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Taking Advantage of Federal Money: Chapter 11 Allows California Schools to Unambiguously Issue Qualified School Construction Bonds

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Code Sections Affected
Education Code §§ 12000 (amended); 12001.5 (enacted).
SB 205 (Hancock); 2010 STAT. Ch. 11 *(Effective March 25, 2010).*

I. INTRODUCTION

Willits Unified School District needs to update and repair its schools.[1] However, the present economic crisis forced the District to reduce its budget by $300 million over the last three years.[2] Facilities at the 1920s-era high school are overcrowded and portable classrooms are being used to deal with overflow.[3] The fact that students in the high school science lab still work on tables containing asbestos poignantly illustrates the school's desperate need for updated facilities.[4] In 2009, Willits received an award of $25 million in Qualified School Construction Bonds (QSCBs), but like many school districts across the country, declined to take advantage of the bonds immediately because of confusion over who had statutory authority to issue the bonds.[5] These bonds would allow the small northern California school district to upgrade its school facilities, while saving money on interest payments and inflation of construction costs in the future.[6] The school district will pay low—or no—interest to the purchasers of the bonds, saving community members money they would have paid in property tax assessments to cover the interest payments.[7] Members of the school board are excited about the improvements they will be able to make with the bond money.[8]

1. Telephone Interview with Kati Aguilar, Dist. Fin. Officer, Willits Unified School Dist., Cal. (July 26, 2010) [hereinafter Aguilar Interview] (notes on file with the *McGeorge Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. Mike A'Dair, *District Okays Bond Sales*, WILLITS NEWS, June 11, 2010, *available at* http://www.allbusiness.com/education-training/school-facilities-transportation/14617533-1.html (on file with the *McGeorge Law Review*) (stating that the School District Board of Trustees voted on June 9, 2010 to approve the issuance and sale of QSCBs not to exceed $25 million); Aguilar Interview, *supra* note 1 (explaining Willits only plans to access $14 million of the available bond funds); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010).

6. A'Dair, *supra* note 5.

7. Aguilar Interview, *supra* note 1.

8. *See, e.g.*, A'Dair, *supra* note 5 (stating the Superintendent Debra Kubin is looking forward to fixing school facilities).

Willits is not alone in this excitement; school districts across California are making plans to improve their facilities with the money they can raise using QSCBs.[9] The California Legislature passed Chapter 11 to clarify aspects of the QSCBs in an effort to allow school districts like Willits to finally take advantage of the federal program.[10]

II. BACKGROUND

The federal government created the QSCB program to improve local school districts and state government.[11] This section discusses the development and challenges of the QSCB program at the federal, state, and local levels of government.

A. *QSCB Allocation at the Federal Level*

The recent economic recession created education budget shortfalls across the country.[12] In 2009 and 2010, states identified $33 billion in education budget deficits.[13] In February 2009, President Obama signed into law Congress' American Recovery and Reinvestment Act of 2009 (ARRA) which, in part, provided the U.S. Department of Education with approximately $100 billion in crucial education funding for states.[14] ARRA was the single largest infusion of federal dollars into education in the last forty years.[15]

ARRA created federal QSCBs to stimulate the economy, create jobs, and improve educational facilities.[16] A QSCB is a bond issued by a state or local

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9. *See, e.g.*, Maritza Velazquez, *Baldwin Park Unified to Construct $15 Million Solar Energy Project*, SAN GABRIEL VALLEY TRIB. (Mar. 10, 2010), *available at* http://www.allbusiness.com/print/14088164-1-22eeq.html (on file with the *McGeorge Law Review*) ("[T]he Board of Education approved a $15 million bond to fund a solar project that will save the district $22.6 million in utility costs over the next 25 years."); James Cartledge, *California Schools to Cut 80% of Electricity Costs with Solar Systems*, BRIGHTERENERGY.ORG (May 31, 2010) http://www.brighterenergy.org/11187/news/solar/california-schools-to-cut-80-electricity-costs-with-solar-systems (on file with the *McGeorge Law Review*) (noting that San Ramon Valley Unified School District plans to install solar systems in six schools, which is expected to save the district more than two million dollars in the first year).

10. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 1 (Mar. 22, 2010).

11. *See generally* I.R.C. § 54F (2010) (designating $11 billion dollars of federal money to be used by states and local school districts for rehabilitation, repair, and construction of school facilities).

12. U.S. DEP'T EDUC., AMERICAN RECOVERY AND REINVESTMENT ACT REPORT: SUMMARY OF PROGRAMS AND STATE-BY-STATE DATA 4 (Nov. 2, 2009).

13. *Id.*

14. *Id.* at 3.

15. Carolyn Warner, *Opportunity and Danger: The Two Sides of the American Recovery and Reinvestment Act*, 75 SCHOOL BUS. AFFAIRS 9, 9 (2009) (stating that ARRA was the largest "infusion of federal dollars into education since Congress passed the Elementary and Secondary Education Act in 1965 . . . .").

16. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 2 (Mar. 22, 2010); *see also* Kathleen Conn, *When School Management Companies Fail: Righting Educational Wrongs*, 31 J.L. & EDUC. 245, 247 (2002) ("Education and corporate law share billing as two of the primary drivers of a society's economic productivity . . . .").

government in which 100% of the proceeds will be used for "construction, rehabilitation, or repair of a public school facility," or to acquire land on which a school facility will be built.[17] Instead of the local government paying interest to the bond holders, the federal government issues income tax credits that are equal to the interest the local government would have paid.[18] This allows "state and local governments to borrow [money] without incurring interest costs."[19] Interest payments are often 50% of the cost of a bond.[20] To this end, QSCBs can create significant savings for local school districts.[21] QSCBs are a low-cost way for school districts to repair and upgrade schools, "which is a win-win for communities across the country . . . . The projects funded with these bonds create jobs . . . building modern schools to prepare our kids for the global economy of tomorrow.'"[22]

Under ARRA, Congress allocated $11 billion for both 2009 and 2010, in federal tax credits for QSCBs,[23] distributing bond volume to each state based on Title I allocation.[24] The federal government allocated 40% of the tax credits directly to one hundred "large local education agencies," or large school districts.[25] States received the remainder for distribution to other school districts.[26]

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17. I.R.C. § 54F(a)(1) (2010).

> The term "qualified school construction bond" means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which a facility is to be constructed with part of the proceeds of such issue, (2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and (3) the issuer designates such bond for purposes of this section.

Id. § 54F(a)(1)-(3).

18. Press Release, Dep't of Treasury, Treasury and Education Announce 2010 School Bond Allocation: Recovery Act Program Provides $11 Billion to Build Schools, Create Jobs Across the Country (Mar. 17, 2010) *available at* http http://www2.ed.gov/news/pressreleases/2010/03/03172010a.html [hereinafter Dep't of Treasury Press Release] (on file with the *McGeorge Law Review*). Traditional tax exempt bonds pay interest to the purchaser. In contrast, tax credit bonds give the purchaser a tax credit that can be claimed against regular income tax and alternative minimum tax liabilities. *Id.* However, the credit in a tax year cannot exceed the sum of the taxpayer's regular tax liability plus minimum tax liability, minus the total of the taxpayer's credits against tax. Unused tax credit bond amounts can be carried over to succeeding tax years. 2010 U.S. Master Tax Guide 520-22, ¶ 1371 (2009).

19. Dep't of Treasury Press Release, *supra* note 18.

20. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 2 (Mar. 22, 2010).

21. *Id.*

22. Lynn Hume, *Departments Allocate $11B of QSCBs*, BOND BUYER, Mar. 18, 2010 (quoting deputy Treasury secretary Neal Wolin).

23. I.R.C. § 54F(c) (2010).

24. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 2 (Mar. 22, 2010). Under Title I, federal funds are given to public schools that have high numbers of low income students. *Id.*

25. *Id.*; Peter Schroeder, *Schools Could Keep Allocations: Districts May Not Lose Their QSCBs*, BOND BUYER, Dec. 3, 2009; I.R.C. § 54F(d)(2)(E) (2010) (large local educational agencies for each state are determined every calendar year as the "[one hundred] local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level").

26. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 2 (Mar. 22, 2010).

B. QSCB Allocation at the State Level

Although school districts across the country were excited about using QSCB money to improve school facilities,[27] many states were unable to use the bonds in the way Congress intended.[28] One of the major problems was a lack of clarity regarding which state entity had authority to allocate tax credits to school districts.[29] Although Congress required the state to allocate QSCBs, no further guidance was given on which state agency was authorized to make the allocations and distributions.[30]

Under ARRA, states are allowed to rollover unused credits to the following year.[31] However, ARRA failed to give large school districts the ability to carry unused allocations forward.[32] Many large school districts were unsure if ARRA required them to transfer their unused allocation to the state to avoid losing the credits.[33]

School districts also discovered that it was difficult to find buyers for the bonds because tax credits are unpopular in a weak economy.[34] With banks (the major purchaser of QSCBs) suffering losses because of the financial crisis, few potential bond purchasers are interested in tax credits because the credits will be unusable if they do not owe federal income taxes.[35] Although the tax credits can be rolled over to future years if unused, bond holders may not know when they

27. *See* Press Release, Sarasota County Schools, Booker High Rebuild Awarded Interest Rebate on $43 Million (July 13, 2010), *available at* http://www.sarasotacountyschools.net/departments/communications/newsroom.aspx?blogmonth=7&blogyear=2010&blogid=868 (on file with *the McGeorge Law Review*) ("'This is great news for the school district and for the citizens of our community,' said Shirley Brown, chairwoman of the School Board of Sarasota County .... 'It's truly a win-win-win scenario.'").

28. Peter Schroeder & Audrey Dutton, *House Bill Offers Bond Boost*, BOND BUYER, Mar. 5, 2010 ("[R]ight now [BAB bonds are] not nearly being used to the extent that Congress intended.").

29. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010); *see, e.g.*, Christopher Flavelle, *Schools Have Trouble Tapping Stimulus Funds*, USA TODAY, Dec. 23, 2009, *available at* http://www.usatoday.com/news/education/2009-12-23-school-bonds_N.htm (stating that "North Carolina law prevents the state from issuing bonds directly ....").

30. GENERAL ASSEMBLY OF S.C., Acts and Joint Resolutions, Advance Sheet No. 3 at 892 (Aug. 4, 2009) (stating that ARRA did not specify the method by which states should allocate QSCB issuance authority to school districts); Exec. Order No. 90, *reprinted in* GUBERNATORIAL DOCUMENTS OF VA 837-38 (2009), *available at* http://www.soc-apps.state.va.us/Bluebook/PDFs/14_Gubernatorial%20Documents.pdf (on file with the *McGeorge Law Review*) (stating that neither Virginia nor the federal government provided a process for making allocations of the 2009 QSCB money).

31. Schroeder, *supra* note 25.

32. *Id.*; SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 4 (Mar. 22, 2010).

33. Schroeder, *supra* note 25.

34. Lynn Bonner, *School Bonds Still Untapped*, NEWS & OBSERVER, Dec. 27, 2009, *available at* http://www.newsobserver.com/2009/12/27/257506/school-bonds-still-untapped.html (on file with the *McGeorge Law Review*) ("[N]early a year after the school construction bonds were approved as part of the federal stimulus package, few school districts in the state or across the country have found companies willing to buy them.").

