LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number SB535/SFCS/aSFl **Sponsor** SFC

Tracking Number .213938.1 **Committee Referrals** SFC;HTRC/HAFC

Short Title Certain Bonding Fund Money to Permanent Fund

Analyst Rogne **Original Date** 2/18/2019
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BILL SUMMARY

Synopsis of Senate Floor Amendment 1

Senate Floor Amendment 1 to SB535/SFCS (SB535/SFCS/aSFl) makes a technical change to change the date of the transfer from the severance tax bonding fund to the severance tax permanent fund to December 31 of each year from 2020 through 2028.

Synopsis of SFC Committee Substitute

The Senate Finance Committee Substitute for SB535 (SB535/SFCS) would amend the Severance Tax Bonding Act to limit the state board of finance (BOF) of the Department of Finance and Administration to issue and sell no more than $181.8 million of supplemental severance tax (STB) bonds or notes in 2019, as a temporary measure. SB535 further amends this act to provide for the transfer of $23.69 million from the severance tax bonding fund to the severance tax permanent fund on June 14, 2019 and by December 29 of each year from 2020 through 2028, unless the BOF determines that a lesser amount is necessary to avoid a potential shortfall in debt service obligations.

FISCAL IMPACT

SB535/SFCS/aSFl does not contain an appropriation.

SB535/SFCS/aSFl would direct $23.69 million to the severance tax permanent fund annually from FY20 through FY29. The Legislative Finance Committee (LFC) notes that this amount is an estimate of the debt services that would be needed if the Legislature authorized, and BOF issued, the full FY19 STB capacity. According to LFC, because SB280, the introduced capital outlay bill, does not include STB authorizations, SB535/SFCS/aSFl would direct the estimated debt service amount to the severance tax permanent fund.

SUBSTANTIVE ISSUES

SB535/SFCS/aSFl may hamper the Public School Capital Outlay Council's (PSCOC) ability to fund new public school capital outlay projects, and may also impact outstanding projects.

Public school capital outlay projects pursuant to the Public School Capital Outlay Act are funded from the proceeds of STBs and supplemental severance tax bonds (SSTBs) authorized pursuant to the Severance Tax Bonding Act. When the PSCOC or the secretary of the Public Education Department (PED) certifies by resolution the need for the issuance of bonds, the BOF may issue and sell SSTBs in compliance with this act. According to the Public School Facilities Authority (PSFA), staff to PSCOC, in December 2018 PSCOC certified the need for $185.6 million, which exceeds the limitation on the sale of SSTBs proposed by SB535/SFCS/aSFl. PSFA notes that the final budgeted revenue as a result of the December 2018 sale is $163.7 million, therefore leaving $21.8 million of certified needs unissued in a sale. In addition, PSFA indicates that the PSCOC financial plan anticipates an additional SSTB sale in June 2019 for $18.1 million, which means the limitation of SSTBs proposed in SB535/SFCS/aSFl would continue to leave PSCOC certified needs without revenue. PSFA also noted that $25 million has been allocated to PED for instructional materials and transportation funding in FY19, further decreasing available revenue.

According to PSFA, they anticipate the SSTB revenues generated for PSFA will be reduced under SB535/SFCS/aSFl. PSFA notes that ongoing transfers from the severance tax permanent fund of an amount up to $23.69 million from 2020 through 2028 reduces revenue available to PSCOC for expenditures relating to public school capital outlay projects pursuant to the Public School Capital Outlay Act. This would negatively impact PSCOC's ability to fund new projects and programs, such as the prekindergarten classroom facilities initiative currently proposed in SB230. SB535/SFCS/aSFl would likely affect funding available for public school capital outlay projects, and discretionary programs pursuant to the Public School Capital Outlay Act, such as lease assistance and education technology deficiency corrections awards, could be reduced.

Repurposing of additional SSTB proceeds may be viewed unfavorably by plaintiffs of the *Zuni* lawsuit. PSFA notes the use of SSTBs as the current funding sources of the public school capital outlay fund was established in response to the *Zuni* lawsuit.

Public School Capital Outlay Funding. Public school capital outlay funding, used to purchase capital assets like buildings, is both a local and state responsibility in New Mexico. The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by the Gallup-McKinley County Public Schools and the Grants-Cibola County Public Schools. The State district court found that through its public school capital outlay funding system the state was violating that portion of the state constitution that guarantees the establishment and maintenance of a "uniform system of free public schools sufficient for the education of, and open to, all children of school age" in the state. The court ordered the state to "establish and implement a uniform funding system for capital improvements… and for correcting past inequities" and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review progress.

Although the quality of school facilities has improved significantly since the lawsuit, litigant school districts are still concerned the system is inequitable. These alleged ongoing disparities led Gallup-McKinley County Schools (GMCS) two years ago to reopen the *Zuni* lawsuit – which had never been closed – and seek judicial intervention to cure what the school district characterizes as ongoing disparities in the current public school capital outlay funding system. For example, GMCS is concerned that property-wealthy school districts are able to build public school facilities significantly above adequacy without taxing themselves to the same extent that voters in the GMCS school district tax themselves.

OTHER SIGNIFICANT ISSUES

According to PSFA, the Severance Tax Bonding Act was amended in 2015 to phase in reductions to the statutory limits of both STB and SSTB capacities to increase the amount of revenue deposited into the severance tax bonding fund that is transferred to the severance tax permanent fund. In FY19 and subsequent fiscal years, SSTBs are realizing reduced capacity by 6.4 percent.

RELATED BILLS

Relates to *SB280, Capital Outlay Expenditures, which makes appropriations from the public school capital outlay fund.

Relates to SB230, Pre-K Classroom Facilities Initiative, which would allow public school prekindergarten facilities to be funded under the Public School Capital Outlay Act.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)
- New Mexico Attorney General (AG)

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