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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB30</u>	Sponsor	<u>Chandler/Garratt</u>
Tracking Number	<u>.223739.2</u>	Committee Referrals	<u>HEC/HHHC</u>
Short Title	<u>Public School Ventilation Improvement Act</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/20/23</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 30 (HB30) creates the “Public School Ventilation Improvement Act,” a new section of the Public School Code. The bill would require all public schools to undertake an assessment of all heating, ventilation, and air conditioning (HVAC) systems at least once every five years.

HVAC assessments required by the bill must be performed by mechanical engineers or certified assessors. The bill defines mechanical engineers as individuals who:

- Are licensed as a mechanical engineer by the state board of licensure for professional engineers and professional surveyors; and
- Have professional experience with HVAC systems.

HB30 defines certified assessors as:

- A certified technician who is certified as a testing and balancing technician by an accredited organization approved by the Construction Industries Division; or
- A person who is certified to perform HVAC assessments by an organization accredited by the American National Standards Institute.

HB30 enumerates requirements that HVAC assessments are required to include. Following an assessment completed by a mechanical engineer, the engineer would be required to list corrective actions required to address deficiencies the assessment identifies. The Public Education Department (PED) would be required to ensure all school districts and charter schools make appropriate corrective actions identified in HVAC assessments. After HVAC work is completed, each school district and charter school would be required to submit a ventilation verification report to PED, listing the status of the school’s HVAC systems and any repairs or replacements that were made. HVAC assessments and reports shall be made available to the public upon request.

All required work identified in an HVAC assessment must be completed by a “skilled and trained construction workforce,” which the bill defines as a workforce in which at least 40 percent of the workers are trained in an apprenticeship program registered with the Department of Workforce Solutions (DWS) or an apprenticeship program for which PED has granted reciprocal approval.

FISCAL IMPACT

The bill does not contain an appropriation.

According to analysis by the Public School Facilities Authority (PSFA), the cost of ventilation assessments for all New Mexico schools would be between \$12 million and \$21 million. This cost would be spread across five years, given the bill's five-year assessment cycle, resulting in an approximate annual recurring cost of \$2.4 million to \$5.3 million.

The cost of HVAC repairs and replacements could be significantly higher. According to PSFA, depending on the deficiencies identified in HVAC assessments, the cost of replacing and repairing HVAC systems could be between \$731 million and \$2 billion.

HB30 does not provide funding source for the significant HVAC work it would require, constituting an unfunded mandate for school districts and charter schools statewide. To meet the bill's requirements, school districts and charter schools would be forced to rely on operational funding, federal Covid-19 relief funding, general obligation bonds, direct legislative appropriations, an award from the Public School Capital Outlay Council, or other local revenue sources to fund the new requirements.

SUBSTANTIVE ISSUES

During the Covid-19 pandemic, the federal Centers for Disease Control and Prevention and the American Society of Heating, Refrigerating and Air Conditioning Engineers released guidance for HVAC systems to reduce virus transmission. The guidance recommends schools replace or renovate HVAC systems to meet three goals:

- Increase outdoor air ventilation rates to dilute and flush virus particulates from the building;
- Install more restrictive air filters to capture virus particulates; and
- Install supplemental air cleaning devices and technologies.

HB30 would likely result in a greater number of schools meeting these goals, but the bill's requirements place school districts and charter schools in a difficult position to find qualified workers that meet the bill's standards and to fund HVAC work using their own resources.

HB30 requires all HVAC work is performed by a "skilled and trained construction workforce," defined as a workforce in which 40 percent of the workers are trained in a registered apprenticeship program or a similar program with reciprocal approval. This requirement may limit the pool of qualified professionals with which schools will be able to contract, especially in rural areas of the state. School districts may no longer be able to allow their own employees to perform HVAC maintenance unless they enroll and complete a certification program approved by DWS. Moreover, school districts in rural New Mexico may be required to contract with HVAC professionals outside of their own community to satisfy the bill's provisions. In an analysis of a similar bill, *HB232 from the 2021 legislative session, the Legislative Finance Committee noted 41 companies in New Mexico met the requirements of a "skilled and trained workforce."

