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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

| | | | |
|------------------------|--|----------------------------|----------------|
| Bill Number | <u>SB54/aSFC</u> | Sponsor | <u>Soules</u> |
| Tracking Number | <u>.218517.1</u> | Committee Referrals | <u>SEC/SFC</u> |
| Short Title | <u>Public Schools Facilities Authority Functions</u> | | |
| Analyst | <u>Bedeaux</u> | Original Date | <u>1/28/21</u> |
| | | Last Updated | <u>3/16/21</u> |

BILL SUMMARY

Synopsis of Senate Finance Committee Amendment

The Senate Finance Committee amendment to Senate Bill 54 (SB54/aSFC) adds an effective date of July 1, 2022 and reinserts a statutory reference to the federal Every Student Succeeds Act to prevent potential unforeseen impacts.

Synopsis of Original Bill

Senate Bill 54 (SB54) limits the Public School Facilities Authority's (PSFA) operating budget for core administrative functions to 5 percent of the average awards made by the Public School Capital Outlay Council (PSCOC) over the prior five years, increasing the timeframe from the three-year average in current law.

FISCAL IMPACT

The bill does not contain an appropriation.

SB54/aSFC would improve the stability of PSFA's annual budget by extending the period of time used to determine the agency's operating budget capacity, lessening the impact of a single year's awards on the average. The three-year period used in current law has made the agency susceptible to declines in the budget capacity after years where awards were anomalously low. Notably, in FY17 and FY18, a downturn in oil and gas revenues coupled with significant improvements in school facilities limited the awards PSCOC decided to make. As a result, PSFA experienced a substantial decrease in its operating budget capacity, which decreased from \$10.2 million in FY17 to \$4.4 million in FY19. While awards and PSFA's budget have begun increasing again in recent years, SB54/aSFC would provide PSFA a cushion against future economic downturns.

PSCOC Awards and PSFA Operating Budget History
(in millions)

| | FY18 | FY19 | FY20 | FY21 | FY22 Est. (3-Year Avg.) | FY23 Estimate SB54/aSFC (5-Year Avg.) |
|---------------------------|--------|--------|---------|---------|----------------------------|---|
| PSCOC Awards | \$87.0 | \$96.7 | \$101.7 | \$168.4 | Based on applications | Based on applications |
| PSFA Budget Capacity | \$7.8 | \$5.7 | \$4.4* | \$4.8* | \$6.1 | \$5.7 |
| PSFA Budget Request | \$6.0 | \$5.1 | \$5.3 | \$5.7 | \$5.9 | Forthcoming in FY23 |
| LFC Budget Recommendation | \$5.6 | \$5.1 | \$5.3 | \$5.7 | \$5.7 | Forthcoming in FY23 |

Source: Legislative Finance Committee and LESC Analysis of PSFA Data

*Note: Calculation errors in a PSFA spreadsheet may have resulted in budget requests and recommendations above the statutory capacity in FY20 and FY21.

PSFA’s budget for FY22 was capped at \$6.1 million using three-year average in current law; however, the House Appropriations and Finance Committee substitute for House Bills 2 and 3 (HB2/HAFCS) includes only \$5.7 million for PSFA’s FY22 operating budget. If SB54/aSFC is enacted, PSFA’s budget for FY23 could be capped at an estimated \$5.8 million, though the actual budget cap will change based on the total awards made by PSCOC in FY22.

SUBSTANTIVE ISSUES

PSFA, the agency responsible for overseeing large state-funded public school construction projects and staffing the Public School Capital Outlay Council, has grown as its administrative functions have expanded over time. Once only responsible for the standards-based awards program, PSFA now also manages systems-based awards, the prekindergarten classroom initiative, facility master plan awards, the broadband deficiencies correction program, lease assistance funding for charter schools, and school security awards. Additionally, the agency has been responsible for tracking the use of standalone appropriations, including those for outside-of-adequacy spaces in Indian-impacted school districts. According to PSFA’s analysis, year-over-year instability in the agency’s budget have caused difficulties maintaining staffing levels and effectively administering these programs.

OTHER SIGNIFICANT ISSUES

The Zuni Capital Outlay Lawsuit. SB54/aSFC amends the Public School Capital Outlay Act, a section of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the *Zuni* lawsuit, finding the Public School Capital Outlay Act, along with the Public School Capital Improvements Act, have exacerbated “gross disparities” between property-wealthy and property-poor school districts. The plaintiff school districts, now including only Gallup-McKinley County and Zuni, argue the school districts’ lack of taxable property makes it impossible for the districts to fund “outside-of-adequacy” spaces freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

The 11th Judicial District Court ruling, however, leaves policymakers without a clear understanding of why the systems were found unconstitutional. The ruling did not cite specific evidence of disparities in the capital outlay funding system and instead adopted wholesale the plaintiff’s findings of fact, which contained inaccuracies and inconsistencies. Further, the court did not review appropriations and changes made to the capital outlay system during the 2019 and 2020 legislative sessions attempting to create greater equity. The Legislature has attempted to

address the plaintiffs concerns by amending the state- and local-match calculation and appropriating \$53 million for outside-of-adequacy spaces in school districts receiving federal Impact Aid for Native American students, but these efforts were not mentioned in the district court's eight-page ruling.

On January 28, 2021, the Legislature and PSCOC's recent actions were submitted as new evidence in the lawsuit, along with a motion to reconsider and a request for a stay of judgment. The court will deliberate the motion; after the court's decision, the state will have an additional 30 days to decide whether it will appeal the ruling to a higher court. The Office of the Attorney General negotiated a stay of the judgment in the meantime to allow PSCOC and PSFA to continue making awards and continuing construction projects pursuant to the Public School Capital Outlay Act and Public School Capital Improvements Act, but pending a decision on the state's motion to reconsider, the Legislature will need to continue to focus on policy options and statutory changes that continue to create equity in the capital outlay system.

ALTERNATIVES

The sponsor may wish to eliminate the budget capacity provision entirely, allowing the Legislature to set the agency's budget using performance metrics similar to most other state agencies.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority.

TB/kh/mb