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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 3308

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The bill was read for the first time and referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to education finance; simplifying the capital expenditure health and
1.3 safety revenue program; amending Minnesota Statutes 2008, section 123B.57,
1.4 as amended.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 123B.57, as amended by Laws 2009
1.7 chapter 96, article 4, section 2, is amended to read:

1.8 **123B.57 CAPITAL EXPENDITURE; HEALTH AND SAFETY.**

1.9 Subdivision 1. **Health and safety ~~program~~ levy application.** (a) To receive
1.10 health and safety revenue for any fiscal year a district must submit to the commissioner
1.11 ~~an a capital expenditure health and safety revenue~~ application for aid and levy by the
1.12 date determined by the commissioner. ~~The application may be for hazardous substance~~
1.13 ~~removal, fire and life safety code repairs, labor and industry regulated facility and~~
1.14 ~~equipment violations, and health, safety, and environmental management, including indoor~~
1.15 ~~air quality management.~~ The application must include a health and safety ~~program~~ budget
1.16 adopted by the school district board. The ~~program~~ budget must include the estimated cost,
1.17 ~~per building,~~ of the program per uniform financial accounting and reporting standards
1.18 (UFARS) finance code, by fiscal year. Upon approval through the adoption of a resolution
1.19 by each of an intermediate district's member school district boards and the approval of the
1.20 Department of Education, a school district may include its proportionate share of the costs
1.21 of health and safety projects for an intermediate district in its application.

1.22 (b) ~~Health and safety projects with an estimated cost of \$500,000 or more per~~
1.23 ~~site are not eligible for health and safety revenue.~~ Health and safety projects with an
1.24 estimated cost of \$500,000 or more per site that meet all other requirements for health and

2.1 safety funding, are eligible for alternative facilities bonding and levy revenue according
 2.2 to section 123B.59. A school board shall not ~~separate portions of a single project into~~
 2.3 ~~components to qualify for health and safety revenue, and shall not~~ combine unrelated
 2.4 projects into a single project to qualify for alternative facilities bonding and levy revenue.

2.5 (c) The commissioner of education shall not make eligibility for health and safety
 2.6 revenue contingent on a district's compliance status, level of program development, or
 2.7 training. The commissioner shall not mandate additional performance criteria such as
 2.8 training, certifications, inspections, or compliance evaluations as a prerequisite for levy
 2.9 approval.

2.10 Subd. 2. ~~Contents of program~~ **Health and safety policy.** (a) To qualify for health
 2.11 and safety revenue, a school district must adopt a health and safety program policy. The
 2.12 program policy must include ~~plans, where applicable, for hazardous substance removal,~~
 2.13 ~~fire and life safety code repairs, regulated facility and equipment violations, and provisions~~
 2.14 for implementing a health and safety program that complies with health, safety, and
 2.15 environmental management, regulations and best practices including indoor air quality
 2.16 management. In the absence of a health and safety policy, districts may submit to the
 2.17 commissioner a board-approved copy of the Department of Education's Attachment 99
 2.18 document.

2.19 (b) The commissioner shall provide districts with a model health and safety policy
 2.20 by July 1, 2011. Once the commissioner has verified that a district's health and safety
 2.21 policy meets the intent of paragraph (a), annual submission of Attachment 99 or other
 2.22 health and safety program status reports is no longer required.

2.23 ~~(a) A hazardous substance plan must contain provisions for the removal or~~
 2.24 ~~encapsulation of asbestos from school buildings or property, asbestos-related repairs,~~
 2.25 ~~cleanup and disposal of polychlorinated biphenyls found in school buildings or property,~~
 2.26 ~~and cleanup, removal, disposal, and repairs related to storing heating fuel or transportation~~
 2.27 ~~fuels such as alcohol, gasoline, fuel, oil, and special fuel, as defined in section 296A.01.~~
 2.28 ~~If a district has already developed a plan for the removal or encapsulation of asbestos as~~
 2.29 ~~required by the federal Asbestos Hazard Emergency Response Act of 1986, the district~~
 2.30 ~~may use a summary of that plan, which includes a description and schedule of response~~
 2.31 ~~actions, for purposes of this section. The plan must also contain provisions to make~~
 2.32 ~~modifications to existing facilities and equipment necessary to limit personal exposure~~
 2.33 ~~to hazardous substances, as regulated by the federal Occupational Safety and Health~~
 2.34 ~~Administration under Code of Federal Regulations, title 29, part 1910, subpart Z; or is~~
 2.35 ~~determined by the commissioner to present a significant risk to district staff or student~~

