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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

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| Bill Number | <u>SB43</u> | Sponsor | <u>Soules</u> |
| Tracking Number | <u>.218518.1</u> | Committee Referrals | <u>SEC/SFC</u> |
| Short Title | <u>Funding of Demolition of Abandoned Schools</u> | | |
| Analyst | <u>Bedeaux</u> | Original Date | <u>1/28/21</u> |
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BILL SUMMARY

Synopsis of Bill

Senate Bill 43 (SB43) would allow the Public School Capital Outlay Council (PSCOC) to fully fund the demolition of abandoned facilities through the systems-based awards program if award applications can demonstrate the following:

- The costs of continuing to insure an abandoned facility outweigh its benefits.
- There is no practical use for the abandoned facility.

FISCAL IMPACT

The bill does not contain an appropriation.

Analysis from the Public School Facilities Authority estimates approximately 750 thousand gross square feet of public school facilities are abandoned and ready for demolition and would cost approximately \$11.3 million to \$18.8 million to demolish. PSCOC evaluates award applications on a case-by-case basis; the council may elect to spread the cost over a period of years based on the availability of funds. PSFA does not assess school district buildings that are abandoned, meaning data on the number of schools eligible for demolition are rough estimates from school districts' five-year facility master plans (FMPs). PSFA indicates even FMPs may not be accurate because school districts may have proceeded with demolition even since the FMP was published.

Each school district that applies for a demolition award would be required to show the cost of insurance outweighs the benefits of keeping the facility, suggesting the initial cost of demolition will likely be recuperated over time through a reduction in insurance costs. Insurance costs are funded through the public school funding formula; a reduction to insurance costs could result in additional operational funding allocated to classroom instruction.

SUBSTANTIVE ISSUES

Demolition is already an eligible system within the PSCOC systems-based award program, but many school districts do not approach the council for a demolition award because of the local

match requirement. According to PSFA, only three of the total 44 systems-based awards issued in the first four years of the program have been for demolition. To receive a systems-based award, school districts are required to contribute local matching funds to the total cost of the project, with the actual amount varying based on the amount of local revenue school districts generate. PSFA also notes school districts may be unwilling to demolish buildings due to a perceived value in abandoned and unused facilities, as well as voters' reluctance to approve general obligation bond funding if the bond language includes "demolition."

According to PSFA, approximately one-quarter of school districts have vacant, unnecessary, or underutilized buildings. While the school districts' five-year facility master plans indicate they plan to eventually demolish the buildings, school districts often do not have sufficient funds to simultaneously pay the local match on the demolition and construct priority projects.

Fully funding awards in the public school capital outlay act may introduce inequities in school district funding, a key argument by plaintiff school districts in the *Zuni* capital outlay project. The phase 2 state and local match calculation is designed to equitably support school districts by accounting for local revenues in individual school districts. School districts with higher amounts of local property wealth are required to fund larger portion of local construction projects. While it remains unclear based on current PSFA data which school districts will apply for demolitions, fully funding demolitions in property-wealthy school districts like Albuquerque may exacerbate tensions due to historic inequities in the public school capital outlay system.

OTHER SIGNIFICANT ISSUES

The Zuni Capital Outlay Lawsuit. SB43 amends the Public School Capital Outlay Act, a section of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the *Zuni* lawsuit, finding the Public School Capital Outlay Act, along with the Public School Capital Improvements Act, have exacerbated "gross disparities" between property-wealthy and property-poor school districts. The plaintiff school districts, now including only Gallup-McKinley County and Zuni, argue the school districts' lack of taxable property makes it impossible for the districts to fund "outside-of-adequacy" spaces freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

The 11th Judicial District Court ruling, however, leaves policymakers without a clear understanding of why the systems were found unconstitutional. The ruling did not cite specific evidence of disparities in the capital outlay funding system and instead adopted wholesale the plaintiff's findings of fact, which contained inaccuracies and inconsistencies. Further, the court did not review appropriations and changes made to the capital outlay system during the 2019 and 2020 legislative sessions attempting to create greater equity. The Legislature has attempted to address the plaintiffs concerns by amending the state- and local-match calculation and appropriating \$53 million for outside-of-adequacy spaces in school districts receiving federal Impact Aid for Native American students, but these efforts were not mentioned in the district court's eight-page ruling.

On January 28, 2021, the Legislature and PSCOC's recent actions were submitted as new evidence in the lawsuit, along with a motion to reconsider and a request for a stay of judgment. The court will deliberate the motion; after the court's decision, the state will have an additional 30 days to decide whether it will appeal the ruling to a higher court. The Office of the Attorney General does not believe that the language in the judge's decision and order prohibit PSCOC and PSFA from

awarding funds and continuing construction projects pursuant to the Public School Capital Outlay Act and Public School Capital Improvements Act, but pending a decision on the state's motion to reconsider, the Legislature will need to continue to focus on policy options and statutory changes that continue to provide for increased equity in the capital outlay system.

POSSIBLE QUESTIONS

Which school districts have the greatest number of abandoned buildings? Which will benefit the most from a fully state-funded demolition program?

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority

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