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FISCAL IMPACT REPORT

SPONSOR SFCS DATE TYPED 03/06/05 HB _____

SHORT TITLE Public School Capital Outlay Amendments SB 455/SFCS/aH AFC

ANALYST Kehoe

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|-----------|-----------------------------|------|----------------------|-----------------------------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | \$2,100.0 | | | Recurring | Public School Capital Outlay Fund |
| \$1,562.0 | | | | | Public School Capital Outlay Fund |
| \$284.4 | | | | | Public School Capital Outlay Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HAFC Amendments

The amendments adopted by the House Appropriations and Finance Committee include “Providing Standards for Charter Schools Facilities to the bill’s title, add a new section that lists “Standards for Charter Schools” and make the following technical corrections: a) clarify that “residential” property tax rates will be used by the council in determining whether to adjust the school districts contributions to capital outlay projects (pp. 27 & 28); and b) add the term “education” to ensure the reference is to the Legislative Education Study Committee (p.40).

Significant Issues

As provided by the HAFC amendments, standards for charter school facilities are outlined below:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school that is in existence, or has been approved, prior to July 1, 2005 shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used as additional lease payments for leasehold improvements.

C. On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section;

(2) shall determine whether facilities of a charter school meet the requirements of Subsections B and C of this section; and

(3) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."".

Synopsis of SFCS/SB 455

Senate Finance Committee Substitute for Senate Bill 455 proposes amendments to the Public School Capital Outlay Act, Technology for Education Act, Public School Code, Public School Insurance Authority Act, Public School Capital Improvements Act, Severance Tax Bonding Act and other statues related to school district obligation bonds and construction; and makes appropriations.

Significant Issues

Laws 2004, Chapter 125, recreated PSCOTF to continue its duties of evaluating the progress and effectiveness of the programs administered pursuant to the Public School Capital Outlay Act (PSCOA) and the Public School Capital Improvements Act (PSCIA). The task force duties included reviewing the condition index and methodology used for ranking public school construction projects; evaluating existing permanent revenue streams as adequate long-term funding sources for public school capital outlay projects; and monitoring and assisting the Public School Capital Outlay Council and the Public School Facilities Authority as they perform functions pursuant to PSCOA and PSCIA, particularly implementation of the statewide-based process for making awards. The following recommendations are the result of the task force' work during the interim and are offered for consideration of the Legislature during the 2005 Session:

Section 1, proposes a new section within the Severance Tax Bonding Act requiring that proceeds of severance tax bonds and supplemental severance tax bonds appropriated for the purpose of carrying out the Public School Capital Outlay Act be immediately transferred to the public school capital outlay fund for administration and disbursement by the Public School Capital Outlay Council in accordance with the Public School Capital Outlay Act. The provision allows payment for project costs as expenses are incurred and within 10 days of payment request and eliminates creation of a special fund.

Section 2, amends the Educational Technology Act to discontinue the offset for direct appropriations for educational technology currently applied to distributions from the education technology fund. Instead, commencing with 2005 appropriations, the offset will apply against future public school capital outlay grant awards, including balances from previous educational technology funds.

Section 3, clarifies and amends existing law requiring all public school construction plans for construction of public school facilities, including projects funded with insurance proceeds, be approved by the Public School Facilities Authority (PSFA) to assure plans are in compliance of the statewide adequacy standards and are integrated into the school district's master plan. However, if a contract is funded in whole or in part with insurance proceeds, the cost of settlement of any insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contract, and the insurance claims settlements will continue to be governed by insurance policies, memoranda of coverage and rules related to them. The section further provides that facilities be constructed pursuant to the Construction Industries Licensing Act building and fire code standards rather than municipal or county standards except for those structures constructed as a part of an educational program of a school district. Provisions relating to fire protection are not effective until the Public Regulation Commission adopts the International Fire Code and all related standards.

Section 4, in conjunction with Sections 5 and 17, provides authorization and funding for a roof repair and replacement initiative as follows:

- PSCOC authorized to allocate up to \$30 million annually in fiscal years 2006 and 2007 for a roof repair and replacement initiative for projects identified by PSCOC, and requires the funds be expended no later than September 1, 2008. (Section 5 describes process; Section 17 appropriates the funds)

- amends the lease assistance program enacted in 2004 to: 1) allow charter schools to apply for the lease assistance program if the school district fails to apply on behalf of the charter school; 2) increase the maximum grant award from \$300 per member to \$600 per member, but maintains the requirement that the award cannot exceed the actual lease amount; 3) allow the distribution during the initial year of operation of a charter school to be based on estimated first-year enrollment rather than prior-year enrollment.

