F I S C A L   I M P A C T   R E P O R T

SPONSOR HEC **ORIGINAL DATE** 2/6/06 **LAST UPDATED** 2/9/06 **HB** 432/HECS/aHAFC

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

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	**FY07**		
$2,500.0		Non-Recurring	Public School Capital Outlay Fund
	$300.0	Non-Recurring	Public School Capital Outlay Fund
$50.0		Non-Recurring	Legislative Cash Balances

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SECS 450
Relates to SB-95; SB-211; SB-247; SB-600; HB-301; HB-405;

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Finance Authority (NMFA)
Public Education Department (PED)
Public School Insurance Authority (PSFA)
Attorney General's Office (AGO)
Department of finance and Administration (DFA)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the House Education Committee substitute for House Bill 432 provides for the creation of a fund for new school start-up costs, increases the membership threshold for eligibility of school districts to receive assistance in developing and updating five-year facilities plans, provides for the correction of deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf if funds are appropriated, provides for the accrual of interest on amounts advanced to school districts for the district share of projects, authorizes a charter authority study, removes all general fund appropriations and changes funding sources for other appropriations.

SIGNIFICANT ISSUES

HB432/HECS/aHAFC provides for interest to be accrued on the amount of money unrecouped from funds advanced for the district share of qualified high priority projects. The interest rate will be a fixed rate equaling the tax exempt interest rate at the time of the advance, for a comparable general obligation bond with similar maturity.

The Attorney General's Office notes that when a project is approved, the grant amount (State share of the cost of an approved project) is determined under a statutory formula that takes into account (i) the district's property tax wealth and (ii) the extent to which a school district has exhausted its local revenue generating abilities. Capital improvements for schools in districts that have utilized all their local revenue generating resources are eligible for a greater state share of the funding of capital outlays than projects in districts that have not utilized all their local resources. NMSA 1978, § 22-24-5(B)(5).

The AGO further notes the act contains an enforcement provision that empowers the Public Schools Capital Outlay Council to sue recalcitrant school districts that fail to bring schools up to the constitutionally required adequacy standard to force them to do what is necessary to meet the standard. The enforcement provision provides that the Court may order the Council to pay for the project and order the recalcitrant district to pay its local share under the funding formula as well as attorneys' fees and costs. The court may also order the "imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court."

The AGO further notes Section 7 of the Bill would modify the current law by allowing the Council to make grants of both the State share and the district share for "qualified high priority projects" as defined in the bill. The HAFC amendment contains a recoupment provision under which a district advanced funds for a "qualified high priority project" would not receive the state share to which it would be entitled on future projects until the amount advanced has been offset by the amounts withheld. Section 7 appears to address critical needs required to meet the adequacy standard in a uniform manner even though some of the districts where "qualified high priority projects" are apparently located have a relatively low district bonding level. This is because under the recoupment provision, a district in which a "qualified high priority project" is located will ultimately receive only its state share for the project.

A question which remains to be answered is whether the provision requiring interest to be assessed amounts to the district incurring debt without the approval of the voters.

<u>Synopsis of Original Committee Substitute</u>

The House Education Committee Substitute for House Bill 432 is an omnibus public school capital outlay bill making changes to the public school capital outlay (PSCO) program, requiring school district master facilities plans and providing for capital outlay fund local match assistance for qualified high priority projects, increases statutory caps on school district cash balances, and creates a fund to pay for new school one-time costs.

The bill also provides funding to fully implement the lease payment assistance program, provides for use of PSCO funds to demolish abandoned buildings, changes the method with which high growth school construction is addressed, and provides funding to correct deficiencies at the New

Mexico School for the Blind and Visually Handicapped and the New Mexico School for the Deaf.

Also included in the bill are provisions increasing the SB-9 guarantee from $60.00 to $90.00 per unit, continuing the exempt status of Public School Facilities Authority (PSFA) employees, providing for PSFA to act as its own purchasing agent and creating a study committee and making appropriations.

