F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/04/2007
SPONSOR Miera **LAST UPDATED** 3/16/2007 **HB** 328/aHEC/aSEC/aSFC

SHORT TITLE Public School Capital Outlay Omnibus Bill **SB**

ANALYST Aguilar

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
		($2,500.0)	Recurring	General Fund
		$3,855.2	Recurring	Public School Facility Opportunity Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB-395
Conflicts with HB-322, HB-323, SB-159

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$5,000.0	$5,000.0	$10,000.0	Recurring	SB9 State Match
		($5,000.0)	($5,000.0)	($10,000.0)	Recurring	Standards Based Awards

(Parenthesis ( ) Indicate Expenditure Decreases)

**** See Fiscal Implications**

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Public Education Department (PED)
Public School Facilities Authority (PSFA)

Responses NOT Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to House Bill 328 as amended changes from twenty percent to ten percent the amount of the unreserved undesignated balances in reverting funds and accounts transferred to the Public School Facility Opportunity Fund. The amendment changes the period of time for these transfers from FY08 through FY12 to the end of fiscal year 2009 through fiscal year 2013.

The amendment increases membership of the Capital Outlay Oversight Task Force from 24 to 26 by adding a member of the house and senate who represent impact aid districts.

The amendment also provides for a delayed repeal of the diversion of reversions of July 1, 2013 and provides for the distribution of funds remaining in the Public School Facility Opportunity Fund.

Synopsis of SEC Amendment

The Senate Education Committee amendment to House Bill 328 as amended removes provisions authorizing the imposition of an additional mill levy, creates the Public School Facility Opportunity fund and provides for grants from the fund to certain school districts.

The amendment provides for 20 percent of all unreserved undesignated balances in reverting funds and accounts not to revert to the general fund but be transferred to the Public School Facility Opportunity fund at the end of fiscal years 2008 through 2012.

The amendment provides for 3 percent of all direct legislative appropriations to be diverted to the Public School Facility Opportunity fund.

The amendment adds provisions that allow for certain sole source components be separately priced in school construction contracts.

The amendment extends the date to complete serious roof deficiency corrections to September 30, 2008.

SIGNIFICANT ISSUES

HB 322/aHEC/aSEC makes changes to language requiring that prior to the purchase of a facility by a school district or charter school the facility must meet or exceed the statewide adequacy standards.

HB 322/aHEC/aSEC provides for 3 percent of all direct legislative appropriations to schools be directed to the Public School Facility Opportunity Fund. The impact to individual districts varies with appropriations; however as a rule, for every $100 thousand appropriated to district projects, $3 thousand will be diverted to the fund. This is estimated to increase revenue to the fund by $1.3 million annually. An unintended consequence of this is that district projects may not be fully funded.

The bill also provides that 20 percent of all unreserved and undesignated balances in reverting funds and accounts at the end of each fiscal year from FY08 through FY12 shall not revert but be transferred to the public schools facility opportunity fund. The consensus revenue estimate for recurring reversions to the general fund in FY08 is $24.8 million. HB 322/aHEC/aSEC would require 20 percent of that amount, or approximately $5 million, to go to the adequacy fund.

HB 322/aHEC/aSEC extends the period of time for the Public School Facilities Authority (PSFA) to complete deficiencies corrections projects through the end of FY08 and for roof deficiency corrections to the end of September 2008. The extension for deficiencies corrections projects may be made upon the determination that a project requires additional time because existing buildings need to be demolished or due to other extenuating circumstances.

The amendment makes changes to the eligibility requirements for school districts to utilize funds from the Public School Facility Opportunity fund. It appears the reason for the change is to make certain the Zuni public school district falls into the eligibility list. Under the original eligibility requirements Zuni would be left out.

The amendment also contains temporary provisions providing for the work of the Public School Capital Outlay Oversight Taskforce.

<u>Synopsis of HEC Amendment</u>

The House Education Committee amendment to House Bill 328 adds language providing that appropriations previously used in calculating reductions in grant awards will not be used in calculating reductions a second time.

<u>Synopsis of Original Bill</u>

House Bill 328 exempts certain construction projects from state oversight, changes criteria used for determining offset amounts, provides for the consideration of space utilization in determining grant awards, provides for additional grants to specific school districts, increases grants to schools for lease payments, and allows for the purchase of certain facilities using state grants.

The bill further provides for the imposition of an additional mill levy, increases the state match, authorizes the use of SB-9 monies for project management which includes personnel salaries, and increases the tax imposition period.

