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FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/2007
 LAST UPDATED 3/17/2007

SPONSOR SFC HB CS/395/aHEC/aHTRC/
 SHORT TITLE Public School Capital Outlay Omnibus Bill SB aHAFC

ANALYST Aguilar/Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
		(\$2,650.0)	Recurring	General Fund
	\$1,355.2	\$4,005.2	Recurring	Public School Facility Opportunity Fund

(Parenthesis () Indicate Revenue Decreases)

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**

Relates to HB 328
 Conflicts with HB 322, HB 328, HB 323, SB 159

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the Senate Finance Committee Substitute for Senate Bill 395 strikes a House Education Committee amendment that would have

required facilities to meet or exceed statewide adequacy standards before the facility is purchased by a school district or charter school.

The amendment changes the effective dates for the diversion of reverting funds to the end of FY09 through the end of FY13 and reinstates changes made to the general provisions of the 2006 General Appropriation Act that were eliminated in the House Education Committee amendment.

The amendment increases the number of members of the public school capital outlay task force from 24 to 26. The two additional members will be a representative and a senator representing districts with school districts receiving “PL 874” federal funds or “impact aid.”

The amendment inserts a July 1, 2013 repeal date for sections seven and eight of the bill, which pertain to supplemental grant funding for public school capital outlay projects and create the public school facility opportunity fund. Money remaining in that fund on July 1, 2013 will revert to the severance tax bonding fund and the general fund.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to the Senate Finance Committee Substitute for Senate Bill 395 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 at the end of fiscal year 2008 through fiscal year 2012.

Synopsis of HEC Amendment

The House Education Committee amendment to the Senate Finance Committee Substitute for Senate Bill 395 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.

The amendment changes the requirement that a school district “shall use” its portion of a project cost for lease payments as they come due to “may use” giving the district the option of using these funds for this purpose. It appears this may be problematic if a district or charter school runs short of funds because they were spent on other projects.

The amendment changes the effective dates for the diversion of reverting funds to the end of FY08 through the end of FY12 and removes changes made to the general provisions of the 2006 General Appropriation Act.

The amendment also provides for a delayed repeal of the diversion of reversions of July 1, 2012 and provides for the distribution of funds remaining in the Public School Facility Opportunity Fund.

Synopsis of Original Bill

The Senate Finance Committee Substitute for Senate Bill 395 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, allows for the

purchase of certain facilities using state grants and extends the time for deficiency corrections funds to be expended.

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

SB 395/SFCS 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.

SB 395/SFCS creates the Public School Facility Opportunity Fund; authorizes grants from the fund to certain districts so that the facilities in these districts may exceed adequacy standards; and provides that a portion of annual general fund appropriations shall revert to the new fund.

The bill also provides that 3 percent of all direct legislative appropriations to schools be directed to the fund.

FISCAL IMPLICATIONS

The Senate Finance Committee substitute for Senate Bill 395 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.

SB 395/SFCS 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.

As noted, the bill 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.

SB 395/SFCS increases 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. This is a

further expenditure from the fund that will result in reduced funds for grant awards.

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.

SB 395/SFCS 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.

SB 395/SFCS 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.

SB 395/SFCS 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.

SB 395/SFCS 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 ten 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.

The decrease in revenue of \$5 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

This bill creates the Public School Facility Opportunity Fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SB 395/SFCS decreases revenue to the general fund by \$5 million in the first year and directs it to the Public School Facility Opportunity Fund for the purpose of making grants to specific districts so that the facilities in these districts may exceed adequacy standards.

An additional \$581.9 thousand is directed to the fund from severance tax bonds used for direct legislative appropriations.

The bill provides the following funding sources for the public school facility opportunity fund:

- Twenty percent of unexpended agency and fund balances that would otherwise revert to the general fund are transferred to the new fund for the next five fiscal years;
- A three percent set aside of all direct legislative appropriations made to school districts or other governmental entities for the purpose of passing the money directly to a school district or public school for non-operating purposes and transfers the amounts to the new fund

SB 395/SFC 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.

SB 395/SFCS 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 provides for the district in preparing ballot resolutions for tax imposition shall include charter schools provided that the charter schools provide necessary information to the district in a timely manner that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used and the capital improvements are included in the five-year facilities plan. 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.

SB 395/SFCS 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.

SB 395/SFCS 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 committee substitute also provides that prior to submitting a bid or proposal for a state or local public works project, if it is determined that there is only one source for a specific service, construction or item of tangible personal property, the responsible bidder, offeror or central purchasing office may require a separate bid or offer be made.

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.

The bill also directs the Public School Capital Outlay Oversight Task Force to continue to work toward an equitable and fair system to address facility inequities between school districts.

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.

SIGNIFICANT ISSUES

The bill includes provisions for awarding additional grant assistance to approximately ten 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.

SB 395/SFCS provides that 3 percent of all direct appropriations made to a school district or another governmental agency for the purpose of passing money to a school district shall be transferred to the public school opportunity fund. In FY06, appropriations from the general fund for direct appropriations totaled \$25.8 million and appropriations from severance tax bonds totaled \$19.4 million resulting in approximately \$1.355 million identified for transfer to the fund.

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 FY07 through FY11 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. SB 395/SFCS would require 20 percent of that amount, or approximately \$5 million, to go to the adequacy fund.

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.

PA/SS:mt