35. Flavelle, *supra* note 29 (explaining that North Carolina has not been able to get the QSCB program started in part because investors want interest, not tax credits); *see also* Bonner, *supra* note 34 ("[I]t has been tough to find banks interested in tax credits that won't do them much good when they're suffering losses.").

will have tax liability in the future, making the credits unattractive when compared to interest payments.[36] In order to find purchasers of QSCBs, some school districts have supplemented the tax credits with coupons or interest payments, defeating the original purpose of helping districts avoid interest payments.[37] By the end of 2009, school districts across the country had issued only 144 QSCBs worth $2.4 billion, significantly less than the $11 billion Congress had allocated.[38]

C. QSCB Allocation in California

California has struggled for decades to fix its school system.[39] In 2000, a class-action lawsuit was filed against the State of California alleging that thousands of students were forced to attend public schools that "shock the conscience."[40] Although the State agreed to make changes to the school system in a 2004 settlement, it did not sufficiently address many of the problems faced by California public schools.[41] In 2008, the American Federation of Teachers estimated that $25.4 billion would be needed to repair the public schools in California.[42] Yet throughout 2008 and 2009, school districts struggled to repair facilities after the State of California froze infrastructure spending and reduced maintenance funding.[43] The recent decline in property values has also impaired the ability of local governments to fund repairs themselves using bond measures, since less money is collected through property taxes.[44] "[S]chools have faced

36. 2010 U.S. Master Tax Guide 520-22, ¶1371 (2009).

37. Patrick Temple-West, *Virginia May Delay Issuing $1 Billion*, BOND BUYER, Dec. 31, 2009, *available at* http://www.bondbuyer.com/issues/118_249/virginia-budget-deficit-1005551-1.html (on file with the *McGeorge Law Review*).

38. Peter Schroeder & Audrey Dutton, *Bill Would Expand BAB-Style Programs*, BOND BUYER, Dec. 17, 2009, *available at* http://www.bondbuyer.com/issues/118_241/bill-expand-bab-style-programs-1005156-1.html (on file with the *McGeorge Law Review*).

39. *See generally* Elizabeth Cairns, Comment, *From the Proxy to the Principal: Disappointments in California's Education Finance Policy and the Benefits of a Human Rights Approach*, 48 SANTA CLARA L. REV. 709, 709-11 (2009) (discussing California's attempts to create equal access to quality education beginning in the 1970s).

40. First Amended Complaint for Injunctive and Declaratory Relief at 6, 9-10, Williams v. California, No. 31-2236 (Cal. Super. Ct. filed Aug. 14, 2000) (complaint described schools that lack basics such as heating or air-conditioning, are infested with vermin or mold, have "leaky roofs, broken windows, peeling paint, defective electrical systems," and often an insufficient number of chairs in the classroom).

41. Cairns, *supra* note 39.

42. Flavelle, *supra* note 29 (interactive map of the country provides estimates of the funding needed to repair schools in each state as of 2008—roll pointer over a state to see the corresponding estimate).

43. Bill Savidge, *Message From the Chair: (More. . .) Challenging Times Ahead*, CASH REGISTER at 2 (2009), *available at* http://www.cashnet.org/members/CASHRegister/2009/NovDec09/NovDecPDFs/CASH_Register_NovDec5.pdf (on file with the *McGeorge Law Review*).

44. *Id.*; *see also* Duane W. Gang, *Decline in Property Values Slows in Two-County Area*, THE RIVERSIDE PRESS-ENTERPRISE, July 2, 2010, *available at* http://www.pe.com/localnews/stories/PE_News_Local_D_taxes03.230894c.html (on file with the *McGeorge Law Review*) (reporting examples of declines in property values affecting local government tax receipts, such as San Bernardino County, CA which had a 6.2%

harmful budget cuts that put [the state's] children's development in jeopardy . . . ." throughout the state of California.[45]

At $720.1 million, California received the largest QSCB allocation of any state.[46] In 2009, the federal government allocated $582 million directly to eleven large school districts in California, and $773.5 million to the state for allocation to school districts and charter schools.[47] Because 231 school districts applied to the state to take part in the QSCB program, the California Department of Education (CDE) held a lottery and allocated tax credits to forty-three school districts.[48] The California School Finance Authority (CSFA) awarded tax credits to an additional six charter schools that were determined to be "credit worthy" and "shovel ready."[49]

While there is clearly a need for additional funds to rehabilitate, repair, and construct school facilities,[50] a lack of clarity on the issuing authority has prevented school districts in California from utilizing the QSCBs.[51] "[B]ond counsels refused to issue bond opinions [which would allow sale of the bonds,] . . . fearing that a challenge [would] be made that a school district did not receive the tax credits from a legally-authorized entity."[52] As of March 22, 2010, no school district that received bond tax credits from the state had issued bonds, despite a deadline of December 31, 2009.[53] Of the eleven large school districts that received credits directly from the federal government, five did not issue

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drop in 2009, and 4.5% drop in 2010 of property values, which are the basis for assessing the amount paid in property taxes).

