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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/15

SPONSOR Muñoz LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Public School Capital Outlay Uses SB 592

ANALYST Chavez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
≤\$3,000.0	≤\$3,000.0	Recurring until FY20	Debt Service for Gallup
≤\$1,000.0	≤\$1,000.0	Recurring until FY20	Debt Service for Zuni

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	≤ (\$4,000.0)	≤ (\$4,000.0)	Recurring until FY20	PSCOF for Standards- Based Awards

Duplicates HB 490  
Relates to HB 352, SB 128, SB 236, HB 159

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public School Facilities Authority (PSFA)  
Public Education Department (PED)  
Higher Education Department (HED)  
Public School Insurance Authority (PSIA)

## SUMMARY

### Synopsis of Bill

Senate Bill 592 amends sections of the Severance Tax Bonding Act (STBA), the General Obligation Bond Act (GOBA), the Public School Capital Improvements Act (PSCIA), the Public School Buildings Act (PSBA) and the Public School Capital Outlay Act (PSCOA) to define “school building” to include public school administration buildings, teacher housing (“teacherages”), and any related structure or facility of a public school.

Finally, the bill allocates funds from the Public School Capital Outlay Fund (PSCOF) in FY16 through FY20 for Gallup McKinley County Schools (GMCS) and Zuni Public Schools (ZPS) for loan payments on revenue bonds issued by the school districts. The bill allocates, for GMCS, the lesser of \$3 million dollars or the amount in debt service payments due for that fiscal year, multiplied by the percentage representing the state share of a project for the school district for FY16 through FY20. Over five years, the total allocation to GMCS could equal up to \$15 million dollars from the PSCOF. The bill also allocates, for ZPS, the lesser of \$1 million dollars or the amount in debt service payments due for that fiscal year, multiplied by the percentage representing the state share of a project for the school district for FY16 through FY20. Over five years, the total allocation to ZPS could equal up to \$5 million dollars from the PSCOF.

## FISCAL IMPLICATIONS

The bill allocates, for GMCS, the lesser of \$3 million dollars or the amount in debt service payments due for that fiscal year, multiplied by the percentage representing the state share of a project for the school district for FY16 through FY20. Over five years, the total allocation to GMCS could equal up to \$15 million dollars from the PSCOF. More detailed information for the GMCS debt service schedule was not available to LFC staff at the time of writing this FIR.

The bill allocates, for ZPS, the lesser of \$1 million dollars or the amount in debt service payments due for that fiscal year, multiplied by the percentage representing the state share of a project for the school district for FY16 through FY20. While the maximum five-year expenditure could be as high as \$5 million, according to a Zuni debt service schedule received by PSFA in December 2014 the actual payments are closer to \$725 thousand annually for a total five-year cost of approximately \$3.6 million.

PED and PSFA both comment allocating PSCOF revenue to making debt service payments for revenue bonds issued by Gallup and Zuni school districts will decrease the funds available annually for standards-based projects.

There bill may also change what is eligible to be funded according to the PSCOA by defining school buildings to include teacherages, administration buildings, and any other related school structure or facility. While it would appear that the intent of this change is to expand the facilities eligible for standards-based awards, it is unclear if inclusion of “school buildings” actually does this as the term is not used elsewhere in the PSCOA (see Significant Issues).

However, assuming that the bill does expand the facilities eligible for standards-based awards, the total number of public school facilities eligible for funding under the PSCOA, including teacherages and administration buildings, would increase. PSFA notes their facility assessment

database (FAD) has incomplete information regarding teacherages but currently has identified 53 teacherages in 22 school districts, adding that the FAD does not have size or condition of the spaces so the potential increase in building spaces eligible for public school capital outlay funding is unknown at this time. It is also difficult to account for changes to standards-based awards to include administration buildings and all other facilities.

PSFA notes that the potential fiscal impact of the inclusion of educational support spaces including administration buildings, teacher housing, playing fields, bus barns and other educational support facilities that would be eligible for public school capital outlay funding is indeterminate but could be significant. PSFA provides the following table that provides rough estimates for only teacherages and main district offices. PSFA adds that a more accurate cost estimate would require standards to measure against and then visits to measure deviation from standards and condition assessments:

