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

Bill Number	<u>SB29</u>	Sponsor	<u>Soules</u>
Tracking Number	<u>.218523.1</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Cost of Photovoltaic Systems</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/28/21</u>
		Last Updated	<u>2/4/21</u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 29 (SB29) amends the systems-based awards Public School Capital Outlay Act to include funding for “photovoltaic systems,” defined as power systems designed to supply usable solar power, which may be grid-tied, off-grid, or a grid hybrid. The bill requires the Public School Capital Outlay Council (PSCOC) to consider systems-based award applications that propose to significantly reduce a school’s utility costs and increase sustainability. If a systems-based award for a heating, ventilation, and air conditioning (HVAC) system includes installation of a photovoltaic system, PSCOC would be required to consider the cost compared with potential offset utility costs over the lifetime of the system. The bill also requires PSCOC to give the highest priority to system awards that respond to a viral or bacterial epidemic to ensure proper air handling to increase the health and safety of students and staff.

FISCAL IMPACT

The bill does not contain an appropriation.

Photovoltaic systems are relatively expensive investments that can lead to long-term cost savings over their lifespans. Analysis by the Public School Facilities Authority (PSFA) estimates the cost of installing a photovoltaic system on an existing school at \$30 thousand to \$500 thousand per project, depending on the size of the school and the amount of energy the school wishes to produce using solar panels. For the 2020 awards cycle, PSCOC made awards totaling \$5 million in state funding, requiring school districts to spend \$3.7 million in local matching funds, to execute high-needs roofing and HVAC system replacement in five schools. Analysis by LFC notes if these projects included photovoltaic systems, the total cost to the state would have increased by approximately \$1.4 million. However, much of the annual cost will depend on individual school districts’ demand for photovoltaic systems.

Some of the initial investment in photovoltaic systems may be recuperated by reductions to schools’ utility costs. PSFA explains schools with photovoltaic systems achieve annual savings from producing electricity on-site. Grid-tied systems can also receive credits from local utilities

by producing excess energy and redistributing it to the grid. According to PSFA, school districts with photovoltaic systems typically recuperate the cost of installation in 10 to 15 years of annual credits and savings from lower monthly utility bills. School utility costs are funded through the state equalization guarantee; a reduction in utility costs could result in more operational funding directed to classrooms.

Using photovoltaic systems to operate more sophisticated HVAC systems installed in response to the Covid-19 pandemic may further work to offset their costs. According to PSFA, new HVAC systems require more energy to operate, and tying them to a photovoltaic system may be a cost effective way to offset the new power demands. PSFA expects demand for new HVAC systems to increase next year due to ongoing concerns about airborne pathogens, potentially increasing the amount of state funding that would be needed for systems-based awards.

Depending on the statewide demand for solar energy, SB29 may significantly increase the number of schools that apply for systems-based awards. Because PSCOC awards funds based on a case-by-case basis, SB29 will not necessarily increase the annual cost of systems-based awards but may dilute the funding available for high-needs building system replacements. Each year, PSCOC evaluates applications for systems-based funding submitted to improve the condition of the 300 worst-ranked facilities in the state. SB29 would allow PSCOC to fund photovoltaic systems through this process, potentially limiting the funds available to construct high-needs building system replacements to correct serious health or safety concerns.

SUBSTANTIVE ISSUES

The systems-based awards process was designed in response to the *Zuni* capital outlay lawsuit to increase state funding for aging building systems. Typically, systems-based awards are made to extend the lifespan of buildings by replacing decaying or malfunctioning building systems, including HVAC systems, roofing, fire alarms, fire suppression systems, site drainage, building demolition, or any system that poses an eminent life, health, or safety hazard to a building's occupants.

SB29 would expand the core values of the PSCOC systems-based award program to include energy sustainability. Currently, the program focuses on providing safe, functional, and durable educational environments. PSCOC awards funds based on a set of standards that are considered the minimum requirements a facility must meet to be considered adequate for the education of students. These adequacy standards have expanded over time to accommodate new technologies. If SB29 is enacted, PSFA and PSCOC would need to adopt new adequacy standards to account for photovoltaic systems.

Currently, photovoltaic systems are outside of the statewide adequacy standards; schools in Albuquerque, Las Cruces, Santa Fe, and Rio Rancho have explored their use using entirely local funds, but property-poor school districts may not be able to afford this option. Covering their cost through the systems-based award program could expand access to solar technologies to school districts without the ability to fund them using only local revenues. However, a large number of awards in recent years have been made to school districts with low property wealth, including plaintiff school districts in the *Zuni* capital outlay lawsuit, Zuni Public Schools and Gallup-McKinley County Schools. Creating new adequacy standards for solar energy beginning in FY22 would once again create facility nonuniformities in projects that are nearing completion in the plaintiff school districts, but those districts would be authorized to apply for systems-based awards to add photovoltaic systems to schools.

OTHER SIGNIFICANT ISSUES

The Zuni Capital Outlay Lawsuit. SB29 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 does not believe that the language in the judge’s decision and order prohibit PSCOC and PSFA from awarding funds 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 provide for increased equity in the capital outlay system.

RELATED BILLS

Related to SB63, Photovoltaic Systems in New Public Schools, which requires any school built after July 1, 2021 include a photovoltaic system sufficient to meet the energy needs of the school.

SOURCES OF INFORMATION

- LESC Files

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