is amended by adding a subdivision to read:

Subd. 5. **Direct ownership of facilities.** (a) A charter school must be qualified under section 124E.30, subdivision 5, as determined by the Charter School Facilities Authority, to directly purchase, purchase and renovate, or construct a facility, regardless of the source of the funding used for the purchase or construction.

(b) A charter school that directly owns a facility without outstanding bonds issued through the Charter School Facilities Authority may finance facility projects that do not meet the threshold specified in section 123B.71, subdivision 8, from sources other than the authority, as long as they do not have other bonds through the authority.

7.1 (c) In the event of a closure of a charter school, a facility owned directly by a charter,
7.2 after satisfaction of creditors, is an asset of the state.

7.3 Sec. 4. Minnesota Statutes 2015 Supplement, section 124E.13, is amended by adding a
7.4 subdivision to read:

7.5 Subd. 6. **Charter school authority and responsibilities.** (a) The board of a
7.6 qualified charter school, by a two-thirds majority, may vote to acquire school facilities
7.7 financed with the proceeds of bonds issued by the Charter School Facilities Authority in
7.8 the manner and subject to the limitations set forth in section 16A.966 in anticipation of
7.9 the receipt of facilities aid under section 124E.22 and long-term facilities maintenance
7.10 revenue under section 123B.595.

7.11 (b) A qualified charter school must provide the authority with a mortgage on the
7.12 facility that may be assigned to a trustee for the benefit of the bondholders.

7.13 (c) A charter school board must notify the Charter School Facilities Authority and
7.14 the commissioner if the board intends to sell a property being financed by the bonds issued
7.15 by the Charter School Facilities Authority. Sales subject to this provision must be made at
7.16 no less than the appraised market value.

7.17 Sec. 5. Minnesota Statutes 2015 Supplement, section 124E.22, is amended to read:

7.18 **124E.22 BUILDING LEASE FACILITIES AID.**

7.19 Subdivision 1. **Facilities aid.** (a) A charter school's facilities aid equals the greater
7.20 of the aids calculated under paragraph (b) or (c).

7.21 ~~(a) When a charter school finds it economically advantageous to rent or lease a~~
7.22 ~~building or land for any instructional purposes and it determines that the total operating~~
7.23 ~~capital revenue under section 126C.10, subdivision 13, is insufficient for this purpose, it~~
7.24 ~~may apply to the commissioner for building lease aid for this purpose.~~ (b) A charter school
7.25 is eligible for lease aid to either rent or lease a building for any instructional purpose. The
7.26 amount of annual building lease aid for a charter school shall not exceed the lesser of 90
7.27 percent of the approved cost or the product of the pupil units served for the current school
7.28 year times \$1,314. The commissioner must review and either approve or deny a lease aid
7.29 application using the following criteria:

7.30 (1) the reasonableness of the price based on current market values;

7.31 (2) the extent to which the lease conforms to applicable state laws and rules; and

7.32 (3) the appropriateness of the proposed lease in the context of the space needs and
7.33 financial circumstances of the charter school. The commissioner must approve aid only
7.34 for a facility lease that has (i) a sum certain annual cost and (ii) a closure clause to relieve

the charter school of its lease obligations at the time the charter contract is terminated or not renewed; the closure clause must not be constructed or construed to relieve the charter school of its lease obligations in effect before the charter contract is terminated or not renewed. Triple net leases entered into after June 20, 2017, are not eligible for lease aid.

(c) A qualified charter school that is required to make loan payments to be applied to principal or interest payments on an outstanding debt obligation issued by the Charter School Facilities Authority or a charter school that takes ownership of a building from an affiliated building company is eligible for loan aid in an amount equal to the amount needed to meet the principal and interest payment on the obligations minus the charter school's long-term maintenance revenue under section 123B.595. A charter school that is financed through bonds issued by the Charter School Facilities Authority need only apply for loan aid in the first year the bonds are issued, or in any first year after the school refinances bonds or takes on additional bonds for a facility project. Eligibility shall be ongoing until the bonds debt is retired and the school is eligible for facilities asset preservation aid under subdivision 2.

(d) Notwithstanding paragraph (a), an online charter school's facilities aid equals the greater of the aids calculated under paragraph (b) or (c) plus costs for electronic hardware provided for student use for online learning for students who are off campus more than 40 percent of the academic year.

(e) A charter school must not use the building lease aid it receives for custodial, maintenance service, utility, or other operating costs.

~~(b) The amount of annual building lease aid for a charter school shall not exceed the lesser of (1) 90 percent of the approved cost or (2) the product of the pupil units served for the current school year times \$1,314.~~

Subd. 2. **Facilities preservation aid.** A charter school is eligible for facilities preservation aid if the school has satisfied all of its debt obligations from the Charter School Facilities Authority and owns its facility directly. A charter school's facilities preservation aid equals 0.4 times the average annual facilities aid under subdivision 1, paragraph (c), received by the charter school during the fiscal years the charter school was repaying debt obligations to the Charter School Facilities Authority.

Subd. 3. **Long-term facilities maintenance aid restrictions.** (a) Notwithstanding section 123B.88, subdivision 10, a charter school receiving loan aid under subdivision 1, paragraph (c), must reserve long-term facilities maintenance aid under section 123B.88 for repayment of debt obligations issued by the Charter School Facilities Authority.

(b) Notwithstanding section 123B.88, subdivision 10, a charter school that has satisfied all of its debt obligations and owns the facility directly must reserve long-term

9.1 facilities maintenance aid under section 123B.88 for deferred capital and maintenance
9.2 expenditures associated with the facility owned by the charter school.