TEACHERAGES		ADMINISTRATIVE SPACES	
Districts with Teacherages	33	Districts with Administrative Space	89
Teacherages(1600 ft <sup>2</sup> ea.) @ each district	50	Average size (ft <sup>2</sup> )	40,000
Total Teacherages	1,650	Total space	3,560,000
Facilities that Need Replacement (50%)	50%	Facilities in Need of Replacement	30%
<b>Total space in need of replacement (ft<sup>2</sup>)</b>	<b>1,320,000</b>	<b>Total Space in Need of Replacement (ft<sup>2</sup>)</b>	<b>1,068,000</b>
Replacement cost (\$/ft <sup>2</sup> ) \$	190	Replacement Cost (\$340/ft <sup>2</sup> ) \$	340
Total cost of facility replacement needs \$	250,800,000	Total Cost of Facility Replacement Needs \$	363,120,000
Program Duration (years)	10	Program Duration (years)	10
Annual Program Cost (all sources) \$	25,080,000	Annual Program Cost (all sources) \$	36,312,000
State share (70%)	70%	State Share (%)	60%
<b>Estimated Annual Program Size: \$</b>	<b>17,556,000</b>	<b>Estimated Annual Program Size: \$</b>	<b>21,787,200</b>

**Total: \$ 39,343,200**

It should be noted that due to significant reductions in oil and gas prices since the December revenue estimate, the February bonding capacity estimate was reduced significantly. The largest impact from the commodity price decline was seen in SSTB capacity, which was reduced by a total \$124 million over the next five years. For fiscal year 2016, SSTB capacity was revised downward by \$54.2 million. This reduction will have a significant impact on the ability of the PSCOC to award funding for school facilities. The provisions in this bill would further reduce the availability of such funding.

Additionally, the Severance Tax Bonds Projects bill being considered by the Legislature (SB 159) contains almost \$9 million in additional appropriations from the PSCOF – \$6.2 million to purchase school buses and \$2.5 million to renovate and construct prekindergarten facilities statewide.

SB 159 also includes a duplicate appropriation from the PSCOF for FY16 in the amount of \$5 million for the purpose of addressing deficiencies and other infrastructure improvements for GMCS, ZPS, and Grants public school districts.

PSFA notes appropriations by the Legislature from the PSCOF over the last two fiscal years have been in excess of \$60 million.

## **SIGNIFICANT ISSUES**

### **Background: Zuni Lawsuit History and Current Litigation**

Section 6 of Article XII of the New Mexico Constitution guarantees “A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.” The current standards-based public school capital outlay program is the result of the *Zuni* lawsuit filed in the late 1990’s by Gallup, Zuni, and Grants-Cibola County public schools. The litigant school districts argued that the “education clause” of the New Mexico Constitution applied to public school capital outlay funding, requiring the state to ensure sufficient, uniform capital outlay funding. The case was decided in favor of the litigant school districts and the current standards-based program was implemented in the early 2000’s, and approved by the court.

The program has three key elements – uniform adequacy standards that define the educational space the state will making matching awards to build; a system that ranks each facility against all other facilities in the state in order to prioritize awards to the worst facilities first; and a formula that considers the relative wealth of each school district to determine how much of a project will be funded by the state and how much of a project will be funded by the local school district. “Adequacy” is defined as “the minimum acceptable level for the physical condition and capacity of school buildings, the educational suitability of educational facilities and the need for technological infrastructure.” (Section 22-24-25C NMSA 1978) Adequacy standards also define a maximum allowable gross square footage based on the total number of students attending a school, as well as the types of spaces the state will fund, and include facilities such as a cafeteria, gymnasium, and classroom space.

Additionally, the standards-based program has waiver provisions that allow the Public School Capital Outlay Council to waive the local matching requirements for districts that have made a good faith effort to use all of their local resources.

The litigant districts requested a review of the current standards-based program in 2014, alleging that the types of facilities currently included in the adequacy standards are not broad enough. They have requested the PSCOF be used to make existing debt service payments and the inclusion of space not currently included in the definition of adequacy, including teacherages and administrative space. The litigant districts agreed to postpone a November trial setting on the merits of their requests to allow the Legislature an opportunity to address their concerns.

This bill proposes to expand the type of facilities eligible for standards-based funding to include “any related public school structure or facility, including teacher housing in school districts with schools located in sparsely populated, isolated, rural areas, that is owned, acquired or constructed by a school district as necessary to carry out the functions of the school district.” The changes made in this definition would significantly expand what is currently funded by PSCOC, and greatly increases the range of possible awards that can be made to school districts. Consequently, this will likely reduce the number of standards-based projects that can be awarded annually.

The PSCOF is the source of funding for the standards-based capital outlay program for public

schools statewide, as well as the state match for the Public School Capital Improvements Act (SB9), lease assistance program, master plan assistance, and other programs under the Public School Capital Outlay Act (Chapter 22, Article 24 NMSA 1978).

