LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **<u>*CS/HB 68</u>** **<u>49th Legislature, 2nd Session, 2010</u>**

Tracking Number: **<u>.181252.1</u>**

Short Title: **<u>Public School Capital Outlay Omnibus Bill</u>**

Sponsor(s): **<u>Representative Rick Miera and Others</u>**

Analyst: **<u>Peter B. van Moorsel</u>** **Date:** **<u>February 9, 2010</u> (revised)**

<u>Bill Summary</u>:

CS/HB 68 amends several sections of the *Public School Capital Outlay Act* (PSCOA) to:

Section 1

- extend the roof repair and replacement initiative sunset date from 2012 to 2015;
- require that money distributed from the Public School Capital Outlay Fund (PSCOF) to the State Fire Marshal or the Construction Industries Division (CID) of the Regulation and Licensing Department be used to supplement, rather than supplant, appropriations to those agencies; and
- permit, rather than require, the Public School Facilities Authority (PSFA) to enter into contracts with the State Fire Marshal to permit and inspect projects funded under the PSCOA;

Section 2

- authorize the Public School Capital Outlay Council (PSCOC) to increase a standards-based funding award to a school district for an approved high school project by up to 20 percent of the total project cost if:

  - ➢ the public high school facility project has previously qualified for a rural community adjustment pursuant to the provisions of a new section proposed in the bill (see Section 3); and
  - ➢ the PSCOC finds that the planned use of the facility will enhance public school education, promote the school district's educational plan for student success, benefit the community, and be regarded as a prudent use of state money;

Section 3

- add a new section to require the PSCOC to qualify a public high school facility for a "rural community adjustment" if the council determines that:

  - ➢ the facility is located in an unincorporated, rural area and is the only facility available for shared use with the community, primarily at the school district's expense and with little contribution from the community;
  - ➢ the community does not have adequate infrastructure or resources to acquire its own facilities or to compensate the school district for the use of the public high school facility;
  - ➢ the state share for existing grants is 70 percent or greater;

- the district has a total aggregate residential (property) tax rate of at least nine mills averaged over the previous four property tax years;
- at least 70 percent of the students in the district are eligible for free or reduced-fee lunch; and
- the school district has complied with all rules adopted by the PSCOC for the implementation of the provisions of this section;

Section 4

- require the PSFA to manage procurement, contractor selection, and contract administration or emergency school projects in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage;

Section 5

- add a temporary provision to require the Public School Capital Outlay Oversight Task Force (PSCOOTF), during calendar year 2010, to continue the work group that has been studying performance-based procurement issues for public school capital outlay projects and to report findings and recommendations to the Legislature and to the Governor by December 15, 2010;

Section 6

- repeal the sections of law passed during the First Special Session, 2009, that appropriated $29.0 million from the PSCOF directly to the New Mexico Public School Insurance Authority (NMPSIA) for the purpose of paying property insurance premiums for school districts and charter schools, including up to $7.0 million for Albuquerque Public Schools; and

Section 7

- add an emergency clause.

<u>Fiscal Impact</u>:

CS/HB 68 does not contain an appropriation; however the following sections may have a fiscal impact:

Section 1 – Extending by three years the potential allocation of up to $10.0 million per year for roof repairs could direct up to $30.0 million from the PSCOF to roof repairs, making these funds unavailable for other awards, such as standards-based awards.

PSFA estimates that the cost to repair or replace all the problematic K-12 public school roofs at $200 million.

In FY 10 the PSCOC awarded a total of $7.9 million for school roofs, which allowed for a total of 1.5 million square feet of problematic roofs to be repaired. Considering matching district fund offsets, the projected total cost of these repairs was $21.1 million.

Sections 2 and 3 – The PSFA reports that, based on the qualifying criteria, the following 11 districts appear eligible for the "rural community adjustment": Belen, Cuba, Gadsden, Gallup-McKinley, Grants-Cibola, Hagerman, Hatch Valley, Tucumcari, Tularosa, West Las Vegas, and Zuni. (PSFA adds, however, that the data available from PED does not currently identify whether schools are located in incorporated areas, which would make these schools ineligible for the adjustment.)

The fiscal impact could be up to 20 percent of the total project cost for these new high schools. However, the fiscal impact depends on when the qualifying schools are awarded grant assistance through the standards-based process.

