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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/2007

SPONSOR Gonzales LAST UPDATED 3/11/2007 HB 1226/aHEC/aHF1

SHORT TITLE Timely Payment of School GO Bonds SB _____

ANALYST McOlash/Baca/Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HF1 Amendment

The House Floor Amendment to House Bill 1226, as amended, strikes references to the State Treasurer and inserts in lieu of the Department of Finance and Administration, as the agency responsible for distributing General Fund appropriations to intercept SEG distributions.

Synopsis of HEC Amendment

The House Education Amendment strikes "immediately make the payment" in several places and replaces the phrase with "forward the amount in immediately available funds necessary to make the payment due on the bonds."

The amendment contains clarifying language and leaves the substance of the bill unchanged.

Synopsis of Original Bill

House Bill 1226 amends Section 22-18-13 NMSA (being Laws 2003, Chapter 46, Section 1) by adding new language regarding state payment on a bond issue that a school district is unable to meet (on or after the effective date of this legislation). The amendment allows the State Treasurer to make payment to the paying agent from the current fiscal year's undistributed State Equalization Guarantee (SEG) to that school district and to withhold subsequent distributions from the SEG to the school district until the full payment is recouped.

The bill amends the current statute by adding language that essentially guarantees bond payments through the State Treasurer's Office.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

This bill provides additional procedures for the repayment of school district General Obligation Bonds (GOBs). ~~to be backed by the full faith and credit of the state's permanent funds.~~ With the backing of the state, school districts ~~will~~ might be able to achieve better bond ratings. These improved bond ratings ~~will~~ could lead to lower interest rates, which will result in lower property taxes for residents and business owners.

AGO Analysis

Existing law requires the State Treasurer to make any payment due on a local school district general obligation bond upon notice that a payment is due and owing, regardless of amount, from immediately available funds. To the extent the amount of the payment is greater than the amount remaining undistributed to the school district from that year's state equalization guarantee distribution, the State's ongoing obligation to make that payment likely violates Article IX, Section 8 of the New Mexico Constitution (the debt clause applicable to the State) because the State is assuming the school district's debt and pledging general tax revenues of the State into a future fiscal year without voter approval. See Hamilton v. Test Systems, Inc. v. City of Albuquerque, 103 N.M. 226, 228-229, 704 P.2d 1102 (1985), and cases cited therein, holding that the comparable limitation on municipal debt, which requires prior approval of the city's voters, is implicated whenever a city obligates itself to pay out of tax revenues and commits itself beyond revenues for the current fiscal year. This bill, if enacted, would avoid this constitutional problem for bonds issued after its effective date by limiting the source and amount of any payment by the State Treasurer to the amount of undistributed state equalization guarantee distribution due to the particular school district in any given fiscal year, and requiring repayment to the State Treasurer of any amount so paid from that funding source or any other legally available monies of the school district.

OTHER SUBSTANTIVE ISSUES

The AGO indicates:

This bill, however, does not provide a mechanism for funding, beyond the amount of any undistributed amounts due to the district under the state equalization guarantee distribution, any due and owing payment on a school bond issued on or after July 1, 2003 and the effective date of this bill when a district is unable to make a timely payment. In light of the guarantee provided by the State when it enacted section 22-18-13 in 2003, to avoid constitutional issues regarding the State's fiscal liability for such payments on school bonds, a legally valid funding source for such payments should be identified and provided for.

The Taxation and Revenue Department correctly notes that the Treasurer's Office does not make SEG distributions and does not have information on the distributions. The Department of Finance and Administration (DFA) initiates the General Fund allotments subsequent to the legislative appropriation of funds. DFA works in cooperation with the Public Education Department to distribute these funds to school districts, monthly. The Treasurer does not have a way to intercept the payments or prevent them from being made.

TECHNICAL ISSUES

The Department of Finance and Administration, as the agency responsible for distributing General Fund appropriations, might be a more appropriate agency to intercept SEG distributions.

BM:LB/csd