45. Press Release, Congresswoman Doris Matsui, Congresswoman Matsui Announces $19 Million School Construction Bond for Sacramento City Unified, (Mar. 18, 2010), *available at* http://www.matsui.house.gov/index.php?option=com_content&task=view&id=2201&Itemid=98 (on file with the *McGeorge Law Review*).

46. Hume, *supra* note 22 (noting that California received the largest allocation of QSCB money, followed by Texas).

47. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 2 (Mar. 22, 2010). The CDE and Governor's office designated $73.5 million of the $773.5 million allocation for charter schools. *Id.*

48. *Id.* at 3 (noting that requests totaled $3.6 billion for $700 million in bond credits). For a complete list of school districts that were allocated tax credits in the lottery for 2009 see CAL. DEP'T OF EDUC., *2009 Qualified School Construction Bond Results*, http://www.cde.ca.gov/ls/fa/qs/qscb09results.asp (last visited Jan. 5, 2011) [hereinafter *2009 Bond Results*] (on file with the *McGeorge Law Review*).

49. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010) (explaining that because charter schools do not have authority to issue bonds, the CSFA will sell the bonds and provide loans to the charter schools).

50. *See* First Amended Complaint for Injunctive and Declaratory Relief at 6, 9-10, Williams v. California, No. 31-2236 (Cal. Super. Ct. filed Aug. 14, 2000) (describing the deplorable conditions in many low-income schools in California).

51. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010) ("[S]chool districts . . . were informed by bond counsels that federal law contained ambiguity that requires statutory clarification by the state [before the bonds could be issued]."); Stephen J. Watson, *Direct Payment Option Now Available for Issuers of Qualified Tax Credit Bonds for Schools and Energy Projects*, FULBRIGHT & JAWORSKI LLP (Mar. 25, 2010), *available at* http://www.fulbright.com/index.cfm?fuseaction=publications.Detail&pub_id=4396&site_id=494&detail=yes (on file with the *McGeorge Law Review*).

52. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010).

53. *Id.*

bonds by the deadline.[54] Many districts waited for state or federal legislation to clarify questions before issuing bonds,[55] causing them to miss the deadline.[56]

D. Subsequent Changes at the Federal Level: HIRE Act

In response to problems with the QSCB program, Congress passed the HIRE Act in March 2010.[57] The HIRE Act allows school districts or local governments that issue bonds to choose between offering tax credit bonds or receiving a direct payment from the federal government to cover the costs of interest on the bonds.[58] Because investors have yet to express much interest in the tax credit bonds, the Act is expected to "jump-start the market" for QSCBs.[59]

The HIRE Act also specifies how large school districts can treat unused tax credits.[60] It allows large school districts that received credits directly from the federal government to carry forward unused tax credits to a future year rather than transferring them to the state.[61] In addition, the HIRE Act clarifies which agencies in the state are authorized to issue QSCBs by replacing the language "by the State" with "by the State education agency (or such other agency as is authorized under State law to make such allocation)."[62] However, this section of the HIRE Act did not clarify the problem of issuing authority in California because there are multiple education agencies in the state that fall within the federal definition of "education agency."[63]

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54. *Id.* at 4.

55. *See, e.g.* North Monterey County Unified School District, Board of Trustees Regular Board Meeting Minutes (Apr. 15, 2010), *available at* http://www.nmcusd.org/pdfs/Board%20Minutes/09-10/Minutes%204-15-10.pdf (on file with the *McGeorge Law Review*) (stating that the school district was waiting for legislative clarification before proceeding with the QSCB).

56. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 3 (Mar. 22, 2010).

