

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: *CS/HB 145

49th Legislature, 2nd Session, 2010

Tracking Number: .181422.1

Short Title: Private Sale of Certain Bonds

Sponsor(s): Representatives Rick Miera, Roberto “Bobby” J. Gonzales and Others

Analyst: Peter B. van Moorsel

Date: February 3, 2010

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HOUSE BILL 145

Bill Summary:

CS/HB 145 amends the *Qualified School Construction Bonds Act* in the *Public School Code* to:

- expand the use of the proceeds of these bonds to include “the acquisition of equipment to be used in the portion of the qualifying school facility that is being constructed, rehabilitated, or repaired with the proceeds;”
- require that the issuer of Qualified School Construction Bonds (QSCBs) be:
 - a school district to which a direct allocation is made pursuant to Section 1521 of the federal *American Recovery and Reinvestment Act of 2009* (ARRA) and the amount of the bonds designated as QSCBs does not exceed the direct allocation; or
 - the state or a school district that has received an allocation distribution from the Public School Capital Outlay Council (PSCOC).
- permit QSCBs to be sold at a public or private sale to the state, the New Mexico Finance Authority (NMFA), or any other purchaser, allowing the bonds to be sold at par, or at less than or greater than par;
- require that, for bonds to be issued in calendar year 2010, the state’s or a school district’s application to the PSCOC must be submitted no later than the last day of the third month following the month in which the bill takes effect;
- require that, for bonds to be issued in any subsequent year in which an allocation exists, the application must be submitted no later than March 1 of that year;
- provide for procedures in the event that the allocation for a given year exceeds the amount of bonds designated as QSCBs as follows:
 - any excess that was allocated to a particular school district shall be allocated to that school district in the subsequent year; and
 - any excess that was not allocated shall revert to the PSCOC and be allocated in the subsequent year; and
- require the PSCOC, in the event that the amount of all proposed QSCBs for a calendar year exceeds the allocation, to consider the following in deciding how to distribute the remaining allocation among the applicants:

- the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;
- the percent of the bond proceeds that is likely to be expended within three years of the date of the issuance of the bonds;
- whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and
- the project's ranking on the New Mexico Condition Index (NMCI).

CS/HB 145 contains an emergency clause.

Fiscal Impact:

CS/HB 145 does not make an appropriation.

QSCBs provide the bondholder with a tax credit in lieu of receiving interest, resulting in an interest-free or very low-interest loan to the state or to local education agencies (LEAs).

Fiscal Issues:

The Public Education Department (PED) analysis reports that the PSCOC was authorized to allocate up to \$64.6 million in QSCBs in each calendar year 2009 and 2010. PED developed an application form and received applications from 20 school districts totaling \$186.5 million, approximately three times the amount the council was authorized to allocate.

At the June 18, 2009 meeting of the PSCOC in Farmington, the Public School Facilities Authority (PSFA) staff were directed by the council to consult with the State Board of Finance and local bond counsels on the constraints, benefits, costs, and marketability of QSCBs based on the requests that had been received.

Language in the *Qualified School Construction Bonds Act* requires the council to award the allocation to every school district on a pro rata basis if the PSCOC receives applications exceeding the available amount. During consultations with the State Board of Finance, PSFA staff raised the concern that distributing the QSCB allocation on a pro rata basis would mean that every school district that submitted an application would receive authority to issue only one-third of the district's total request as interest-free QSCBs. As a result, these districts would likely have to make two distinct bond issuances, and incur two issuance costs – one for the bonds designated as QSCBs and another for the balance of the request. The additional issuance costs would reduce the potential benefits derived from issuing zero-interest bonds and could also affect the bonds' marketability.

CS/HB 145 amends the *Qualified School Construction Bonds Act* to address this issue by allowing the PSCOC to allocate the bond designations on a priority basis.

Background:

Section 1521 of the federal ARRA defines QSCBs and authorizes up to \$11.0 billion in bonds to be designated as QSCBs nationwide in both 2009 and 2010.

The ARRA requires that the national limitation amount be split between large local education agencies and the states, as follows:

- (1) 40 percent must be directly allocated to the 100 “large local education agencies (LEAs)” with the largest numbers of children ages 5 through 17 living below the poverty level; and up to 25 additional LEAs that are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or other factors deemed appropriate by the Secretary of Education; and
- (2) 60 percent must be allocated among the states in proportion to each state’s Title I eligibility. The ARRA requires that the amount of this allocation to a state be reduced in the amount of any direct allocation to a large LEA (see 1 above) in that state.

In addition to the amounts noted above, the ARRA authorizes, for both 2009 and 2010, an additional \$200 million in QSCB authorizations to be allocated by the Secretary of the Interior for school construction and repair of schools funded by the Bureau of Indian Affairs.

The ARRA allows the portion of a state’s allocation that was not used to designate bonds as QSCB in one year to be carried over to the next year.

Enacted in 2009 to enable the use of QSCBs, the *Qualified School Construction Bonds Act* authorizes the state or a school district, under certain conditions, to designate bonds as QSCBs. The act defines certain terms, including:

- “allocation” as New Mexico’s allocation of the national qualified school construction bond limitation pursuant to ARRA; and
- “qualified school construction bond” as a bond issued by the state or a school district that meets the requirements of ARRA (see “Fiscal Issues,” above).

Related Bill(s):

None as of January 31, 2010