

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/SB 2

**50th Legislature, 1st Session, 2011**

**Tracking Number:** .183910.4

**Short Title:** School Capital Outlay, Grants & Consolidation

**Sponsor(s):** Senators Sue Wilson Beffort, Cynthia Nava, and John Arthur Smith

**Analyst:** Peter B. van Moorsel

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**SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SENATE BILL 2**

**Bill Summary:**

Among its provisions, CS/SB 2:

- amends the *Public School Capital Outlay Act* to provide incentives for school districts to limit school populations when constructing new schools or renovating existing schools;
- provides for procedures for the closure or consolidation of schools; and
- provides that students attending high schools with enrollments smaller than 900 students may participate in school district extracurricular activities at other schools if they are not offered at the school that they attend.

**Section 1** amends the act by:

- Requiring the Public School Capital Outlay Council (PSCOC), in establishing criteria to be used in public school capital outlay projects that receive grant assistance, to consider:
  - joint use of reasonably accessible community educational facilities among concepts that promote efficient but flexible utilization of space; and
  - the construction or renovation of elementary and middle or junior high schools that would accommodate no more than 400 students and high schools that would accommodate no more than 900 students among financing or construction concepts that may maximize the dollar effect of the state grant assistance on future student performance.
- Defining “community educational facilities” to mean any non-classroom space designed to support educational programs, including physical education facilities, sports fields, gymnasiums, swimming pools, performing arts facilities, fine arts facilities, libraries, and media centers.
- Permitting the state share of a standards-based construction award to be increased by 5.0 percent if the PSCOC finds that the construction project for a new school will include in its design the joint use of reasonably accessible community educational facilities.

- Requiring the PSCOC to provide a credit of 10 percent of the project cost against the amount of local share otherwise required for certain projects, so long as the state share does not exceed the total project cost, including:
  - a new school construction project for an elementary school or a middle or junior high school that is designed to accommodate between 200 and 400 students as long as any portion of the project receiving state share funds has a maximum building gross square footage no larger than that established under the adequacy standards for a school of 800 students;
  - a new high school construction project that is designed to accommodate between 400 and 900 students as long as any portion of the project receiving state share funds has a maximum building gross square footage no larger than that established under the adequacy standards for a school of 1,000 students;
  - a school renovation project designed to renovate an existing elementary or middle or junior high school that is larger than 400 students into multiple smaller schools, each of which is designed to accommodate between 200 and 400 students; and
  - a high school renovation project designed to renovate an existing high school that is larger than 900 students into multiple smaller schools, each of which is designed to accommodate between 400 and 900 students.
- Providing that no application for grant assistance from the Public School Capital Outlay Fund for a new school project may be approved unless the PSCOC determines that the application includes:
  - an analysis of the number, type, location and capacity of community educational facilities reasonably accessible to the proposed school;
  - a plan for how the new school will use the community educational facilities identified; and
  - if the new school will not be using any of the identified community educational facilities, an explanation of why it will not be using them.

**Section 2** creates a new section of the *Public School Code* to provide procedures for the closure or consolidation of schools by:

- Permitting local school boards to close a school or to consolidate two or more schools within a school district only if it determines that the closure or consolidation is in the best interest of students served by any school to be affected by the closure or consolidation.
- Requiring local school boards to prepare a feasibility study examining the likely effects of the closure or consolidation on the education of students in the school district and on the community in which the schools are located, including effects on:
  - student achievement;
  - student participation in co-curricular activities;
  - student health and well-being;
  - student commuting time and patterns;
  - parental participation in school activities and student learning;
  - annual cost per pupil and total cost per graduate;

- other costs related to the closure or consolidation; and
- other factors related to the educational performance of the school or schools and the students.
- Requiring local school boards, after the preparation of the feasibility study, to hold a public hearing in each of the schools to be affected by closure or consolidation in order to receive input from members of the community:
  - At least 30 days prior to the hearing date, the local school boards must give notice of each such hearing that provides the subject of the hearing, the time and place of the hearing, where interested parties may obtain copies of the feasibility study, and the manner in which interested persons may present their views at the hearing.
  - At the public hearings, local school boards must allow interested persons an opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.
  - The local school board must decide whether to proceed with the proposed school closure or consolidation within 21 days of the last required public hearing.
  - If the local school board decides to proceed with the closure or consolidation, it must forward its decision, the feasibility study, and the record of each public hearing to the Secretary of Public Education.
- Providing that no school closure or consolidation may be carried out without the approval of the Secretary of Public Education, if the secretary determines that the local school board's decision is reasonably supported by the feasibility study and the public input and is otherwise in accordance with applicable laws and rules.

