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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/05/09

SPONSOR SFC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Public School Capital Outlay Amendments SB CS/378/SFCS

ANALYST Aguilar

### APPROPRIATION (dollars in thousands)

| Appropriation |            | Recurring<br>or Non-Rec | Fund<br>Affected                     |
|---------------|------------|-------------------------|--------------------------------------|
| FY09          | FY10       |                         |                                      |
|               | \$10,000.0 | Recurring               | Public School Capital<br>Outlay Fund |
|               | \$2,000.0  | Nonrecurring            | Public School Capital<br>Outlay Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB-324, HB-465  
Conflicts with HB-465, HB-425

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

Senate Bill 378 appropriates \$12 million from the Public School Capital Outlay Fund (PSCOF) with PSCOC approval of awards, for the purpose of implementing a roof repair and replacement initiative (\$10 million) and for lights and bleachers at rural high school athletic fields (\$2 million).

SB-378 extends the time required for charter schools to be in public buildings from 2010 to 2015 and provides for the total annual expenditures from the PSCOF for the core administrative functions of PSFA not to exceed 5 percent.

SB-378 removes the annual cap of \$7.5 million for lease payments to schools allocated from the capital outlay fund but retains the annual cap of \$700 per student adjusted by the change in the consumer price index of the United States.

The bill provides for certain districts to be eligible, with council approval for an increased distribution of up to 20 percent of the total project cost for an approved high school facility if they meet certain requirements for the rural community adjustment. The bill also expands language allowing districts to use "other funds available to the district" to exceed adequacy

standards.

SB-378 establishes the criteria necessary for a district to qualify for the rural community adjustment for an approved high school facility. It appears that high school projects in 11 of the 89 school districts qualify for the increased distribution.

SB-378 includes a revision to the definitions for the acceptable use of Public School Capital Improvements Act (SB-9) funds to include the purchase and repair of maintenance equipment, the participation in the facility information management system, and the payment of contracts through regional education cooperatives.

The bill further provides for revenues received from the federal American Recovery and Reinvestment Act (federal stimulus) for non-operating purposes shall be subject to an offset in the districts share of the cost of standards based projects in the same manner as direct legislative appropriations are offset.

SB-378 declares an emergency.

### **FISCAL IMPLICATIONS**

The appropriation of \$10 million contained in this bill is a recurring expense to the public school capital outlay fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

The appropriation of \$10 million is included for a roof replacement and renovation program previously funded from the Public School Capital Outlay Fund and while limited to \$10 million is considered to be recurring.

The appropriation of \$2 million contained in this bill is a nonrecurring expense to the public school capital outlay fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

Currently PSCOF is funded from Supplemental Severance Tax Bonds (SSTB's). Under current statute, this revenue stream is dedicated solely for school construction projects awarded by the Public School Capital Outlay Council (PSCOC). However, in recent years many programs have been added to the act. Currently, funds are used to fund the Capital Improvements Act (SB-9), New School Development Act, the lease payment assistance program, CID, state fire marshal and local inspection authority reimbursements, PSFA operating budget, assistance for master facility plans, demolition allocations, and emergency allocations. The annual uses from the fund for purposes other than standards-based awards have increased, resulting in decreased revenues available for standard-based awards. At present, these "other" uses account for approximately \$40 million or 20 percent of the annual SSTB revenues dedicated for school construction.

The December revenue estimate reports that approximately \$182.9 million will be available in SSTBs for the next PSCOC award cycle. The latest PSCOC financial plan suggests that for the 2009 awards cycle, after funding all additional programs from the fund pursuant to CS/SB378, cost overruns, supplemental awards and emergency awards, no new money will be available for standards-based construction projects. This compared to a \$145.8 million average for the last five years, and the smallest amount available for new allocations in 10 years.

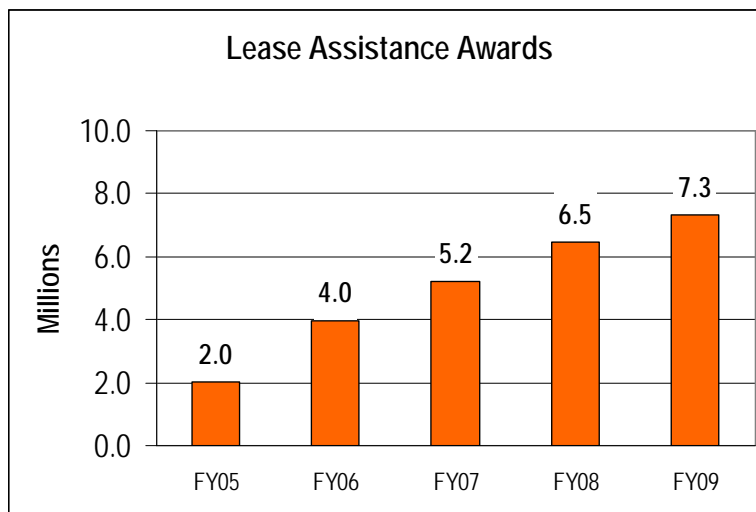
The committee substitute removes the 2020 sunset for the use of PSCOF funds for grants to school districts for the purpose of making lease payments for classroom facilities, presumably extending the use of the fund for these purposes into perpetuity.

