

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR THE ALLOCATION OF QUALIFIED SCHOOL CONSTRUCTION
BONDS AS AUTHORIZED IN THE FEDERAL AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009; AUTHORIZING QUALIFIED SCHOOL
CONSTRUCTION BONDS AND BUILD AMERICA BONDS TO BE SOLD AT A
PUBLIC OR PRIVATE SALE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Code is
enacted to read:

"SHORT TITLE.--Sections 1 through 4 of this act may be
cited as the "Qualified School Construction Bonds Act"."

Section 2. A new section of the Public School Code is
enacted to read:

"DEFINITIONS.--As used in the Qualified School
Construction Bonds Act:

A. "allocation" means New Mexico's allocation of
the national qualified school construction bond limitation
pursuant to Section 1521 of the federal American Recovery and
Reinvestment Act of 2009;

B. "council" means the public school capital
outlay council;

C. "eligible taxpayer" means an entity that
qualifies as an eligible taxpayer under the Internal Revenue

Code of 1986, as amended, and may include a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified school construction bond" means a bond issued by the state or a school district that meets all of the requirements of Section 3 of the Qualified School Construction Bonds Act and the requirements for a qualified school construction bond pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009; and

E. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements of Section 1521 of the federal American Recovery and Reinvestment Act of 2009."

Section 3. A new section of the Public School Code is enacted to read:

"QUALIFIED SCHOOL CONSTRUCTION BONDS--DESIGNATION--TERMS--SALE.--

A. The state or a school district that has been authorized to issue bonds may designate all or any part of the bonds as qualified school construction bonds if:

(1) one hundred percent of the available project proceeds from the issuance of the bonds are to be used

for the construction, rehabilitation or repair of a qualifying school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds;

(2) the bonds are issued by the state or a school district within the jurisdiction in which the qualifying school is located; and

(3) the issuer designates the bonds as qualified school construction bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school construction bonds may be sold at a public or private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school construction bonds shall not be issued for a term longer than the term fixed pursuant to the Internal Revenue Code of 1986, as amended, and applicable state law."

Section 4. A new section of the Public School Code is enacted to read:

"ALLOCATION.--

A. The aggregate face amount of all qualified school construction bonds issued in a calendar year shall not exceed the allocation for that year.

B. Except for the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to particular school

districts, the council is designated the state education agency responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a school district desires to designate bonds as qualified school construction bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of Subsection A of Section 3 of the Qualified School Construction Bonds Act have been satisfied; provided, however, that any school district to which a direct allocation is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 shall be exempt from the application requirement to the extent that the amount of qualified school construction bonds to be issued by that district does not exceed the direct allocation.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school construction bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event that the face amount of all proposed qualified school construction bonds for a calendar year exceeds the allocation remaining after deducting the

direct allocations made to particular school districts pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009, the council shall ratably apportion the remaining allocation among the state and school districts that have timely filed valid applications for that year; provided, however, that the apportionment shall not reduce the direct allocation to any particular school district pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009."

Section 5. Section 6-15-5 NMSA 1978 (being Laws 1929, Chapter 201, Section 3, as amended) is amended to read:

"6-15-5. SALE OF BONDS.--

A. Before any bonds issued by a municipal corporation are offered for public sale, the corporate authorities issuing the bonds shall designate the maximum net effective interest rate the bonds shall bear, which shall not exceed the maximum permitted by the Public Securities Act. Except as provided in Subsection B or C of this section and in Sections 6-18-6, 6-18-7 and 6-21-9 NMSA 1978, all the bonds shall be offered and sold at public sale pursuant to this section.

B. Bonds maturing in less than thirty days may be sold at private sale to the state of New Mexico at the price and upon such terms and conditions as a municipal corporation and the state of New Mexico may determine.

C. Notwithstanding any law requiring bonds to be sold at a public sale, the following bonds may be sold at a public or private sale:

(1) bonds designated as build America bonds pursuant to Section 1531 of the federal American Recovery and Reinvestment Act of 2009; and

(2) qualified school construction bonds issued pursuant to the Qualified School Construction Bonds Act and Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

D. A notice calling for bids for the purchase of the bonds shall be published once at least one week prior to the date of the sale in a newspaper having local circulation. The notice shall specify a place and designate a day and hour subsequent to the date of the publication when bids shall be received and publicly opened for the purchase of the bonds. The notice shall specify the maximum net effective interest rate permitted for the bonds and the maximum discount if a discount is allowed by the governing body and shall require bidders to submit a bid specifying the lowest rate of interest and any premium or discount if allowed by the governing body at, above or below par at which the bidder will purchase the bonds. The bonds shall be sold to the responsible bidder making the best bid determined by the municipal corporation as set forth in the notice, subject to the right of the governing

body to reject any and all bids and readvertise. All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state of New Mexico or the United States, if one is received, all bids shall be accompanied by a deposit of not less than two percent of the principal amount of the bonds, either in the form of a financial security bond or in cash or by cashier's or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States, which deposit shall be returned if the bid is not accepted. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond must be issued by an insurance company licensed to issue such a bond in New Mexico. If the successful bidder does not complete the purchase of the bonds within thirty days following the acceptance of the bidder's bid or within ten days after the bonds are made ready and are offered by the municipal corporation for delivery, whichever is later, the amount of the bidder's deposit shall be forfeited to the municipal corporation issuing the bonds, and, in that event, the governing body may accept the bid of the

bidder making the next best bid. If all bids are rejected, the governing body may readvertise the bonds for sale in the same manner as for the original advertisement or sell the bonds at private sale to the state of New Mexico or the United States. If there are two or more equal bids and the bids are the best bids received, the governing body shall determine which bid shall be accepted.

E. Except as provided in this section, bonds to be issued by a municipal corporation for various purposes may be sold and issued as a single combined issue even though they may have been authorized by separate votes at an election or elections. Bonds authorized by any city, town or village for the construction or purchase of a system for supplying water, a sanitary sewer system or a storm sewer system may be combined with each other and sold and issued as a single issue but may not be combined with bonds to be issued for any other purpose that may be subject to the debt limitation of Article 9, Section 13 of the constitution of New Mexico."

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
