

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 346a

**50th Legislature, 1st Session, 2011**

**Tracking Number:** .184196.2

**Short Title:** Public School Facility Opportunity Program

**Sponsor(s):** Senators Cynthia Nava, Lynda M. Lovejoy, and George K. Muñoz

**Analyst:** Peter B. van Moorsel and Eilani Gerstner      **Date:** March 3, 2011

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**AS TWICE AMENDED**

The Senate Finance Committee amendment corrects the same technical error that was corrected by the Senate Education Committee (see below).

**\*Because the amendment inserted the word “facility” a second time on page 10, line 7, the sponsor may wish to amend the bill to strike the one instance of the word “facility”.**

The Senate Education Committee amendment corrects a technical error by inserting the word “facility” where it was missing.

**Original Bill Summary:**

SB 346 creates the Public School Facility Opportunity Program in the *Public School Capital Outlay Act* to provide additional grant assistance from the Public School Capital Outlay Fund (PSCOF) for qualifying school districts located in areas with low total assessed property valuations.

SB 346 amends the *Public School Capital Outlay Act* to permit the Public School Capital Outlay Council (PSCOC), upon application by a qualifying school district, to make allocations from the PSCOF through the Public School Facility Opportunity Program for the purpose of providing certain facilities, such as performing arts centers and auxiliary gymnasiums, that, generally, are not included in the adequacy standards and that, therefore, school districts with low property tax valuations cannot afford to build on their own.

SB 346 also creates a new section of the *Public School Capital Outlay Act* that:

- provides that a district may apply for grant assistance under the Public School Facility Opportunity Program if the PSCOC determines that the district:
  - meets all qualifications to apply for grant assistance pursuant to the *Public School Capital Outlay Act*;
  - the state share for existing grants is 70 percent or greater;
  - at all times during the previous four years, the school district has a total aggregate residential property tax rate of at least 9 mills;
  - at least 70 percent of the students in the district are eligible for free or reduced-fee lunch; and

- for the next four years after the application for grant assistance, any local school district resources will be expended for the local match required for public school capital outlay projects and, therefore, the school district will have no available local resources to expend on school district public school facilities for the purpose of exceeding the statewide adequacy standards.

Among its other provisions, SB 346:

- requires that school districts apply to the PSCOC for grant assistance from the Public School Facility Opportunity Program in accordance with the PSCOC requirements;
- requires that the PSCOC develop criteria to evaluate and prioritize applications for grant assistance from the fund;
- permits the PSCOC, to the extent that money in the fund is available for such purposes, to award grant assistance for those prioritized applications;
- provides that all provisions of the *Public School Capital Outlay Act* relating to the expenditure of grant assistance awarded from the fund apply to the use and expenditure of grants made pursuant to this section; and
- permits the PSCOC to require conditions and procedures necessary to ensure that the money is expended in the most prudent manner.

**Fiscal Impact:**

SB 346 does not contain an appropriation.

**Fiscal Issues:**

The Public School Facilities Authority (PSFA) analysis of SB 346 raises the following points:

- Public school physical plant improvements have stalled over the past two years due to limits on funding, and this year they have begun to worsen.
- The average Facilities Condition Index (FCI) for all school buildings in New Mexico, excluding New Mexico School for the Deaf (NMSD) and New Mexico School for the Blind and Visually Impaired (NMSBVI), has been flat at about 36 percent over the past two years, and increased to 38 percent this year. (If a building costs \$100,000 and has an FCI of 38 percent, that building needs \$38,000 in repairs. The lower the FCI, the better).
- Average annual investment in facilities required by the state to keep facilities' condition from worsening is approximately \$134 million.
- Current unfunded needs for public school facilities in New Mexico total approximately \$4.05 billion (excluding NMSD and NMSBVI).
- Any additional funding burden imposed on the PSCOF would have the effect of accelerating FCI levels, meaning that the overall condition of school facilities would worsen.

- Over the next 18 months, PSFA staff estimate that the PSCOC has over \$385 million in funding commitments to projects already in development and construction.

PSFA also indicates that 10 school districts may be eligible to apply for funding under the Public School Facility Opportunity Program: Belen, Gadsden, Gallup-McKinley County, Grants-Cibola County, Hagerman, Hatch Valley, West Las Vegas, Tucumcari, Tularosa, and Zuni.

### **Original Technical Issues:**

SB 346 identifies the program created as the “Public School Facility Opportunity Program”; however, page 10, line 7 of the bill refers to the “Public School Opportunity Program.”

The sponsor may wish to amend the bill to insert “facility” after “school” on page 10, line 7.

### **Substantive Issues:**

Providing Public School Facility Opportunity Program grants from the PSCOF to some districts and not others could have a disequalizing effect on the state’s standards-based process for public school capital outlay, as these grants would provide funds for facility features that exceed the public school facility adequacy standards, and they could violate the court order pursuant to the *Zuni Lawsuit* (see “Background,” below).

Regarding the standards-based process for public school capital outlay, PSFA notes that:

Overall, the program is designed to average out to 50-50 state-local participation on PSCOC-funded projects to adequacy. This proposed change would skew this formulation toward having the state provide greater than 50% of project funding to adequacy over the long run to selected districts, and may upset equity and fairness issues established by the State’s response to the *Zuni Lawsuit* with the adoption of the current standards-based capital outlay process and prioritized ranking of schools by their physical condition and adequacy standard needs.

On a similar note, the Public Education Department analysis of SB 346 notes that:

- The concept of the opportunity fund goes against the grain and the philosophical underpinnings of the new standards-based system.
- The criteria used in the opportunity fund does not address all school-age children within the state and is for expenditures above the adequacy standards, which was a cornerstone of the new “equalized” standards-based system.

### **Background:**

In 1998, the constitutionality of the state’s process for funding public school capital outlay was challenged when the Zuni Public Schools district filed a lawsuit against the state that resulted in a 1999 court order requiring the state to correct past inequities and to establish and implement a uniform system of funding for future school capital outlay.

**Related Bills:**

CS/SB 2a *School Capital Outlay, Grants & Consolidation*

SB 441 *Public School Capital Outlay Eligibility*

HB 120 *New School & School Building Moratorium*