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

		ORIGINAL DATE	2/12/2008		
SPONSOR	SFl	**LAST UPDATED**	2/13/2008	**HB**	
SHORT TITLE	Public School Capital Outlay Omnibus Bill			**SB**	146/SFlCS
				ANALYST	Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	**FY09**		
	$3,000.0	Recurring	Public School Capital Outlay Fund
	* SEE FISCAL IMPLICATIONS		

(Parenthesis ( ) Indicate Expenditure Decreases)

* SB-146 extends the period of time for the expenditure of funds appropriated in section 14 of Chapter 95 of Laws 2006 through fiscal year 2009.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
$3,000.0			Recurring	New School Development Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

The Senate Floor Substitute for Senate Bill 146 appropriates $3 million from the Public School Capital Outlay Fund to the New School Development fund for the purpose of making distributions to school districts to pay for equipment and other non-operating costs unique to the first year of operation of new schools.

The bill provides for advance payment to the Construction Industries Division, the State Fire Marshall and local entities for providing inspection services. The reimbursement provision currently in statute is removed.

SFCS/SB-146 provides for a reduction in the district share of offsets resulting from direct legislative appropriations for projects to be jointly used by other governmental agencies.

SB-146 provides for a reduction of 5 percent in a school districts share of project costs as an incentive for implementing good maintenance practices.

The bill provides for additional funding of up to 25 percent above project costs to allow certain districts to exceed the statewide adequacy standards.

The bill removes the State Investment Officer from the Public School Capital Outlay Oversight Taskforce.

The bill extends the period of time to expend funds appropriated for implementation of the facility information management system.

FISCAL IMPLICATIONS

The appropriation contained in this bill is a 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 New Mexico Condition Index currently identifies a statewide need of more than $4 billion to repair, renovate and replace public school buildings to the current adequacy standards. Additional expenditures from the Capital Outlay Fund for purposes other than meeting adequacy extends the period of time the state will require to meet existing needs.

The bill provides for increased distributions from the Public School Capital Outlay Fund (PSCOF) for initiatives other than standards based awards. These initiatives, CID/SFMO payments, maintenance incentives, supplemental payments and a reduction in offset for direct appropriations all appear to have merit, but the diversion of funds away from the core function of PSCOC means fewer funds are available for standards based awards.

SIGNIFICANT ISSUES

The bill also provides for the Public School Facilities Authority to "pre-pay" initial estimated payments from the Public School Capital Outlay Fund prior to actual expenditure pursuant to contracts with the State Fire Marshall, the Construction Industries Division, and local permitting and inspection authorities for projects funded under the Public School Capital Outlay Act. Currently, the PSFA may enter into contracts to reimburse these agencies for costs associated with permitting and inspecting projects funded in whole or in part by the PSCOC. These agencies currently receive base funding from the state to perform these services as a normal part of their responsibilities and it appears the intent of this provision is for authorities having jurisdiction to give PSCOC project inspections high priority for improved delivery of service. This provision appears to supplement these agency operations with additional funding to do the job they are already tasked with. Currently PSCOC requires that performance measures be met per the agreements with the PSFA and the inspecting agency to justify this arrangement. Because these agencies already receive base funding, the Legislature may wish to consider leaving the reimbursement condition as it currently stands to allow Public School Capital Outlay

Council to assess the services provided and determine the appropriate reimbursement for prioritizing project inspections.

The committee substitute provides for a reduction in the offset for all direct legislative appropriations that will be used toward a project to be used jointly by a governmental agency and school district. The criteria for the amount of reduction will be determined by the PSCOC through rule.

Provisions are included providing for a 5 percent reduction in the district share of approved projects if the district is deemed exemplary in implementing and maintaining a preventive maintenance program. The criteria for qualifications shall be adopted by the PSCOC through rule. The intent of this proposed change is to give school districts an incentive for implementing exemplary maintenance programs.

