House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

# HOUSE BILL 2875

AN ACT

AMENDING SECTIONS 15-2004, 15-2005, 15-2006 AND 15-2031, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE SCHOOL FACILITIES BOARD BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-2004, Arizona Revised Statutes, is amended to read:

15-2004. School facilities board lease-to-own; fund; expiration

A. In order to fulfill the requirements of section 15-2041, the school facilities board may acquire school facilities for the use of one or more school districts by entering into one or more lease-to-own transactions in accordance with this section. For purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the lease-to-own transaction. The school facilities board may provide monies to provide school facilities in part pursuant to section 15-2041 and in part through a lease-to-own transaction.

B. A lease-to-own transaction may provide for:

1. The ground lease of the land for the facilities to a private entity for the term of the lease-to-own transaction or for a term of up to one and one-half times the term of the lease-to-own transaction, subject to earlier termination on completion of performance of the lease-to-own agreement. The ground lessor may either be the school district or the school facilities board, whichever holds title to the land.

2. The lease of the completed school facilities by a private entity to the school facilities board for an extended term of years pursuant to a lease-to-own agreement.

3. The sublease of the completed school facilities by the school facilities board to the school district during the term of the lease-to-own agreement. The sublease shall provide for the use, maintenance and operation of the school facilities by the school district and for the transfer of ownership of the school facilities to the school district on completion of performance of the lease-to-own agreement.

4. The option for the school facilities board's purchase of the school facilities and transfer of ownership of the school facilities to the school district before the expiration of the lease-to-own agreement.

5. The services of trustees, financial advisors, paying agents, transfer agents, underwriters, lawyers and other professional service providers, credit enhancements or liquidity facilities and all other services considered necessary by the school facilities board in connection with the lease-to-own transaction, and related agreements and arrangements including arrangements for the creation and sale of certificates of participation evidencing proportionate interests in the lease payments to be made by the school facilities board pursuant to the lease-to-own agreement.

C. The sublease of the school facilities to the school district is subject to this section and to the provisions of the lease-to-own agreement. Neither a ground lease by the school district as lessor nor a sublease of the school facilities to the school district is required to be authorized by a vote of the school district electors. A ground lease is not subject to any

limitations or requirements applicable to leases or lease-purchase agreements pursuant to section 15-342 or any other section of this title.

D. Any school facility that is constructed through a lease-to-own agreement shall meet the minimum building adequacy standards set forth in section 15-2011.

E. School districts may use local monies to exceed the minimum adequacy standards and to build athletic fields and any other capital project for leased-to-own facilities.

F. The school facilities board shall include any square footage of new school facilities constructed through lease-to-own agreements in the computations prescribed in section 15-2011.

G. Pursuant to section 15-2031, a school district is eligible to receive building renewal monies for any facility constructed through a lease-to-own agreement. If a facility's building maintenance renewal is included in the lease-to-own agreement, ~~then~~ the facility shall not be included in the district's building renewal calculation.

H. A lease-to-own fund is established consisting of monies appropriated by the legislature. The school facilities board shall administer the fund and distribute monies in the fund to make payments pursuant to lease-to-own agreements entered into by the school facilities board pursuant to this section, to make payments to or for the benefit of school districts pursuant to local lease-to-own agreements entered into by school districts pursuant to section 15-2005 and to pay costs considered necessary by the school facilities board in connection with lease-to-own transactions and local lease-to-own transactions. Payments by the school facilities board pursuant to a lease-to-own agreement or local lease-to-own agreement shall be made only from the lease-to-own fund. On notice from the school facilities board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the lease-to-own fund.

I. A lease-to-own agreement entered into by the school facilities board pursuant to this section shall provide that:

1. At the completion of the lease-to-own agreement, ownership of the school facilities and land associated with the lease-to-own agreement shall be transferred to the school district as specified in the agreement.

2. The obligation of the school facilities board to make any payment under the lease-to-own agreement is a current expense, payable exclusively from appropriated monies, and is not a general obligation indebtedness of this state or the school facilities board. The obligation of a school district to make expenditures under a sublease pursuant to subsection B, paragraph 3 of this section is a current expense, payable exclusively from budgeted monies, and is not a general obligation indebtedness of the school district.

3. If the legislature fails to appropriate monies or the school facilities board fails to allocate such monies for any periodic payment or renewal term of the lease-to-own agreement, the lease-to-own agreement terminates at the end of the current term and this state and the school facilities board are relieved of any subsequent obligation under the agreement and the school district is relieved of any subsequent obligation under the sublease.

4. The lease-to-own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5. Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

J. The school facilities board may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient appropriated monies to make payments under a lease-to-own agreement, but the lease-to-own agreement shall acknowledge that appropriating state monies is a legislative act and is beyond the control of the school facilities board or of any other party to the lease-to-own agreement.

