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HOUSE BILL 145

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Rick Miera

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC FINANCE; ALLOWING CERTAIN BONDS TO BE SOLD AT A PRIVATE SALE; AMENDING THE QUALIFIED SCHOOL CONSTRUCTION BONDS ACT; DECLARING AN EMERGENCY.

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

Section 1. 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

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1 shall be offered and sold at public sale pursuant to this  
2 section.

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

7 C. Notwithstanding any law requiring bonds to be  
8 sold at a public sale, [~~the following bonds~~] a bond issue may  
9 be sold at a public or private sale

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

13 ~~(2) qualified school construction bonds issued~~  
14 ~~pursuant to the Qualified School Construction Bonds Act and~~  
15 ~~Section 1521 of the federal American Recovery and Reinvestment~~  
16 ~~Act of 2009] if any portion of the bonds issued are:~~

17 (1) refunding bonds; or

18 (2) taxable or tax credit bonds authorized by  
19 the federal American Recovery and Reinvestment Act of 2009,  
20 including but not limited to bonds designated as build America  
21 bonds pursuant to Section 1531 of that act and qualified school  
22 construction bonds issued pursuant to Section 1521 of that act.

23 D. A notice calling for bids for the purchase of  
24 the bonds shall be published once at least one week prior to  
25 the date of the sale in a newspaper having local circulation.

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1 The notice shall specify a place and designate a day and hour  
2 subsequent to the date of the publication when bids shall be  
3 received and publicly opened for the purchase of the bonds.  
4 The notice shall specify the maximum net effective interest  
5 rate permitted for the bonds and the maximum discount if a  
6 discount is allowed by the governing body and shall require  
7 bidders to submit a bid specifying the lowest rate of interest  
8 and any premium or discount if allowed by the governing body  
9 at, above or below par at which the bidder will purchase the  
10 bonds. The bonds shall be sold to the responsible bidder  
11 making the best bid determined by the municipal corporation as  
12 set forth in the notice, subject to the right of the governing  
13 body to reject any and all bids and readvertise. All bids  
14 shall be sealed or sent by facsimile or other electronic  
15 transmission to the municipal corporation as set forth in the  
16 notice. Except for the bid of the state of New Mexico or the  
17 United States, if one is received, all bids shall be  
18 accompanied by a deposit of not less than two percent of the  
19 principal amount of the bonds, either in the form of a  
20 financial security bond or in cash or by cashier's or  
21 treasurer's check of, or by certified check drawn on, a solvent  
22 commercial bank or trust company in the United States, which  
23 deposit shall be returned if the bid is not accepted. The  
24 financial surety bond or the long-term debt obligations of the  
25 issuer or person guarantying the obligations of the issuer of  
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1 the financial surety bond shall be rated in one of the top two  
2 rating categories of a nationally recognized rating agency,  
3 without regard to any modification of the rating, and the  
4 financial surety bond must be issued by an insurance company  
5 licensed to issue such a bond in New Mexico. If the successful  
6 bidder does not complete the purchase of the bonds within  
7 thirty days following the acceptance of the bidder's bid or  
8 within ten days after the bonds are made ready and are offered  
9 by the municipal corporation for delivery, whichever is later,  
10 the amount of the bidder's deposit shall be forfeited to the  
11 municipal corporation issuing the bonds, and, in that event,  
12 the governing body may accept the bid of the bidder making the  
13 next best bid. If all bids are rejected, the governing body  
14 may readvertise the bonds for sale in the same manner as for  
15 the original advertisement or sell the bonds at private sale to  
16 the state of New Mexico or the United States. If there are two  
17 or more equal bids and the bids are the best bids received, the  
18 governing body shall determine which bid shall be accepted.

19 E. Except as provided in this section, bonds to be  
20 issued by a municipal corporation for various purposes may be  
21 sold and issued as a single combined issue even though they may  
22 have been authorized by separate votes at an election or  
23 elections. Bonds authorized by any city, town or village for  
24 the construction or purchase of a system for supplying water, a  
25 sanitary sewer system or a storm sewer system may be combined

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1 with each other and sold and issued as a single issue but may  
2 not be combined with bonds to be issued for any other purpose  
3 that may be subject to the debt limitation of Article 9,  
4 Section 13 of the constitution of New Mexico."