9.3 **Sec. 6. [124E.30] CHARTER SCHOOL FACILITIES AUTHORITY.**

9.4 **Subdivision 1. Creation; membership; administration.** (a) A state agency known
9.5 as the Charter School Facilities Authority is created. The Charter School Facilities
9.6 Authority shall consist of seven members:

9.7 (1) five of which are appointed under paragraph (b) by the governor with the advice
9.8 and consent of the senate;

9.9 (2) the commissioner of management and budget or the commissioner's designee; and

9.10 (3) an expert in education finance from the Department of Education designated by
9.11 the commissioner of education.

9.12 (b) All members to be appointed by the governor shall be residents of the state. At
9.13 least two members shall reside outside of the metropolitan area as defined in section
9.14 473.121, subdivision 2. At least one of the members shall have skill, knowledge, and
9.15 experience in the field of state bonding or finance; at least one of the members shall
9.16 have skill, knowledge, and experience in the building construction field; and at least one
9.17 member shall be a representative of the Minnesota Association of Charter Schools. With
9.18 the exception of the representative of the Minnesota Association of Charter Schools, each
9.19 appointed member of the authority shall be independent and not affiliated with a charter
9.20 school, a charter school management organization, or any entity working or contracting
9.21 with a charter school.

9.22 **Subd. 2. Term; compensation; removal.** The membership terms, compensation,
9.23 removal of members, and filling of vacancies for board members other than the
9.24 commissioner of management and budget and the commissioner of education shall be
9.25 provided in section 15.0575. The commissioner of management and budget, or the
9.26 commissioner's designee, shall convene the first meeting of the authority no later than
9.27 September 15, 2017. The authority shall elect a chair at its first meeting and shall
9.28 determine a rotation for the chair.

9.29 **Subd. 3. Purpose.** The authority shall provide an efficient and cost-effective method
9.30 of financing charter school facilities in this state through the sale and issuance of state
9.31 revenue bonds, in anticipation of the collection of facilities aid, for a qualified charter
9.32 school, to finance, in whole or in part, the cost of acquisition, acquisition and renovation,
9.33 or construction of a charter school building.

9.34 **Subd. 4. Duties; applications; fees.** The authority shall review applications from
9.35 charter schools to be determined to be qualified schools for the purchase and renovation

of an existing facility or to develop and construct a new facility. The authority shall review applications for issuance of bonds under section 16A.966 for specific projects. The authority may charge a charter school an application or administrative fee. The authority shall adopt policies and procedures necessary to fulfill its responsibilities. The application deadlines and any fees shall be determined by the authority. The authority may hire or contract for services.

Subd. 5. **Eligibility for qualified status.** (a) The authority shall determine which charter schools are in a financial and operational position to purchase, purchase and renovate an existing facility, or construct a new facility.

(b) The authority shall approve a charter school to purchase, purchase and renovate, or construct a school facility and finance that school facility through the issuance of bonds. The authority shall only approve the sale of bonds on behalf of charter schools that are issued through the authority.

(c) A charter school approved by the authority is a "qualified" school. A charter school is prohibited from using the term qualified as defined in this subdivision in educational promotional materials or advertising. A charter school may use the term qualified for the purposes of issuing bonds through the authority.

Subd. 6. **Criteria for qualified status.** A charter school that has been enrolling students for five or more years may seek qualified status from the authority to purchase, purchase and renovate an existing building, or construct a new facility. The charter school must submit to the authority the following information:

(1) documentation of the charter school's contract history and current status with the school's authorizer and a letter indicating support from the authorizer for the proposed facility project;

(2) documentation of the school's academic and nonacademic student performance record in relation to the goals agreed upon in its charter contracts over the preceding five years;

(3) financial statements for the preceding five fiscal years, a current year budget, and fund balance of the school at the time of the application;

(4) a third-party review of the school's operating finances;

(5) long-range strategic plan and five-year financial projections for the school;

(6) an analysis prepared by an independent third party of school finances and the five-year financial projections;

(7) a statement of the need for the purchase or purchase and renovation of the proposed facility, including the physical space needs of the school, other facility options examined, zoning and e-rating eligibility, and an appraisal of the proposed facility;

11.1 (8) documentation of a positive review and comment from the commissioner of
11.2 education for projects that are subject under section 123B.71; and

11.3 (9) a statement adopted by the charter school board of directors acknowledging that
11.4 any sale of the facility before the bonds are fully paid must be reviewed by the authority to
11.5 assure the property is sold for no less than the appraised value. In the event that the school
11.6 closes, the building and any assets revert to the state after satisfaction of creditors.

11.7 Subd. 7. **Determination.** The authority may request additional information of the
11.8 charter school to make their determination. The authority must use the criteria submitted as
11.9 required by subdivision 6 and any additional information the authority receives to determine
11.10 whether to qualify a school and allow a charter school to purchase, purchase and renovate,
11.11 or construct a new facility and use debt financing to pay for the costs of the school facility.

11.12 The authority must notify the charter schools of their determination within 45
11.13 business days after the application deadline. The decision of the authority is final. A
11.14 charter school may reapply for future consideration.

11.15 Sec. 7. **REPEALER.**

11.16 Minnesota Statutes 2015 Supplement, section 124E.26, is repealed.

APPENDIX
Repealed Minnesota Statutes: 16-4772

124E.26 USE OF STATE MONEY.

Money received from the state may not be used to purchase land or buildings. The school may own land and buildings if obtained through nonstate sources.