**Section 3** further amends the *Public School Code* to:

- require the New Mexico Activities Association (NMAA) and the local school board in which a high school enrolling fewer than 900 students is located to allow students at that school to participate in school district extracurricular activities sanctioned by the NMAA or other association if those students meet eligibility requirements and if that school does not offer such activities; and
- require a student at a high school enrolling fewer than 900 students who is otherwise eligible to participate in an extracurricular activity to participate in the extracurricular activities at the public school closest to the attendance zone in which the student lives; provided, that the student may choose only one public school in which to participate.

**Fiscal Impact:**

CS/SB 2 does not contain an appropriation.

***Capital Outlay Costs***

CS/SB 2 creates an incentive by reducing the district share of a qualifying school construction or renovation project by up to 15 percent of the total project cost to adequacy, and increasing the state share (and cost to the Public School Capital Outlay Fund) by an equal amount.

The Public School Facilities Authority (PSFA) has developed an estimate of the potential fiscal impact of CS/SB 2 in terms of capital costs only:

- The bill “*allows* but does *not mandate* that school districts evolve higher student population schools/school designs into lower student population schools/school designs,” and that “if no school district chooses to avail itself of these incentives, the fiscal impact of the bill could conceivably be \$0.00.”
- On a per-student basis, smaller schools are generally more expensive to build and to operate due to higher square footage per student (at a marginal operating cost of approximately \$6 per square foot per year). However, PSFA states that CS/SB 2 seeks to limit additional costs due to smaller populations by:
  - providing an incentive to make use of community facilities near the school for educational purposes; and
  - requiring that schools that receive the credit created in CS/SB 2 limit the square footage per student pursuant to state adequacy standards.

PSFA estimated the fiscal impact of CS/SB 2 using the following assumptions:

- The average useful life of school facilities is 40 years (therefore, within 40 years, all public schools in New Mexico should cycle through the standards-based process for renovation/replacement).
- Accordingly, the full estimated facilities-related fiscal impacts of CS/SB 2 would be amortized over 40 years, meaning that the estimated annual cost would be 1/40th of the total cost.
- The cost estimate is an average, in 2011 dollars. The actual annual cost is a function of the number of qualifying schools that come up for funding in each annual funding cycle.
- CS/SB 2 provides incentives up to 15 percent of the cost of a project, which could be lower if projects qualifying for the small school capital outlay incentive do not include use of community educational facilities. (PSFA assumes that the incentive will be 15 percent for all qualifying projects, but also estimates the average annual cost if the incentive were to be 10 percent if all projects do not receive the 5.0 percent credit for using community educational facilities.)
- PSFA notes that the most significant unknown may be the percentage of qualifying larger schools that would evolve into smaller facilities as a result of CS/SB 2. For the purposes of this analysis, PSFA estimates that 40 percent of qualifying larger schools would, over the next 40 years, choose to evolve into multiple smaller schools.

Based on the above assumptions, then, PSFA estimates that the average annual cost to the state (from the Public School Capital Outlay Fund) of CS/SB 2 would be **\$21.42 million per year** over 40 years, determined as follows:

- the total replacement cost of all qualifying larger schools is estimated at \$13.59 billion;
- assuming a 15 percent credit, the additional cost to the state would be approximately \$2.03 billion;
- amortized over 40 years, the annual cost would be approximately \$50.96 million if all schools chose to use the incentives in CS/SB 2; and
- assuming that 40 percent of qualifying schools use the incentives, the annual additional capital cost would be approximately \$20.4 million (PSFA notes that this is a conservative estimate).

