

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 234

49th Legislature, 1st Session, 2009

Short Title: Create Computer Hardware Loan Fund

Sponsor(s): Senator Pete Campos

Analyst: Pamela Herman

Date: February 16, 2009

Bill Summary:

SB 234 adds a new section to the *Instructional Materials Law* in the *Public School Code* to create a Computer Hardware Loan Fund in the state treasury; and to transfer to the Public Education Department (PED) an unexpended 2007 appropriation for computers and related technology in private schools.

Among its provisions, SB 234:

- establishes a computer hardware loan program to provide computers for classroom use 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 old prior to September 1 of the school year, but not 22 years old on the first day of the school year;
- allows a private school approved by PED to apply to use loaned computers purchased by PED with dollars from the fund;
- requires the private school to enter into a loan agreement with PED requiring the school to:
 - be responsible for inventory control, insurance, and safekeeping of loaned computers;
 - assure that the computers are to be used solely for classroom use, not for any religious, sectarian or denominational purposes, and subject to monitoring by PED or others;
 - acknowledge that the computers are state property; and
 - reimburse PED for lost, stolen, or damaged computers;
- requires PED to adopt rules to implement the fund including application standards, criteria for ranking applications, and procedures for the loan, return, or disposal of loaned computers; and
- permits a private school to hold a parent, guardian, or student responsible for damage to or destruction of loaned computer hardware, and to withhold the grades, diploma, or transcript of a student until the parent, guardian, or student has paid for any losses. PED must deposit recovered dollars into the fund.

Finally, SB 234 requires that a 2007 appropriation to PED be transferred to the Computer Hardware Loan Fund and expended pursuant to the provisions of the bill, and makes the transferred funds non-reverting.

Fiscal Impact:

SB 234 transfers an unexpended balance of a \$2.5 million appropriation to PED from the General Fund included in Subsection 442 of Section 55 of Chapter 42 of Laws 2007. However, in 2008, that appropriation was reauthorized in Laws 2008, Chapter 83 to change the agency, purpose and extend the time of expenditure for a variety of capital outlay purposes through 2010.

Fiscal Issues:

PED estimates that 2,000 laptop computers could be purchased with \$2.5 million, which would include insurance, warranties, and maintenance; however, hardware as defined in the bill could also mean printers and peripherals. Because the bill does not identify software as a permissible use, there would be an additional cost either to the school or PED for software. PED states that there would need to be professional development to use the technology effectively for educational purposes.

In 2007, CS/SB 827, *Severance Tax Bond Projects*, appropriated \$2.5 million to PED from the General Fund 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.” As noted in “Fiscal Impact,” above, those funds were reauthorized in the 2008 legislative session.

The American Civil Liberties Union (ACLU) of New Mexico objected to the 2007 appropriation.

- In a letter to the Secretary of Public Education dated June 29, 2007, the ACLU stated that “[a]lthough this expenditure is neutrally drafted in an apparent effort to avoid a facial challenge. . .the only benefactor of the funding of which we 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 of the United States Constitution.²

According to the Office of the Attorney General, SB 234 could raise both federal and state constitutional issues. A 2008 analysis by the Attorney General’s office of SB 290, *School Computer Hardware Loan Fund*, an identical bill filed in 2008, notes the following issues:

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 no 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) hold 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.

- First Amendment Establishment Clause: The US Constitution forbids states from enacting laws that have the purpose or effect of advancing or inhibiting religion. The US Supreme Court has upheld a school voucher program as not in violation of this ban because the program was neutral with respect to religion and provided assistance directly to a broad class of citizens who, in turn, direct the governmental aid to religious schools wholly as a result of their own independent choice of which schools their children attend. Zelman v. Simmons-Hardin, 536 U.S. 639 (2002). Although New Mexico has a state-funded program for public schools that may fund computers and other technology tools to public schools, it is not based on a parent's choice of school their child attends. Nor is the program outlined in this bill—the schools apply, rather than the parents. Also, public schools are not allowed to participate at all, so it is not neutral, nor clearly based on genuine choice by the parent/school.
- State Bar Against State Funding of Any Private School: Article XII, Section 3 of our state Constitution bans use of funds appropriated for educational purposes to support any private, sectarian, or denominational school. In Opinion 99-01, the Attorney General concluded that this prohibition is not limited to direct payments from the state to private schools, and that a New Mexico court would likely conclude that tuition assistance under a voucher program is an unconstitutional use of public money for the support of both religious and non-religious private schools. Although SB 234 focuses on computer hardware, it appears the same analysis would prohibit the use of state funds for purposes set out in the bill.
- Additional Issues: Although the funding provided for in SB 234 is General Fund monies, the language of the bill would allow use of any state funds, including severance tax and general obligation bond proceeds. Such use could cause problems under federal tax laws applicable to such funding purposes.

Background:

Since 2003, the Legislature has appropriated a total of \$12.2 million from the General Fund for laptop computers for public school students in grade 7, as follows:

- in 2003: \$1.7 million;
- in 2004: \$4.0 million;
- in 2005: \$1.0 million;
- in 2006: \$2.0 million;
- in 2007: \$1.5 million; and
- in 2008: \$1.0 million.

In addition, the Legislature has appropriated approximately \$32.0 million from the General Fund to PED for the non-reverting Educational Technology Fund, for distribution to public school districts pursuant to the *Education Technology Act* for the purchase, distribution, use, and maintenance of educational technology, as follows:

- in 2003: \$5.0 million;
- in 2004: \$5.0 million;
- in 2005: \$5.0 million;
- in 2006: approximately \$5.0 million after sanding;
- in 2007: \$6.0 million; and
- in 2008: \$6.0 million.

Related Bills:

SB 355 *Nonpublic School Scholarship Tax Credit*

HB 740 *Dual Credit Program for Additional Students*