The bill declares an emergency.

FISCAL IMPLICATIONS

The House Education Committee substitute for House Bill 432 appropriates $343.4 million from the general fund to various agencies and funds to implement the various provisions indicated.

House Bill 432 includes the following appropriations for expenditure beginning in 2006:

$40,000.0 To the public school capital outlay fund (PSCOF) to correct deficiencies at the at the New Mexico School for the Blind and Visually Handicapped and the New Mexico School for the Deaf. Funds remaining at the end of FY11 shall not revert but shall remain in the public school capital outlay fund.

$2,500.0 To PSFA for continued development and implementation of a uniform, statewide web-based facility information management system. Funds remaining at the end of FY08 shall revert to the general fund.

$2,000.0 To PSCOF for demolition of abandoned school buildings. Funds remaining at the end of FY10 shall not revert but shall remain in PSCOF.

$290,000.0 To PSCOF for making grants for both the state and local share for qualified high priority projects. Funds remaining at the end of FY10 shall not revert but shall remain in PSCOF.

$1,000.0 To the New School Development Fund to pay costs unique to the first year operation of new schools. Funds remaining at the end of a fiscal year shall not revert.

$7,500.0 To PSCOF to be used for the lease assistance program. Funds remaining at the end of FY07 shall not revert but shall remain in PSCOF.

$300.0 To PSFA for making grants to improve indoor air quality. Funds remaining at the end of FY07 shall revert to the general fund.

$50.0 To the Public Education Department for a feasibility study of alternative chartering authority related to the establishment of charter schools. Funds remaining at the end of FY07 shall revert to the general fund.

$50.0 To the Legislative Council Service for mileage and per diem to members of the district revenue impact group. Funds remaining at the end of FY07 shall revert to the general fund.

SIGNIFICANT ISSUES

The bill requires all school districts to have submitted a five-year facilities plan which includes enrollment projections, a current preventative maintenance plan, the capital needs of charter schools located in the district, and projections of facility needs to maintain a full-day kindergarten program prior to PSFA approving school construction or a district letting contracts for school construction. PSFA notes this is consistent with requirements currently in effect for districts applying for grant assistance.

Provisions contained in the bill increase the current 3 to 9 percent caps currently in place on the amount of operational cash balances a public school district may retain to 5 to 15 percent depending on total program cost. School districts have complained the caps currently in place are unfair and are causing undue pressure with regard to expenditures which require the district to expend funds prior to requesting reimbursement.

The committee substitute also provides for the secretary of education to waive all or a portion of reductions for excess cash balances if the funds are needed to provide a local match or to reduce the districts share of amounts granted for qualified high priority projects.

HB432/HECS creates the New School Development Fund to be used to supplement district funds to pay for supplies, equipment and operating costs unique to the first year of operation. New school construction funding generally funds facility construction only and does not include funding for articles such as desks, chairs, and laboratory equipment. In FY06, the Public School Funding Formula distributed $17.5 million for enrollment growth at $3,035.16 per unit. At this time, there is no clear differentiation between operational and capital outlay and this would appear to be double funding. Other sources of revenue already available for start-up costs include enrollment growth, the SB-9 mill levy and district operational cash balances.

The bill extends the lease payment assistance program through 2010, appropriates $7.5 million to fund the current assistance amount of $600 dollars per MEM.

Further, the bill authorizes the Public School Capital Outlay Council (PSCOC) to make distributions from the PSCOF to assist certain school districts in developing and updating five-year facilities plans. Assistance is focused on small districts with limited financial resources. The PSCOC may waive the district match in certain circumstances, but is limited to schools with fewer than 800 MEM enrolled on the 80^{th} and 120^{th} day. Limiting the council to assisting smaller school districts causes concern with regard to a “uniform system”. Not allowing larger school districts access to this funding may be problematic with regard to issues involved in the Zuni lawsuit.