Analysis from PSFA estimates that due to the "skilled and trained construction workforce" requirement, only 40 to 60 HVAC replacement projects could be in process concurrently. To repair and replace HVAC systems on a five-year cycle, one fifth of the state's schools, approximately 190 schools, will need to assess their HVAC systems each year. If more than 60 of those schools

require significant work, the construction workforce will not be able to keep up with the five-year cycle required by HB30. The bill does not include corrective actions that must be taken if schools or skilled and trained workers are unable to meet the bill's requirements.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department is not the appropriate agency to oversee ventilation assessments. While PED administers capital outlay funding programs, the standards for physical school buildings and their various systems are established and monitored by the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA). Because PED currently does not have HVAC experts on staff, HB30 would likely create a significant amount of new administrative burden for PED. PED would likely need to hire new staff within the department's capital outlay bureau to monitor HVAC assessments, ensure HVAC work is completed, and review HVAC reports submitted by school districts.

As written, the definition of a "skilled and trained construction workforce" requires PED to grant reciprocal approval to apprenticeship programs, an administrative duty that falls far outside the department's current scope of duties. However, the reference to PED in this section is likely a mistake (See **Technical Issues**).

Schools currently receive a PSFA assessment of facility and system conditions approximately once every five years. Deficiencies identified in each assessment are noted in a statewide database and become the basis for the calculation of the weighted New Mexico Condition Index (wNMCI). Each year, PSFA calculates the wNMCI rank of every school site in New Mexico in terms of the quality of its physical facility and its adequacy to deliver an educational program. Schools ranked among the 300 worst condition schools in the state according to the wNMCI are eligible to apply for a "systems-based award" from PSCOC. The systems-based awards program has helped many schools repair and replace their HVAC systems over the past 10 years, independent of the provisions of HB30.

However, PSFA staff describes the current facility assessment process as more cursory than the process HB30 would require, focusing on glaring physical deficiencies rather than exact technical specifications. PSFA reports the agency's staff does not currently have the expertise to conduct technical HVAC assessments, and if HB30 became part of the assessment process, the agency would rely heavily on contracts with HVAC experts. PSFA staff also report the technical assessment of HVAC systems could slow down the facility assessment process, limiting the number of assessments that could be conducted per year.

TECHNICAL ISSUES

Subsection F of Section 2, the definition of a "skilled and trained construction workforce," includes a reference to "the department" on page 3, line 4. While the bill likely intends to refer to DWS, references to "the department" in the Public School Code are defined in Section 22-1-2 NMSA 1978 as references to PED. While this is likely a simple oversight, the literal interpretation of this clause would create new duties for PED that fall far outside of the scope of the department's current responsibilities.

Subsection A of Section 3 of the bill allows assessments to be performed by "certified assessors" or "mechanical engineers," but Subsection B requires only those assessments performed by mechanical engineers to result in an assessment report. The sponsors may wish to amend the bill

to require all ventilation assessments to result in an assessment report, regardless of the qualifications of the assessor.

OTHER SIGNIFICANT ISSUES

The definition of a “skilled and trained construction workforce” is too vague to be effectively implemented. The definition does not specify the level of measurement that constitutes a “workforce,” leaving school districts themselves to decide whether a workforce refers to employees of the school district, employees of a single company, or available contractors in a geographic area, like a city, county, or the state as a whole.

Analysis from PSFA points out Subsection A of Section 3 of the bill requires school districts to undertake HVAC assessments for “all mechanical ventilation systems in the school district.” Because the definition does not specify schools or educational facilities, the bill may require HVAC assessments at district offices, maintenance facilities, warehouses, or garages, expanding the scope of work the bill would require.

ALTERNATIVES

Rather than creating an unfunded mandate as HB30 does, the Legislature should consider establishing an HVAC grant program as a supplemental program awarded by PSCOC and administered by PSFA. PSFA is equipped with the administrative expertise to help school districts and charter schools navigate HVAC repair and replacement projects and already does so on an annual basis during the systems-based awards program. Standalone programs awarded by PSCOC and administered by PSFA have successfully addressed specific facility demands in the past, with notable examples including the roof deficiencies program and the school security program.

Alternatively, the Legislature could consider allowing the existing systems-based awards program to handle the demand for HVAC system upgrades on a case-by-case basis. The systems-based award program allocates state funds to schools demonstrating the highest facility needs, and PSFA provides technical support to school districts each step of the way, from project applications to construction. Moreover, the systems-based program is designed to equitably distribute limited state resources by requiring school districts with high property wealth to use more of their local revenue on construction projects.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)

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