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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>SB63</u>	Sponsor	<u>Soules</u>
Tracking Number	<u>.218522.1</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Photovoltaic Systems in New Public Schools</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/28/21</u>
		Last Updated	<u>2/4/21</u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 63 (SB63) amends the definition of “system” in the Public School Capital Outlay Act to authorize funding for “photovoltaic systems,” defined as power systems designed to supply usable solar power, which may be grid-tied, off-grid, or a grid hybrid. The bill requires any standards-based award made by the Public School Capital Outlay Council (PSCOC) after July 1, 2021, to include funding for a photovoltaic system sufficient to meet the energy needs of the public school.

FISCAL IMPACT

The bill does not contain an appropriation.

Photovoltaic systems are relatively expensive investments that can lead to long-term cost savings over their lifespans. Analysis by the Public School Facilities Authority (PSFA) estimates the cost of building a new school with a photovoltaic system would cost an additional \$500 thousand to \$2 million per school, depending on the size of the school and the amount of energy the school wishes to produce using solar panels. If every standards-based project funded during the 2020 awards cycle included photovoltaic systems, PSFA estimates the total cost to the state would have increased by approximately \$5.9 million.

Awards for standards- and systems-based projects require school districts to fund the local match portion of the award. In addition to increasing the state’s spending from the public school capital outlay fund, SB63 would increase school districts’ local responsibility to fund projects if they want to apply for PSCOC awards. It may be difficult for some school districts, like those reporting low local revenues in the *Zuni* lawsuit, to participate in the PSCOC awards program if additional local funding is a prerequisite for participation.

Language in SB63 appears to require any school that begins construction after July 1, 2020, to include funding for photovoltaic systems. Currently, several schools are nearing the end of their planning and design phase and may begin construction after July 1. However, these schools have

not been designed to include photovoltaic systems. SB63 may require these schools to redesign their facilities, further delaying construction and requiring additional PSCOC awards to fund the redesign. For a proposed remedy, see **Alternatives**.

Depending on the statewide demand for solar energy, SB63 may also increase the number of schools that apply for systems-based awards to fund photovoltaic systems. Because PSCOC awards funds based on a case-by-case basis, SB63 will not necessarily increase the annual cost of systems-based awards but may dilute the funding available for high-needs building system replacements. Each year, PSCOC evaluates applications for systems-based funding submitted to improve the condition of the 300 worst-ranked facilities in the state. SB63 would allow PSCOC to fund photovoltaic systems through this process, potentially limiting the funds available to construct high-needs building system replacements to correct serious health or safety concerns.

Some of the initial investment in photovoltaic systems may be recuperated by reductions to schools' utility costs. PSFA explains schools with photovoltaic systems achieve annual savings from producing electricity on-site. Grid-tied systems can also receive credits from local utilities by producing excess energy and redistributing it to the grid. According to PSFA, school districts with photovoltaic systems typically recuperate the cost of installation in 10 to 15 years of annual credits and savings from lower monthly utility bills. School utility costs are funded through the public school funding formula; a reduction in utility costs could result in more operational funding directed to classrooms.

SUBSTANTIVE ISSUES

The standards-based awards program, the core function of the PSCOC, was created in response to the *Zuni* capital outlay lawsuit to improve the adequacy and uniformity of public school facilities statewide. PSCOC annually awards funds to applicants to renovate or replace facilities in the 100 worst-ranked facilities in the state based on the weighted New Mexico condition index. Since the creation of the program, the average condition of the state's public schools has improved substantially with a large number of targeted investments in school districts with poor facilities and an inability to raise local revenue to replace those facilities.

SB63 would expand the core values of the PSCOC standards-based award program to include energy sustainability. Currently, the program focuses on providing adequate educational environments that are safe, functional, and durable. PSCOC awards funds based on a set of standards considered the minimum requirements a facility must meet to be considered adequate for the education of students. These adequacy standards have expanded over time to accommodate new technologies. If SB63 is enacted, PSFA and PSCOC would need to adopt new adequacy standards to account for photovoltaic systems.

Currently, photovoltaic systems are outside of the statewide adequacy standards; schools in Albuquerque, Las Cruces, Santa Fe, and Rio Rancho have explored their use using entirely local funds, but property-poor school districts may not be able to afford this option. Covering their cost through the standards- and systems-based award programs could expand access to solar technologies to school districts without the ability to fund them using only local revenues. However, a large number of awards in recent years have been made to school districts with low property wealth, including plaintiff school districts in the *Zuni* capital outlay lawsuit, Zuni Public Schools and Gallup-McKinley County Schools. Creating new adequacy standards for solar energy beginning in FY22 would once again create facility nonuniformities in projects that are nearing

completion in the plaintiff school districts, but those districts would be authorized to apply for systems-based awards to add photovoltaic systems to schools.

While they may be attractive for some school districts, photovoltaic systems may not be appropriate for all New Mexico public school facilities. According to analysis from PSFA, most photovoltaic systems cannot meet 100 percent of a school's energy needs. Typically, schools should plan to meet 65 percent to 80 percent of their energy needs using solar power for two reasons: first, excess power generated by the system may overload the grid infrastructure of some utility companies, and second, the financial credits awarded by utilities for excess production are often soft-capped at 1 MW of power.

OTHER SIGNIFICANT ISSUES

The Zuni Capital Outlay Lawsuit. SB63 amends the Public School Capital Outlay Act, a section of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the *Zuni* lawsuit, finding the Public School Capital Outlay Act, along with the Public School Capital Improvements Act, have exacerbated “gross disparities” between property-wealthy and property-poor school districts. The plaintiff school districts, now including only Gallup-McKinley County and Zuni, argue the school districts’ lack of taxable property makes it impossible for the districts to fund “outside-of-adequacy” spaces freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

The 11th Judicial District Court ruling, however, leaves policymakers without a clear understanding of why the systems were found unconstitutional. The ruling did not cite specific evidence of disparities in the capital outlay funding system and instead adopted wholesale the plaintiff's findings of fact, which contained inaccuracies and inconsistencies. Further, the court did not review appropriations and changes made to the capital outlay system during the 2019 and 2020 legislative sessions attempting to create greater equity. The Legislature has attempted to address the plaintiffs concerns by amending the state- and local-match calculation and appropriating \$53 million for outside-of-adequacy spaces in school districts receiving federal Impact Aid for Native American students, but these efforts were not mentioned in the district court's eight-page ruling.

On January 28, 2021, the Legislature and PSCOC's recent actions were submitted as new evidence in the lawsuit, along with a motion to reconsider and a request for a stay of judgment. The court will deliberate the motion; after the court's decision, the state will have an additional 30 days to decide whether it will appeal the ruling to a higher court. The Office of the Attorney General does not believe that the language in the judge's decision and order prohibit PSCOC and PSFA from awarding funds and continuing construction projects pursuant to the Public School Capital Outlay Act and Public School Capital Improvements Act, but pending a decision on the state's motion to reconsider, the Legislature will need to continue to focus on policy options and statutory changes that continue to provide for increased equity in the capital outlay system.

ALTERNATIVES

To ensure schools currently undergoing planning and design will not have to redesign to include photovoltaic systems, the sponsor may wish to consider amending the bill to require photovoltaic systems on any newly-funded project after July 1, 2021, rather than any school beginning construction after this date.

Alternatively, the sponsor may wish to consider amending the bill to allow photovoltaic systems as an option eligible for funding through the standards-based awards process, rather than a requirement.

RELATED BILLS

Related to SB29, Cost of Photovoltaic Systems, which amends the systems-based awards program to include funding for photovoltaic systems.

SOURCES OF INFORMATION

- LESC Files

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