### SIGNIFICANT ISSUES

The bill extends the date charter schools are required to be in a public building. The date is extended from 2010 to 2015. The bill provides that all charter schools that have gone through one renewal process will be evaluated and eligible for capital outlay grants pursuant to the PSCOA. Senate Bill 378 also adds another option that will allow a charter school to fulfill the 2015 deadline if they have entered into a lease purchase agreement.

**New Program, Section 2** – The bill authorizes PSCOC to award up to \$10 million for expenditure in FY10, FY11 and FY12 for roof repair and replacement initiatives. Any awards for this program shall be expended within two years from the date of award. This was proposed by PSFA as an alternative to the regular standards-based process at a time when available resources are limited as a way to prevent and mitigate issues that might cause damage to school buildings.

The bill imposes conditions on grants made for lease-purchase payments, removes the annual \$7.5 million cap on lease payment distributions to schools and allows an annual increase tied to the change in the consumer price index of the United States. PSFA reports that the distribution of Lease Assistance funding to charter schools and school districts has increased from \$300/MEM in FY05 (\$2 million) to \$700/MEM in FY09 (\$7.3 million), an increase of 265 percent.



It is uncertain what the growth rate of the program will be going forward. The uncertainty arises from the recent establishment of the state-chartered charter school program and the eligibility of charter schools for funds for lease-purchase type arrangements. Given the recent history of charter school enrollment and these recent developments, annual growth in program distributions may increase anywhere from 7 percent to 20 percent annually over the next several years. A potential FY10 incremental growth of \$895 thousand is projected by applying an overall increase of 15 percent over the current year distribution.

**New Program, Sections 2 & 4** – The bill provides for a process for the PSCOC to make awards of up to \$2 million for expenditure in fiscal years 2009 through 2011 for lights and bleachers for high school athletic fields in rural areas where there are no other athletic fields with lights and bleachers available for use by the high school. The bill is unclear regarding the definition of “rural”. Section 7 of the bill provides for a Rural Community Adjustment for certain facilities and this may be the criteria to be used but it is unclear. It appears this appropriation may be targeted at certain districts particularly if the rural community adjustment criteria are used.

PED notes that the current standards-based process was developed due to the Zuni lawsuit which was filed in 1999. In the suit state district Judge Joseph L. Rich found the State of New Mexico to be in violation of its state constitutional requirement to establish and maintain “a uniform system of public schools sufficient for the education of, and open to, all of the children of school age in the state” in the way the state funded capital outlay expenditures. The judge ordered the state to establish a uniform funding system for capital improvements. In response, the state adopted legislation to phase in a new equalized standards-based system using a set of standard adequacy standards along with a state share formula. The new adopted system was only to pay for those capital expenditures to meet these adequacy standards. The concept of the funding projects above adequacy goes against the grain and the philosophical underpinnings of the new standards-based system. Funding athletic fields are expenditures above the adequacy standards, which was a cornerstone of the new “equalized” standards-based system.

**New Program, Section 7** – The bill provides for certain districts to be eligible, with council approval for an increased distribution of up to 20 percent of the total project cost for an approved high school facility if they meet certain requirements for the rural community adjustment. The bill also expands language allowing districts to use “other funds available to the district” to exceed adequacy standards.

The implications of differentiating certain rural districts from other no-qualifying rural districts and urban districts may effectively undermine the systematic mechanisms inherent in the existing state-local match calculation. Currently the state local match calculation is formulated to average out to 50-50 state-local participation on projects over the long run. This proposed change would skew this formulation toward having the state provide greater than 50 percent of project funding over the long run to selected districts, and may upset equity and fairness issues established by the State’s response to the Zuni Lawsuit with the adoption of the current standards-based capital outlay process and prioritized ranking of schools by their physical condition and adequacy standards needs.

Based on criteria contained in the bill, the eligible school districts that would have to prove “rural” eligibility and demonstrate that no other facilities in the community are available are: Cuba, Gadsden, Gallup, Grants, Hagerman, Hatch, West Las Vegas, Tucumcari, Tularosa and Zuni

The bill amends the Public School Improvements Act (SB-9) to allow the funds to be used by school districts for purchasing maintenance equipment, participating in the facility information management system and for payments under contracts with regional education cooperatives for maintenance support. The original intent of SB-9 funds was specifically for maintenance of school district buildings. These added items to the definition section appear to align with the

original intent of these funds. Currently, school districts are purchasing maintenance equipment with their SB-9 funds.

The bill requires school districts to include the needs of locally and state-chartered schools on the resolution submitted to the voters for approval of an SB- election after July 1, 2009. This section of the bill will give charter schools an additional avenue to access local capital dollars and assist them in getting into public buildings by 2010 and/or to assist them in purchasing a building.

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