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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/10
 LAST UPDATED 02/04/10 HB 145/HECS

SPONSOR HEC

SHORT TITLE Qualified School Construction Bonds SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Taxation and Revenue Department (TRD)
 Public Education Department (PED)

No Response From

Department of Finance and Administration
 Public Schools Finance Authority

SUMMARY

Synopsis of House Education Committee Substitute

The House Education Committee substitute for House Bill 145 makes the following changes to Section 22-18C NMSA 1978. The bill:

- Applies the citation of “Qualified School Construction Bonds Act” to Chapter 22 Article 18C NMSA 1978.
- Eliminates the definition of “qualified taxpayer.”
- Allows “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” as a valid use of Qualified School Construction Bonds (QSCBs).
- Specifies that the issuer of the bonds is “(a) a school district to which a direct allocation

is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 and the amount of the bonds designated as qualified school construction bonds does not exceed the direct allocation; or (b) the state or a school district that has received an allocation distribution from the council pursuant to Section 22-18C-4 NMSA 1978.

- Allows qualified public school construction bonds to be sold at public or private sale to the state, the New Mexico Finance Authority or any other purchaser and may be sold at par, or at less than or greater than par.
- Clarifies that the aggregate amount of all QSCBs issued in a calendar year shall not exceed the available allocation, including any carry-forward allocation, for that year.
- Requires the state or a school district desiring to designate all or a portion of bonds they intend to issue as QSCBs to apply to the Public School Capital Outlay Council (PSCOC) for an allocation distribution, and specifies the application deadlines.
- Requires that unused allocation amounts revert to the PSCOC and will be carried forward (1) to the school district in the subsequent year; and (2) any excess not previously allocated to a school will become available for new applications.
- Provides a process for the PSCOC to make distributions of QSCBs in the event that all applications in a calendar year exceed the amount available after deducting the direct allocations made to particular school districts. The criteria PSCOC shall use is: (1) the dates for initial expenditure and for completion of the project, (2) the percent of the bond proceeds likely to be expended within three years of the date of issuance, (3) whether the bond proceeds plus other available funding are sufficient to complete the project, and (4) the priority ranking of the project as determined by applying the deviation from the statewide adequacy standards pursuant to 22-24-5 NMSA 1978.

The bill contains an emergency clause.

Synopsis of Original Bill

House Bill 145 amends NMSA Section 6-15-5 relating to bond sales by counties, incorporated cities, incorporated towns, incorporated villages or school districts to allow the public or private sale of bonds, if any portion of the bonds issued are refunding bonds, or include any bonds authorized by the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5. The bill eliminates current language limiting the public or private sale of bonds to those bonds designated as “Build America bonds” pursuant to Section 1531 of the federal act; and qualified school construction bonds (QSCBs) issued pursuant to the Qualified School Construction Bonds Act and Section 1521 of the federal act.

House Bill 145 makes further amendments to statutes as follows:

NMSA Section 22-18C-2 of the state Qualified School Construction Bonds Act, 22-18C-1 et seq. is amended to eliminate language limiting the sale of those bonds to an “eligible taxpayer” which is currently defined as “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”; and amends NMSA Section 22-18C-3 of that act to allow the sale of those bonds to the State, the New Mexico finance authority or “any other purchaser.”

NMSA Section 22-18C-3 is amended to allow the sale of qualified school construction bonds for 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, in addition to currently authorized uses of those proceeds.

NMSA Section 22-18C-3 is amended to allow the sale of qualified school construction bonds at par, or at less than or equal to par, notwithstanding any law requiring bonds to be sold not less than par.

NMSA Section 22-18C-4 of the Qualified School Construction Bonds Act is amended to allow the state or school district to designate a portion of a bond sale as qualified school construction bonds and to prohibit the bonds issued in any calendar year from exceeding the “available” allocation, which, under the bill, would include “any carry-forward allocation”.

The bill amends that section to remove language requiring a school district that desires to issue qualified school construction bonds apply to the Council for “reservation of an allocation”, and inserts language requiring that the application be for an “allocation distribution”.

The bill also amends that section to change the application deadline from July 1 of the calendar year in which the bonds are to be issued to the last day of the third month following the month in which the bill is first effective for bonds to be issued in calendar year 2010; and, for bonds to be issued in any subsequent year in which an allocation exists, the application deadline would be no later than March 1 of that year.