The bill provides for awards to be made by PSCOC for the demolition of abandoned public school buildings when certain conditions are met. It is anticipated such costs will be defrayed by insurance premium savings accruing to the school district. PSCOC may enter into agreements with school districts to reimburse the PSCOF with these savings.

The bill addresses health, safety and infrastructure deficiencies at the New Mexico School for the

Blind and Visually Impaired (NMSBVH) and the New Mexico School for the Deaf (NMSD). While these two schools serve a kindergarten to 12th grade population, because of their unique governance structure they were excluded from the original deficiency corrections program. The bill includes these institutions as eligible for public school capital outlay projects and authorizes PSCOC to correct serious deficiencies at these two schools. It is important to note NMSBVH and NMSD are constitutionally established institutions that are funded quite differently from public schools. Special distributions to these schools reduce the funding available to public schools.

The committee substitute includes new local match provisions for qualified high priority projects. If appropriations are available and a district requests assistance, funds may be utilized to pay both the state share and the district share of such projects. Payment of the district share is conditioned upon the following:

- The district's share of a project as well as direct appropriations made to the district and not rejected is combined to determine the total district share to be recouped by the PSCOF.
- Recouping of funds is accomplished by offsetting future allocations from the fund for the state share of projects qualifying for a grant award.
- Until the entire district share is recouped, no standards-based grant awards from the fund will be made to the district and the district will be solely responsible for using local resources to bring those facilities that would be eligible for allocations from the fund to the statewide adequacy standards.
- The committee substitute provides for the district to use cash balances to reduce the amount to be recouped.

While the bill generally provides for no more than one project at a time per district to be funded under this method, provisions are included for two projects in the same district in very specific circumstances. These include:

- Both projects qualify during the same awards cycle, beginning on or after July 1, 2006.
- Both projects were approved for a grant award during the 2004-05 or the 2005-06 award cycles and the school district has not obtained funding for the district share as of July 1, 2007; and
- Are located in a high growth area; or
- Is a project the council has determined that the cost or bringing the facility up to statewide adequacy would be equal or more than the cost of replacing the existing facility;

The committee substitute also provides criteria under which the PSCOC may designate high-growth areas.

The Eleventh Judicial District Court ordered the state to establish and implement a uniform funding system for capital improvements of New Mexico school districts. In response to the judge's order, New Mexico changed the way in which the state funds public school capital outlay expenditures by making extensive amendments to the Public School Capital Outlay Act. One of the changes was to implement a state-share formula based upon a local school district's property tax wealth and its local effort. Provisions contained in this bill appear to minimize the local effort component. Whenever a subset of districts or district projects is created for the purposes of special funding, the equity and uniformity of the funding system may be in jeopardy. Since the court has not completed its oversight, HECS-432 could potentially reopen the entire case.

The bill continues the exemption of PSFA staff from provision of the State Personnel Act and further excludes PSFA from central purchasing through the state purchasing agent. This exclusion permits PSFA to establish price agreement with vendors selected through a competitive bid process. The price agreements may be utilized by school districts and PSFA for various products and services related to construction, design professional services, roof consulting services and master planning.

The bill increases the state SB-9 distribution amount from $60.00 to $90.00 per program unit. The proposed increase is recommended to be used for maintenance of school facilities. Additionally, the bill expands the definition of capital improvements to include payments for contracts for maintenance support services. Currently, the SB-9 distribution equals $17.7 million annually, increasing the distribution to $90 will increase annual costs to $44.7 million.

