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SENATE BILL 377

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Lidi o G. Rainaldi

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; ALLOWING FEDERAL FUNDS TO BE PLEDGED FOR SCHOOL REVENUE BONDS EVEN IF SUBJECT TO ANNUAL APPROPRIATION; ALLOWING OTHER REVENUE TO BE PLEDGED; ALLOWING INCOME FROM FUTURE INCOME PROJECTS TO BE PLEDGED; PROVIDING FOR DEBT SERVICE RESERVE FUNDS; INCREASING THE NET EFFECTIVE INTEREST RATE ALLOWED ON SCHOOL REVENUE BONDS.

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

Section 1. Section 22-19-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 240) is amended to read:

"22-19-1. SHORT TITLE. -- [~~Sections 77-16-1 through 77-16-16 New Mexico Statutes Annotated, 1953 Compilation~~] Chapter 22, Article 19 NMSA 1978 may be cited as the "School Revenue Bond Act". "

Section 2. Section 22-19-2 NMSA 1978 (being Laws 1967, . 140069. 1

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1 Chapter 16, Section 241) is amended to read:

2 "22-19-2. DEFINITIONS. --As used in the School Revenue
3 Bond Act:

4 A. "bonds" means revenue bonds;

5 B. "federal grant" means a payment, grant,
6 subsidy, contribution or other money from the United States or
7 any of its agencies or instrumentalities that is not otherwise
8 restricted as to use and that the federal government allows to
9 be pledged or used to pay debt service on bonds;

10 ~~[A.]~~ C. "income project" means ~~[purchasing,~~
11 ~~erecting, improving, repairing or furnishing a building,~~
12 ~~improvement or facility including the land upon which it is~~
13 ~~situated which will produce]~~ a facility that produces an
14 income to the school district, including housing for teachers
15 and including the land upon which the income project is
16 situated and improvements to that land;

17 ~~[B.]~~ D. "net income from the income project" means
18 all income derived from an income project ~~[including the~~
19 ~~income pledged pursuant to the School Revenue Bond Act]~~ less
20 the operating costs of the income project; [and

21 ~~C.]~~ E. "operating costs" means expenses of
22 operating, maintaining and keeping in repair an income
23 project, including the cost of ~~[heating, electricity]~~
24 utilities, insurance, service employees and equipment
25 replacement; and

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1 F. "pledgeable revenue" means net income from the
2 income project and other revenue of the school district,
3 including net income from other existing and future income
4 projects and federal grants, but not including revenue from
5 the state, property taxes or other bond issues. "

6 Section 3. Section 22-19-4 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 243) is amended to read:

8 "22-19-4. BONDS [MORTGAGES] NOT GENERAL OBLIGATIONS OF
9 SCHOOL DISTRICT OR STATE. --

10 A. A local school board may issue bonds [~~or other~~
11 ~~special obligations~~] to finance [~~the repayment of all money~~
12 ~~borrowed for~~] the purchase, construction, renovation,
13 equipping or furnishing of an income project [pursuant to the
14 School Revenue Bond Act.

15 ~~B. A local school board may execute a mortgage,~~
16 ~~deed of trust or a security agreement upon the income project~~
17 ~~to secure payment of any bonds or other special obligations~~
18 ~~issued pursuant to the School Revenue Bond Act] and may~~
19 irrevocably pledge any or all pledgeable revenue to the
20 payment of those bonds and to the debt service reserve fund if
21 one is established for the bonds.

22 B. Bonds shall be payable solely from pledgeable
23 revenue and shall not constitute an indebtedness or general
24 obligation of the school district, the state or other
25 political subdivisions of the state. "

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1 Section 4. Section 22-19-5 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 244) is amended to read:

3 "22-19-5. DETERMINATION BY LOCAL SCHOOL BOARD-- FEDERAL
4 GRANTS. --

5 A. Prior to [~~borrowing money and~~] issuing
6 [~~evidences of indebtedness~~] bonds to finance the purchase,
7 construction, renovation, equipping or furnishing of an income
8 project, a local school board shall make a determination that
9 the income project is necessary and that [~~sufficient income~~
10 ~~will be produced by the income project~~] estimated pledgeable
11 revenue pledged to the bonds is sufficient to repay [~~all money~~
12 ~~borrowed and to discharge any~~] the bonds [~~or other special~~
13 ~~obligations issued for the repayment of the money borrowed~~].