K. The land and the school facilities on the land are exempt from taxation during the term of the lease-to-own agreement and during construction and subsequent occupancy by the school district pursuant to the sublease.

L. The powers prescribed in this section are in addition to the powers conferred by any other law. Without reference to any other provision of this title or to any other law, this section is authority for the completion of the purposes prescribed in this section for the school facilities board to provide school facilities for use by school districts through lease-to-own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of this title that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

M. THE SCHOOL FACILITIES BOARD SHALL NOT ENTER INTO LEASE-TO-OWN TRANSACTIONS, INCLUDING ANY REFINANCINGS OR REFUNDINGS, PURSUANT TO THIS SECTION FROM AND AFTER MAY 15, 2006.

Sec. 2. Section 15-2005, Arizona Revised Statutes, is amended to read:

15-2005. Local lease-to-own by school districts; expiration

A. In order to fulfill the requirements of section 15-2041, with the approval of the school facilities board, a school district may acquire school facilities by entering into a local lease-to-own transaction in accordance with this section. For purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the local lease-to-own transaction. The school facilities board may provide monies to provide school facilities in part pursuant to section 15-2041 and in part through payments to or for the benefit of a school district for a local lease-to-own transaction.

B. A local lease-to-own transaction may provide for:

1. The ground lease of the land for the facilities to a private entity for the term of the local lease-to-own transaction or for a term of up to one and one-half times the term of the local lease-to-own transaction, subject to earlier termination on completion of performance of the local lease-to-own agreement. The ground lessor may either be the school district or the school facilities board, whichever holds title to the land.

2. The lease of the completed school facilities by a private entity to the school district for an extended term of years pursuant to a local lease-to-own agreement. The local lease-to-own agreement shall provide for the use, maintenance and operation of the school facilities by the school district and for the transfer of ownership of the school facilities to the school district on completion of performance of the local lease-to-own agreement.

3. The option for the school district's purchase of the school facilities and transfer of ownership of the school facilities to the school district before the expiration of the local lease-to-own agreement.

4. The services of trustees, financial advisors, paying agents, transfer agents, underwriters, lawyers and other professional service providers, credit enhancements or liquidity facilities and all other services considered necessary by the school district or the school facilities board in connection with the local lease-to-own transaction, and related agreements and arrangements including arrangements for the creation and sale of certificates of participation evidencing proportionate interests in the lease payments to be made by the school district pursuant to the local lease-to-own agreement.

C. Neither a ground lease by the school district as lessor nor a local lease-to-own agreement is required to be authorized by a vote of the school district electors. A ground lease is not subject to any limitations or requirements applicable to leases or lease-purchase agreements pursuant to section 15-342 or any other section of this title.

D. The school facilities board may make payments to or for the benefit of the school district from the lease-to-own fund established by section 15-2004 for the payment of amounts payable under the local lease-to-own agreement.

E. Any school facility that is constructed through a lease-to-own agreement shall meet the minimum building adequacy standards set forth in section 15-2011.

F. School districts may use local monies to exceed the minimum adequacy standards and to build athletic fields and any other capital project for leased-to-own facilities.

G. The school facilities board shall include any square footage of new school facilities constructed through lease-to-own agreements in the computations prescribed in section 15-2011.

H. Pursuant to section 15-2031, a school district is eligible to receive building renewal monies for any facility constructed through a lease-to-own agreement. If a facility's building maintenance renewal is included in the lease-to-own agreement, ~~then~~ the facility shall not be included in the district's building renewal calculation.

I. A local lease-to-own agreement entered into by a school district pursuant to this section shall provide that:

1. At the completion of the lease-to-own agreement, ownership of the school facilities and land associated with the lease-to-own agreement shall be transferred to the school district as specified in the agreement.

2. The obligation of the school district to make any payment or expenditure under the local lease-to-own agreement is a current expense, payable exclusively from properly budgeted monies, and is not a general obligation indebtedness of this state, the school facilities board or the school district, and that any payment by the school facilities board to or for the benefit of the school district from the lease-to-own fund established by section 15-2004 for payments of amounts payable under the local lease-to-own agreement is a current expense, payable exclusively from appropriated monies, and is not a general obligation indebtedness of this state or the school facilities board.

3. If the school district fails to properly budget for payments under the local lease-to-own agreement or if the legislature fails to appropriate monies or the school facilities board fails to allocate monies for periodic payment to or for the benefit of the school district for payments under the local lease-to-own agreement, the local lease-to-own agreement terminates at the end of the current term and the school district, the school facilities board and this state are relieved of any subsequent obligation under the local lease-to-own agreement.

