

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 145

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

AN ACT

RELATING TO PUBLIC FINANCE; 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 22-18C-1 NMSA 1978 (being Laws 2009,  
Chapter 154, Section 1) is amended to read:

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

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

"22-18C-2. 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

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1 pursuant to Section 1521 of the federal American Recovery and  
2 Reinvestment Act of 2009;

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

5 ~~[C. "eligible taxpayer" means an entity that~~  
6 ~~qualifies as an eligible taxpayer under the Internal Revenue~~  
7 ~~Code of 1986, as amended, and may include a bank, insurance~~  
8 ~~company or corporation actively engaged in the business of~~  
9 ~~lending money;~~

10 ~~D.]~~ C. "qualified school construction bond" means a  
11 bond issued by the state or a school district that meets all of  
12 the requirements of Section ~~[3 of the Qualified School~~  
13 ~~Construction Bonds Act]~~ 22-18C-3 NMSA 1978 and the requirements  
14 for a qualified school construction bond pursuant to Section  
15 1521 of the federal American Recovery and Reinvestment Act of  
16 2009; and

17 ~~[E.]~~ D. "qualifying school" means a public school,  
18 a New Mexico state educational institution providing education  
19 or training below the post-secondary level or a program within  
20 such a public school or educational institution and which  
21 school, institution or program meets the requirements of  
22 Section 1521 of the federal American Recovery and Reinvestment  
23 Act of 2009."

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

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1 "22-18C-3. QUALIFIED SCHOOL CONSTRUCTION BONDS--  
 2 DESIGNATION--TERMS--SALE.--

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

6 (1) one hundred percent of the available  
 7 project proceeds from the issuance of the bonds are to be used  
 8 for:

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

11 (b) the acquisition of land on which  
 12 such a facility is to be constructed with part of the proceeds;  
 13 or

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

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

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

22 (a) a school district to which a direct  
 23 allocation is made pursuant to Section 1521 of the federal  
 24 American Recovery and Reinvestment Act of 2009 and the amount  
 25 of the bonds designated as qualified school construction bonds

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1 does not exceed the direct allocation; or

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

5 B. Notwithstanding any law requiring bonds to be  
6 sold at a public sale or at not less than par, qualified school  
7 construction bonds may be sold at a public or private sale to  
8 ~~[eligible taxpayers]~~ the state, the New Mexico finance  
9 authority or any other purchaser and may be sold at par, or at  
10 less than or greater than par.

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

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

18 "22-18C-4. ALLOCATION.--

19 A. The aggregate face amount of all qualified  
20 school construction bonds issued in a calendar year shall not  
21 exceed the available allocation, including any carry-forward  
22 allocation, for that year.

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

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

4 C. If the state or a school district that has been  
 5 authorized to issue bonds, or is in the process of obtaining  
 6 authorization to issue bonds, desires to designate all or any  
 7 portion of the bonds as qualified school construction bonds, it  
 8 shall ~~[by July 1 of the calendar year in which the bonds are to~~  
 9 ~~be issued]~~ submit an application ~~[for reservation of an~~  
 10 ~~allocation]~~ to the council for an allocation distribution. For  
 11 bonds to be issued in calendar year 2010, the application shall  
 12 be submitted no later than the last day of the third month  
 13 following the month in which this 2010 act is first effective;  
 14 and, for bonds to be issued in any subsequent year in which an  
 15 allocation exists, the application shall be submitted no later  
 16 than March 1 of that year. The application shall include  
 17 evidence that the requirements of Paragraphs (1) and (2) ~~[and~~  
 18 ~~(3)]~~ of Subsection A of Section ~~[3 of the Qualified School~~  
 19 ~~Construction Bonds Act]~~ 22-18C-3 NMSA 1978 have been satisfied;  
 20 provided, however, that any school district to which a direct  
 21 allocation is made pursuant to Section 1521 of the federal  
 22 American Recovery and Reinvestment Act of 2009 shall be exempt  
 23 from the application requirement to the extent that the amount  
 24 of qualified school construction bonds to be issued by that  
 25 district does not exceed the direct allocation.

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1           D. If, for a calendar year, the allocation for that  
2 year exceeds the amount of qualified school construction bonds  
3 designated and issued in that year, the excess shall revert to  
4 the council and shall be carried forward and included in the  
5 allocation for the subsequent year as follows:

6                   (1) any excess attributable to the portion of  
7 the allocation required by Section 1521 of the federal American  
8 Recovery and Reinvestment Act of 2009 to be made to a  
9 particular school district shall be allocated to that school  
10 district in the subsequent year; and

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

15           E. In the event that the face amount of all  
16 proposed qualified school construction bonds for a calendar  
17 year exceeds the allocation remaining after deducting the  
18 direct allocations made to particular school districts pursuant  
19 to Section 1521 of the federal American Recovery and  
20 Reinvestment Act of 2009, the council shall, [~~ratably~~  
21 ~~apportion~~] after considering the factors listed in Subsection F  
22 of this section, decide how the remaining allocation [~~among the~~  
23 ~~state and school districts~~] shall be distributed to applicants  
24 that have timely filed valid applications for that year;  
25 provided, however, that the [~~apportionment~~] distribution shall

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1 not reduce the direct allocation to any particular school  
2 district pursuant to Section 1521 of the federal American  
3 Recovery and Reinvestment Act of 2009.

4 F. In deciding how the remaining allocation shall  
5 be distributed to applicants pursuant to Subsection E of this  
6 section, the council shall consider:

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

9 (2) the percent of the bond proceeds that are  
10 likely to be expended within three years of the date of the  
11 issuance of the bonds;

12 (3) whether the bond proceeds, together with  
13 all other money available for the project, are sufficient to  
14 complete the project; and

15 (4) the priority ranking of the project, as  
16 determined by applying the deviation from the statewide  
17 adequacy standards pursuant to Section 22-24-5 NMSA 1978."

18 Section 5. EMERGENCY.--It is necessary for the public  
19 peace, health and safety that this act take effect immediately.