14 B. Revenue from federal grants may be pledged even
15 if the federal grants are subject to annual appropriation.
16 Federal grants shall not be pledged unless such use is allowed
17 by federal law. The local school board shall include in its
18 determination a statement as to the legality of pledging the
19 federal grants and what other revenue will be available to
20 make bond payments if federal grants are not appropriated."

21 Section 5. Section 22-19-6 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 245) is amended to read:

23 "22-19-6. REPORT TO STATE BOARD.--Prior to [~~borrowing~~
24 ~~any money~~] issuing bonds to finance an income project, a local
25 school board shall furnish to the state board the following

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1 information:

2 A. a detailed description of the income project;

3 B. an explanation of the necessity for the income
4 project;

5 C. an estimate of the total cost of the income
6 project;

7 ~~[D. an estimate of the amount of income~~
8 ~~anticipated from the income project;~~

9 ~~E.]~~ D. an estimate of ~~[the amount of income from~~
10 ~~existing buildings, improvements or facilities]~~ the net income
11 of the income project and other revenues that will be pledged
12 to pay for the income project; and

13 ~~[F.]~~ E. an estimate of the yearly operating cost
14 of the income project [and

15 ~~G. an estimate of the anticipated yearly net~~
16 ~~income from the income project]. "~~

17 Section 6. Section 22-19-7 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 246) is amended to read:

19 "22-19-7. STATE BOARD APPROVAL-- DETERMINATION BY STATE
20 BOARD. --

21 A. A local school board shall obtain written
22 approval of the state board before it [~~borrow money~~] issues
23 bonds [~~or other special obligations or executes mortgages,~~
24 ~~deeds of trust or security agreements for financing]~~ to
25 finance an income project pursuant to the School Revenue Bond

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1 Act.

2 B. Prior to giving written approval to an income
3 project, the state board shall determine that the income
4 project is necessary and that [~~sufficient income will be~~
5 ~~produced by the income project to repay all money borrowed and~~
6 ~~to discharge any bonds or other special obligations issued for~~
7 ~~the repayment of the money borrowed]~~ estimated pledgeable
8 revenue pledged to the bonds is sufficient to repay the
9 bonds. "

10 Section 7. Section 22-19-8 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 247) is amended to read:

12 "22-19-8. RECORDS--RESTRICTION ON USE OF INCOME. --

13 A. A local school board shall retain complete and
14 accurate records of:

15 (1) the net income from the income project;

16 [~~and~~]

17 (2) receipt and amount of other pledgeable
18 revenue that is pledged or may be pledged to the repayment of
19 the bonds; and

20 [~~(2)~~] (3) the operating costs of the income
21 project.

22 B. [~~All income from the income project~~] Pledgeable
23 revenue that is pledged to the repayment of bonds shall first
24 be used [~~solely for the following purposes:—(1)~~] to pay the
25 principal, interest and service charges on [~~any~~] the bonds [~~or~~

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1 ~~other special obligations issued pursuant to the School~~
2 ~~Revenue Bond Act; and (2) to pay the operating costs of the~~
3 ~~income project] and to fund a debt service reserve fund, if~~
4 applicable. "

5 Section 8. Section 22-19-9 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 248) is amended to read:

7 "22-19-9. BONDS-- PLEDGE OF INCOME [~~SATISFACTION OF~~
8 ~~INDEBTEDNESS~~]. --

9 A. Bonds [~~or other special obligations issued~~
10 ~~pursuant to the School Revenue Bond Act]~~ shall be payable
11 solely from any or all pledgeable revenue, and the local
12 school board shall irrevocably pledge [for] that revenue to
13 the prompt payment of the principal, interest and service
14 charges [thereof, the net income from the income project for
15 which the bonds or other special obligations were issued] on
16 the bonds. The bonds [~~or other special obligations]~~ shall be
17 equally and ratably secured, without priority, by this pledge
18 [~~of the net income from the income project]~~ of pledgeable
19 revenue.