HB-328 also provides for school districts to enter into lease-purchase agreements, provides for these agreements to be funded by state grants and tax revenues, and provides for the direct distribution of property tax proceeds to charter schools.

FISCAL IMPLICATIONS

House Bill 328 makes a number of changes to the Public School Capital Outlay Act which provides for increased allocations from the Public School Capital Outlay Fund. It is important to note that absent appropriations from the general fund, the revenue source for this fund is finite on an annual basis and that any distributions from the fund for initiatives other than school building construction reduces the amount available for grants to school districts. With a statewide need of more than $4 billion for repair and renovation, any reduction in the amount available for standards based awards lengthens the time required to meet the statewide need.

HB-328 increase the per student allocation for lease payments from the current $600 to $700 limited to no more than $7.5 million in FY07. Provisions for per student allocation increases beginning in FY09 and increases in the total amount available for this purpose beginning in FY08 are contained in the bill. Both adjustments are tied to percentage increase of the next to last and immediately preceding calendar year of the consumer price index.

The bill provides for the use of lease payments to be used for lease-purchase agreements of real property and extends the period of time lease payments may be made from 2010 to 2020.

This bill provides for continuing appropriations from the public school capital outlay fund. The LFC has concerns with including continuing appropriation language in the statutory provisions for funds, as earmarking reduces the ability of the legislature to establish spending priorities.

HB-328 extends the period of time for the Public School Facilities Authority (PSFA) to complete deficiencies corrections projects through the end of FY08. The extension is for up to three unfinished projects if it is determined that the projects require additional time because existing buildings need to be demolished or because of other extenuating circumstances.

HB-328 makes a number of changes to the existing methodology used in calculating the state share of approved projects. These include:

- Charter schools receiving grant assistance will use the participation factor of the school district where the charter school is physically located;
- Offset calculations will no longer include previous direct legislative appropriations that have been reauthorized to another entity;
- Future offsets will be calculated at 50 percent of direct legislative appropriations made after January 1, 2007 for projects ranked in the top 150 in either the current or preceding funding cycle; and,
- All appropriations made after January 1, 2007 to a state-chartered school shall be excluded from the offset of the school district. The offset will be excluded whether the charter is a state charter at the time of the appropriation or becomes a state charter at a later date.

HB-328 also provides for the financing of a lease purchase agreement to be considered a project eligible for grant assistance as follows and provides criteria for determining eligibility. The bill also provides that the cost of the project may not exceed the cost of the lease-purchase payment agreement.

HB-328 provides for the purchase of a private built and owned facility to be considered eligible for grant assistance. Based on testimony over the interim, schools to be located in Santa Teresa and Mesa del Sol would be primary candidates for this option. The bill contains specific criteria which must be met to be eligible. These are:

- the facility to be purchased equals or exceeds the statewide adequacy standards and building standards for public school facilities;
- attendance at the facility is at 75% or greater of design capacity and that attendance at other schools in the district that students at the facility would otherwise attend is greater than 85% of design capacity

- The school district and the capital outlay project meet all the requirements for grant assistance.

Of note in this requirement is the provision noting that when determining deviations from the statewide adequacy standards for the purpose of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

The bill includes provisions for awarding additional grant assistance to approximately eight school districts to fund projects above the currently adopted adequacy standards. The current standards-based awards process was developed to make certain that all students are taught in facilities meeting a certain level of adequacy to provide a sufficient education. This provision appears to be moving beyond the original intent of the Public School Capital Outlay Act and targeting funding outside of the adequacy process. This may set an undesirable precedent where the standards-based process is set aside and projects are funded using random criteria.

HB-328 expands the use of SB-9 (2 mill levy) revenues to include payments for the lease-purchase of real property. At present, these funds can only be used for lease payments for education technology equipment, construction and renovation of school buildings, providing equipment for or furnishing public school buildings, maintenance of school buildings, purchasing activity vehicles and purchasing computer hardware and software. The increase in deferred maintenance in schools is an ongoing problem. The authorization to use these funds for financing payments may have the effect of reducing expenditures on maintenance.

The bill also increases the state SB-9 state match to school districts to $70 in FY08 and adjusted annually at a rate tied to the consumer price index. PED reports the guaranteed match amount is currently calculated by multiplying the school districts' total 40th day program units by $62.04 and further multiplying this amount by the tax rate approved by the local voters (the $62.04 includes the FY07 increase based on a CPI of 3.4 percent. The increase in the guarantee match amount will result in approximately $5 million in additional funding to school districts who qualify for state matching funds. Again, the Legislature should remember this $5 million will reduce the amount available for standards based awards.

