LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: SB 136 **50th Legislature, 1st Session, 2011**

Tracking Number: .183930.1

Short Title: Higher Education Capital Outlay Act

Sponsor(s): Senator Pete Campos

Analyst: Craig J. Johnson **Date: February 7, 2011 (revised)**

Bill Summary:

Among its provisions, Senate Bill 136:

- enacts the *Higher Education Capital Outlay Act;*
- creates the higher education capital outlay fund;
- establishes procedures for correcting outstanding deficiencies at state institutions; and
- provides for a process for prioritizing future critical capital outlay projects.

The bill also creates an 11-member Higher Education Capital Outlay Council consisting of:

- the Secretary of the Department of Finance and Administration or designee;
- the Governor or designee;
- the Director of the Legislative Finance Committee (LFC) or designee;
- the Director of the Legislative Council Service or designee;
- the Secretary of Higher Education or designee;
- a representative of a four-year institution appointed by the Council of University Presidents;
- a representative of a two-year institution appointed by the New Mexico Association of Community Colleges;
- two members appointed by the President Pro Tempore of the Senate; and
- two members appointed by the Speaker of the House of Representatives.

Among its duties, the council is required, in conjunction with the Higher Education Department (HED) to:

- review the existing five-year facilities plans of public postsecondary institutions;
- conduct an assessment of outstanding health, safety, and infrastructure deficiencies in those facilities statewide; and
- develop a plan to correct the deficiencies; then
- after correcting the deficiencies, develop criteria for assessing, evaluating, and prioritizing other critical capital outlay needs of each institution;
- if funding is available, award grant assistance to the highest priority projects; and
- by December 15 of each year, provide a report to the Governor, LFC, and the Legislature.

Fiscal Impact:

SB 136 does not contain an appropriation.

Fiscal Issues:

- SB 136 authorizes the State Board of Finance to issue and sell up to $90.0 million in short-term severance tax bonds (STBs) to generate funds for the Higher Education Capital Outlay Fund; and requires that the above STBs may not be issued:

  - until all other severance tax bonds and supplemental severance tax bonds to be issued in FY 11 have been issued; and
  - unless the balance in the severance tax bonding fund as of the date that the bonds are issued is greater than the sum of:

    - the debt service on the severance tax bonds to be issued pursuant to this section;
    - the debt service scheduled to be paid during the remainder of the fiscal year on all outstanding severance tax bonds and supplemental severance tax bonds; and
    - the amount necessary to meet all principal and interest payments on outstanding bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

- The analysis from the New Mexico Public School Facilities Authority (PSFA) states "Passage of this bill as introduced is a "new" use of senior Severance Tax Bond (STB) capacity would require a corresponding decrease in the water projects and or statewide capital project."

- According to the LFC, during the past several years, most severance tax bonds were issued as short-term notes. In the bonding capacity calculation for FY 11, a larger proportion of STB capacity has been designated for long-term bonds than in prior years. As a result, the annual STB debt service will increase from $112 million in FY 10 to $122 million in FY 13. The estimate assumes short-term notes will be used to maximize capital outlay. However, the use of short-term notes means little or no funds will be available for transfer to the severance tax permanent fund.

- According to the latest data from the US Census Survey of Government Finance, the combined long-term state and local debt per capita for New Mexico was $6,610 in FY 08, up slightly from FY 07. The average for all states was much higher at $8,234 – an indication New Mexico has not over-leveraged its residents relative to other states.