57. Lewis G. Feldman & Tuan A. Pham, *President Signs Jobs Bill; Direct Payment Bond Program Expanded*, GOODWIN PROCTOR LLP (Mar. 23, 2010), *available at* http://www.mondaq.com/unitedstates/article.asp?articleid=96447 (on file with the *McGeorge Law Review*).

58. *Id.*

59. *Id.* "'It's huge. I think this has the potential to be a game-changer,' said Sam Gruer, managing director at Cityview Capital Solutions LLC. 'I can't see why anyone would borrow on the tax-credit basis if this option is available to them.'" Schroeder & Dutton, *supra* note 38.

60. Watson, *supra* note 51.

61. *Id.*

62. Pub.L. 111-147, § 301(b)(1) (codified as amended at I.R.C. § 54F (2010)) (change was made in a 2010 Amendment to subsection (d)(1)); Watson, *supra* note 51 ("This clarification is especially important for the State of California, where QSCB issuance has been delayed due to questions regarding the State Education Department's authority to allocate volume cap.").

63. Telephone Interview with Shannon Farrell-Hart, Educ. Fiscal Serv. Consultant, Cal. Dep't of Educ. (July 23, 2010) (notes on file with the *McGeorge Law Review*) [hereinafter Farrell-Hart Interview] (explaining that California has three such agencies).

III. CHAPTER 11

Chapter 11 clarifies an ambiguity in federal law over issuing authority by giving the CDE and CSFA statutory authority to administer the 2009 QSCB federal tax credits.[64] It also allows the CDE to grant extensions for issuing bonds to school districts that were assigned tax credits prior to December 31, 2009.[65] Unissued bonds will be added to the state's volume cap for 2010.[66] Chapter 11 also allows the CDE to reassign credits back to large districts if their credits were reallocated to the state for non-issuance.[67] The CDE will assign and administer up to $700 million of 2009 federal tax credits, while CFSA will have approximately $73.5 million for allocating to charter schools.[68]

The legislation contained an urgency clause to rush the bill through the Legislature and allow school districts to begin taking advantage of the federal tax credits and bonds sooner.[69] Chapter 11 will also exempt the CDE and CSFA from the rulemaking provisions of the Administrative Procedures Act (APA).[70]

IV. ANALYSIS

The most significant impact of Chapter 11 is that it allows school districts to have immediate access to funding in order to begin repairing and improving schools.[71] The Legislature intended to expedite the issuance of the federal tax credits by putting an urgency clause in the bill and exempting CDE and CSFA from the APA.[72] Issuing the QSCBs will "expedite public school construction" and is expected to create 11,400 jobs in California.[73] School districts will be able to finish projects that were planned but not completed when dropping property values reduced expected funding.[74] They will also be able to retire debt faster, reducing the burden on schools and saving taxpayers money.[75]

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64. CAL. EDUC. CODE §12001 (amended by Chapter 11) ("When any such federal law designates a state education agency or other agency or officer primarily responsible for state supervision of public schools, such designation shall be deemed to refer to the State Board of Education."); *Id.* § 12001.5(b)-(c) (enacted by Chapter 11).

65. *Id.* § 12001.5(d)(1) (enacted by Chapter 11) (allowing CDE to grant 120 day extensions from March 22, 2010, the date the bill was enacted).

66. *Id.*

67. *Id.* §12001.5(d)(3) (enacted by Chapter 11).

68. *Id.* § 12001.5(b)-(c)(1) (enacted by Chapter 11).

69. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 6 (Mar. 22, 2010).

70. CAL. EDUC. CODE §12001.5(f) (enacted by Chapter 11).

71. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 6 (Mar. 22, 2010).

72. CAL. EDUC. CODE §12001.5(f) (enacted by Chapter 11).

73. Press Release, Senate President Pro Tem Darrell Steinberg, Democrats Introduce Jobs Agenda (Feb. 9, 2010), *available at* http://dist06.casen.govoffice.com/index.asp?Type=B_PR&SEC={F6FF3E1C-F0CF-4B93-91F3-DA32A1D3E8F8}&DE={BF632762-1C90-43C3-81D0-471483F925B3} (on file with the *McGeorge Law Review*).

