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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/2009

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE Create Computer Hardware Fund SB 234

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$2,500.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to SB-355 and HB-740

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate Could be Substantial				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 234 appropriates \$2.5 million in unexpended balances from a 2007 capital projects (GF) appropriation to the computer hardware loan fund for providing free classroom use of loaned computers to private schools.

The bill establishes provisions under which the department must establish rules for implementing the program.

FISCAL IMPLICATIONS

SB 234 transfers unexpended balances of a \$2.5 million appropriation to PED from the General Fund included in Subsection 442 of Section 55 of Chapter 42 of Laws 2007. This funding is no longer available for expenditure after being reauthorized in Laws 2008, Chapter 83 to change the agency and purpose and extend the time of expenditure for a variety of capital outlay purposes through 2010.

The appropriation of \$2.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall not revert to the general fund but remain in the computer hardware loan fund.

This bill creates a new 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.

SIGNIFICANT ISSUES

A private school approved by PED may apply for the free classroom use of loaned computer hardware purchased with money appropriated from the fund. The application must demonstrate a critical need for the free classroom use of the computer hardware and how the computer hardware will support the use of electronic educational media in relation to the private school's nonsectarian curriculum. If the application is approved, PED and the private school shall enter into a loan agreement that includes:

The New Mexico Constitution, Article XII, Section 3 states in pertinent part, "no part of. . .any. . .funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational, or private school, college or university. Also, Article IX, Section 14 provides that "[n]either the state no any county school district or municipality. . .shall directly or indirectly. . .make any donation to or in aid of any person, association, or public or private corporation." A donation for purposes of this section has been described as an "allocation or appropriation of something of value, without consideration."

According to an analysis conducted by LESC, the Office of the Attorney General notes that SB 234 could raise both federal and state constitutional issues. A 2008 analysis by the Attorney General's office of SB 290, *School Computer Hardware Loan Fund*, an identical bill filed in 2008, notes the following issues:

First Amendment Establishment Clause: The US Constitution forbids states from enacting laws that have the purpose or effect of advancing or inhibiting religion. The US Supreme Court has upheld a school voucher program as not in violation of this ban because the program was neutral with respect to religion and provided assistance directly to a broad class of citizens who, in turn, direct the governmental aid to religious schools wholly as a result of their own independent choice of which schools their children attend. *Zelman v. Simmons-Hardin*, 536 U.S. 639 (2002). Although New Mexico has a state-funded program for public schools that may fund computers and other technology tools to public schools, it is not based on a parent's choice of school their child attends. Nor is the program outlined in this bill—the schools apply, rather than the parents. Also, public schools are not allowed to participate at all, so it is not neutral, nor clearly based on genuine choice by the parent/school.

The LESC analysis further notes that the State Bar Against State Funding of Any Private School: Article XII, Section 3 of our state Constitution bans use of funds appropriated for educational purposes to support any private, sectarian, or denominational school. In Opinion 99-01, the Attorney General concluded that this prohibition is not limited to direct payments from the state to private schools, and that a New Mexico court would likely conclude that tuition assistance under a voucher program is an unconstitutional use of public money for the support of both religious and non-religious private schools. Although SB 234 focuses on computer hardware, it appears the same analysis would prohibit the use of state funds for purposes set out in the bill.

Additional Issues: Although the funding provided for in SB 234 is General Fund monies, the language of the bill would allow use of any state funds, including severance tax and general obligation bond proceeds. Such use could cause problems under federal tax laws applicable to such funding purposes.

The bill requires PED to adopt rules for the implementation of the fund, including standards for approving private school applications.

A private school may hold the parent, guardian or student responsible for any damage to or destruction of loaned computer hardware. PED shall deposit in the fund all money it receives from a private school or its insurer for damage to or loss of hardware.

The bill defines “qualified students” to include private school students.

The PED estimates that 2,000 laptop computers could be purchased with \$2,500.0, which would include accidental damage, protection warranties and maintenance. However, hardware as defined in the bill could mean printers and peripherals (external drives, scanners, digital cameras, any device used beyond the computer, etc.).

Because the bill doesn’t identify software there would be an additional cost either to the school or PED for software.

869 laptops were purchased by the PED for the New Mexico Laptop Learning Initiative (NMLLI), which is serving 869 students. The cost per unit was \$1,221 for a total cost of \$1,610.0.

The private schools will need to be able to accommodate the technology coming into their schools with appropriate infrastructure. In the Request for Applications (RFA), the PED will ask the private schools to justify their infrastructure (wiring and the backbone to support the technology).

There would also need to be professional development to effectively integrate the technology. With the NMLLI, the PED provided in-the-classroom mentoring with individual teachers. This occurred over a four-year cycle in the 7th grades that benefited from the program. The PED created a train-the-trainer model so that the professional development could continue past the 7th grade. It should be noted that the professional development only focused on the core content areas of math, science, social studies and language arts.