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FISCAL IMPACT REPORT

SPONSOR Nava DATE TYPED 2/04/04 HB _____

SHORT TITLE Public School Capital Outlay Council Changes SB 372

ANALYST Kehoe

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 393 and Senate Bill 399.

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public School Facilities Authority (PSFA)
 Regulation & Licensing Department,
 Construction Industries Commission (CID)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 372 proposes changes to the membership of the Public School Capital Outlay Council (PSCOC).

Significant Issues

Senate Bill 372 proposes that the chairman of the Senate Education Committee and chairman of the House Education Committee, or their designees, serve on PSCOC in lieu of the directors of the Legislative Education Study Committee (LESC) and the Legislative Council Service (LCS). The bill expands the membership to include two public members appointed by the governor. One public member shall have expertise in public finance and the other shall be licensed by the Construction Industries Commission “to construct.” The bill changes the title of two members to

conform with the recently passed Amendment 1 to Article 12, Section 6 of the Constitution of New Mexico creating a public education commission and a secretary of the department of education. The title “superintendent” is changed to the “secretary of public education,” and “the president of the state board” is changed to “a member of the public education commission,” appointed by the governor.

The current PSCOC membership consists of three members each from the executive, the legislative and school representatives. Members include: the secretary of the Department of Finance and Administration, the secretary of the Public Education Department, the governor, the president of the New Mexico School Boards Association, the director of the Construction Industries Division, the president of the Public Education Commission, the director of the Legislative Education Study Committee, the director of the Legislative Finance Committee, and the director of the Legislative Council Service.

FISCAL IMPLICATIONS

Senate Bill 372 does not contain an appropriation. However, PSCOC meets monthly and given the various responsibilities of the council, members typically serve on more than one subcommittee and periodically make site visits to school facilities throughout the state. Expenses incurred in the performance of these duties by the current members are paid by the respective employers or entities. The proposed representation on the council will require a general fund appropriation for per diem and mileage expenses and a statutory amendment authorizing compensation for the new members. If funding is appropriated for per diem and mileage expenditures for legislators, it should be noted that legislators are compensated at a higher rate of reimbursement for per diem and mileage expenses than employees or public members.

ADMINISTRATIVE IMPLICATIONS

During the interim, PSCOC determined staffing and the funding needs of the newly created Public School Facilities Authority, continued refining the Statewide Adequacy Standards and developed a reference guide to assist school districts and design professionals in interpreting and applying the standards. In addition, the council has also begun development of model maintenance plans and model master plans to assist the school districts.

The proposal in this bill to add new members would provide additional expertise in carrying out the council’s numerous responsibilities. However, the positions that are proposed to be removed have great value to the council. Both representatives have provided historical continuity and institutional memory that is critical to the council’s work-in-progress.

The PSCOC is in the process of finalizing the standards-based process called for by the court in the Zuni law suit. A considerable amount of time and effort would be necessary to educate new members and to update them on the issues involved and would require increased staff time and council time. If Senate Bill 372 is enacted, perhaps it would be prudent to delay the effective date of removing current members so that implementation of the standards-based program can be fully implemented in a timely manner and to the satisfaction of the court.

PSCOC is administratively supported by staff of the Public School Facilities Authority and personnel of LESC, LCS, LFC, CID and DFA. Losing LESC and LCS staff support will require more time of LFC, CID and DFA that combined with other responsibilities is already limited.

CONFLICT

This bill conflicts with House Bill 393 and Senate Bill 399. Both bills make technical changes to the current membership of PSCOC to comply with Amendment 1 to Article 12, Section 6 of the Constitution of New Mexico creating a public education commission and a secretary of the department of education.

TECHNICAL ISSUES

According to CID, the proposed language on page 2, lines 19-21 of the bill to create a public member “licensed by the Construction Industries Commission to construct” is inconsistent with the Construction Industries Licensing Act. The Act provides that the division director rather than the commission issues licenses. The CID director does not issue licenses to “construct”, but does issue licenses to approximately 100 classifications of activity defined within the Act as “contracting.”

The following technical amendment is proposed by CID to make the language consistent with the Construction Industries Licensing Act: On page 2, strike 19-21 and insert in lieu thereof “a public member, appointed by the governor, who has a current, valid license, to engage in contracting, issued by the construction industries division pursuant to the Construction Industries Licensing Act.

POSSIBLE QUESTIONS

1. Does the addition of legislative members to a council that carries out executive functions violate the Separation of Powers set out in Article 3 of the New Mexico Constitution?
2. Would legislators be prohibited from voting or participating in funding decisions for schools located within their legislative districts?
3. Council responsibilities are considered an executive function. Would legislators be allowed to be paid while engaged in performing executive functions not defined as legislative functions?

RLG/lg:prr