PSFA adds that currently, three high schools from these 11 districts have already received a design award or are currently in the top 100 of the New Mexico Condition Index (NMCI) ranked list of school facility needs. The highest-ranked projects in the NMCI are those with the highest priority for a capital outlay award from the state.

Section 6 – Repealing the $29.0 million appropriation to NMPSIA will negatively impact public school districts, as they will have to pay for property insurance for FY 10 using operational funding.

According to PSFA, the PSCOC's funding commitments for FY 10 exceed available funds by $30.8 million. This repeal would preclude the transfer of $29.0 million out of the PSCOF, which would reduce PSCOC's FY 10 funding commitment deficit to $1.8 million for 2010.

Substantive Issues:

Sections 2 and 3 – Implementation of the "rural community credit," which could increase qualifying public school capital outlay awards by up to 20 percent, could have a disequalizing effect on the state's standards-based process for public school capital outlay, as the credit would effectively reduce the district's local match percentage.

Section 6 – The State Board of Finance and legislative staff identified several issues with the distribution of the $29.0 million appropriated for public school property insurance costs:

- Bond counsel from the State Board of Finance voiced concerns that proceeds from supplemental severance tax bonds are for capital outlay purposes and should not be used for operational types of expenditures, such as insurance costs.

- Legislative staff questioned whether the distribution of the $29.0 million to school districts outside of the State Equalization Guarantee (SEG) would create disparity issues within the current operational funding for schools. If the distribution of these funds would cause New Mexico to fail the disparity test for its designation as an "equalized state" (see "Background"), it would no longer be able to take credit for 75 percent of the operational portion of federal Impact Aid payments to school districts, meaning that New Mexico could stand to lose approximately $46.0 million in funding.

Background:

Sections 2 and 3 – Legislation similar to the "rural community adjustment" has been considered in the past:

- During the 2006 interim, and again during the 2007 interim, the PSCOOTF discussed the creation of the Public School Facility Opportunity Fund to fund selected school districts above adequacy. The task force determined that the special conditions faced by school districts that meet certain criteria made it unlikely that these districts would ever have the capability for generating the funds needed to fund a facility above adequacy. As a result, the task force endorsed legislation to create the Public School Facility Opportunity Fund.

- The 2007 Legislature passed legislation creating the Public School Facility Opportunity Fund; however, the language creating the fund was line-item vetoed by the Governor, due to concerns over funding sources and providing funds to selected districts outside of the standards-based capital outlay process. In his veto message, the Governor requested that the PSCOOTF perform further study of the issue.

- In a November 2007 presentation to the PSCOOTF, the Department of Finance and Administration (DFA) described several areas of concern regarding the Public School Facility Opportunity Fund. DFA was particularly concerned with potential disequalizing effects that the fund may have on the current standards-based award system of capital funding. DFA also questioned the equity of the criteria that determine eligibility for grants from the fund, noting that schools that are not eligible for funding potentially face the same facility needs as the eligible schools. Finally, DFA questioned whether a more equitable means toward achieving the goals of the opportunity fund would be to redefine adequacy standards for all schools, and to continue making capital outlay awards using the established standards-based process.

Section 6 – The "equalized" determination is based on a "disparity" computation that allows the state to rank school districts within the state on the basis of current expenditures **or** revenue per pupil for the second preceding year before the year of determination; disregards school districts at or above the 95^{th} or below the 5^{th} percentiles of those expenditures or revenues in the state; and subtracts the lower expenditure or revenue per pupil figures from the higher figures and divides the difference by the lower figure. If the resulting percentage results in a "disparity" of not more than 25 percent, the state is considered "equalized" and is allowed to offset or take credit for federal Impact Aid revenues in the state's calculation of the SEG distribution.

New Mexico is one of only three states (Alaska and Kansas are the others) that have received federal approval to count impact aid under their equity plan. A state can qualify for federal approval in only two ways: by showing that the per pupil disparity between its highest and lowest spending districts is less than 25 percent, or by showing that 85 percent of its districts' education funds are raised in a wealth-neutral way so that each district receives the same amount of money for an equal tax effort. That is, a state must be able to demonstrate that education dollars are distributed equitably and are not dependent on local district wealth.

Related Bill(s):

None as of February 9, 2010.