

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 290

48th Legislature, 2nd Session, 2008

Short Title: School Computer Hardware Loan Fund

Sponsor(s): Senator Pete Campos

Analyst: Frances R. Maestas

Date: January 26, 2008

Bill Summary:

SB 290 creates a Computer Hardware Loan Fund in the state treasury; transfers to the Public Education Department (PED) an unexpended 2007 appropriation for computers and related technology in private schools; and adds a new section to the *Instructional Material Law* in the *Public School Code* to:

- establish a computer hardware loan program to provide, for classroom use, computers to a private school “qualified student” who is:
 - attending a private school in any grade from 1 through 12;
 - regularly enrolled in one-half or more of the minimum course requirements approved by PED for public school students; and
 - at least five years of age prior to 12:01 am on September 1 of the school year and who has not reached 22 years of age on the first day of the school year;
- allow a private school, approved by PED, to apply for the use of loaned computers purchased by PED with dollars from fund;
- require the private school application to demonstrate critical need and address how the computers will support the use of electronic education media in relation to the private school’s nonsectarian curriculum;
- require an approved private school to enter into a loan agreement with PED that requires the private school to:
 - be responsible for the inventory control, insurance, and safekeeping of loaned computers;
 - assure that the loaned computers are to be used solely for classroom use; not to be used for any religious, sectarian or denominational purposes; and subject to monitoring by PED or others;
 - acknowledge that the loaned computers are state property; and
 - reimburse PED for lost, stolen, or damaged computers; and
- require PED, in rule, to adopt application standards; criteria for ranking applications; and procedures for the loan return or disposal of the loaned computers.

With regard to any damage to, destruction of, or loss of loaned computers, SB 290 requires:

- a private school to withhold the grades, diploma, or transcript of a student until the parent, guardian, or student has paid for any losses; and
- PED to deposit recovered dollars into the fund.

Finally, SB 290 transfers dollars from a 2007 appropriation that remains unexpended into the Computer Hardware Loan Fund.

Fiscal Impact:

\$2.5 million is appropriated to PED from a General Fund appropriation included in Subsection 442 of Section 55 of Chapter 42 of Laws 2007.

In 2007, CS/SB 827a, *Severance Tax Bond Projects*, appropriated \$2.5 million to PED, for expenditure in FY 07 through FY 11, “to assist in integrating technology into the learning process by providing computers and related technology at nonpublic schools that are owned, operated or controlled by an entity that owns, operates or controls five or more schools in New Mexico.” (see Issues)

Issues:

- The definition for a “qualified student” in SB 290 provides for a student who has not reached 22 years of age on the first day of school. On page 5, line 3 after “year” and before the period, the sponsor may wish to insert “and is receiving special education services”.
- The 2007 appropriation to PED appears to remain unexpended primarily because of the objection of the American Civil Liberties Union (ACLU) of New Mexico. In a letter to the Secretary of Public Education, dated June 29, 2007, the ACLU stated that “Although this expenditure is neutrally drafted in an apparent effort to avoid a facial challenge...the only benefactor of the funding of which [they] are aware are schools owned and operated by the Catholic church in New Mexico.” In that letter, the ACLU requested PED to “cease implementation of this questionable expenditure as it violates the New Mexico Constitution¹ and possibly the Establishment Clause of the First Amendment to the United States Constitution².”
- According to the PED bill analysis, SB 290 appears to be drafted in a manner that:
 - is consistent with the guidance set down in a US Supreme Court case that upheld a federal program in which library and media materials and computer software and hardware could be loaned to public and private schools to implement secular neutral and non-ideological programs; and
 - does not violate the New Mexico Constitution because the materials are not donated, but loaned with accountability to PED; the state retains ownership; and reimbursement is required for any damages or losses of the computers.
- As of January 26, 2008, an analysis of SB 290 has not been received from the New Mexico Attorney General’s Office.

Related Bills:

None as of 01/26/08

¹ The New Mexico Constitution, Article XII, Section 3 states in pertinent part, “no part of ... any ... funds appropriated, levied, or collected for educational purposes, shall be used for the support of any sectarian, denominational, or private school, college, or university. Also, Article IX, Section 14, provides that “[n]either the state nor any county school district or municipality ... shall directly or indirectly ... make any donation to or in aid of any person, association, or public or private corporation. A donation for purposes of this section has been described as an “allocation or appropriation of something of value, without consideration.”

² Agostini v. Felton, 521 US 20 (1997) and Mitchell v. Helms, 530 US 793 (2000) indicate that aid to nonpublic schools will be upheld under the Establishment Clause *only* if it is offered neutrally to all private schools without regard to religious affiliation.