5 Section 2. Section 22-18C-1 NMSA 1978 (being Laws 2009,  
6 Chapter 154, Section 1) is amended to read:

7 "22-18C-1. SHORT TITLE.--~~[Sections 1 through 4 of this~~  
8 ~~act]~~ Chapter 22, Article 18C NMSA 1978 may be cited as the  
9 "Qualified School Construction Bonds Act".

10 Section 3. Section 22-18C-2 NMSA 1978 (being Laws 2009,  
11 Chapter 154, Section 2) is amended to read:

12 "22-18C-2. DEFINITIONS.--As used in the Qualified School  
13 Construction Bonds Act:

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

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

20 ~~[C. "eligible taxpayer" means an entity that~~  
21 ~~qualifies as an eligible taxpayer under the Internal Revenue~~  
22 ~~Code of 1986, as amended, and may include a bank, insurance~~  
23 ~~company or corporation actively engaged in the business of~~  
24 ~~lending money;~~

25 ~~D.]~~ C. "qualified school construction bond" means a

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1 bond issued by the state or a school district that meets all of  
2 the requirements of Section [~~3 of the Qualified School~~  
3 ~~Construction Bonds Act~~] 22-18C-3 NMSA 1978 and the requirements  
4 for a qualified school construction bond pursuant to Section  
5 1521 of the federal American Recovery and Reinvestment Act of  
6 2009; and

7           [~~E.~~] D. "qualifying school" means a public school,  
8 a New Mexico state educational institution providing education  
9 or training below the post-secondary level or a program within  
10 such a public school or educational institution and which  
11 school, institution or program meets the requirements of  
12 Section 1521 of the federal American Recovery and Reinvestment  
13 Act of 2009."

14           Section 4. Section 22-18C-3 NMSA 1978 (being Laws 2009,  
15 Chapter 154, Section 3) is amended to read:

16           "22-18C-3. QUALIFIED SCHOOL CONSTRUCTION BONDS--  
17 DESIGNATION--TERMS--SALE.--

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

21                       (1) one hundred percent of the available  
22 project proceeds from the issuance of the bonds are to be used  
23 for:

24                               (a) the construction, rehabilitation or  
25 repair of a qualifying school facility [~~or for~~];

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1                   (b) the acquisition of land on which  
2 such a facility is to be constructed with part of the proceeds;  
3 or

4                   (c) the acquisition of equipment to be  
5 used in the portion of the qualifying school facility that is  
6 being constructed, rehabilitated or repaired with the proceeds;

7                   (2) the bonds are issued by the state or a  
8 school district within the jurisdiction [~~in~~] of which the  
9 qualifying school is located; and

10                   (3) the issuer [~~designates the bonds as~~  
11 ~~qualified school construction bonds~~] is:

12                   (a) a school district to which a direct  
13 allocation is made pursuant to Section 1521 of the federal  
14 American Recovery and Reinvestment Act of 2009 and the amount  
15 of the bonds designated as qualified school construction bonds  
16 does not exceed the direct allocation; or

17                   (b) the state or a school district that  
18 has received an allocation distribution from the council  
19 pursuant to Section 22-18C-4 NMSA 1978.

20                   B. Notwithstanding any law requiring bonds to be  
21 sold at a public sale or at not less than par, qualified school  
22 construction bonds may be sold at a public or private sale to  
23 [~~eligible taxpayers~~] the state, the New Mexico finance  
24 authority or any other purchaser and may be sold at par, or at  
25 less than or greater than par.

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

6           Section 5. Section 22-18C-4 NMSA 1978 (being Laws 2009,  
7 Chapter 154, Section 4) is amended to read:

8           "22-18C-4. ALLOCATION.--

9           A. The aggregate face amount of all qualified  
10 school construction bonds issued in a calendar year shall not  
11 exceed the available allocation, including any carry-forward  
12 allocation, for that year.

