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FISCAL IMPACT REPORT

SPONSOR Stewart LAST UPDATED 1/23/2024
ORIGINAL DATE 1/23/2024
BILL
SHORT TITLE School Local Share Adjustment Waiver NUMBER Senate Bill 76
ANALYST Carswell

ADDITIONAL EXPENDITURES* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
		\$0 to \$9,850.2		\$0 to \$22,746.1		Nonrecurring	Public School Capital Outlay Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of Senate Bill 76

Senate Bill 76 (SB76) amends statutory requirements regarding school districts' eligibility for waivers of the local match for projects funded through the Public School Capital Outlay Council (PSCOC). The bill clarifies that a school district may be eligible for a waiver if its local match under the phase two formula is greater than 50 percent.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

SB76 would benefit school districts that do not currently qualify for local match waivers due to temporary reductions to school districts' local match resulting from Senate Bill 131 (SB131) (Laws 2023, Chapter 28). The 2023 legislation reduced the share of local school capital project costs by one-half for micro-districts with 200 or fewer students and by one-third for other school districts from FY24 to FY26. Due to these reductions, some school districts that previously qualified for waivers no longer qualify.

Additionally, despite the temporary reductions to local match, some districts are finding it difficult to afford their required match due to high construction costs and limited bonding capacity. Some projects brought before the PSCOC in 2023 for construction awards saw costs double or nearly double over estimates just a year earlier, with rural projects experiencing the highest cost increases. If a district cannot afford the required local match, they may ask the council to grant a waiver, which is a reduction of the local match. Districts must meet criteria outlined in statute to be considered for a waiver. Table 1 below, provided by the Public School Facilities Authority (PSFA), outlines three routes by which districts may qualify for waivers.

Table 1. Eligibility for Waivers of Local Match

Option 1: All Districts	If the school district has insufficient bonding capacity over the next 4 years and the mill levy is equal to or greater than 10
Option 2: Small Districts	If the MEM count is equal to or less than 800 AND
	the percent of free or reduced fee lunch is equal to or greater than 70% AND
	the state share is less than 50% AND the mill levy is equal to or greater than 7.00
Option 3: Growth Districts	If the school district has an enrollment growth rate over the previous school year or at least 2.5% AND
	pursuant to its 5-year facilities master plan, will be building a new school within the next 2 years AND
	the mill levy is equal to or greater than 10.0

**Mill levy - sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds*

Source: PSFA

According to PSFA, SB76 would result in five additional districts becoming eligible for waiver consideration via the criteria outlined in option two above, based on bonding levels the agency has on record, which do not account for the most recent bond elections. The districts are: Carrizozo, Cuba, Estancia, Hondo, and Jemez Valley. PSFA expects Santa Rosa would also be eligible for waiver consideration under SB76 when accounting for recent bond elections because the district passed a bond that will put its mill levy above 7.0 in the fall of 2023. Two additional districts – Clayton and Lordsburg – are already eligible for waivers under option two and would remain so.

Of the eight districts that are expected to become eligible for waiver consideration if SB76 is enacted (and after accounting for recent bond elections), only three are currently pursuing projects before the council: Estancia, Hondo, and Santa Rosa.

The fiscal impact estimated here assumes the three districts would pursue a full waiver of their local match if SB76 were enacted in order to calculate the maximum potential impact to the public school capital outlay fund. In reality, the council is likely to consider what the districts can afford within their bonding constraints and ask the districts to provide some portion of their local match, should they pursue waivers. The total project cost estimates were provided by PSFA. The potential cost of a full waiver for the construction phase of the Estancia project is assumed to

occur in FY25, which is consistent with PSFA’s project schedule; design phase funding has already been awarded by the council and it is unclear if Estancia will pursue a waiver, according to PSFA. Hondo and Santa Rosa have both submitted pre-applications for school replacement projects but the projects have not yet been awarded by the council. The costs of potential full waivers for those projects are assumed to occur in FY27; however, the project schedules and unknown at this time. Construction costs estimates were provided by PSFA.