The bill further creates the School District Revenue Impact Study Group. The group whose membership is delineated in the bill is created for one year. The group will meet during calendar 2006 to examine various issues related to real estate development and the resulting public use infrastructure demands. Emphasis of the work of the study group will be on the impacts on school district revenues and expenditures, the costs of building and maintaining school facilities and associated infrastructure and existing and alternative cost sharing mechanisms, including impact fees

OTHER SUBSTANTIVE ISSUES

High Growth Schools. The provision to deal with "qualified high priority projects" comes at a critical time for some school districts. The governor, in January called for $290 million in additional funding to assist high growth areas, notably: Albuquerque, Deming, Las Cruces, Los Lunas, Gadsden Independent Schools and Rio Rancho Public Schools. The governor's proposal would utilize senior severance tax bonds ($145 million in FY06, $145 million in FY07) to provide funding for the program as opposed to general fund revenue. The following tables illustrate the district wide growth rates for these select districts and the preliminary 2006-2007 NMCI rankings.

Historical 40 Day MEM Counts

District	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	Change 01-05	%
Albuquerque	85,276	87,152	87,939	90,214	93,338	8,062	*9.5%*
Deming	5,325	5,315	5,384	5,471	5,443	118	*2.2%*
Gadsden	13,100	13,254	13,454	13,796	14,089	989	*7.5%*
Las Cruces	22,185	22,414	22,778	23,101	23,717	1,532	*6.9%*
Los Lunas	8,569	8,528	8,421	8,590	8,613	44	*0.5%*
Rio Rancho	10,219	10,566	11,138	11,776	12,532	2,313	*22.6%*

Compiled by PSFA 01/25/06 from data provided by the Public Education Department.

DISTRICT	SCHOOL	2004-2005 NMCI Ranking	2005-2006 NMCI Ranking	2006-2007 Preliminary NMCCI Ranking	STATE SHARE	DISTRICT SHARE

Albuquerque	Northwest High School	1		752	47%	53%
Albuquerque	Southwest High School		2	751	47%	53%
Deming	Columbus Elementary School		16	721	76%	24%
Gadsden	South Elementary School			Not included as a proposed school	87%	13%
Las Cruces	Southwest High School		85	698	67%	33%
Las Cruces	Southwest Mid School			Not included as a proposed school	67%	33%
Los Lunas	Westside Elementary School			Not included as a proposed school	77%	23%
Rio Rancho	Northwest Elementary School			Vista Grande ES ranked #1	65%	35%
Rio Rancho	Northeast Elementary School			Colinas del Norte ES ranked #30	65%	35%

As reported in the Albuquerque Journal, Albuquerque Public School staff recommended to their school board a 1 mill increase which would have generated significant funding for the new high schools, however the school board decided against placing it for consideration on the general obligation bond election.

Is should be noted that an individual schools attendance growth may be caused by immigration or by population shifts within the district boundaries. Population shifts may not be evident in district wide attendance figures but only at the school level of detail. The PSFA in FY05 contracted with the Bureau of Business and Economic Research (BBER) to study and begin developing a model to forecast school district growth. One requirement of the project is to have available on-line, demographic and other data of the district available to school districts to perform scenarios in order to assist districts in responding to growth issues that may be on the horizon. The first phase of the study is almost complete and the second phase will be considered, subject to funds being available to proceed further with the work.

It should be noted that funding increases in the Lease Assistance program and the Capital Improvements Act (SB-9) distributions will reduce the amount of funds available for PSCOC Grant Awards. The table below illustrates the relationship of the programs as competing uses of a single source of funding.

PSCOC FUNDING SOURCES AND USES SCENARIO

SOURCES:	**FY06 YTD**	**FY07 est.**	**FY08 est.**	**FY09 est.**
Supplemental STB's	$162.8	$138.5	$153.1	$153.7
TOTAL:	$162.8	$138.5	$153.1	$153.1

USES:				
PSCOC Grant Awards	**$132.3**	**$78.3**	**$93.2**	**$94.2**
Capital Improvements Act (SB-9)	$20.0	$44.7	$44.7	$44.7
Lease Payment Assistance	$4.0	$7.5	$7.5	$7.5
PSFA Operating	$4.4	$5.7	$5.8	$6.0
Earmark for CID &SFMO Inspection Costs	$2.1	$2.3	$1.9	$1.3
TOTAL:	$162.8	$138.5	$153.1	$153.7

Provisions in the committee substitute require the district to utilize local resources to bring facilities ineligible for allocations from the fund as a result of the “qualified high priority projects” to state adequacy standards. It is unclear whether a district would have the resources to accomplish this given the districts inability to fund the local share of the priority project. The result may be that schools high on the PSCOC list for allocations may not receive the funding necessary to meet adequacy.