13           B. Except for the portion of the allocation  
14 required by Section 1521 of the federal American Recovery and  
15 Reinvestment Act of 2009 to be made to particular school  
16 districts, the council is designated the state education agency  
17 responsible for ensuring compliance with the limitation of  
18 Subsection A of this section.

19           C. If the state or a school district that has been  
20 authorized to issue bonds, or is in the process of obtaining  
21 authorization to issue bonds, desires to designate all or any  
22 portion of the bonds as qualified school construction bonds, it  
23 shall [~~by July 1 of the calendar year in which the bonds are to~~  
24 ~~be issued~~] submit an application [~~for reservation of an~~  
25 ~~allocation~~] to the council for an allocation distribution. For

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1 bonds to be issued in calendar year 2010, the application shall  
2 be submitted no later than the last day of the third month  
3 following the month in which this 2010 act is first effective;  
4 and, for bonds to be issued in any subsequent year in which an  
5 allocation exists, the application shall be submitted no later  
6 than March 1 of that year. The application shall include  
7 evidence that the requirements of Paragraphs (1) and (2) [~~and~~  
8 ~~(3)~~] of Subsection A of Section [~~3 of the Qualified School~~  
9 ~~Construction Bonds Act~~] 22-18C-3 NMSA 1978 have been satisfied;  
10 provided, however, that any school district to which a direct  
11 allocation is made pursuant to Section 1521 of the federal  
12 American Recovery and Reinvestment Act of 2009 shall be exempt  
13 from the application requirement to the extent that the amount  
14 of qualified school construction bonds to be issued by that  
15 district does not exceed the direct allocation.

16 D. If, for a calendar year, the allocation for that  
17 year exceeds the amount of qualified school construction bonds  
18 designated and issued in that year, the excess shall revert to  
19 the council and shall be carried forward and included in the  
20 allocation for the subsequent year as follows:

21 (1) any excess attributable to the portion of  
22 the allocation required by Section 1521 of the federal American  
23 Recovery and Reinvestment Act of 2009 to be made to a  
24 particular school district shall be allocated to that school  
25 district in the subsequent year; and

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1                   (2) any excess not allocated pursuant to  
2 Paragraph (1) of this subsection shall revert to the council  
3 and be distributed pursuant to Subsection C of this section in  
4 the subsequent year.

5                   E. In the event that the face amount of all  
6 proposed qualified school construction bonds for a calendar  
7 year exceeds the allocation remaining after deducting the  
8 direct allocations made to particular school districts pursuant  
9 to Section 1521 of the federal American Recovery and  
10 Reinvestment Act of 2009, the council shall, [~~ratably~~  
11 ~~apportion~~] after considering the factors listed in Subsection F  
12 of this section, decide how the remaining allocation [~~among the~~  
13 ~~state and school districts~~] shall be distributed to applicants  
14 that have timely filed valid applications for that year;  
15 provided, however, that the [~~apportionment~~] distribution shall  
16 not reduce the direct allocation to any particular school  
17 district pursuant to Section 1521 of the federal American  
18 Recovery and Reinvestment Act of 2009.

19                   F. In deciding how the remaining allocation shall  
20 be distributed to applicants pursuant to Subsection E of this  
21 section, the council shall consider:

22                           (1) the dates anticipated for the initial  
23 expenditure of bond proceeds and for completion of the project;

24                           (2) the percent of the bond proceeds that are  
25 likely to be expended within three years of the date of the

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- 1     issuance of the bonds;
- 2                     (3) whether the bond proceeds, together with
- 3     all other money available for the project, are sufficient to
- 4     complete the project;
- 5                     (4) the priority ranking of the project, as
- 6     determined by applying the deviation from the statewide
- 7     adequacy standards pursuant to Section 22-24-5 NMSA 1978; and
- 8                     (5) any other factors deemed relevant by the
- 9     council."

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