74. Heather Murtagh, *Million in Tax Credits to Local Schools*, SAN MATEO DAILY JOURNAL, Jan. 18, 2011, *available at* http://www.smdailyjournal.com/article_preview.php?id=150627&title=Millions%20in

Some school districts plan to use the QSCB bond money to create green schools, which will save on utility expenses and help teach students about renewable energy resources.[76] Baldwin Park Unified School District in southern California plans to install carport shade structures with solar panels at a high school, middle school, and five elementary schools throughout the district.[77] San Ramon Valley Unified School District also plans to install solar panels on carports at four high schools and two middle schools.[78] The company installing these solar panels is working with the school district to create lesson plans on energy and how to use the solar panels as educational tools.[79]

Chapter 11 allows California school districts to issue bonds immediately[80] by eliminating concerns over whether the CDE and CSFA are legally-authorized to issue the tax credits.[81] The Legislature passed Chapter 11 to ensure that QSCBs accomplish their ultimate purpose of providing school districts access to the low-interest bonds.[82] Although the federal HIRE Act was intended to resolve ambiguities about state issuing authority, it did not clarify the problem in California because multiple state education agencies fall within the federal definition of "education agency."[83] Chapter 11 resolves this by unambiguously granting the CDE and CSFA issuing authority for federal tax credits.[84]

The rollover provisions are important for ensuring that none of the tax credits are lost because of the time spent resolving ambiguities over the issuing authority in 2009.[85] Federal law allowed large school districts in receipt of credits directly

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%20tax%20credits%20to%20local%20schools (on file with the *McGeorge Law Review*) (dropping property values forced San Mateo Union High School District to restructure projects paid for by a $298 million bond approved by voters in 2006).

75. *Id.*; Lisa Rosenthal, *Burlingame School district Awarded $9.9 Million*, BURLINGAMEPATCH, Jan. 21, 2011, *available at* http://burlingame.patch.com/articles/burlingame-school-district-awarded-99-million (on file with the *McGeorge Law Review*) (noting Burlingame School District will be able to pay off their construction bond in 16 years, instead of 25, which is estimated to save $10 million in interest payments).

76. Lance Knobel, *Berkeley Schools Win $25m from Federal Stimulus Funds*, BERKELEYSIDE, Jan. 18, 2011, *available at* http://www.berkeleyside.com/2011/01/18/berkeley-schools-win-25-million-from-federal-stimulus-funds/comment-page-1/ (on file with the *McGeorge Law Review*) (quoting State Superintendent Tom Torlakson: "It makes no sense to teach the next generation of California's students in facilities that are relics of the past, powered by energy sources that are out of touch with our state's renewable future[.]... Investing in energy efficiency will help our schools save money—now and over the long run— and show students that we're concerned about the environment and their future.").

77. Velazquez, *supra* note 9.

78. Cartledge, *supra* note 9.

79. *Id.*

80. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 6 (Mar. 22, 2010).

81. *Id.* at 3.

82. *Id.* at 5-6.

83. Farrell-Hart Interview, *supra* note 63 (explaining that California has three such agencies).

84. CAL. EDUC. CODE §12001.5 (enacted by Chapter 11).

85. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 4 (Mar. 22, 2010) (explaining the purpose is to ensure credits not used by large school districts will be reallocated to other districts).

from the federal government to reassign unused tax credits to the state.[86] Chapter 11 establishes a process for the CDE to reassign the federal tax credit volume cap if these districts reallocated their credits to the state within 30 days after enactment of the bill.[87] The State will rollover unused tax credits from 2009 that are not issued during the 120-day extension and add them to the state's volume cap for 2010, which will allow more schools to receive tax credits in the future.[88]

Although there is general optimism about the use of QSCBs and the effect on education and job creation in California,[89] there are voices encouraging caution in the use of QSCBs at the state and national level.[90] Senator Chuck Grassley of Iowa has expressed concern that federal bond programs will encourage states to "borrow more money than they otherwise would," and possibly more than they can afford to pay back.[91] The California Legislative Analyst's Office has urged school districts to issue bonds with caution.[92] "It's not free money . . . . The program just helps lower the interest rate."[93]