3.1 ~~health and safety as a result of foreseeable use, handling, accidental spill, exposure, or~~
 3.2 ~~contamination.~~

3.3 ~~(b) A fire and life safety plan must contain a description of the current fire and life~~
 3.4 ~~safety code violations, a plan for the removal or repair of the fire and life safety hazard,~~
 3.5 ~~and a description of safety preparation and awareness procedures to be followed until the~~
 3.6 ~~hazard is fully corrected.~~

3.7 ~~(c) A facilities and equipment violation plan must contain provisions to correct~~
 3.8 ~~health and safety hazards as provided in Department of Labor and Industry standards~~
 3.9 ~~pursuant to section 182.655.~~

3.10 ~~(d) A health, safety, and environmental management plan must contain a description~~
 3.11 ~~of training, record keeping, hazard assessment, and program management as defined~~
 3.12 ~~in section 123B.56.~~

3.13 ~~(e) A plan to test for and mitigate radon produced hazards.~~

3.14 ~~(f) A plan to monitor and improve indoor air quality.~~

3.15 Subd. 3. **Health and safety revenue.** A district's health and safety revenue
 3.16 for a fiscal year equals the district's alternative facilities levy under section 123B.59,
 3.17 subdivision 5, paragraph (b), plus the greater of zero or:

3.18 ~~(1) the sum of (a) the total approved cost of the district's hazardous substance~~
 3.19 ~~plan for fiscal years 1985 through 1989, plus (b) the total approved cost of the district's~~
 3.20 ~~health and safety program for fiscal year 1990 through the fiscal year to which the levy~~
 3.21 ~~is attributable, excluding expenditures funded with bonds issued under section 123B.59~~
 3.22 ~~or 123B.62, or chapter 475; certificates of indebtedness or capital notes under section~~
 3.23 ~~123B.61; levies under section 123B.58, 123B.59, 123B.63, or 126C.40, subdivision 1 or~~
 3.24 ~~6; and other federal, state, or local revenues, minus~~

3.25 ~~(2) the sum of (a) the district's total hazardous substance aid and levy for fiscal years~~
 3.26 ~~1985 through 1989 under sections 124.245 and 275.125, subdivision 11c, plus (b) the~~
 3.27 ~~district's health and safety revenue under this subdivision, for years before the fiscal year~~
 3.28 ~~to which the levy is attributable.~~

3.29 Subd. 4. **Health and safety levy.** To receive health and safety revenue, a district
 3.30 may levy an amount equal to the district's health and safety revenue as defined in
 3.31 subdivision 3 multiplied by the lesser of one, or the ratio of the quotient derived by
 3.32 dividing the adjusted net tax capacity of the district for the year preceding the year the
 3.33 levy is certified by the adjusted marginal cost pupil units in the district for the school year
 3.34 to which the levy is attributable, to \$2,935.

3.35 Subd. 5. **Health and safety aid.** A district's health and safety aid is the difference
 3.36 between its health and safety revenue and its health and safety levy. If a district does not

4.1 levy the entire amount permitted, health and safety aid must be reduced in proportion to
 4.2 the actual amount levied. Health and safety aid may not be reduced as a result of reducing
 4.3 a district's health and safety levy according to section 123B.79.