Table 2. Potential Cost to Public School Capital Outlay Fund if Eligible Districts Under SB76 were Granted Full Local Match Waivers

District	Estimated Total Project Cost	Local Match Under SB131	Potential Waiver
Hondo	\$38,025,000	33%	\$0 - \$12,548,250
Santa Rosa	\$26,836,355	38%	\$0 - \$10,197,815
Estancia*	\$20,102,446	49%	\$0 - \$9,850,199
Total Potential Cost to PSCOF			\$0 - \$32,596,263

*Estimated project cost only includes construction phase because design phase funding has already been awarded. Based on cost estimate provided in December financial plan for PSCOC.

Source: LFC Analysis of PSFA Data

PSFA notes: “SB76 would increase the state share of potential PSCOC funded projects by making potential waivers to the local share easier to attain for some districts. Currently, due to the high cost of construction, materials, and labor, there is a concern that the public school capital outlay fund cannot support additional waivers.”

SIGNIFICANT ISSUES

The 1999 *Zuni* capital outlay adequacy lawsuit, which found the prior practice of locally funded school construction was unfair to property-poor districts, remains open despite the state’s investment of \$2.7 billion since the ruling to improve school facilities and a significant improvement in the average condition of New Mexico schools.

Until this year, applications to the state’s public school capital outlay fund—created to address the *Zuni* lawsuit—had dwindled, while growth in oil and gas revenue expanded the state’s capacity to finance school facility projects. Legislative changes to funding formulas, outstanding legislative offset balances, improvements in overall school facility conditions, and pandemic-related disruptions all contributed to reduced demand for state funding and rising uncommitted balances in the public school capital outlay fund.

SB131 changed the state-local match formula to entice more school districts to seek support for projects from the public school capital outlay fund. The effect was to reduce the cost burden on school districts and increase the cost burden to the state. The changes have increased demand for the fund but have collided with dramatic increases in construction costs that have left many districts unable to afford their reduced local matches, prompting an unprecedented number of waiver requests before the PSCOC.

PSFA notes that 20 schools applied for standards-based awards in 2023, or projects to partially or fully replace schools. According to the agency, “Of those 20, 14 will need a local match reduction (waiver) to support funding the total project cost of the school replacement. However, most of the districts needing a waiver were not eligible unless they passed a bond and increased their mill-levy to 7 or above, which many have since done. But the reduce local match, caused by SB131, negates the eligibility under option 2.”

Construction Costs. In 2023, the council began to receive construction funding requests with steep increases in cost. Two elementary school replacement projects brought by Los Alamos Public Schools in the spring had roughly doubled in cost relative to estimates made just a year earlier for the same projects.

LFC and Legislative Education Study Committee analysis suggests the recent cost increases in New Mexico may be more significant than those occurring in other markets. The cost of public school construction in New Mexico closely followed the Coldwell Banker Richard Ellis cost index, for example, until this year. Had costs in the state continued to track with the index, the cost per square foot for a new public school would have been around \$437 this year. Instead, the first four school projects brought to the council in 2023 averaged \$771 per square foot. As the year progressed, costs continued to increase for projects in some areas of the state. In October, the PSCOC approved construction funding for public schools in Des Moines and Mosquero with total projects costs of \$51 million and \$46 million, respectively, or more than \$1,000 per square foot.

PSFA staff have suggested the problem is, in part, regional in nature, with projects in northern New Mexico coming with particularly high price tags due to limitations in contractor availability in surrounding areas and the remote location of projects like those in Des Moines and Mosquero. PSFA staff have revised the assumptions underlying the agency’s financial plan multiple times over the course of the year to account for rising costs and have begun making estimates based on regional factors. Several projects that came to the council for funding at the end of the year in less remote locations did receive lower bids, with total project costs around \$600 to \$700 per square foot and more competition among contractors for projects closer to Albuquerque.

OTHER SUBSTANTIVE ISSUES

PSFA states that it is difficult for some districts to meet the criteria for waivers, particularly for small districts due to requirements not altered by SB76, including a student population with 70 percent or more qualifying for free and reduced lunch and the requirement for a state match of less than or equal to 50 percent. PSFA notes the cost share percentages can change annually, causing districts to shift in and out of eligibility.

ALTERNATIVES

PSFA provided the following alternative: “Due to the difficulty of some districts not being able to meet the waiver criteria, for free/reduced lunch or the state/local share, the statute could be amended to remove these criteria from Section 22-24-5 NMSA, B(9)(b)(3).”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Several districts will not be eligible for a local match reduction and may not be able to afford their projects.

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