

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3448

(SENATE AUTHORS: GUSTAFSON)

DATE
02/12/2024

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11539 Introduction and first reading
Referred to Education Policy

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to education; modifying provisions for charter school facilities; amending
1.3 Minnesota Statutes 2022, sections 124E.13, by adding a subdivision; 124E.22;
1.4 124E.26; Minnesota Statutes 2023 Supplement, section 124E.13, subdivision 3.

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

1.6 Section 1. Minnesota Statutes 2023 Supplement, section 124E.13, subdivision 3, is amended
1.7 to read:

1.8 Subd. 3. **Affiliated nonprofit building corporation.** (a) An affiliated nonprofit building
1.9 corporation may purchase, expand, or renovate an existing facility to serve as a school or
1.10 may construct a new school facility. One charter school may organize an affiliated nonprofit
1.11 building corporation that serves only that charter school ~~if the charter school:~~

1.12 ~~(1) has operated for at least six consecutive years;~~

1.13 ~~(2) as of June 30, has a net positive unreserved general fund balance in the preceding~~
1.14 ~~three fiscal years;~~

1.15 ~~(3) has long-range strategic and financial plans that include enrollment projections for~~
1.16 ~~at least five years;~~

1.17 ~~(4) completes a feasibility study of facility options that outlines the benefits and costs~~
1.18 ~~of each option; and~~

1.19 ~~(5) has a plan that describes project parameters and budget.~~

1.20 No charter school may create an affiliated nonprofit corporation after May 31, 2024.

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

- 2.1 (1) be incorporated under chapter 317A;
- 2.2 (2) comply with applicable Internal Revenue Service regulations, including regulations
2.3 for "supporting organizations" as defined by the Internal Revenue Service;
- 2.4 (3) post on the school website the name, mailing address, bylaws, minutes of board
2.5 meetings, and names of the current board of directors of the affiliated nonprofit building
2.6 corporation;
- 2.7 (4) submit to the commissioner a copy of its annual audit by December 31 of each year;
2.8 and
- 2.9 (5) comply with government data practices law under chapter 13.
- 2.10 (c) An affiliated nonprofit building corporation must not serve as the leasing agent for
2.11 property or facilities it does not own. A charter school that leases a facility from an affiliated
2.12 nonprofit building corporation that does not own the leased facility is ineligible to receive
2.13 charter school ~~lease~~ facility aid. The state is immune from liability resulting from a contract
2.14 between a charter school and an affiliated nonprofit building corporation.
- 2.15 (d) The board of directors of the charter school must ensure the affiliated nonprofit
2.16 building corporation complies with all applicable legal requirements. The charter school's
2.17 authorizer must oversee the efforts of the board of directors of the charter school to ensure
2.18 legal compliance of the affiliated building corporation. A school's board of directors that
2.19 fails to ensure the affiliated nonprofit building corporation's compliance violates its
2.20 responsibilities and an authorizer must consider that failure when evaluating the charter
2.21 school.
- 2.22 (e) Title and ownership of facilities and land owned by an affiliated nonprofit building
2.23 corporation shall be transferred to the charter school when the nonprofit building corporation
2.24 refinances the facilities and land or when the nonprofit building corporation fulfills the
2.25 terms of the mortgage or bonds.
- 2.26 (f) When a charter school closes before the facilities or land has been transferred under
2.27 paragraph (e), the nonprofit building corporation must sell the facilities at fair market value
2.28 and any proceeds from the sale after mortgage or bond obligations have been paid shall be
2.29 returned to the state of Minnesota.

3.1 Sec. 2. Minnesota Statutes 2022, section 124E.13, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 5. **School-owned facilities.** (a) A charter school may purchase, expand, renovate
3.4 or construct a new school facility if the charter school:

3.5 (1) has operated for at least seven consecutive years;

3.6 (2) has a current letter of school standing from its authorizer;

3.7 (3) has a net positive unreserved general fund balance in the preceding three fiscal years,
3.8 documented in annual audits;

3.9 (4) has long-range strategic plans that include enrollment projections for at least five
3.10 years;

3.11 (5) documents completion of a feasibility study of facility options that outlines the
3.12 benefits and costs of each option;

3.13 (6) has a financial plan and budget for the facility reviewed by a certified public
3.14 accountant;

3.15 (7) documents that the scope and project parameters have been reviewed by an architect
3.16 or engineer as appropriate;

3.17 (8) documents that the proposed location is zoned appropriately for a school;

3.18 (9) documents that purchase and construction agreements have been reviewed by
3.19 competent legal counsel; and

3.20 (10) submits plans for positive review and comment to meet the requirements of section
3.21 123B.71, subdivision 8.

3.22 (b) A charter school that owns a school facility must:

3.23 (1) use long-term maintenance revenue for the purposes defined in section 123B.595;

3.24 (2) maintain the funding reserve required by bond or mortgage holders; and

3.25 (3) maintain exclusive use of the facility for school or community activities.

3.26 Sec. 3. Minnesota Statutes 2022, section 124E.22, is amended to read:

3.27 **124E.22 BUILDING LEASE FACILITY AID.**

3.28 (a) ~~When~~ A charter school ~~finds it economically advantageous to rent~~ may own or lease
3.29 a building or land for any instructional purpose and it determines that the total operating
3.30 capital revenue under section 126C.10, subdivision 13, is insufficient for this purpose, it

4.1 may apply to the commissioner for building ~~lease~~ facility aid. The commissioner must
 4.2 review and either approve or deny a ~~lease~~ facility aid application using the following criteria:

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

4.4 (2) the extent to which the ~~lease~~ facility conforms to applicable state laws and rules; and

4.5 (3) the appropriateness of the proposed ~~lease~~ facility in the context of the space needs
 4.6 and financial circumstances of the charter school. The commissioner must approve aid only
 4.7 for a facility ~~lease~~ that has (i) a sum certain annual cost and (ii) if the school is leasing space,
 4.8 a closure clause to relieve the charter school of its lease obligations at the time the charter
 4.9 contract is terminated or not renewed. The closure clause under item (ii) must not be
 4.10 constructed or construed to relieve the charter school of its lease obligations in effect before
 4.11 the charter contract is terminated or not renewed.

4.12 (b) A charter school must not use the ~~building-lease~~ facility aid it receives for custodial,
 4.13 maintenance service, utility, or other operating costs.

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

4.17 (d) A charter school's ~~building lease~~ facility aid pupil units equals the sum of the charter
 4.18 school pupil units under section 126C.05 and the pupil units for the portion of the day that
 4.19 the charter school's enrolled students are participating in the Postsecondary Enrollment
 4.20 Options Act under section 124D.09 and not otherwise included in the pupil count under
 4.21 section 126C.05.

4.22 Sec. 4. Minnesota Statutes 2022, section 124E.26, is amended to read:

4.23 **124E.26 USE OF STATE MONEY.**

4.24 A charter school may ~~not~~ use state money to purchase land or buildings. ~~The~~ If the
 4.25 amount of a purchase agreement or construction contract exceeds the review and comment
 4.26 threshold, a charter school must receive a positive review and comment from the
 4.27 commissioner before initiating any purchase agreement or construction contract. For purposes
 4.28 of this section, "review and comment threshold" means the dollar amount specified in section
 4.29 123B.71, subdivision 8, applicable to a school entity that is not a recipient of a maximum
 4.30 effort capital loan. A charter school may also own land and buildings if obtained through
 4.31 nonstate sources.