

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 232

50th Legislature, 2nd Session, 2012

Tracking Number: .188843.2

Short Title: Capital Outlay for Middle School Science Needs

Sponsor(s): Senators Cynthia Nava, Mary Jane M. García, and Stephen H. Fischmann

Analyst: David Craig

Date: February 9, 2012

Bill Summary:

SB 232 provides access to \$10.0 million of the Public School Capital Outlay Fund (PSCOF) between FY 13 and FY 17 for an initiative to renovate, remodel or provide middle school science facilities, including provision of scientific materials and equipment.

SB 232 also requires:

- Public School Capital Outlay Council (PSCOC) to develop guidelines for the initiative;
- school districts desiring a grant award under the initiative to submit an application to PSCOC;
- school districts to include an assessment in the grant application to PSCOC of the middle school science facilities including equipment and materials that are significantly below adequacy standards;
- PSCOC to create a methodology to rank applications;
- Public School Facilities Authority (PSFA) to verify district assessments of middle school science facilities including equipment and materials that are significantly below adequacy standards;
- a public hearing prior to award; and
- any money allocated for this initiative to be expended within two years.

Fiscal Impact:

SB 232 does not make an appropriation.

SB 232 seeks to use \$10.0 million from the PSCOF per year for the next five fiscal years (FY 13 through FY 17) to renovate, remodel, or provide middle school science facilities or scientific materials and equipment. The PSCOF is funded primarily through supplemental severance tax bonds (SSTB). The PSCOF is used to fund projects under the *Public School Capital Outlay Act* (PSCOA).

According to the Public Education Department (PED), Capital Outlay Bureau, in recent years the following programs have been added to the PSCOA:

- the Public School Capital Improvements Act (SB-9);
- the lease assistance program;
- Construction Industries Division (CID) reimbursements;

- the operating budget of the (PSFA);
- assistance for facility master plans; and
- demolition and emergency allocations.

The PED analysis indicates “annual uses from the fund have increased, which means the additional programs reduce available revenues for standard-based projects.”

The CID reimbursement is for expenditures made to permit and inspect projects funded in whole or in part under the PSCOA. Allowable CID reimbursement is up to 1.0 percent of the average grant assistance authorized from the fund during the three previous fiscal years. In addition, state statute provides for the State Fire Marshal also to be eligible to access these funds, but historically the State Fire Marshal has declined.

Currently, up to 5.0 percent of the average grant assistance authorized from the fund during the three previous fiscal years is to be used for the PSFA operating budget. Unexpended or unencumbered funds for this purpose revert at the end of the year. SB 232 makes no change to these uses.

According to a January 18, 2012 presentation by PSFA to the State Board of Finance:

- the current PSCOF balance is \$469 million;
- PSFA estimates \$169 million in payments for current project expenditures and \$215 million in new contracts in 2012;
- based on recent SSTB forecasts, average annual project expenditures from 2012 to 2015 will be \$127 million; and
- the estimate to maintain the statewide average facility condition is \$108 million.

According to the 2010 PSCOC and PSFA annual report:

- state funding currently represents 39 percent of school construction; and
- at lower state funding levels than the cost to maintain the current State’s facility condition rating, degradation exceeds renovation and repair and facilities decline.

The PSFA analysis indicates:

- the total amount of state funds needed annually depends on the number of applications received and the individual state and local match of the applicant districts;
- the estimate for state-wide space related deficiencies to meet adequacy standards for middle school science classrooms and storage for equipment and material is approximately \$21.0 million;
- current unfunded K-12 facility needs in the 89 school districts and 84 charter schools are approximately \$3.0 billion;
- the PSCOC has committed to \$12.7 million in additional deficiency corrections projects for the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired;
- the PSCOC financial plan for use of the PSCOF indicates that current revenues will only support only previously awarded projects under the standards-based award process; and
- the PSCOF lacks capacity to take on new categories of funding without negatively affecting funding for other K-12 school facilities for which needs already exceed available funding.

Finally, the process for deficiency award funding is a separate process from the standards-based award process.

Fiscal Issues:

If awards under this new building-focused grant application process were to be construed as special legislative appropriations, then these awards would trigger a reduction in state funding for the campus standards-based award process; and other public school capital outlay initiatives in the district may receive less state capital outlay funding.¹

According to the PED analysis, “SB 232 requires that any money allocated be expended within two years of the allocation. Currently, when school districts and/or charter schools receive direct legislative appropriations that are construction related, they are provided up to four years to complete the project.”

In addition, according to the PSFA analysis, “[f]unding science classrooms separate from entire school facilities may improve the overall facility condition index of a school and delay eligibility under the standards-based capital outlay process.”

Substantive Issues:

Zuni Lawsuit Implications

The standards-based award process for public school capital outlay was developed, in part, as a result of a lawsuit brought forth by Zuni Public Schools and the Gallup-McKinley County Public Schools District in 1999, protesting the equity and adequacy of school district capital outlay funding. According to the PED analysis, “The current standards-based process and funding stream for school facilities was developed due to the Zuni lawsuit filed in 1999. The court found 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 2002, the district court special master issued a finding that the state ‘is in good faith and with substantial resources attempting to comply with the requirements’ of the court. The passage of SB-232 could prompt another status conference with the Court to review resources of the State to maintain the uniform system of funding for future public school capital improvements.”

Facility Master Plans

As a requirement of receiving a standards-based capital outlay award, school districts must have a five-year facility master plan in place. Currently, PSFA works with some school districts to develop a five-year master plan to help with long-range capital outlay planning for public school capital outlay in the district. Certain districts that meet size and economic need criteria are eligible for grants to develop these long-term plans. According to information on the PSFA website, as of September 30, 2011:

- 80 of the 89 school districts either had or were developing a facilities master plan;
- 26 school districts have five-year facilities master plans that extend beyond 2013; and
- 13 school districts are currently developing their five-year facilities master plan.

¹ 22-24-5 B (6) NMSA 1978

SB 232 may require districts with a five-year facility master plan to amend their long range capital plan to take advantage of this new source of funding. This may disrupt the application process for standards-based awards.

Creation of New Processes

According to the PSCOC analysis:

- the PSCOC would need to develop an application process for the initiative;
- the PSCOC would need to develop a methodology to evaluate and prioritize the statewide needs for funding; and
- currently there are not standards to measure science equipment.

Related Bills:

SJM 37 *Evaluate Public School Capital Outlay*

HB 139a *Supplemental Road Severance Tax Bonds*