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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 31, 2024
Bill No: SB238

Sponsor: BURT
Short Title: REGIONAL ED COOPERATIVE REVENUE

Agency Name and Code Number: New Mexico Public School Facilities Authority 940
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$6,000.00		Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 238 (SB238) proposes a new section to the Public School Code that would create the Regional Cooperative Revenue Bond Act (Act). The Act at Section 2 provides for defined terms inclusive of the terms: bonds, capital project, coordinating council, cooperative, and pledgeable income. A coordinating council is defined as a coordinating council that is designated as a board of finance by the department (PED). The coordinating council may issue and sell regional education cooperative revenue bonds or it may request the New Mexico Department of Finance (NMFA) to do so. The bonds are to be used to finance a capital project, defined to mean a purchase, renovation, repair, planning, designing, construction, landscaping, equipping and furnishing necessary for buildings, structures or other facilities of the cooperative.

Prior to the issuing bonds for the financing of some or all of a project, a coordinating council shall provide PED certain information related to the project to include a detailed description of the capital project. PED shall determine if the capital project is necessary and that sufficient income will be produced by a cooperative to repay and discharge the bonds issues.

The bill also provides for the pledge of revenue and the satisfaction of indebtedness of the bonds. In addition, bonds issued shall be deposited into a separate account to be used only for the specific purpose for which the bond/s were issued. SB238 makes provisions for a retirement fund. Any proceeds remaining after the completion of the capital project shall be deposited in the retirement fund. Money in the retirement fund shall only be used for the purpose of repaying the principal, interest and service charges on the bond.

SB238 also appropriates \$6M from the general fund to the Regional Education Cooperative Nice to plan, design, construct, equip and furnish an Early Childhood Center in Ruidoso.

FISCAL IMPLICATIONS

SB238 appropriates \$6M from the general fund to the regional education cooperative nine for expenditure in fiscal years 2024 through 2028 to plan, design, construct, equip and furnish an early childhood center in Ruidoso.

In 2017, the Ruidoso Municipal School District closed its Nob Hill Elementary School, which served its early childhood Pre-K and Kindergarten students. As part of its replacement of Sierra Vista Elementary School, the district programmed a Pre-K and Kindergarten wing in the new building, which opened in 2018. The new Sierra Vista Elementary contains nine Pre-K classrooms and nine Kindergarten classrooms. Pre-K capacity in the new facility totals 135 based on classrooms and loading of 15 students. While the Ruidoso Municipal School District's Pre-K enrollment has increased the past few years, it totaled 97 students in the 2022-23 school year. The enrollment projection in the district's new facilities master plan shows the Pre-K enrollment stabilizing at 95 students over the next five years. The district's kindergarten enrollment has also decreased from the early part of last decade and appears to be stable.

Unless there is proven demand in the community, constructing a new early childhood center in Ruidoso, as proposed Section 11 of this bill, could lead to excess space in the community given the new early childhood wing at Sierra Vista Elementary. This situation could lead to duplication of services and low utilization of the new Sierra space as well as the proposed early childhood center. Should this bill move forward, the planning of the early childhood center should include a utilization and capacity analysis to demonstrate the need.

The early childhood center in Ruidoso that this bill appropriates funding to cannot be funded by the PSCOC, due to the fact that it is not a public school, within a school district. Therefore, if the need is demonstrated for additional early childhood capacity within that community, another funding mechanism, such as an appropriation, would be needed.

SIGNIFICANT ISSUES

Per Section 22-2B-3, regional education cooperatives were established to provide education-related services to school districts within each defined district. New Mexico has 10 cooperatives, supporting 68 school districts, as well as state-chartered charter schools. The regional education cooperatives are an entity within PED. The cooperatives "may apply for and receive public and private grants as well as gifts, donations, bequests and devises and use them to further the

purposes and goals of the cooperative,” as well as receive legislative appropriations. The statute also indicates that “cooperatives may own, and have control and management over, buildings and land independent of the director of the facilities management division of the general services department.” It is unclear at this time if the regional education cooperatives currently fund capital projects for school districts, and if so, at what scale.

SB238 would bypass the existing funding mechanism that the state uses to fund public schools in need of capital funding. SB238 will have a significant impact on the Public School Capital Outlay Act, which funds capital projects for the 89 school districts in New Mexico. The Public School Facilities Authority (PSFA) is the administrative arm of the Public School Capital Outlay Council (PSCOC). The New Mexico Legislature established the PSCOC and the PSFA to implement the Public School Capital Outlay Act, as a result of the *Zuni Lawsuit*. In the *Zuni Lawsuit*, the litigants challenged the equity of the state capital outlay distribution. The Court ruled in favor of the litigants and held that public school capital outlay funding in New Mexico violated the State Constitution guarantee: establishment and maintenance of a “uniform system of free public schools sufficient for the education of all children of school age.” As a result of this ruling, (which on appeal to the New Mexico Supreme Court) “the New Mexico Public School Capital Outlay Act was adopted to ensure that the “physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and minimize safe, functional and durable learning environments in order to for the state to meet its educational responsibilities.” Section 22-24-2 NMSA 1978. Capital projects allowed under this bill will allow districts to complete planning, design and construction of infrastructure and facilities that may be contrary to the Public School Capital Outlay Act regarding adequate statewide levels and standards.