20 B. [A] If the bonds are payable solely from the
21 net income of the income project being financed, the local
22 school board shall operate the income project so as to
23 [~~insure]~~ ensure a sufficient income to promptly pay the
24 principal, interest and service charges as they become due on
25 the bonds [~~or other special obligations issued after the~~

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1 ~~payment of operating costs of the income project. A local~~
2 ~~school board shall establish a reserve fund not exceeding ten~~
3 ~~thousand dollars (\$10,000) to be used for the repayment of any~~
4 ~~money borrowed.~~

5 ~~C. Satisfaction of any indebtedness created by any~~
6 ~~bonds or other special obligations issued pursuant to the~~
7 ~~School Revenue Bond Act shall be limited solely to foreclosure~~
8 ~~of the income project upon which a mortgage, deed of trust or~~
9 ~~security agreement was executed, without the right to a~~
10 ~~deficiency judgement]. "~~

11 Section 9. Section 22-19-10 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 249) is amended to read:

13 "22-19-10. PROCEEDS OF BOND SALES--RETIREMENT FUND--
14 RESERVE FUND. --

15 A. Proceeds from the sale of bonds [~~or other~~
16 ~~special obligations issued by a local school board pursuant to~~
17 ~~the School Revenue Bond Act]~~ shall be deposited into a
18 separate account to be used solely for the specific purposes
19 for which the [~~money was borrowed~~] bonds were issued,
20 including a debt service reserve fund. All costs incident to
21 issuing and selling the bonds [~~or other special obligations]~~
22 may be paid out of the proceeds of [~~this account~~] the bonds.

23 B. [A] The local school board [~~at the time of~~
24 ~~issuing any bonds or other special obligations]~~ shall
25 establish a [~~fund to be known as the~~] bond "retirement fund"

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1 ~~[All net income from the income project and]~~ to be used solely
2 for the payment of principal, interest and service charges on
3 the bonds. Sufficient amounts from the pledged revenue shall
4 be deposited in the retirement fund at least annually so that
5 timely payments of principal and interest may be made. All
6 proceeds remaining after completion of the income project
7 shall be deposited into the retirement fund. ~~[All proceeds in~~
8 ~~the retirement fund shall be used solely for the purpose of~~
9 ~~repaying the principal, interest and service charges on any~~
10 ~~bonds or other special obligations issued for the income~~
11 ~~project.]~~

12 C. The local school board may establish a "debt
13 service reserve fund" to be used to pay bond payments in case
14 the pledged revenue is insufficient."

15 Section 10. Section 22-19-11 NMSA 1978 (being Laws 1967,
16 Chapter 16, Section 250) is amended to read:

17 "22-19-11. BONDS--FORM-REQUIREMENTS.--All bonds [~~or~~
18 ~~other special obligations]~~ issued pursuant to the School
19 Revenue Bond Act shall:

20 A. be fully negotiable within the provisions of
21 the Uniform Commercial Code;

22 B. have a duration of time not to exceed forty
23 years from their date of issuance;

24 C. bear interest at a rate [~~not to exceed a net of~~
25 ~~six percent a year, interest]~~ or rates payable annually or

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1 semi annually;

2 D. be sold at a price [~~which~~] that does not result
3 in [~~an actual~~] a net effective interest [~~cost to maturity,~~
4 ~~computed on the basis of standard tables of bond values, in~~
5 ~~excess of six percent a year~~] rate in excess of twelve percent
6 a year;

7 E. have the principal [~~thereof~~] of the bonds paid
8 in yearly amounts beginning not later than two years from
9 their date of issuance; and

10 F. be sold at public or private sale [~~with or~~
11 ~~without a discount, as provided by Subsection D of this~~
12 ~~section~~] at, above or below par. "

13 Section 11. Section 22-19-12 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 251) is amended to read:

15 "22-19-12. PLEDGE OF ADDITIONAL REVENUE. --A local school
16 board may pledge as security for the payment of the principal
17 and interest on [any] the bonds [~~or other special obligations~~
18 ~~issued pursuant to the School Revenue Bond Act~~] a part or the
19 whole amount of net income derived from an existing [~~building,~~
20 ~~improvement or other facility~~] or future income project
21 subject to the control of the local school board. A local
22 school board may pledge this income whether or not the
23 existing [~~building, improvement or facility~~] or future income
24 project is to be improved, repaired or furnished by the
25 proceeds of the bonds [~~or other special obligations~~]. "

