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FISCAL IMPACT REPORT

SPONSOR HTRC **DATE TYPED** 02/18/2004 **HB** CS/393/aHFL#1/aHFL#2

SHORT TITLE Omnibus Public School Capital Outlay Bill **SB** _____

ANALYST Kehoe/Aguiar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
\$57,000.0				Non-Recurring	Severance Tax Bonding Fund
	\$125,000.0			Recurring	STB and SSTB Capacity
	\$4,000.0			Recurring	Public School Capital Outlay Find

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 399
 Conflicts with Senate Bill 372
 Conflicts with appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of HFL Amendment #2

House Floor Amendment #2 to House Taxation and Revenue Committee Substitute for House Bill 393 removes that portion of the bill that makes changes to the composition of the Public School Capital Outlay Council and makes related changes to the title of the bill.

Significant Issues

The House Bill 393 originally proposed to make changes and additions to the membership of the Public School Capital Outlay Council. HFL#2 removes this provision and retains the current make-up of the council.

Synopsis of HFI Amendment #1

House Floor Amendment #1 to House Taxation and Revenue Committee Substitute for House Bill 393 removes language which would have increased the state's portion of the SB-9 match to \$60 dollars from the current \$50 dollar level. Related changes are made to the title of the bill.

Significant Issues

Keeping the current SB-9 distribution at \$50 dollars will allow approximately \$10 million additional dollars to be used for grant assistance to school districts for building projects rather than being directed to maintenance activities.

Synopsis of Original Bill

The House Taxation and Revenue Committee Substitute for House Bill 393 authorizes supplemental severance tax bonds for public school capital outlay projects; establishes funding priorities and provides provisions for the grants and awards process; provides funding and other provisions for charter schools; provides for action against school districts for constitutional violations; continues the Public School Capital Outlay Task Force; amends the Technology for Education Act; increases the state distribution and provides for an inflation factor; changes the membership of the Public School Capital Outlay Council and provides for an appeal process.

Significant Issues

HTRCS 393 proposes that the amount of severance tax revenues that can be used to support SSTB be increased from 37.5 percent to 45 percent, thereby providing additional capacity in years when revenues are rising due to high oil and natural gas prices.

The bill authorizes \$57 million derived from supplemental severance tax bonds paid from fiscal year 2004 revenues that would otherwise be transferred to the severance tax permanent fund to be used to complete projects that have been partially funded by the Public School Capital Outlay Council (PSCOC) in September 2003 pursuant to the Public School Capital Outlay Act; and to fund the deficiencies correction program administered by PSFA. In addition, the bill reauthorizes the use of balances from the appropriation made from the general fund to the public school capital outlay fund to carry out provisions of the Public School Capital Outlay Act and extends the time in which it may be expended through 2007. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall not revert but shall be used for the purpose of providing grant assistance pursuant to the Public School Capital Outlay Act.

Information provided to the Public School Capital Outlay Task Force by the Public Schools Facilities Authority estimate that \$106 million dollars is needed to complete deficiencies correction statewide and \$65 million to complete those projects partially funded by the PSCOC in September 2003.

HTRCS 393 makes technical changes to language relating to the bond issue.

HTRCS 393 also authorizes balances in the public school capital outlay fund to be annually appropriated to pay for the core administrative functions of the (PSFA) and further authorizes balances in the fund to be expended by PSFA, with the approval of PSCOC, for project manage-

ment expenses. These expenses may not exceed five percent of the average annual grant assistance authorized from the fund during the three previous fiscal years. It should be noted that funding for PSFA has been included in the 2004 General Appropriation Act passed by the legislature.

HTRCS 393 amends the Public School Capital Outlay Act to provide for the following

- requires that for the allocation cycle beginning September 2, 2004, grant awards be based on the adequacy standards adopted by the Public School Capital Outlay Council (PSCOC) on September 1, 2003;
- all school districts are eligible to apply regardless of bond indebtedness;
- authorizes PSCOC to make grants outside the normal process when emergencies occur that threaten the health and safety of students and school personnel;
- provides that for the first three years beginning July 1, 2004, the order of priority of funding shall first fund those projects that were partially funded by PSCOC in September 2003;
- provides for an appeal process if school districts determine there is a problem or discrepancy in the new standards-based process; appeal process may prevent lawsuits from occurring in the future;
- authorizes an appropriation of up to \$4 million annually from the public school capital outlay fund to PSCOC in fiscal years 2005 through 2009 to support leasing classroom space for schools, including charter schools;
- provides that the amount of an annual grant to a school district must not exceed the actual lease payments owed for leasing classroom space for schools, including charter schools or \$300 per member attending the charter school;
- provides that grants to charter schools may also be used as a state match to obtain federal grants pursuant to the No Child Left Behind Act of 2001;
- eligibility of grants to charter schools will be based on rules adopted by PSCOC;
- charter school funds are intended to be available during the transition period when charter schools are moved into public facilities. Other specifics are included in the Charter School Bill (Senate Bill 403 and House Bill 404) also endorsed by PSCOTF;
- PSCOC is allowed to bring a court action against a school district that is determined to be either unwilling or unable to bring its facilities up to a minimum standard required by the constitution of New Mexico within a reasonable time frame;
- a court may enter a judgment against the school district that would constitute a debt of the district. If the debt cannot be satisfied with available funds of the district, the court may order the imposition of a property tax in the district sufficient to satisfy the debt;
- amends the Public School Improvements Act (SB 9) allowing funds to be used for technical training and certification for maintenance and facilities management personnel;
- the state guarantee amount for SB 9 is increased from \$50.00 per unit per mill to \$60.00 per unit per mill beginning in fiscal year 2005. Thereafter, both the guarantee amount and minimum state contribution of \$5.00 per unit per mill are indexed to inflation. The increase is expected to provide approximately \$10 million a year in additional state funds for maintenance in fiscal year 2005 and to protect the level of state funding over time from erosion due to normal growth in assessed valuations (see attachment- SB9 calculations);and
- authorizes PSFA to purchase and own portables in order to loan the portable to districts to meet temporary requirements.