4. The local lease-to-own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5. Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

J. The school district may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient monies to make payments under a local lease-to-own agreement, but the local lease-to-own agreement shall acknowledge that budgeting school district monies is a governmental act of the school district governing board that may not be contracted away. The school facilities board is not required to covenant to budget, obtain, allocate or maintain sufficient monies in the lease-to-own fund to make payments to or for the benefit of a school district for payments under a local lease-to-own agreement.

K. The land and the school facilities on the land are exempt from taxation during the term of the local lease-to-own agreement and during

construction and subsequent occupancy by the school district pursuant to the local lease-to-own agreement.

L. The powers prescribed in this section are in addition to the powers conferred by any other law. Without reference to any other provision of this title or to any other law, this section is authority for the completion of the purposes prescribed in this section for school districts to provide school facilities through local lease-to-own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of this title that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

M. SCHOOL DISTRICTS SHALL NOT ENTER INTO LEASE-TO-OWN TRANSACTIONS, INCLUDING ANY REFINANCINGS OR REFUNDINGS, PURSUANT TO THIS SECTION FROM AND AFTER MAY 15, 2006.

Sec. 3. Section 15-2006, Arizona Revised Statutes, is amended to read:

15-2006. Lease-to-own amount; expiration

A. In order to fulfill the requirements of section 15-2041, the school facilities board may enter into lease-to-own transactions for up to a maximum of two hundred million dollars in any fiscal year.

B. THE SCHOOL FACILITIES BOARD SHALL NOT ENTER INTO LEASE-TO-OWN TRANSACTIONS, INCLUDING ANY REFINANCINGS OR REFUNDINGS, PURSUANT TO THIS SECTION FROM AND AFTER MAY 15, 2006.

Sec. 4. Section 15-2031, Arizona Revised Statutes, is amended to read:

15-2031. Building renewal fund; definitions

A. A building renewal fund is established consisting of monies appropriated by the legislature ~~and monies credited to the fund pursuant to section 42-5030.01~~. The school facilities board shall administer the fund and distribute monies to school districts for the purpose of maintaining the adequacy of existing school facilities. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The school facilities board shall inventory and inspect all school buildings in this state in order to develop a database to administer the building renewal formula. The database shall include the student capacity of the building as determined by the school facilities board. The board shall distribute monies from the building renewal fund to school districts in an amount computed pursuant to subsection G of this section. A school district that receives monies from the building renewal fund shall use the monies primarily for any buildings in the database developed or created under subsection D of this section and secondly for any other buildings owned by the school district for any of the following:

1. Major renovations and repairs of a building.

2. Upgrading systems and areas that will maintain or extend the useful life of the building.

3. Infrastructure costs.

4. Relocation and placement of portable and modular buildings.

C. Monies received from the building renewal fund shall not be used for any of the following purposes:

1. New construction.

2. Remodeling interior space for aesthetic or preferential reasons.

3. Exterior beautification.

4. Demolition.

5. The purchase of soft capital items pursuant to section 15-962, subsection D.

6. Routine maintenance except as provided in section 15-2002, subsection K and subsection J of this section.

D. The school facilities board shall maintain the building renewal database and use the database for the computation of the building renewal formula distributions. The board shall ensure that the database is updated on at least an annual basis to reflect changes in the ages and value of school buildings. The facilities listed in the database shall include only those buildings that are owned by school districts that are required to meet academic standards. Each school district shall report to the school facilities board no later than September 1 of each year the number and type of school buildings owned by the district, the square footage of each building, the age of each building, the nature of any renovations completed and the cost of any renovations completed. The school facilities board may review or audit, or both, to confirm the information submitted by a school district. The board shall adjust the age of each school facility in the database whenever a building is significantly upgraded or remodeled. The age of a building that has been significantly upgraded or remodeled shall be recomputed as follows:

1. Divide the cost of the renovation by the building capacity value of the building determined in subsection G, paragraph 3 of this section.

2. Multiply the quotient determined in paragraph 1 of this subsection by the currently listed age of the building in the database.

3. Subtract the product determined in paragraph 2 of this subsection from the currently listed age of the building in the database, rounded to the nearest whole number. If the result is negative, use zero. IF THE RESULT IS GREATER THAN THIRTY, USE THIRTY.

E. The school facilities board shall submit an annual report to the president of the senate, the speaker of the house of representatives, the Arizona state library, archives and public records and the governor by October 1 that includes the computation of the amount of monies to be distributed from the building renewal fund for the current fiscal year. The joint committee on capital review shall review the school facilities board's calculation of the building renewal fund distributions. After the joint committee on capital review reviews the distributions computed by the school facilities board, the school facilities board shall distribute the monies

from the building renewal fund to school districts in two equal installments in November and May of each year.