Finally, PSFA includes in its estimate an additional 5.0 percent site development cost for new sites, bringing the estimate to \$21.42 million.

### ***Use of Community Facilities***

In addition to the increased costs to the state due to a larger share of the construction costs being paid from the Public School Capital Outlay Fund, the transition to more, smaller schools could result in the loss of economies of scale related to building larger schools. However, the additional cost of building a smaller school could potentially be offset by savings related to the use of community educational facilities, as these facilities would not need to be constructed or operated at the school site.

This issue is addressed in a 2003 article co-authored by PED Secretary-Designate Hanna Skandera that argues that “cost-effectiveness is also possible in small schools. When per pupil costs are calculated on the number of students who actually graduate from school, rather than on the number who just attend, the so-called savings of big schools largely disappear.” The article notes that “[i]f a small school attempts to maintain the large-school infrastructure, however, it will probably not be cost-effective,” alluding to the need to use community facilities to supplement educational programs.

CS/SB 2 provides incentives for the use of community facilities, and it requires that school districts applying for grant assistance from the Public School Capital Outlay Fund perform an analysis of the number, type, location and capacity of community educational facilities reasonably accessible to the proposed school.

However, PSFA notes in its analysis of the bill that “more effective regional planning and/or lengthy planning horizons” may be required before school districts can make effective joint use of community facilities.

### **Fiscal Issues:**

PSFA notes the following in its analysis of CS/SB 2:

- Any additional costs to the Public School Capital Outlay Fund could affect the state’s average Facility Condition Index (FCI)<sup>1</sup>. According to PSFA, current unfunded needs for public school facilities in New Mexico total approximately \$4.05 billion. PSFA adds that the average annual required state investment in facilities to keep the facilities condition from worsening is approximately \$125 million, and any additional funding burden imposed on the Public School Capital Outlay Fund would have the effect of accelerating FCI levels, meaning that the overall condition of school facilities would worsen.
- Existing additional funding burdens on the Public School Capital Outlay Fund include full-day kindergarten programs that are not yet fully housed in permanent facilities; and charter schools will need to be in public facilities in 2015.
- During the 2010 interim, the Government Restructuring Task Force (GRTF) examined potential inefficiencies and “formula chasing in the qualification for small school size

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<sup>1</sup> PSFA provides the following example to illustrate the Facility Condition Index – if a building costs \$100,000 and has an FCI of 37 percent, that building needs \$37,000 in repairs; therefore, lower FCIs are better.

adjustment units in the public school funding formula. PSFA notes that, with the incentives created in CS/SB 2, it “may be possible to creatively move a handful of students in and out of a school facility in order to qualify for the small school capital outlay incentive, and then move those students back into the school.”

- If a school evolves into two smaller schools, and they are not both located in the original facility, and if the excess space is not demolished, under-utilization of space on the original campus could result. PSFA states that it costs approximately \$6 per square foot per year to operate a facility. If the excess space were to be demolished, the district and the state would face the costs of demolition. Neither of these costs is included in PSFA’s potential annual cost estimate.

### **Issues:**

The provisions of CS/SB 2 appear to reflect the findings of a 2008 report prepared by Think New Mexico<sup>2</sup> titled *Small Schools: Tackling the Dropout Crisis While Saving Taxpayer Dollars*. The report cites several advantages of small schools, including higher graduation rates, improved student achievement, greater school safety, increased extracurricular opportunities, and increased student, teacher, parent, and administrator satisfaction.

Stevens (2008)<sup>i</sup>, however, notes that “[r]eformers often caution that reducing school size is no panacea for the challenges facing schools, but is only a lever to help facilitate positive changes in school environment, teaching, and student learning. Both research and anecdotal observations seem to corroborate this warning: for every example of a small school successfully creating a supportive and enriching learning environment for students, there are equally dramatic examples of small school experiments that did little to improve the educational experiences of students.”