4.4 Subd. 6. **Uses of health and safety revenue.** ~~(a)~~ Health and safety revenue may be
 4.5 used only for approved expenditures necessary to correct fire and life safety hazards, ~~or for~~
 4.6 ~~the design, purchase, installation, maintenance and inspection of fire protection and alarm~~
 4.7 ~~equipment, purchase or construction of appropriate facilities for the storage of combustible~~
 4.8 ~~and flammable materials, inventories and facility modifications to comply with lab~~
 4.9 ~~safety requirements pursuant to section 121A.31, inspection, testing, repair, removal or~~
 4.10 ~~encapsulation, and disposal of asbestos from school buildings or property owned or being~~
 4.11 ~~acquired by the district, asbestos-related repairs, asbestos-containing building materials,~~
 4.12 ~~cleanup and disposal of polychlorinated biphenyls found in school buildings or property~~
 4.13 ~~owned or being acquired by the district, or the, cleanup and disposal of hazardous and~~
 4.14 ~~infectious wastes, cleanup, removal, disposal, and repairs related to storing heating fuel~~
 4.15 ~~or transportation fuels such as alcohol, gasoline, fuel oil, and special fuel, as defined in~~
 4.16 ~~section 296A.01, Minnesota correction of occupational safety and health administration~~
 4.17 ~~regulated facility and equipment hazards, indoor air quality inspections, investigations and~~
 4.18 ~~testing, mold abatement, and upgrades or replacement of mechanical ventilation systems~~
 4.19 ~~to meet American Society of Heating, Refrigerating and Air Conditioning Engineers~~
 4.20 ~~standards and State Mechanical Code, design, materials, and installation of local exhaust~~
 4.21 ~~ventilation systems, including required make up air for controlling regulated hazardous~~
 4.22 ~~substances, correction of Department of Health Food Code and violations, correction of~~
 4.23 ~~swimming pool hazards excluding depth correction, playground safety inspections and~~
 4.24 ~~the installation of impact surfacing materials, bleacher repair or rebuilding to comply~~
 4.25 ~~with section 16B.616, purchase and maintenance of equipment and supplies necessary~~
 4.26 ~~for operation of the district's emergency plan, testing and mitigation of elevated radon~~
 4.27 ~~hazards, lead in water, paint, soil and toys testing, copper in water testing, cleanup after~~
 4.28 ~~major weather-related disasters or flooding, reduction of excessive organic and inorganic~~
 4.29 ~~levels in wells and well capping of abandoned wells, installation and testing of boiler~~
 4.30 ~~backflow valves to prevent contamination of potable water, vaccinations, titers, and~~
 4.31 ~~preventative supplies for bloodborne pathogen compliance, costs to comply with the~~
 4.32 ~~Janet B. Johnson Parents' Right To Know Act, and health, safety, and environmental~~
 4.33 ~~management costs associated with implementing the district's health and safety program~~
 4.34 ~~including costs to establish and operate safety committees, in school buildings or property~~
 4.35 ~~owned or being acquired by the district. Testing and calibration activities are permitted~~
 4.36 for existing mechanical ventilation systems at intervals no less than every five years.

5.1 ~~Health and safety revenue must not be used to finance a lease purchase agreement,~~
 5.2 ~~installment purchase agreement, or other deferred payments agreement. Health and safety~~
 5.3 ~~revenue must not be used for the construction of new facilities or the purchase of portable~~
 5.4 ~~classrooms, for interest or other financing expenses, or for energy efficiency projects~~
 5.5 ~~under section 123B.65. The revenue may not be used for a building or property or part~~
 5.6 ~~of a building or property used for postsecondary instruction or administration or for a~~
 5.7 ~~purpose unrelated to elementary and secondary education:~~

5.8 Subd. 6a. **Restrictions on health and safety revenue.** (b) Notwithstanding
 5.9 paragraph (a) subdivision 6, health and safety revenue must not be used to finance a
 5.10 lease purchase agreement, installment purchase agreement, or other deferred payments
 5.11 agreement, for the construction of new facilities or the purchase of portable classrooms,
 5.12 for interest or other financing expenses, or for energy efficiency projects under
 5.13 section 123B.65, for a building or property or part of a building or property used for
 5.14 postsecondary instruction or administration or for a purpose unrelated to elementary
 5.15 and secondary education, for replacement of building materials or facilities including
 5.16 roof, walls, windows, internal fixtures and flooring, nonhealth and safety costs associated
 5.17 with demolition of facilities, structural repair or replacement of facilities due to unsafe
 5.18 conditions, violence prevention and facility security, ergonomics, or for building and
 5.19 heating, ventilating and air conditioning supplies, maintenance, and cleaning activities.
 5.20 ~~All assessments, investigations, inventories, and support equipment not leading to the~~
 5.21 ~~engineering or construction of a project shall be included in the health, safety, and~~
 5.22 ~~environmental management costs in subdivision 8, paragraph (a):~~

5.23 Subd. 6b. **Health and safety projects.** (a) Health and safety revenue applications
 5.24 defined in subdivision 1 must be accompanied by a description of each project for which
 5.25 funding is being requested. Project descriptions must provide enough detail for an auditor
 5.26 to determine if the work qualifies for revenue. Project descriptions need not include
 5.27 itemized details such as material types, room locations, square feet, names, or license
 5.28 numbers. The commissioner shall approve only projects that comply with subdivisions 6
 5.29 and 7, as defined by the Department of Education.

