

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/SB 173

50th Legislature, 1st Session, 2011

Tracking Number: 185014.1

Short Title: Post-Secondary School Building Moratorium

Sponsor(s): Senator Gay G. Kernan and Others

Analyst: Craig J. Johnson and Pamela Herman

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**SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 173**

Bill Summary:

CS/SB 173 proposes a six-year moratorium on new postsecondary education sites and buildings, except under prescribed circumstances.

CS/SB 173 provides that, between January 1, 2011 and January 1, 2017, there shall be no new educational sites or new buildings constructed or opened:

- by an institution of higher education named in the state constitution, or a branch of the institution, unless the construction or opening:
 - was the result of a project that had final approval by the Higher Education Department (HED) and was funded prior to January 1, 2011;
 - is a research or similar facility that receives no state funds for construction or building renewal and replacement (BR&R);
 - is a dormitory, student union, or other student services building for which the institution does not receive state funds for construction or renewal, and the operations of which are not funded through the higher education funding formula, including BR&R funding;
 - the institution demonstrates that the facility will not require any state funding through the funding formula for operations, or from capital outlay from the Legislature, during the moratorium; or
 - HED and the State Board of Finance certify that construction is necessary because of serious health and safety concern or significant enrollment growth.

- by an independent community college or technical-vocational institute, for which the college expects to receive any state funding through the funding formula for operations, including BR&R funding, or for capital outlay by the Legislature, unless:
 - construction was begun before January 1, 2011;
 - it is a workforce training center for customized training as provided in the *Workforce Training Act*; or

- HED and the State Board of Finance certify that construction is necessary because of serious health and safety concern or significant enrollment growth.

CS/SB 173 also provides that in no event shall an institution of higher education build, renovate, or occupy any building at a location or address that prior to January 1, 2011 was not an established location or address at which the institution's students were taught.

Fiscal Impact:

CS/SB 173 does not contain an appropriation.

Fiscal Issues:

CS/SB 173 seeks to control the capital outlay costs and subsequent operational costs associated with expanding higher education sites and building new facilities beyond those already in existence. The HED State Master Plan dated December 10, 2010 lists 65 existing public postsecondary sites (see Attachment).

Technical Issues:

Language in the original SB 173 may have been unclear or ambiguous. The bill analysis of SB 173 by the New Mexico Independent Community Colleges (NMICC) noted that in that version:

- SB 173 appeared to prohibit construction of all facilities on constitutionally created postsecondary campuses regardless of the source of construction funds unless the project was approved before the moratorium, a prohibition that NMICC stated would affect auxiliary facilities such as dormitories that do not depend, on nor are they eligible for, state capital outlay or operational funding;
- language in subsection B of SB 173 referred to capital outlay funding during *or after* the moratorium period, which would appear to make the moratorium on use of capital outlay funding perpetual in certain circumstances; and
- while most of subsection A addressed constitutional institutions, the final sentence spoke to “an institution of higher education”; NMICC noted that if the limitation was meant to apply to all higher education institutions, it should be moved to another subsection.

Substantive Issues:

According to the December 2010 Final Report of the Government Restructuring Task Force (GRTF):

[i]n the last decade, New Mexico has seen an explosion in the growth of higher education. State and local policymakers made a conscious decision to foster access to higher education . . . through the higher education funding formula by financing enrollments and square footage and through programs such as the legislative lottery scholarship program . . . and the college affordability scholarships. . . However, the state's commitment to funding access has not led to higher graduation rates over the same period and, because the funding formula does not control the excessively high course withdrawal rate and the number of

excess credit hours toward graduation, the state ends up paying a substantial premium for low performance. The Legislative Finance Committee (LFC) has noted that ‘the state does not incentivize degree production, nor monitor quality outcomes of existing programming and degrees they produce.’

The public policy driving access has resulted in an untenable number of institutions and campuses, or sites as they are termed by HED.

The GRTF heard testimony indicating that institutions have expanded the number and scope of programs regardless of their service areas; for example:

- New Mexico State University (NMSU) and New Mexico Highlands University (NMHU) offer the same social work degree program in Albuquerque in buildings located adjacent to one another;
- NMSU offers public health and education courses in Albuquerque in competition with the University of New Mexico (UNM); and
- Doña Ana Community College is building an education center for four-year institutions to offer courses, but will keep the square-footage funding.

According to its final report, GRTF:

- supports a moratorium on any new campuses, or sites, or the creation of any more community colleges;
- encourages its successor to work with the Governor, HED, the Boards of Regents and governing boards to effectuate a substantial contraction of off-main-campus offerings, in particular, duplicative offerings in the same geographic area, or offerings outside an institution’s reasonable geographic area; and
- agrees with LFC, HED, the Higher Education Funding Formula Task Force, the Council of University Presidents; NMICC; and the New Mexico Association of Community Colleges, that an in-depth study of the higher education funding formula, and drivers behind the formula, is of critical importance.

Background:

In 1971, legislation was enacted to prohibit any expenditure by any higher education institution created in the state constitution for the purchase of real property or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the state board of finance.

In 2005, two additional pieces of legislation were enacted on the subject of higher education expansion and capital construction:

- No new public postsecondary educational institution, branch campus or off-campus instructional center may be created unless specifically created by the legislature. HED must review any proposal for to establish a new public postsecondary educational institution or campus and submit its recommendations to the Legislature.

- In reviewing proposals, the department may consider:
 - provisions for a local mill levy of at least two mills;
 - population base to provide at least 500 full-time students;
 - whether at least 50 percent of the costs of initial construction comes from private or local sources;
 - governance structure;
 - means for acquisition of property, including purchase, lease, donations or any other means;
 - eligibility and level of funding request of the state; and
 - brokering of extended learning provisions; and

- HED, in conjunction with the governing bodies of the postsecondary educational institutions and other constitutionally created higher educational institutions, must develop and approve a five-year plan for funding the infrastructure renovation and expansion projects designated by the department as the highest priority of significant needs. HED shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to appropriations.

The GRTF heard testimony from representatives of four-year postsecondary institutions that it may be time to consider:

- real structural change in the higher education funding formula, including finding administrative savings through consolidation and increased productivity;
- merging small, less productive community colleges with larger schools; and
- establishing a system in which all community colleges are linked to universities in both administrative support and governance.

Related Bills:

SB 136 *Higher Education Capital Outlay Act*

SB 237 *“Colleges in Energy Efficiency & Bonding Act”*

HJM 30 *Higher Education Redesign Governor Task Force*