An LESC staff review of research and other information regarding school size also appears to corroborate the above notion that the results of research on the effects of school size may be contrary. On the one hand, the findings of several studies assert that students in smaller schools tend to perform better than students in larger schools. Among them:

- Howley (2002)<sup>ii</sup>, notes that “smaller school size is associated with higher achievement under some conditions; smaller schools promote substantially improved achievement equity; and smaller schools may be especially important for disadvantaged students;” and
- Kuziemko (2006)<sup>iii</sup> suggests “that smaller schools increase both math scores and attendance rates and that the benefit of smaller schools outweighs the cost.”

On the other hand, some research results have not confirmed that school size is a significant factor in school performance. For example:

A study of school size and student outcomes in Kentucky’s public schools<sup>iv</sup> found that, generally the scores on the Commonwealth Accountability Testing System (CATS) assessments of students enrolled at larger schools were as high or higher than the scores of students enrolled at smaller schools:

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<sup>2</sup> Think New Mexico identifies itself as a results-oriented think tank serving the citizens of New Mexico, whose mission is to improve the quality of life for all New Mexicans by educating the public, the media, and policymakers about problems facing New Mexico and by developing effective, comprehensive, sustainable solutions to those problems.

- scores for middle and high school students were generally higher for those enrolled at larger schools; and
- scores for elementary school students attending relatively large schools were generally as high or higher than for those attending smaller schools; however,
- there was some evidence to suggest that performance was higher at smaller schools than at schools that were somewhat larger; and
- Howley (2002), while cited above as reporting benefits of smaller schools, also states that “evidence on the effectiveness of Schools-Within-A-School – a strategy to reduce school size within existing large school buildings – is negligible.” Note that CS/SB 2 appears to create incentives for the evolution of one large school into multiple smaller schools.

Alternatively, school size may not be a factor at all in determining student achievement. Stevens (2002) finds that reducing size does not automatically lead to such developments schools will need to intentionally focus on creating organizational characteristics that foster improved academic achievement. The analysis finds that, in addition to providing a personalized and supportive environment for their students, schools with comparatively high student achievement exhibited the following three conditions:

- strong teacher professional communities;
- deep principal leadership; and
- strong teacher influence.

Perhaps more importantly, Slate (2005)<sup>v</sup> notes that “different studies of school size often produce contrary (i.e., different) results because the effects of school size are complex and vary depending upon a number of factors”; and this source cautions that “before recommendations can be made based upon the school size literature, a number of major methodological problems need to be addressed,” among them:

- “large scale studies employing random assignment of students to schools are not available. As a result, any causal conclusions are tentative at best. Although researchers are trained not to draw causal conclusions from correlational data, decision-makers are often forced to do so based upon the best evidence available—even though this evidence is less than ideal”; and
- “a large number of researchers studying school size have used an advocacy research style. That is, they have conducted the research to advocate either for or against school consolidation. The danger of this research style is that researchers can intentionally or unintentionally bias the research design or data analysis to support the desired conclusion.”

### **Background:**

Legislation similar to CS/SB 2 was introduced during the 2009 legislative session; however, it did not pass. That same year, the Bill and Melinda Gates Foundation stated in its 2009 Annual Letter that “many of the small schools that we invested in did not improve students’ achievement in any significant way.” These tended to be the schools that did not take radical steps to change the culture.

## **Related Bills:**

### HB 120 *New School & School Building Moratorium*

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<sup>i</sup> Stevens, W. David. *If Small Is Not Enough...? The Characteristics of Successful Small High Schools in Chicago*. Consortium on Chicago School Research, April 2008.

<sup>ii</sup> Howley, Craig. "Small Schools," in *School Reform Proposals: The Research Evidence*. ERIC Clearinghouse on Rural Education and Small Schools and Arizona State University, 2002.

<sup>iii</sup> Kuziemko, Ilyana. *Using Shocks to School Enrollment to Estimate the Effect of School Size on Student Achievement*. Economics of Education Review, February 2006.

<sup>iv</sup> Legislative Research Commission. *School Size and Student Outcomes in Kentucky's Public Schools*. Research Report No. 334 Frankfort: LRC, 2006.

<sup>v</sup> Slate, John R. and Craig H. Jones. *Effects of School Size: A Review of the Literature with Recommendations*. Essays in Education, Volume 13, Spring 2005.