

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: *CS/SB 378¹

49th Legislature, 1st Session, 2009

Short Title: Public School Capital Outlay Amendments

Sponsor(s): Senator Cynthia Nava and Others

Analyst: Peter B. van Moorsel

Date: March 12, 2009

**SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 378**

Bill Summary:

The provisions of CS/SB 378 are detailed in the following sections:

Section 1 (pp. 1-4) amends the *Charter Schools Act* to extend to 2015 (from 2010) the deadline for charter schools to be located in a public building or in a building subject to an approved lease-purchase arrangement.

Section 2 (pp. 4-13) amends the *Public School Capital Outlay Act* to:

- limit total annual expenditures for Public School Facilities Authority (PSFA) core administrative functions from the Public School Capital Outlay Fund (PSCOF) to 5.0 percent of annual grant assistance during the three previous fiscal years;
- reduce to \$10.0 million (from \$30.0 million) the amount that the Public School Capital Outlay Council (PSCOC) may allocate for roof repair and replacement for expenditure in FY 10 through FY 12, and require that the allocation must be expended within two years;
- eliminate the 2020 sunset date for the lease-payment assistance program;
- remove the requirement that lease payments be reduced proportionately if the award exceeds available funds;
- provide that the \$700 per MEM lease-payment assistance amount is subject to adjustment by the percentage change, rather than percentage increase, in the Consumer Price Index;
- provide that lease-payment assistance grants for lease-purchase arrangements may only be made to charter schools with approved lease-purchase arrangements;
- eliminate the \$7.5 million annual limit on expenditures from the PSCOF for lease-payment assistance; and
- authorize the PSCOC to allocate up to \$2.0 million from the PSCOF in FY 09 through FY 11 for lights and bleachers for certain rural high school athletic fields.

Section 3 (pp. 13-15) amends the *Public School Capital Outlay Act* to specify that roof repair and replacement grants must be expended within two years of the grant allocation.

Section 4 (pp. 15-16) adds a new section of the *Public School Capital Outlay Act* that establishes criteria for the application for and the awarding of grants for lights and bleachers for rural high school athletic fields that were previously funded through the *Public School Capital Outlay Act*.

¹ Version .177670.4

Section 5 (pp. 16-33) amends the *Public School Capital Outlay Act* to:

- include in the calculation of a school district’s offset any capital funds received pursuant to Title 14 of the *American Recovery and Reinvestment Act of 2009* unless the funds were distributed as PSCOC grant awards; and
- authorize the PSCOC to increase grant awards from the PSCOF for approved high school projects by up to 20 percent of the total project cost if:
 - the public high school facility has previously qualified for a rural community credit (see Section 7); and
 - the PSCOC finds that the planned use of the additional distribution will enhance public school education at the facility, will further the district’s Educational Plan for Student Success (EPSS), is needed by and will benefit the community, and is a prudent use of state money.

Section 6 (pp. 33-35) amends the *Public School Capital Outlay Act* to include in the calculation of a state-chartered charter school’s offset any capital funds received pursuant to Title 14 of the *American Recovery and Reinvestment Act of 2009*.

Section 7 (pp. 35-37) adds a new section of the *Public School Capital Outlay Act* to establish qualification criteria for a “rural community adjustment.” A public high school facility may qualify if:

- the facility is in an unincorporated, rural area;
- the facility is the only facility practicably available for community purposes and shares its use with the community, primarily at the school district’s expense;
- the community served by the facility does not have the infrastructure or resources to acquire its own facilities or to compensate the school district for use of the facility;
- the state share for existing grants is 70 percent or greater;
- averaged over the previous four property tax years, the district has a total aggregate residential (property) tax rate of at least nine mills;
- at least 70 percent of the students in the district are eligible for free or reduced-fee lunch; and
- the district has complied with all rules adopted by the PSCOC for the implementation of this section.

Section 8 (pp. 37-38) amends the *Public School Capital Improvements Act* to expand the allowed uses of capital improvements property tax receipts to include:

- participating in the Facility Information Management System;
- purchasing or repairing maintenance equipment; and
- contracting with Regional Education Cooperatives (RECs) for maintenance support services.

Section 9 (pp. 38-40) amends the *Public School Capital Improvements Act* to require, effective July 1, 2009, that resolutions for bond elections adopted by local school boards include capital improvements funding for a locally chartered or state-chartered charter school located within the district.

Section 10 (pp. 40-41) amends the *Public School Capital Improvements Act* to:

- require, effective July 1, 2009, that if a locally chartered or state-chartered charter school was included in a resolution for a bond election, the tax receipts (SB-9 funds) be distributed in the same proportion as the charter school's enrollment is to total district enrollment (including state-chartered charter school enrollment); and
- provide that no distribution may be made to a charter school that is in its first year of operation.