HB-328 provides for charter schools to be included as a political subdivision as a revenue recipient and provides for the direct distribution of property tax revenues to charter schools. This appears to give district chartered schools status as a separate political subdivision although the schools are already under the control of a political subdivision. Further, the distribution of property tax revenues directly to district chartered charter schools appears to circumvent local board control over decisions made regarding the schools within a school district.

The bill deletes language preventing school districts from charging rent to charter schools and adds new language allowing school districts to lease space to a charter school as long as the lease payments do not exceed the amount the charter school receives from the lease-payment assistance program. Further, the bill provides that revenue received from these lease agreements will not be considered as cash balances in the calculation of cash balance credits. This provision may be in conflict with current statute regarding the calculation of cash balance credits as the funds would generally be classified as unrestricted, unreserved cash balances.

The bill also provides for school districts to request authorization from district voters for an additional 1 mill levy for capital improvement in the district for a term not to exceed six years. Revenue received from this levy will be apportioned among all schools in the district based on the schools prior year 40^{th} day enrollment or on current 40^{th} day enrollment if classes had not commenced in the prior year. This provision includes both district and state chartered schools to be included on the ballot question as well take part in sharing revenue received. This appears to again bring into question a local school boards authority to make decisions for their districts. And including state chartered schools, which are not under the control of the local board raises further concern.

HB-328 expands the purposes for which funds generated from the Public School Buildings Act also known as HB-33 revenues. Currently the use of these funds is restricted for lease payments for education technology equipment, construction and renovation of school buildings, and purchasing or improving public school grounds. The bill expands the use of these funds to be used for administering projects noted above including expenditures for facility maintenance and project maintenance software, project oversight and district personnel specifically related to administration of projects funded by this act but may not exceed 5 percent of total project costs.
HB-328 provides for the Public School Capital Outlay Council (PSCOC), by rule, to exempt certain types of construction from oversight. This in will generally apply to minor repair projects that have little or no impact on the facilities assessment database. The bill specifically exempts projects of less than $200 thousand from the review and approval process. In general this should help speed up the construction process for small projects; however some projects of this size are complex and could have a significant impact on overall facility condition.

The bill adds the efficient and flexible utilization of space as a priority for funding to be used by the council in determining grant awards.

This bill also includes a temporary provision recompiling the New School Development Fund as part of the Public School Finance Act. The effect of this provision is unclear.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

PED notes that Section 5 of this bill is proposing to implement a program to fund above the statewide adequacy standards. This may conflict with House Bill 322 and Senate Bill 403 which are proposing to enact the same exact program to be funded from other sources.

Senate Bill 159 makes reference to unrestricted and unreserved cash balances in determining a districts cash balance credit. Provisions in this bill regarding revenue received by the district from lease payments by charter schools may be in conflict with SB-159.

TECHNICAL ISSUES

The Legislature may wish to consider removing language exempting projects less than $200 thousand and instead allow the PSCOC to specifically determine which projects require oversight.

The Public Education Department submits the following for consideration by the Legislature:

- Line 25, on page 24, and lines 1 and 2, on page 25, state that all offsets incurred as a result of direct legislative appropriations to charter schools after January 1, 2007 will follow the charter schools as they become state-chartered schools. This poses a problem because a district with a local-chartered school may apply for assistance under the PSCOA and use the offset before the charter school becomes a state-chartered school. In essence an offset may be counted twice.

- On page 30, line 13, “and charter school” should be inserted after “district”.

- Section 12 adds a new section which allows a school district to impose an extra mill or Ad Valorem tax to be divided on a per membership basis. Does imposition of this extra mill have to take place at the same time as the imposition of the tax imposed pursuant to section 22-25-3 NMSA 1978 or can a school district impose this mill at any time? If the intent is to implement these two mill levies concurrently language needs to be added to state this. A recommendation would be to add this language after section 4 on page 51, line 20.

- A suggestion would be to add language on page 52, line 7, after “department” to state that the department shall certify to the county treasurer the percentage of revenue to be distributed to each charter school.

- Section 12 also states that all provisions of Section 22-25-3 NMSA 1978 apply to the tax imposition provided in this new section. This may pose a problem because section 22-25-3 NMSA 1978 states that the proposed tax under this section shall not exceed 2 mills. This new section allows a district to impose an additional mill. This may be contradictory.

PA/mt