5.30 (b) Districts may request funding for projects based on self-assessments, safety
 5.31 committee recommendations, insurance inspections, management assistance reports,
 5.32 fire marshal orders, or other mandates. Notwithstanding subdivision 1, paragraph (b),
 5.33 and subdivision 8, paragraph (b), individual project size for projects authorized by this
 5.34 subdivision is not limited and may include related work in multiple facilities. Health and
 5.35 safety management costs from subdivision 8 may be reported as a single project.

6.1 (c) The commissioner may approve projects based on projected health and safety
6.2 expenditures.

6.3 (d) All costs directly related to a project shall be reported in the appropriate Uniform
6.4 Financial Accounting and Reporting Standards (UFARS) finance code.

6.5 (e) Allowable costs associated with physical hazard management shall be reported
6.6 under finance code 347.

6.7 (f) Allowable costs associated with hazardous substance management shall be
6.8 reported under finance code 349.

6.9 (g) Allowable costs associated with health and safety management shall be reported
6.10 under finance code 352.

6.11 (h) Allowable costs associated with asbestos management shall be reported under
6.12 finance code 358.

6.13 (i) Allowable costs associated with fire/life safety shall be reported under finance
6.14 code 363. For projects exceeding \$10,000, a fire marshal plan review is required.

6.15 (j) Allowable costs associated with indoor air quality (IAQ) management shall be
6.16 reported under finance code 366.

6.17 (k) Districts shall update project estimates with actual expenditures for each
6.18 fiscal year. If a project's final cost is significantly higher than originally approved, the
6.19 commissioner may request additional supporting information.

6.20 Subd. 6c. **Appeals process.** In the event a district is denied funding approval for
6.21 a project the district believes complies with subdivisions 6 and 7, and is not otherwise
6.22 excluded, a district may appeal the decision. All such requests must be in writing. The
6.23 commissioner shall respond in writing. The commissioner may request a report from a
6.24 qualified third-party evaluator for projects with a value exceeding \$10,000. A written
6.25 request should contain the following: project number; description and amount; reason for
6.26 denial; unresolved questions for consideration; reasons for reconsideration; and a specific
6.27 statement of what action the district is requesting.

6.28 Subd. 7. **Proration.** In the event that the health and safety aid available for any year
6.29 is prorated, a district having its aid prorated may levy an additional amount equal to the
6.30 amount not paid by the state due to proration.

6.31 Subd. 8. **Health, safety, and environmental management cost.** (a) "Health, safety,
6.32 and environmental management" is defined in section 123B.56.

6.33 (b) A district's cost for health, safety, and environmental management is limited to
6.34 the lesser of:

6.35 (1) actual cost to implement their plan; or

7.1 (2) an amount determined by the commissioner, based on enrollment, building
7.2 age, and size.

7.3 ~~(b) (c) The department commissioner may contract with regional service~~
7.4 ~~organizations, private contractors, Minnesota Safety Council, or state agencies to provide~~
7.5 management assistance to school districts for health and safety capital projects at a
7.6 district's request. Management assistance is the development of written programs for
7.7 the identification, recognition and control of hazards, and prioritization and scheduling
7.8 of district health and safety capital projects. The ~~department commissioner~~ shall not
7.9 mandate management assistance or exclude private contractors from the opportunity to
7.10 provide any health and safety services to school districts.

7.11 ~~(c) Notwithstanding paragraph (b), the department may approve revenue, up to~~
7.12 ~~the limit defined in paragraph (a) for districts having an approved health, safety, and~~
7.13 ~~environmental management plan that uses district staff to accomplish coordination and~~
7.14 ~~provided services.~~

7.15 **EFFECTIVE DATE.** This section is effective July 1, 2010.