ALTERNATIVES

A number of alternatives have been suggested by Secretary Jimenez in a presentation to the Public School Capital Outlay Taskforce in December. These include:

- Consider retroactive awards to APS for projects that APS did not previously apply.
- Consider waiver of match on 2005 awards for high growth schools or for APS.
- Create a moratorium on offsets, for a period of time, for awards related to “significant growth.” Significant growth criteria would be developed by PSCOC.
- Prescribe that growth dollars cannot be considered from PSCOC unless; the district has implemented a policy that any school that enrolls its first student over design capacity, will at the next school year, become a “year around school.” Year around school increases student capacity at a school by 20 percent.
- Prescribe that growth dollars cannot be considered from PSCOC unless; the district has first implemented all options including boundary changes that would spread students across available facilities.
- PSCOC impose a tax upon APS to raise needed match for high needs schools or projects.
- Adjust growth awards by reducing local match by 20 percent (.8 x calculated required local match amount) conditional upon a district having a certain minimum indebtedness relative to a community “doing its best.”
- PSCOC loan funding to districts for match dollars and require repayment by a certain date.
- Increase outside input of capital into schools such as from developers.
    - Impact fees for school construction
    - Lease purchase option
- Review the 3X weighting of the growth factor within the NMCI ranking formula which would de-magnify growth issues so that analysis of space would be simply reactive to present need.

Other alternatives which may be considered:

- Exempt direct appropriations for high growth schools and districts so they aren’t affected in the formula, or
- Prohibit direct appropriations for districts with high growth schools.

PA/nt
Attachment

Bonding Capacity and Tax Rates

Bonding Capacity & Tax Rates

Year		Albuquerque Public Schools [1]	Albuquerque Public Schools [2]	Las Cruces Municipal Schools	Santa Fe Public Schools	Gadsden Municipal Schools	Gallup-McKinley Public Schools	State Average
2005	22.4	19.18%	19.18%	73.43%	14.59%	99.99%	96.62%	40.53%
2006		18.67%	19.04%	83.37%	18.81%	85.52%	90.83%	40.53%
2007		20.62%	22.99%	81.22%	21.87%	96.20%	93.29%	40.53%
2008		22.12%	28.51%	80.20%	19.48%	96.18%	93.38%	40.53%
2009		22.83%	32.61%	78.82%	17.42%	96.16%	94.20%	40.53%
2010		23.49%	36.68%	80.89%	18.84%	96.20%	83.70%	40.53%
2011		24.13%	37.78%	82.76%	19.76%	96.23%	72.94%	40.53%
2012		24.70%	38.66%	82.71%	20.32%	96.23%	61.99%	40.53%
2013		25.25%	39.39%	82.71%	20.56%	75.43%	52.92%	40.53%
2014		25.75%	39.78%	83.15%	16.00%	59.52%	42.78%	40.53%
Debt Service Tax Rate:		$2.162	$3.008	$7.504	$3.630	$13.150	$8.116	
State Average for Debt Service:					**$5.571**			
Capital Improvements Tax Rate [3]:		$8.036	$8.882	$9.436	$6.908	$15.086	$10.079	
State Average for Capital Improvements:					**$7.848**			

1) - Current Finance Plan, no tax increase
2) - High Funding Scenario 3, tax increase
3) - Two Mill Levy, HB33

Albuquerque Public Schools