

HOUSE BILL NO. 128
INTRODUCED BY A. BECKER
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING OUTMODED REQUIREMENTS FOR PRIOR REVIEW OR APPROVAL BY THE ATTORNEY GENERAL OF LOCAL GOVERNMENT AND SCHOOL BOND ACTIONS, LAW ENFORCEMENT MUTUAL AID AGREEMENTS, SPECIAL EDUCATION COOPERATIVE CONTRACTS, AND TEXTBOOK SURETY BONDS; AMENDING SECTIONS 7-7-104, 7-7-2213, 7-7-4212, 20-7-454, 20-7-455, 20-7-457, 20-7-604, 20-9-327, 20-9-461, 20-9-464, 20-9-466, 20-15-404, AND 44-11-310, MCA; AND REPEALING SECTIONS 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, AND 44-11-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-7-104, MCA, is amended to read:

"7-7-104. Limitation on action to test bond validity. A local government general obligation bond of any issue, ~~in which the preliminary proceedings have been submitted to and approved by the attorney general,~~ may not be held invalid because of any defect or failure to comply with ~~any a~~ a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government."

Section 2. Section 7-7-2213, MCA, is amended to read:

"7-7-2213. Citizen bonds -- procedural requirements prior to issuance. ~~(1) Prior to the final passage of the resolution provided for in 7-7-2238, a county shall notify the attorney general of its intention to issue citizen bonds-~~

~~(2)~~ Prior to issuing citizen bonds, a county shall make available to interested investors:

~~(a)~~ (1) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; and

~~(b)~~ (2) application forms for the purchase of citizen bonds that must specify at a minimum:

~~(i)~~ (a) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

- ~~(ii)(b)~~ the issue date, maturity dates, and the dates on which interest will be earned and paid;
- ~~(iii)(c)~~ the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;
- ~~(iv)(d)~~ the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and
- ~~(v)(e)~~ the provision made for the transfer of ownership of outstanding bonds; ~~and~~
- ~~_____ (c) other information that the attorney general may require."~~

Section 3. Section 7-7-4212, MCA, is amended to read:

"7-7-4212. Citizen bonds -- procedural requirements prior to issuance. ~~(1) Prior to final passage of the resolution provided for in 7-7-4236, a city or town shall notify the attorney general of its intention to issue citizen bonds.~~

- ~~(2)~~ Prior to issuing citizen bonds, a city or town shall make available to interested investors:
 - ~~(a)(1)~~ a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels; and
 - ~~(b)(2)~~ application forms for the purchase of citizen bonds, which must specify at a minimum:
 - ~~(i)(a)~~ the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;
 - ~~(ii)(b)~~ the issue date, maturity dates, and the dates on which interest will be earned and paid;
 - ~~(iii)(c)~~ the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;
 - ~~(iv)(d)~~ the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and
 - ~~(v)(e)~~ the provision made for the transfer of ownership of outstanding bonds; ~~and~~
 - ~~_____ (c) any other information that the attorney general may require."~~

Section 4. Section 20-7-454, MCA, is amended to read:

"20-7-454. Final approval and filing of full service education cooperative contract. ~~Within 10 days after approval by the attorney general and prior~~ Prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 must be:

- (1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;
- (2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and
- (3) filed with the secretary of state."

Section 5. Section 20-7-455, MCA, is amended to read:

"20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract ~~such any~~ material, personnel, or services ~~as may be~~ that are within its legal power to furnish."

Section 6. Section 20-7-457, MCA, is amended to read:

"20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.

- (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.
- (2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.
- (3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.
- (4) A cooperative that has not met the requirements of ~~20-7-453~~ and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.
- (5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.
- (6) ~~Before July 1, 1994, the~~ The superintendent of public instruction, after consulting with regional

representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member."

Section 7. Section 20-7-604, MCA, is amended to read:

"20-7-604. Licensing textbook dealers. (1) Textbook dealers ~~shall~~ must be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction ~~his~~ the dealer's written agreement to:

(a) guarantee that textbooks ~~shall~~ must be supplied to any district at the listed, uniform sales prices in effect for schools, except that ~~such~~ the prices may be reduced in accordance with this section;

(b) guarantee that at no time ~~shall~~ will any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond ~~shall~~ must run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond ~~shall~~ must be set by the superintendent of public instruction and ~~shall be~~ may not be less than \$2,000 ~~but not~~ or more than \$10,000. ~~The bond shall be approved by the attorney general. It shall be~~ is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer."

Section 8. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101; and
- (iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of ~~20-7-453~~ and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is \$2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students."

Section 9. Section 20-9-461, MCA, is amended to read:

"20-9-461. Purpose. ~~Sections 20-9-461 through Section 20-9-464 and this section~~ are intended to improve the marketability of bonds issued by school districts in order that ~~said~~ the bonds may be sold upon the most favorable terms."

Section 10. Section 20-9-464, MCA, is amended to read:

"20-9-464. Statute of limitations -- action to test validity. A bond of any issue, ~~in which the preliminary proceedings have been submitted to and approved by the attorney general,~~ may not be held invalid because of

any defect or failure to comply with ~~any a~~ statutory provision relating to the authorization, issuance, or sale of the bonds; unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district."

Section 11. Section 20-9-466, MCA, is amended to read:

"20-9-466. School district bonds -- state loan -- qualifications for state loan. (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703, to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 through 20-9-446, 20-9-461, and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii);

and

(c) received a final certificate of allocation from the department of administration pursuant to subsection

(5).

(3) The board of public education shall:

- (a) maintain a record of the total principal amount of bonds for which certification has been issued; and
- (b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

- (a) the tentative date of sale of the school district's bonds;
- (b) the principal amount of the bonds to be issued;
- (c) the name and addresses of bond counsel and the financial ~~advisor~~ adviser; and
- (d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. The loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the

district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

~~(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.~~

~~(9)(8) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department."~~

Section 12. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

- (1) the teachers' retirement provisions of Title 19, chapter 20;
- (2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;
- (3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;
- (4) the adult education provisions of Title 20, chapter 7, part 7;
- (5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;
- (6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, ~~and 20-9-461, through 20-9-464, and 20-9-465;~~
- (7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;
- (8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;
- (9) the school elections provisions of Title 20, chapter 20;
- (10) the students' rights provisions of 20-25-511 through 20-25-516; and
- (11) the health provisions of 50-1-206."

Section 13. Section 44-11-310, MCA, is amended to read:

"44-11-310. Filing of agreement. Within 20 days after the final approval by the ~~attorney general governing bodies of all parties to the agreement~~, an agreement made pursuant to this part must be filed in the

office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state."

NEW SECTION. Section 14. Repealer. Sections 7-7-101, 7-7-102, 7-7-103, 20-7-453, 20-9-462, 20-9-463, and 44-11-309, MCA, are repealed.

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