Section 11 (pp. 41-47) amends the *Public School Capital Improvements Act* to:

- require school districts and charter schools to include among the priorities for expending SB-9 funds contracts with RECs for maintenance support services;
- require, effective July 1, 2009, that the state match for SB-9 funds be distributed to a charter school in the same proportion as the charter school's enrollment is to total district enrollment (including state-chartered charter school enrollment);
- provide that no distribution may be made to a locally or state-chartered charter school that is in its first year of operation; and
- require that students attending a state-chartered charter school be included in determining a district's total program units to calculate the state match for SB-9 funds.

Section 12 (p. 47) contains the emergency clause.

Fiscal Impact:

CS/SB 378 does not contain an appropriation; however, some sections of the bill may have a fiscal impact, among them:

Section 2 – PSFA reports that:

- limiting PSFA's administrative functions to 5.0 percent of annual grant assistance would have no fiscal impact because its operating budget, since FY 02, has not exceeded 4.16 percent of prior year awards;
- eliminating the funding limit for lease-payment assistance awards, and assuming a 15 percent growth in lease payments over the FY 09 amount, could result in an increase in \$895,000 in lease-payment awards for FY 10;
- awarding grants for lights and bleachers for rural high school athletic fields, could reduce the funds available for standards-based awards by up to \$2.0 million annually, because no additional funding sources are identified; and
- awarding the maximum allowed for roof repair and replacement projects for expenditure in FY 10 through FY 12 could reduce the funds available for standards-based awards in those years by up to \$10.0 million.

Sections 5 and 7 – According to PSFA:

- based on the qualification criteria, the districts that could have schools eligible for the "rural community adjustment" are Cuba, Gadsden, Gallup-McKinley County, Grants-Cibola County, Hagerman, Hatch Valley, Tucumcari, Tularosa, West Las Vegas, and Zuni; and

- the fiscal impact of the “rural community adjustment” is not currently known, and it would depend on when the qualifying schools are awarded grant assistance through the standards-based process.

Sections 9-11 – PSFA notes that the distribution of SB-9 funds to charter schools would result in a reduction in the amount of SB-9 funds that are available to the district in which the charter school is located. Because the distribution of funds is made in the same proportion as the charter school’s enrollment is to total district enrollment, districts with the highest percentage of enrollment in charter schools would experience the greatest reduction in SB-9 funds. PSFA adds that two such districts are Jemez Valley Public Schools (16 percent of enrollment in charter schools) and Albuquerque Public Schools (8.1 percent), compared to a statewide average of 3.6 percent.

PSFA estimates that the provisions in Sections 9-11 of CS/SB 378 would result in a distribution to charter schools of approximately \$3.8 million in SB-9 funds. PSFA based this estimate on the total 2008 distribution of SB-9 funds, including local tax receipts and state match funds (\$106.2 million), and the statewide average percentage of students enrolled in charter schools (3.6 percent).

Issues:

PSFA identifies issues with several sections of CS/SB 378, among them:

Section 2 – Given the current downturn in the economy, districts may experience difficulty in passing new bonds and other property tax initiatives, which are needed by districts to raise revenues for local matches to state awards. According to PSFA, the programs authorized in CS/SB 378 would be small enough to enable districts to pay the local match, and would enable schools to continue to improve their facilities.

Sections 5 and 7 – PSFA cautions that the “rural community adjustment” – a 20 percent increase to an existing award for certain high schools in unincorporated areas – could have a disqualifying effect on the state’s standards-based process for public school capital outlay, as the credit would effectively reduce the district’s local match percentage.

Background:

Originally created by the 2001 Legislature, the Public School Capital Outlay Oversight Task Force (PSCOOTF) is charged with building upon and continuing the work of two previous task forces, one of which accomplished a comprehensive review of the issues concerning capital outlay and the other, which addressed issues brought about by the *Zuni* lawsuit (which challenged the constitutionality of New Mexico’s process for funding public school capital outlay).

The PSCOOTF consists of 25 members including the Speaker of the House, the President Pro Tempore of the Senate, 11 other legislative members, two members of the executive branch of government, and 10 public members, including at least three school superintendents. The duties of the task force are to monitor the overall progress of bringing all public schools up to the statewide adequacy standards; monitor the progress and effectiveness of the public school capital outlay program; monitor the existing permanent revenue streams to ensure that they continue to provide adequate funding; and oversee the work of the PSCOC and the PSFA.

Related Bills:

SB 217a *UNM Geographic Information System*
CS/SB 255 *School Size Capital Funding & Consolidation*
CS/SB 453 *Public School Science Facilities*
*CS/SB 734 *Qualified School Construction Bonds*
HB 463 *Tax Revenue to Certain Charter Schools*
HB 464a *School Capital Outlay Administrative Limits*
*HB 465a *Public School Improvement Definitions*
HB 466a *Public School Lease Purchase*
HB 620 *Public School Capital Outlay Maintenance*
*CS/HB 928 *Qualified School Construction Bonds*