



Legislative Council Staff

Research Note

Version: Final

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Bill Number

Senate Bill 16-072

Sponsors

Senator Kerr
Representatives Garnett and
Wilson

Short Title

Increase Annual BEST
Lease-purchase Payment Cap

Research Analyst

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Status

This research note reflects the final version of the bill and becomes effective upon signature of the Governor.

Summary

Currently, under the Building Excellent Schools Today (BEST) Act, the state may enter into lease-purchase agreements for public school facility capital construction projects, subject to the limitation that the maximum total annual amount of lease payments payable under these agreements does not exceed \$80 million in a fiscal year. The bill establishes the following incremental caps on lease payments:

- \$80 million in FY 2015-16;
- \$90 million in FY 2016-17; and
- \$100 million in FY 2017-18 and thereafter.

In addition, the bill changes certain eligibility requirements to apply for grants from the BEST program.

Background

Prior to 1998, public school capital construction was largely funded from local sources. A class action lawsuit filed in 1998 changed how the state contributes to K-12 capital construction. The lawsuit alleged that the state had not fulfilled its constitutional responsibility to establish and

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maintain a thorough and uniform system of public schools because of the deteriorating condition of many public schools and issues of overcrowding. As a result of the lawsuit, Senate Bill 00-181 required the General Assembly to appropriate \$190 million for public school capital construction over a period of 11 years. In 2008, the General Assembly enacted House Bill 08-1335, the BEST Act, which replaced the financial assistance programs established pursuant to the lawsuit.

The BEST program was established to provide grants to public schools to rebuild, repair, or replace the state's deteriorating K-12 facilities. Capital construction projects qualify for funding and are prioritized based on the following criteria: (1) addresses potential safety hazards and/or health concerns; (2) relieves overcrowding; (3) incorporates technology into the educational environment; and (4) all other projects. The BEST Act also established a division and staff within the Colorado Department of Education (CDE) to manage the program.

BEST is administered by the nine-member Public School Capital Construction Assistance Board (board), which includes experts in public school finance and facilities planning. The board is charged with administering the grant program, including annually submitting a prioritized list of projects recommended for funding to the State Board of Education. Two types of grants may be awarded to BEST-qualified projects, including: (1) cash awards; and (2) long-term borrowing through lease-purchase agreements. The source of state funds for the cash awards and to repay long-term borrowing is the Public School Capital Construction Assistance Fund. Money is annually appropriated in the Long Bill for this purpose. The fund collects revenue from the following sources:

- 50 percent of the moneys earned from state public school lands in the form of rental income and mineral royalties;
- net lottery proceeds that would otherwise be transferred to the General Fund;
- the first \$40 million in annual retail marijuana excise tax revenue;
- net proceeds from the sale of certificates of participation; and
- interest earnings.

The BEST program requires grant recipients to pay a portion of the cost of a project, unless a waiver is granted. Criteria used to determine a recipient's share of the project cost include the property and income wealth of a school district, and any current efforts of districts and schools to finance capital improvements.

Through FY 2014-15, the BEST program funded \$1.25 billion in public school capital construction projects from a total of \$2.84 billion in requests, including nearly \$500 million in state revenue from the following sources:

- public school lands income (87 percent);
- marijuana excise tax (5.4 percent);
- net lottery proceeds (5 percent); and
- interest (2.3 percent).

Senate Action

Senate Education Committee (January 28, 2016). Many members of the public testified in support of the bill. The committee adopted amendments L.001, L.004, L.005, and a conceptual amendment to clarify amendment L.005, and referred the bill to the Senate Finance Committee. Amendment L.001 eliminated an increase, from \$40 million to \$60 million, of the minimum transfer of public school lands income to the BEST program. Amendment L.004 removed a five-year eligibility requirement for charter schools to apply for BEST grants. Amendment L.005 removed

a requirement that charter schools comply with certain construction guidelines and allowed charter schools to apply for grants directly rather than through its authorizing school district or the Charter School Institute. The conceptual amendment to Amendment L.005 clarified that an authorizing school district or the Charter School Institute is not prohibited from submitting a letter indicating its position on a charter school's application for a BEST grant.

Senate Finance Committee (February 9, 2016). The committee referred the bill to the Senate Appropriations Committee with a favorable recommendation.

Senate Appropriations Committee (April 27, 2016). The committee adopted amendments L.006 and J.001. Amendment L.006 removed the incremental cap on lease payments for FY 2018-19 and each fiscal year thereafter. Amendment J.001 appropriates \$5.0 million to the Department of Education in FY 2016-17 from the Public School Capital Construction Assistance Fund for future lease payments that may result because of this bill. The committee referred the bill to the Senate Committee of the Whole, as amended.

Senate second reading (April 28, 2016). The Senate adopted the Senate Education and Appropriations Committee reports. The Senate passed the bill on second reading with no additional amendments.

Senate third reading (April 29, 2016). The Senate passed the bill on third reading with no amendments.

House Action

House Education Committee (May 4, 2016). At the hearing, a representative from the Opportunity Coalition testified in support of the bill. A representative from the BEST program responded to committee questions. The committee adopted amendments L.009 and L.007. The amendments clarified that: schools must have been used for educational purposes for at least three years in order to be eligible for BEST grants; the \$100 million cap on lease payments is extended for each fiscal year after FY 2017-18; and BEST projects that incorporate technology are prioritized higher than those that do not.

House Appropriations Committee (May 5, 2016). The committee referred the bill to the House Committee of the Whole.

House second reading (May 9, 2016). The House adopted the House Education Committee report. The House passed the bill on second reading with no additional amendments.

House third reading (May 10, 2016). The House passed the bill on third reading with no amendments.

Conference Committee

First conference committee (May 11, 2016). The Senate acceded to the House amendments to the bill. The committee adopted a report to clarify that financial assistance from the BEST program is available for all public school facilities in existence for at least three years, not only ones used for educational purposes.

Relevant Research

Colorado Department of Education, BEST Grant Program: <http://tinyurl.com/zeo6e27>

Legislative Council Staff, *Distribution of Marijuana Tax Revenue*, Issue Brief, July 2015:
<http://tinyurl.com/gutj3nt>