Other general provisions of the bill propose the following:

- re-creation of the Public School Capital Outlay Task Force for an additional year to continue oversight of the implementation of the new standards-based process and to evaluate the adequacy of funding sources for public school capital outlay;
- changes the membership of PSCOC to conform with the recently passed Amendment 1 to Article 12, Section 6 of the Constitution of New Mexico creating a public education commission and a secretary of the department of education, and adds the president of the New Mexico Superintendents' Association as a tenth member;
- includes language to encourage the use of mediation at the district level to resolve disputes the district administration may have with individual schools; and
- provides for a three-year carry-forward period applied to the direct legislative appropriation offset that applies to education technology funding.

FISCAL IMPLICATIONS

The increased use of severance tax revenues to support supplemental severance tax bonds will reduce the amount of money transferred into the severance tax permanent fund on an annual basis. However, the task force feels this must be weighted against the scarce resources available to the state for public schools and other state and local infrastructure needs.

ADMINISTRATIVE IMPLICATIONS

HTRCS 393 shifts the responsibilities of distributing PSCOC funds from the Public Education Department (PED) to PSFA. It should be noted that school districts have been confused by the administrative changes that have taken place in the last couple of years. According to PED, changing the process could further confuse the districts. According to PSFA, they may not have the necessary resources to hire additional FTE to adequately process and account for all of the funds in awards and reimbursements made annually by PSCOC.

This bill makes reference to a new standards-based process. The process is currently being refined, but has not been approved and adopted by PSCOC as of this writing.

CONFLICT and RELATIONSHIP

The HTRCS conflicts with Senate Bill 372 that proposes the chairman of the Senate Education Committee and chairman of the House Education Committee or their designees serve on PSCOC in lieu of the directors of the Legislative Education Study Committee (LESC) and the Legislative Council Service (LCS). The bill expands the membership to include two public members appointed by the governor. One public member shall have expertise in public finance and the other shall be licensed by the Construction Industries Commission "to construct." The bill also changes the title of two members to conform with the recently passed Amendment 1 to Article 12, Section 6 of the Constitution of New Mexico creating a public education commission and a secretary of the department of education. The title "superintendent" is changed to the "secretary of public education," and "the president of the state board" is changed to "a member of the public education commission," appointed by the governor. The bill changes the membership of PSCOC to conform with the recently passed Amendment 1 to Article 12, Section 6 of the Constitution of New Mexico creating a public education commission and a secretary of the department of education, and adds the president of the New Mexico Superintendents' Association as a tenth

member.

The 2004 General Appropriation Act recently passed by the legislature appropriates \$3,683,600 from the public school capital outlay fund and authorizes 37 FTE for the core administrative functions and field management expenses of PSFA.

TECHNICAL ISSUES

The provisions in this bill for imposing taxes on recalcitrant districts may pose constitutional issues. Article 8, Section 2 of the Constitution of New Mexico establishes property tax limits, whereas “laws may be passed authorizing additional taxes” when approved by the voter.

OTHER SUBSTANTIVE ISSUES

The Public School Capital Outlay Task Force was created in part in response to the *Zuni* lawsuit, filed in January 1998, which challenged the constitutionality of the state's process for funding public school capital outlay in the state that was in effect at the time. In 1999, the judge of the eleventh judicial district court found that the state was in violation of the uniformity clause of the New Mexico constitution (Article XII, Section 1) in the manner in which it funded capital outlay for schools. The state was given until July 28, 2000 to correct past inequities and to establish and implement a uniform system of funding for future capital improvements. The court extended the time frame to await the work of the 2000 task force after its creation.

Laws of 2001, Chapter 338 enacted various recommendations of the task force. The legislation established a framework for public school capital outlay and provided one hundred percent state funding for correcting health and safety deficiencies at all public schools in New Mexico, continued funding of the backlog of critical capital outlay needs of school districts that had capped their own resources for public school capital improvements; and implemented a long-term public school capital improvement process beginning September 1, 2003 that guarantees all school districts an adequate physical space, adequate educational suitability and adequate technological infrastructure. The legislation also increased the funding for maintenance and repair of schools so that the state investment in school facilities is safeguarded. Finally, it established a permanent revenue source for public school capital outlay using supplemental severance tax bonds.

PA/dm:yr