Current law allows PSCOC to allocate up to \$4 million a year in fiscal years 2005 through 2009 for grants to school districts for the purpose of making lease payments for classroom facilities. PSCOC allocated \$1.9 million in lease assistance awards, and no federal funds were appropriated to supplement the program. According to PSCOTF, the changes will provide additional assistance to charter schools and other public schools that lease classroom facilities over the next four years of the program.

Section 4, further authorizes PSCOC to expend up to one percent of the average grant assistance for the three previous years to reimburse the State Fire Marshall, the Construction Industries Division and local jurisdictions, when under contract with PSFA, for permits and inspections they perform as part of the public school capital outlay process. The estimated cost for fiscal year 2006 is \$2,100 million.

Section 5, describes the PSCOC process for applying for funds for the new roof initiative, requires the Council to develop guidelines for the new initiative, requires PSFA to verify the school district's assessment of the project and rank the application based on a methodology adopted by PSCOC, and requires that the costs of repairs or replacement be shared by the state and the district using the state-share formula that applies to other capital outlay projects.

Section 6, allows PSCOC to complete outstanding deficiencies including serious roof deficiencies affecting the health or safety of students and school personnel regardless of the local effort or percentage of indebtedness of the school district subject to the following provisions: 1) if the Council determines that the school district has excess capital improvement funds, the cost of correcting the deficiencies will first come from the excess funds, and if the funds are insufficient to correct the deficiencies, the difference will be paid from the public school capital outlay fund; and 2) if the school district refuses to pay its share of the cost of correcting deficiencies, future distributions from the public school improvements fund will not be made to the school district but will be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share. All awards for correcting outstanding deficiencies for roofs must be made no later than September 30, 2005, and the funds must be expended no later than September 30, 2007.

Section 7, proposes changes to the grant assistance program as follows:

- Reduce priority funding for continuations projects from three to two years and clarifies the definition of a continuation project.
- Revise formula applied to grants by calculating the state-share amount as a three-year average beginning with 2004.
- Change date for districts to reject direct legislative appropriations from July 15 to June 1 to coincide with Board of Finance schedule for issuing severance tax bonds.
- Provide a deadline of May 1 of each year by which PED must calculate the public school district formula

- Allow school district funds to be considered part of a local match for a project initiated after the statewide adequacy standards were adopted (September 1, 2002), but before the standards were first used for making grants (September 1, 2004).
- Provide that appropriations for education technology made after January 2005 apply against capital outlay awards and transfer balances of any existing education technology offsets to apply against future capital outlay awards.
- Change criteria for determining when to fund the total amount of a project when a school district has used all of its local resources. The Public School Capital Outlay Council may adjust the amount of local share otherwise required if it determines a school district has used all of its local resources, but before making adjustments to the local share must determine the district has met the following factors:
 1. For all districts, criteria would be that district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and that the district has imposed at least 10 mills of property taxes for all educational purposes.
 2. For small districts (districts with fewer than 800 students), would be considered as having used all their resources if at least 70 percent of their students are eligible for free or reduced-rate lunch, have a local-share based on the formula of greater than 50 percent and have imposed at least seven mills of property tax for add educational purposes.
 3. The school district has: 1) an enrollment growth rate over the previous school year of at least two and one-half percent; 2) according to its five-year facilities plan, will be building a new school within the next two years; and 3) for all education purposes, has a property tax rate of at least \$10.00 on each \$1,000 of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.
- Require that school district five-year facilities plan required for submission for grant assistance include the capital needs of charter schools located in the district.

Section 8, requires the Council to develop, implement and maintain a uniform web-based facility information management system, and within available appropriations, to develop a schedule and procedure for phasing all school districts into the system, including school districts not applying for grant assistance. The system will provide a centralized database of maintenance activities for monitoring, supporting and evaluating school-level and district-wide maintenance efforts; provide comprehensive maintenance request and expenditure information to the school districts and the Council; and facilitate training of facilities maintenance and management personnel. School districts would be required to participate in system to be eligible for a capital outlay award.