Another concern is that QSCB bonds must be paid off in a shorter period of time than other bonds school districts may use.[94] In February 2011, the Santee School District Board of Education voted against using QSCBs to fund the building of new classrooms.[95] The dissenters worried that if property values in Santee have not rebounded, the school district will face more budget problems when the loans are refinanced in five years.[96]

After the Legislature enacted Chapter 11, thirty-nine school districts requested and received 120-day extensions.[97] Twelve school districts chose not to use the full amount of tax credits allocated to them.[98] Only twelve school districts

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86. *Id.*

87. *Id.*

88. *Id.*; Rosenthal, *supra* note 75 (Burlingame applied for tax credits in 2009 but did not receive them).

89. Aguilar Interview, *supra* note 1.

90. *See* Senator Chuck Grassley, Floor Speech (Mar. 16, 2010), *available at* http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=25758 (on file with the *McGeorge Law Review*) (noting his opposition to the bonds in a Senate floor speech).

91. *Id.* ("Build America Bonds create a perverse incentive that causes state and local governments to borrow more than they otherwise would. This is especially true regarding the school tax-credit bonds.").

92. J.N. Sbranti, *Plan to Repay Gregori Bond Taps General Fund*, MODESTO BEE, May 30, 2010, *available at* http://www.modbee.com/2010/05/30/1187541/plan-to-repay-gregori-bond-taps.html (on file with the *McGeorge Law Review*).

93. *Id.*

94. *Compare* William Dudley, *Chet F. Harritt Promised Modernization Additions with Solid Funding*, SANTEEPATCH.COM, Feb. 18, 2011, *available at* http://santee.patch.com/articles/chet-f-harritt-school-promised-modernization-additions-without-solid-funding (on file with the *McGeorge Law Review*) (expressing concern that QSCB loans would need to be repaid in 5 years), *with* Rosenthal, *supra* note 75 (explaining district had planned to repay traditional bonds in twenty-five years but will instead pay them off in sixteen years).

95. *Id.*

96. *Id.*

97. Farrell-Hart Interview, *supra* note 63.

98. *See 2009 Bond Results*, *supra* note 48 (providing financial data on authorized and issued bonds).

declined to take advantage of the tax credits at all.[99] The Department of Education authorized a little over $704 million for allocation to the school districts that won the lottery, of which approximately $485 million was actually allocated to school districts.[100] The school districts declined to use approximately $219 million, which will roll over and be allocated in 2010.[101]

V. CONCLUSION

California's educational facilities are in desperate need of repair.[102] With the current budget crisis, the state is unable to provide the funding necessary to repair and maintain school facilities,[103] even though education is "'one of the most important services performed by the state.'"[104] The federal HIRE Act provides clarification and flexibility on the QSCB program so school districts will not struggle to find purchasers for the bonds.[105] Chapter 11 clarifies ambiguities in the federal QSCB program so California schools will be able to take advantage of federal money.[106] In northern California, Willits Unified School District is already making plans to repair, modernize, and transform their facilities, starting with a two-story module focusing on science and vocational education at the high school.[107] "We [are] so excited because we have so many needs," said Katie Aguilar, Willits District Financial Officer.[108]

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99. *Id.*

100. *Id.* (showing the amounts authorized by the state as a total allocation of $704,724,432, and the total amounts issued to school districts adds up to $485,246,432).

101. *Id.* (to find the total amount not used by school districts the credits issued, $485,246,432, was subtracted from the total authorized, $704,724,432.); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 4 (Mar. 22, 2010).

102. Flavelle, *supra* note 29 (see interactive map).

103. Savidge, *supra* note 43.

104. Conn, *supra* note 16, at 247.

105. Feldman & Pham, *supra* note 57.

106. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 205, at 4 (Mar. 22, 2010).

107. Aguilar Interview, *supra* note 1.

108. *Id.*