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1 Section 12. Section 22-19-13 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 252) is amended to read:

3 "22-19-13. REFUNDING BONDS. --

4 A. A local school board may issue refunding bonds
5 ~~[for the purpose of refunding, for not less than the principal~~
6 ~~amount thereof]~~ to refund bonds ~~[issued pursuant to the~~
7 ~~provisions of the School Revenue Bond Act or any act repealed~~
8 ~~thereby or for the purpose of providing additional funds for~~
9 ~~any income project for which bonds have been authorized by a~~
10 ~~local school board, or for both purposes].~~

11 B. Except as otherwise provided in the School
12 Revenue Bond Act, refunding bonds shall conform to the
13 provisions of the School Revenue Bond Act ~~[which]~~ that provide
14 for the issuance of other revenue bonds by a local school
15 board.

16 C. A refunding bond issued by a local school board
17 may have the same security or source of payment as was pledged
18 for the payment of the bond being refunded, but no source of
19 payment shall be pledged ~~[which]~~ that is not authorized by the
20 School Revenue Bond Act.

21 D. A refunding bond may be delivered in exchange
22 for a bond authorized to be refunded, sold at a public or
23 private sale ~~[for not less than the par value of the bond]~~ or
24 sold in part and exchanged in part as provided in the Public
25 Securities Act. If the refunding bond is sold, the proceeds

. 140069. 1

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1 shall be immediately applied to the retirement of the bond to
2 be refunded, or the proceeds or the obligations in which the
3 proceeds are permitted by law to be invested shall be placed
4 in trust to be held and applied to payment of the bond to be
5 refunded. "

6 Section 13. Section 22-19-14 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 253) is amended to read:

8 "22-19-14. REFUNDING BONDS--ISSUANCE--SALE--PROCEEDS.--

9 A. ~~[No]~~ A bond shall not be refunded ~~[pursuant to~~
10 ~~the School Revenue Bond Act]~~ unless it matures or is callable
11 for prior redemption under its terms within fifteen years from
12 the date of issuance of the refunding bond or unless the
13 holder of the bond voluntarily surrenders it for exchange or
14 payment.

15 B. Outstanding bonds of more than one issue may be
16 refunded by refunding bonds of one or more issue. Bonds and
17 refunding bonds and any other bonds authorized pursuant to the
18 School Revenue Bond Act may be issued separately or in
19 combinations of one or more series.

20 C. If ~~[any]~~ an officer whose signature or
21 facsimile signature appears on ~~[any]~~ a bond or coupon
22 ~~[authorized by the School Revenue Bond Act]~~ ceases to hold
23 office before delivery of the bond, the signature or facsimile
24 signature shall be valid for all purposes as if he had
25 remained in office until delivery.

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1 D. When a refunding bond is sold, the net proceeds
2 may, in the discretion of the local school board, be invested
3 in obligations of the federal government or [~~any~~] an agency of
4 the federal government or in obligations fully guaranteed by
5 the federal government, but the obligations purchased [~~must~~]
6 shall have a maturity and bear a rate of interest payable at
7 times to ensure the existence of sufficient money to pay the
8 bond to be refunded when it becomes due or redeemable pursuant
9 to a call for redemption, together with interest and
10 redemption premiums, if any.

11 E. All obligations purchased with the net proceeds
12 from refunding bonds shall be deposited in trust with a bank
13 [~~doing business in the state and which~~] that has trust powers
14 and that is a member of the federal deposit insurance
15 corporation. The obligations shall be held, liquidated and
16 the proceeds of the liquidation paid out for payment of the
17 principal, interest and redemption premium of the bonds to be
18 refunded as the bonds to be refunded become due or where the
19 bonds are subject to redemption under a call for redemption
20 previously made or where there is a voluntary surrender with
21 the approval of the local school board.

22 F. The determination of the local school board
23 issuing refunding bonds that the issuance has been in
24 compliance with the School Revenue Bond Act is conclusively
25 presumed correct in the absence of fraud or arbitrary and

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gross abuse of discretion.

G. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser. "

Section 14. REPEAL. -- Section 22-19-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 242) is repealed.