- The Department of Finance and Administration provides the following information on state bonding capacity:

Core Bonding Programs
Sources & Uses of Funds by Fiscal Year
Bonding Capacity Available for Authorization
DFA December 2010 Estimate

Sources of Funds (millions)	2011	2012	2013	2014	2015	Five-Year
General Obligation Bonds	-	306.3	-	184.3	-	490.6
Severance Tax Bonds	180.5	180.5	180.5	180.5	180.5	902.5
Severance Tax Notes	84.2	67.3	63.2	60.3	50.2	325.2
Subtotal Senior STBs	***264.7***	***247.8***	***243.7***	***240.8***	***230.7***	***1,227.7***
Supplemental Severance Tax Bonds	-	-	-	-	-	-
Supplemental Severance Tax Notes	147.7	144.8	168.0	183.0	186.7	830.2
Subtotal Supplemental STBs	***147.7***	***144.8***	***168.0***	***183.0***	***186.7***	***830.2***
Total Sources of Funds	**412.4**	**698.9**	**411.7**	**608.1**	**417.4**	**2,548.5**

Uses of Funds (millions)	2011	2012	2013	2014	2015	Five-Year
Projects approved by referendum	-	306.3	-	184.3	-	490.6
New Statewide Capital Projects	237.8	198.2	194.9	192.7	184.6	1,008.2
Authorized but Unissued STB Projects*	0.4	-	-	-	-	0.4
10% Water Projects	26.5	24.8	24.4	24.1	23.1	122.9
5% Colonias Projects	-	12.4	12.2	12.0	11.5	48.1
5% Tribal Projects	-	12.4	12.2	12.0	11.5	48.1
Educational Capital	147.7	144.8	168.0	183.0	186.7	830.2
Total Uses of Funds	**412.4**	**698.9**	**411.7**	**608.1**	**417.4**	**2,548.5**

* Currently, authorized but unissued projects total $16.6 million. However, as a result of SB182 (Laws 2010, Chapter 105), which deauthorized several STB projects and reassigned only some of the associated proceeds to other capital projects, $16.4 million of existing proceeds are currently available in the event those authorized but unissued projects become ready.

<u>Substantive Issues</u>:

The bill analysis from HED included the following:

- HED has already implemented all of the functions and processes stated in the act;
- oversight is provided by the department's Institutional Finance and Capital Outlay Division;
- HED established a Capital Projects Committee that reviews capital projects based on criteria/regulations set specifically for New Mexico's public higher education institutions, and these rules follow regulation set by the State Board of Finance;
- the meetings are monthly to allow for institutions to meet their building construction schedules and allow for the usual construction company 30-day bid process;
- there is a detailed form that institutions fill out for review with the committee monthly and annually;
- the department has developed an improved process that has specific criteria set for evaluating higher education capital outlay on an annual basis; and
- this criteria includes relation to the mission of the college and the alignment of the institution's five-year plan, the enrollment history, the space utilization, green building plan/strategy, the Facility Condition Index (FCI) that pertains to deferred maintenance, timeline for project completion and funding from other sources.

Providing sufficient resources to staff and operate the Higher Education Capital Council is a concern.

For consideration of the 2011 Legislature, the Legislative Education Study Committee has endorsed legislation (SB 173), which proposes a moratorium, from January 1, 2011 through January 1, 2017, on constructing new higher education buildings or sites.

<u>Background</u>:

- Current law authorizes HED to determine funding and to recommend institutional capital project priorities for New Mexico's four- and two-year public postsecondary institutions. Current funding for the institutions of higher education includes a factor for building renewal and replacement (BR&R).

- According to the LFC analysis:

  - in the last several years, capital improvements for higher education facilities have been financed through local general obligation bonds, revenue bonds issued by the universities, and state severance tax bonds and general funds;
  - additional amounts are derived from other sources such as federal funds, grants, foundations or institution fund balances;
  - the Legislature authorizes the funding of larger, more costly capital improvements for higher education projects from general obligation bond capacity available only in even-years;
  - local funds, which are usually local general obligation bonds issued by the two-year colleges, have contributed significantly toward capital needs at their campuses to pay for campus improvements such as childcare centers, student activity buildings and student recreational facilities; and
  - university system revenue bonds are generally used to pay for projects such as dormitories, student union buildings, stadiums, parking garages, UNM Hospital, other revenue-generating facilities or for capital improvements.

<u>Related Bills</u>:

SB 173 *Post-Secondary School Building Moratorium*