Section 9, recreates the PSCOTF as a permanent public school outlay oversight task force; changes the membership to include: 1) the Speaker of the House or designee; 2) the President Pro Tempore of the Senate or designee; 3) two minority party members of the House of Representatives appointed by the New Mexico Legislative Council; 4) two minority party members of the Senate appointed by the New Mexico Legislative Council; and 5) a member of the interim legislative committee charged with the oversight of Indian affairs appointed by the New Mexico Legislative Council, provided the member rotate annually between a Senate member and a member of the House of Representatives. The provision removes the dean of the UNM Law School as a member; requires two of the three superintendents appointed to the task force be from im-

pact aid districts, and requires that two of the three public members be residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity in accordance with Title 20.

Section 10, describes the duties of the task force and directs the task force to name an advisory committee to look at ways to facilitate the interaction between charter schools and their school districts on issues relating to facility needs.

Section 11, requirement that employees of PSFA be subject to the State Personnel Act is delayed until July 1, 2006. PSFA is required to account for all awards made after July 1, 2004 from the public school capital outlay fund, and to make annual reports to the Public Education Department, the governor, the Legislative Study Committee, the Legislative Finance Committee and the Legislature.

Section 12, requires PSFA to complete an assessment of a public facility that will be provided for the use of a charter school within 60 days of being notified by the charter school of the proposed use of the facility. The assessment will determine the extent to which the facility meets the adequacy standards and the costs of bringing the school to those standards. Once assessed, the proposed facility would be prioritized and eligible for grant awards.

Section 13, clarifies that proceeds from school district general obligation bonds can be used for the purpose of matching capital outlay awards after consideration of the priorities for the school district's capital needs as reflected by the facility assessment database maintained by PSFA

Section 14, increases the state SB 9 guarantee from \$50 to \$60 per unit per mill commencing in 2006. The proposed increase is recommended for maintenance of school facilities and is consistent with the long-term goal of the task force to raise the state share of funding for maintenance to approximately one-third of the total. According to PED, the increase in equalization guarantee amount to \$60 would increase the state share of total SB 9 funding from approximately 17 percent to 22 percent in fiscal year 2006, and the estimated increase will result in an additional \$6 million for 64 school districts. The provision also allows these funds to be used by school districts for the district's share for the proposed new roof repair and replacement initiative. However, if a serious deficiency in a roof has been corrected and the school district refuses to pay its share of the cost, the distribution will be made to the public school capital outlay fund rather than the school until the public school capital outlay fund is reimbursed by the school district in full.

Section 15, requires all school districts, not just those who apply for state funding, to develop and implement preventive maintenance plans and to participate in the facility information management system proposed in Section 8 of this bill.

Section 16, is technical clean-up.

Section 17, requires that a claim for property damage to a school facility be paid directly to the school district. The section further authorizes the district to expend the insurance funds as long as the district complies with the procurement code and the expenditure has been approved by PSFA and determined to be consistent with the state adequacy standards.

Section 18, appropriates \$1,562,000 from the public school capital outlay fund to PSFA to develop and implement a uniform, statewide web-based facility information management system;

appropriates \$284,400 from the public school capital outlay fund to PSCOC in fiscal year 2005 to reimburse charter schools in their first year of operation in the 2004-2005 school year for least payments.

Section 19, contains an emergency clause.

FISCAL IMPLICATIONS

The appropriation of \$1,562 million contained in this bill for expenditure in fiscal years 2005 through 2007 is a non-recurring expense to the public school capital outlay fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the public school capital outlay fund.

The appropriation of \$284.4 thousand contained in this bill for expenditure in fiscal year 2005 is a non-recurring expense to the public school capital outlay fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall revert to the public school capital outlay fund.

Section 4 of the bill authorizes PSCOC to expend up to 1 percent of the average grant assistance during the previous three years, totaling approximately \$2.1 million for the purpose of reimbursing the State Fire Marshal, Construction Industries Division and local jurisdictions.