SB238 would bypass the existing prioritization method that the state uses to determine which public schools are in the most need of capital funding. SB238 has the potential for eroding the ranking of school facilities most in need of replacement or repair. Capital improvements completed with monies from the Public School Capital Outlay Fund (PSCOCF) are awarded based on a statewide ranking system. The statewide ranking is based on the results of PSFA assessments that document the condition and maintenance of all school buildings statewide. Through these facility assessments, PSFA gathers and manages facility information for every school in the state and uses the facility information to generate the numerical score for each school that is the basis of the statewide ranking. The statewide ranking is the prioritized list of school facilities that is the basis of funding decisions for the PSCOC funding programs. Schools with the greatest facility needs are identified and prioritized for state funding through PSCOC funding programs.

SB238 defines a “capital project” as the “purchase, renovation, repair, planning, designing, construction, landscaping, equipping and furnishing necessary for buildings, structures or other facilities of the cooperative.” Many of the potential capital projects this bill intends to fund through the revenue bonds may be eligible for PSCOC funding. However, the Regional Cooperative Revenue Bond Act does not stipulate a prioritization method or strategy for funding projects, other than issuing and selling bonds regional education cooperative revenue bonds to be used to finance a capital project, defined to mean a purchase, renovation, repair, planning, designing, construction, landscaping, equipping and furnishing necessary for buildings, structures or other facilities of the cooperative. There is no indication of the amount of funding that may be available for these capital projects, the number of capital projects this act can support, and at what scale.

PERFORMANCE IMPLICATIONS

It is uncertain if PED has the qualified staff to review and make the determinations required in this bill.

PSCOC and the PSFA are the recognized experts on school construction. Bypassing the PSCOC and the PSFA, to fund capital projects for school districts is duplicative and in conflict to the PSCOA, and established prioritization mechanisms and protocols to fund capital projects to public schools in New Mexico. This also eliminates the project management and expertise that the PSFA provides for PSCOC funded projects, as co-owners of a project.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

At page 9, line 20, SB238 makes reference to “education cooperative nine;” however, this is the first reference to “education cooperative nine.” Based on this phrase it appears up to nine or perhaps more than nine education cooperatives are intended; however, the bill does not discuss how the education cooperatives shall be established.

SB238 proposes a new section to the Public School Code defining a *cooperative* to mean a regional education cooperative. The definition should reflect a *cooperative* to mean a regional education cooperative as authorized by Section 22-2B-3 NMSA.

Section 22-2B-3 A(3) NMSA 1978 already allows PED the discretion to designate a cooperative council as a board of finance. Therefore, SB238 should instead propose to amend Section 22-2B-3-A(3) to allow a cooperative council designated as a board of finance to administer the provisions as specified in the proposed *Regional Education Cooperative Revenue Bond Act*.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The PSCOC funds specific types of capital projects, with specific eligibility requirements, including:

- Standards-based: full/partial school replacement, renovation, or additions
 - FY24 eligibility: top 175 of ranking, or Facility Condition Index (FCI) score > 70%
- Systems-based: replacement of eligible systems to extend the life span of a facility
 - FY24 eligibility: top 350 of ranking, or FCI score > 70%, or eligible systems with condition deficiencies in the Facilities Assessment Database (FAD)
- Pre-Kindergarten: classroom addition or renovation for pre-kindergarten
 - Schools with Pre-kindergarten programs
- Teacher Housing: teacher housing
 - Rural school districts with no available housing

Given the PSCOC funding program types and eligibility thresholds, not all school district capital needs may be eligible for PSCOC funding. Non-educational spaces, athletic spaces, and spaces not included in the Statewide Adequacy Standards (6.27.30 NMAC) cannot be included in PSCOC funded projects. For instance, district administration offices, bus barns, athletic facilities, etc. are not eligible for state funding, and must be funded in full by a school district.

Therefore, it may be feasible for the Regional Education Cooperative Revenue Bond Act to provide a funding mechanism for school districts to fund projects ineligible for PSCOC funding, that fall outside of the allowable funding for school adequacy.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The regional education cooperative revenue bond act will not be enacted.

The Regional Education Cooperative 9 will not receive an appropriation to plan, design, construct, equip and furnish an early childhood education center in Ruidoso.

AMENDMENTS