F. School districts that receive monies from the building renewal fund shall establish a district building renewal fund and shall use the monies in the district building renewal fund only for the purposes prescribed in subsection B of this section. Ending cash balances in a school district's building renewal fund may be used in following fiscal years for building renewal pursuant to subsection B of this section. By October 15 of each year, each school district shall report to the school facilities board the projects funded at each school in the previous fiscal year with monies from the district building renewal fund, an accounting of the monies remaining in the district building renewal fund at the end of the previous fiscal year and a comprehensive three year plan that details the proposed use of building renewal monies. If a school district fails to submit the report by October 15, the school facilities board shall withhold building renewal monies from the school district until the school facilities board determines that the school district has complied with the reporting requirement. When the school facilities board determines that the school district has complied with the reporting requirement, the school facilities board shall restore the full amount of withheld building renewal monies to the school district.

G. Notwithstanding any other provision of this chapter, if a school district converts space that is listed in the database maintained pursuant to this section to space that will be used for administrative purposes, the school district is responsible for any costs associated with the conversion, maintenance and replacement of that space. The building renewal amount for each school building shall be computed as follows:

1. Divide the age of the building as computed pursuant to subsection D of this section by one thousand two hundred seventy-five ~~or, in the case of modular or portable buildings, by two hundred ten~~.

2. Multiply the quotient determined in paragraph 1 of this subsection by 0.67.

3. Determine the building capacity value as follows:

(a) Multiply the student capacity of the building by the ~~per student square foot capacity~~ SQUARE FOOTAGE PER PUPIL REQUIREMENTS established by section ~~15-2041~~ 15-2011.

(b) Multiply the product determined in subdivision (a) by the REPLACEMENT cost per square foot established by section 15-2041. FOR THE PURPOSES OF THIS SUBDIVISION, "REPLACEMENT COST" MEANS EIGHTY-FIVE PER CENT OF THE COST PER SQUARE FOOT FOR NEW SCHOOL CONSTRUCTION FOR THE SPECIFIC GRADE CONFIGURATION PRESCRIBED IN SECTION 15-2041.

4. Multiply the product determined in paragraph 2 of this subsection by the product determined in paragraph 3, subdivision (b) of this subsection.

H. If the school facilities board determines that a school district has spent monies from the building renewal fund for purposes other than those prescribed in subsection B of this section, the school facilities board shall

notify the superintendent of public instruction. Notwithstanding any other law, the superintendent of public instruction shall withhold a corresponding amount from the monies that would otherwise be due the school district under the capital outlay revenue limit until these monies are repaid.

I. Beginning on July 1, 2002, a school district is not entitled to receive monies from the building renewal fund for any buildings that are to be replaced with new buildings that are funded with deficiencies corrections monies pursuant to section 15-2021. The replacement buildings are not eligible to receive building renewal funding until the fiscal year following the completion of the building.

J. Notwithstanding subsections B and C of this section, a school district may use eight per cent of the building renewal amount computed pursuant to subsection G of this section for routine preventative maintenance. The board, after consultation with maintenance specialists in school districts, shall provide examples of recommended services that are routine preventative maintenance.

K. A school district that uses building renewal monies for routine preventative maintenance shall use the building renewal monies to supplement and not supplant expenditures from other funds for the maintenance of school buildings. The auditor general shall prescribe a method for determining compliance with the requirements of this subsection. A school district, in connection with any audit conducted by a certified public accountant, shall also contract for an independent audit to determine whether the school district used building renewal monies to reduce the school district's existing level of routine preventative maintenance funding. The auditor general may conduct discretionary reviews of a school district that is not required to contract for an independent audit.

L. For the purposes of this section:

1. "Routine preventative maintenance" means services that are performed on a regular schedule at intervals ranging from four times a year to once every three years and that are intended to extend the useful life of a building system and reduce the need for major repairs.

2. "Student capacity" has the same meaning prescribed in section 15-2011.

Sec. 5. Appropriation; building renewal fund

The sum of $86,283,500 is appropriated from the state general fund in fiscal year 2006-2007 to the building renewal fund.

Sec. 6. School facilities lease-to-own; legislative intent

It is the intent of the legislature that, as a consequence of appropriating $250,000,000 in fiscal year 2006-2007 to the new school facilities fund, the legislature does not intend to appropriate any future amounts to make annual payments for any lease-to-own transactions entered into pursuant to title 15, chapter 16, article 1, Arizona Revised Statutes, in fiscal year 2006-2007.

Sec. 7. Retroactivity; applicability

A. Sections 15-2004, 15-2005 and 15-2006, Arizona Revised Statutes, as amended by this act, apply retroactively to from and after May 15, 2006.

B. Section 15-2031, Arizona Revised Statutes, as amended by this act, applies, and sections 5 and 6 of this act are effective, retroactively to from and after June 30, 2006.

C. Notwithstanding any other law, the school facilities board shall use the provisions of section 15-2031, Arizona Revised Statutes, as amended by this act, to make calculations under the building renewal formula for fiscal year 2006-2007.