No new revenue sources for the public school grant assistance program are recommended for fiscal year 2006 in this bill. However, because of the volatility and uncertainty of severance tax revenues upon which supplemental severance tax bonding capacity is based, the state should consider, on a year-by-year basis, using severance tax revenues that would otherwise flow to the severance tax permanent fund for supplemental severance tax bonds for public school capital outlay purposes.

ADMINISTRATIVE IMPLICATIONS

Section 6 of this bill provides a deadline of May 1 of each year by which PED must calculate the public school district formula. Information related to prior year land valuations necessary to update the formula is provided by the Taxation and Revenue Department (TRD). Based on past experience, PED indicates meeting the proposed deadline may be difficult unless TRD is required to submit the necessary information to PED by a particular date.

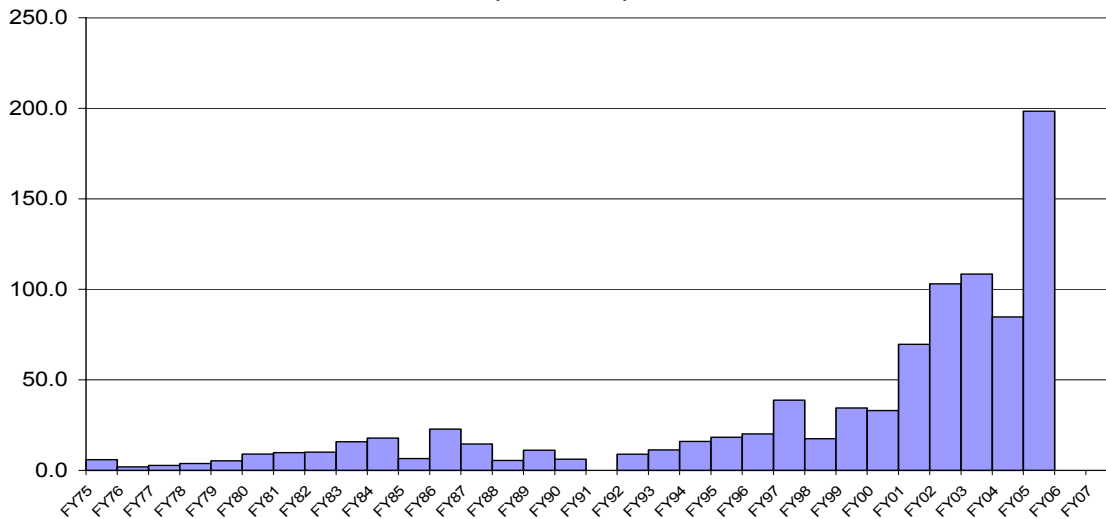
OTHER SUBSTANTIVE ISSUES

As of September, 2004, Laws of 2004, Chapter 125, required PSCOC to make public school construction grant awards compliant with the new standards-based process adopted by PSCOC in September 2003. PSCOC awarded \$198.5 million for statewide public school construction in FY2004-05. Of the \$198.5 million, \$124.7 million was awarded for 97 projects out of 100 ranked for schools of greatest need as listed in the New Mexico Condition Index (NMCI) rankings. The allocations included \$38.8 million derived from out-year capacity in order to fund projects in whole rather than by piecemeal. Of the total awarded, \$73.8 million was allocated to complete projects partially funded in the prior award cycle. Although no longer required by law, the awards provided \$109.4 million to Impact Aid districts, including Albuquerque.

To ensure adequate space for kindergarten classrooms in time for the September 2004 school year, PSCOC allocated \$12 million from the public school capital outlay fund for the kindergarten initiative. Of the allocation, a \$5 million general obligation bond recently approved by the voters will partially reimburse the fund.

The state has made a substantial commitment to adequately fund infrastructure for public schools statewide. Bonding capacity levels have increased over the last several years and are now 95 percent of prior year severance tax revenues less up to 50 percent for senior severance tax bonds. Based on current estimates, supplemental severance tax bond capacity, dedicated for public school construction will be \$135 million for FY06 and projected to be in excess of \$115 million annually for the next five years. Nearly \$900 million has been appropriated for critical capital outlay projects, continuation projects, standards-based projects, deficiency correction projects, kindergarten facilities, lease payments, and oversight expenses. FY2004-05 was a record-breaking year for public school capital outlay funding as depicted in the following graph:

**Public School Capital Outlay Allocations
State Portion Only
1975 through 2005
(Millions \$)**



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