The committee substitute provides for incremental funding to school districts who receive grant assistance under the PSCOA. The additional grant assistance is to be used to fund projects by as much as 10 percent to 25 percent higher than the estimated construction cost to allow approved districts to exceed the statewide adequacy standards. Funding to pay for these projects will come from the Public School Capital Outlay Fund.

While it is not expected to have a significant impact in the first year, as more projects from eligible districts come online, the effect of incremental funding may be to push projects from other districts further out in time, delaying the implementation of construction.

If the Public School Capital Outlay Council determines a district meeting the specified criteria has a demonstrated history of providing what support it is able to provide, the incremental funding appears to be automatic rather than based on project need and the PSCOC would be required to provide the funding.

Initial analysis indicates that those districts eligible at this time for incremental funding are Cuba, Gadsden, Gallup, Grants, Hagerman, Hatch, West Las Vegas, Tucumcari, Tularosa and Zuni.

The Attorney General's Office notes this bill alters grant distributions from the existing Public School Capital Outlay Fund by allowing any school district to receive an additional amount based upon its "preventive program". It also allows certain school districts to receive additional capital outlay funding. As such, the bill could have an impact on pending litigation between the Zuni, Grants, and Gallup school districts and the State of New Mexico (*Zuni School District v. State,* McKinley County No. CV-98-14-II).

In that case the plaintiffs claimed that the state's system of school finance was unconstitutional with respect to capital funding. The Court granted partial summary judgment to plaintiffs in October 1999 and ordered the state to establish a uniform funding system for school facilities. In 2002 the state adopted a new capital funding system intended to establish a standards-based, adequacy level for facilities in all districts. The new legislation allowed *all* school districts to apply for capital outlay funding regardless of existing debt, provided funds to immediately address health and safety deficiencies, and generally increased the amount of capital improvement funds available to school districts. In January 2002 a special master reported that the State was making a good faith effort to comply with the court's order, and in summer of 2002, over the plaintiffs' objections, the Court approved the special master's report. The case remains pending, and it is unclear how the provisions of this bill authorizing additional capital funding only to certain school districts, and additional funding based upon "preventive maintenance program" compliance would comply with or be consistent with provisions of the special master's report.

TECHNICAL ISSUES

The Attorney General's Office notes the definition of "Governmental Entity" in Section 3 appears to *only* include Indian Nations, Tribes, and Pueblos. The effect of this definition would be to require the Public School Capital Outlay Council to reduce a grant to a school district by a proportional amount based upon the use of a district project by an Indian Nation, Tribe, or Pueblo. The bill does not appear to require such reduction based upon use of the project by any other governmental entity.

Pursuant to 22-24-5 the Public Education Department is required to calculate the percentages of participation for a PSCOC project no later than May 1st of each calendar year. Section three proposes to increase the state percentage of a PSCOC project by 5% for those school districts who demonstrate exemplary in implementing a preventative maintenance program. It should be noted that the list of districts qualifying for the additional 5% should be submitted to the PED prior to May 1st of each calendar year so that the department is able to meet the statutory deadline. The department is also tasked with calculating the offsets for all school districts each year. Section three proposes to exclude a portion of appropriations from the offset if the project is used jointly by a governmental agency and the school district. The PSCOC shall determine the amount to be excluded from the offset. A deadline should be implemented on this determination so the department can calculate the offsets prior to the council making the final awards each year.

PED notes Section two of the bill proposes to give the PSFA the ability to provide initial funds for estimated payments prior to the expenditures for contracts with CID and the State Fire Marshal. This may be problematic as the source of the PSCOF is supplemental severance tax bonds, which can only be disbursed on a reimbursement basis due to arbitrage issues.

ALTERNATIVES

The 10 percent to 25 percent incremental funding appears to be very rich and the Legislature may wish to consider the following:

On page 30, Line 16, strike "six-tenths" and insert in lieu thereof "six hundred twenty-five thousandths"

On page 30, Line 17, strike "twenty-five" and insert in lieu thereof "fifteen"

PA/mt:bb