The bill also amends that section to change current language providing that the excess allocation beyond the amount of the bonds actually designated and issued in a calendar year be carried forward, and to enact new language providing that the excess shall revert to the council and shall be carried forward and included in the allocation for the subsequent year as follows: (1) any excess attributable to the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to a particular school district shall be allocated to that school district in the subsequent year; and (2) any excess not allocated shall revert to the council and be distributed pursuant to Subsection C of this section in the subsequent year.

The bill also amends that section to eliminate language requiring the Council to ratably apportion among the state and school districts any remaining allocation after deducting the direct allocations made to particular school districts pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 in the event that the face amount of all proposed qualified school construction bonds for a calendar year exceeds the allocation remaining; and substitutes language requiring the Council to consider certain factors in deciding how the remaining allocation shall be distributed to applicants.

SIGNIFICANT ISSUES

The PED notes the following issues with House Bill 145.

As part of the ARRA of 2009 (federal stimulus package), Section 1521, qualified school construction bonds were created. The purpose of these bonds is to give school districts authority to issue interest-free bonds for projects that meet certain qualifications. A school district must have voter approval for the issuance of the bonds and cannot exceed the limitations as described in Article IV, Section 11 of the New Mexico Constitution. The issuer of these bonds will then receive a tax credit up to 35% of the interest payable. The ARRA of 2009 has limited the designation of these bonds to \$11 billion for 2009 and \$11 billion in 2010 (total \$22 billion nationwide). 40% of the total will be distributed among the 100 largest districts in the nation as a “direct allocation”, of which the Albuquerque Public Schools will receive approximately \$44,648.9. The remaining 60% was apportioned to the states. New Mexico has been authorized to issue bonds not to exceed \$64,602.0. The PSCOC will be responsible for appropriating New Mexico’s allocation among the districts based on “timely filed valid applications”.

The QSCBA created in 2009 authorized the PSCOC to allocate these bonds based on an application process and was given the responsibility of ensuring compliance to the criteria from the ARRA. The PED on behalf of the PSCOC developed and sent out an application to every school district in the state. The PED received applications from 20 school districts totaling \$186,500.0, which was three times over the amount the state was authorized to issue. The problem at hand is that the QSCBA was written so that if the PSCOC received applications exceeding the available amount, the council was to award the funds to every school district on a pro rata basis. In this scenario every school district that submitted an application would only have received authority to issues one-third of their total request as interest-free bonds. This was a major flaw because each school district would need to have two distinct bond sales which would have resulted in two associated issuance costs; one for the QSCB designated bonds and another for the balance of the request in order to have sufficient funding for the target project submitted in the application. This would reduce the zero-interest benefits because of added issuance costs and could also impact the bonds marketability. Section 5, paragraph E and F, fixes this flaw. These allow the PSCOC to allocate the funds on a priority ranking.

House Bill 145 has several other technical amendments throughout the bill. These amendments are solely for the financial institutions to have the ability to sell the bonds according to the guidelines implemented by the federal government. These amendments have been brought forward and supported by school district bonding advisors who work directly with school districts in issuing all of their local general obligation bonds.

ADMINISTRATIVE IMPLICATIONS

The PED states that their agency has been assigned to administer the application process of the Qualified School Construction Bonds. This was determined by the PSCOC. The PED is also currently responsible for administration of the QZAB, program which is very similar to the QSCBA.

CONFLICT

Although private sales of bonds may be allowable under the federal law that creates QSCBs, private sales may be in conflict with proposed laws that would demand transparency in New Mexico finances, and also with the New Mexico Procurement Code.

TECHNICAL ISSUES

The PED makes the following comments on House Bill 145.

The purpose of the bonds is to give the state and school districts authority to issue interest-free bonds for projects meeting certain conditions. Specifically:

1. 100 percent of available project proceeds from the issuance of bonds are to be used for construction, rehabilitation or repair of a qualifying school facility or for the acquisition of land on which a school is to be constructed,
2. the bonds must be issued within the same jurisdiction and location of the qualified school; and,
3. the issuer must designate the bonds as qualified school construction bonds.

After the conclusion of the 2009 legislative session several glitches were discovered within the language of the newly created QSCBA. These glitches prevented the state of New Mexico from allocating authority to school districts to issue these interest-free bonds. House Bill 145 is aimed at fixing all of the glitches that exist so the state can take advantage of this program offered through the ARRA.

CH/mew