Changes to the General Obligation Bond Act (GOBA), the Public School Capital Improvements Act (PSCIA), the Public School Buildings Act (PSBA) and the Public School Capital Outlay Act (PSCOA) are further outlined below:

### **GOBA**

The GOBA currently allows school districts to issue GO bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, purchasing or improving school grounds, purchasing computer software and hardware for student use in public schools, or providing matching funds for capital outlay projects funded pursuant to the PSCOA. The bill amends the Act to define “school building” as “public school administration buildings, or any related public school structure or facility, including teacher housing (“teacherages”)", allowing school districts to use GO bonds for these purposes.

A 1981 Attorney General’s Opinion (No. 81-01) defines school building to mean a structure which is used for teaching. Buildings used for teacher housing which are not used for instructional purposes do not fall within the meaning of the term ‘school building’ under this definition and under current law, revenues generated by the school district general obligation bonds may not be used to construct teacher housing. This bill would change the definition of public buildings in statute to include investments in teacher housing and other school facilities as allowable uses of general obligation bond revenues.

### **PSCOA**

The bill includes the same definition of school building in the PSCOA. It appears the intent of the change on page 6 of the bill is to expand the facilities eligible for standards-based awards. However, it is unclear if inclusion of the definition of “school buildings” actually does this as the term “school building” is not used elsewhere in the PSCOA. The Legislature may wish to consider amending this term to “public school facilities” or “facilities” to ensure these types of facilities are eligible for standards-based awards under the PSCOA.

### **PSCIA, PSBA**

The bill also changes the definition of school building in the PSCIA and the PSBA which would expand what is allowed for school districts in imposing local levies for capital improvements. However, it is important to note that Section 22-25-9 of the PSCIA expressly prohibits a state distribution from the public school capital improvements fund be used for capital improvements to any administration building of a school district. (See Technical Issues)

### **DUPLICATION, RELATIONSHIP**

HB 352, SB 128 and SB 236 all amend different sections of 22-24-4 NMSA 1978.

HB 159 appropriates nearly \$9 million from the PSCOF for school buses and prekindergarten classrooms.

HB 159 also appropriates \$5 million from the PSCOF for expenditure in FY15 through FY 19 to address deficiencies and other infrastructure improvements for schools under litigation in the Zuni public school district, the Gallup-McKinley county public school district and the Grants-Cibola county school district.

HB 490 is a duplicate.

### **ADMINISTRATIVE ISSUES**

Changes to the definitions of public buildings would require PSCOC to develop adequacy standards for these additional facilities in the standards-based program.

### **TECHNICAL ISSUES**

PED notes Section 6 of the bill adds the definition of “school building” to section 22-25-2 NMSA 1978 of the PSCIA that includes expenditures for a public school administration building and teacher housing. However, pursuant to 22-25-9(A) NMSA 1978, language prohibits any state distribution to be used for any improvements to any administration building. The legislature may consider amending language to one or both of these sections so that they do not contradict each other.

It appears the intent of the definition of “school building” in the PSCOA on page 6 of the bill is to expand the facilities eligible for standards-based awards. However, the term “school building” is not used elsewhere in the PSCOA. The Legislature may wish to consider amending this term to “public school facilities” or “facilities” to ensure these types of facilities are eligible for standards-based awards under the PSCOA.

If the change to the definition of school building in the PSCOA is interpreted to expand what is eligible for standards-based funding, there may be disagreement between what statute defines as a school building and what is defined as meeting adequacy by the PSCOC. Section 22-24-5C states that “the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for education technology infrastructure.” If this bill is enacted, PSCOC would have to update the definition of adequacy to match the expanded definition of school facilities.

### **OTHER SUBSTANTIVE ISSUES**

PSFA reported to PSCOC on January 15, 2015 that the current PSCOF balance projection shows that the rate of SSTB sales and budgeting of revenues outpace the needs of the current project schedules. Reductions in SSTB capacity available for existing PSCOC programs and awards would further exacerbate the risk of project delays.

PED’s analysis states, “There is no criteria used in determining these appropriations and does not address all school-age children within the state, which was a cornerstone of the new ‘equalized’ standards-based system. Based on the language of the bill only two districts qualify.”

Similarly, PSFA notes that “the 2002 report of the Special Master appointed as a result of the

Zuni lawsuit specifically highlighted ‘the disequalizing effect of direct legislative appropriations to individual schools for capital outlay purposes.’ The offset was enacted to mitigate this concern. Including the use of the public school capital outlay fund to service debt for two specific school districts is for all intents and purposes a direct appropriation and may be viewed by the other eighty-seven school districts as having a disequalizing effect on the standards-based process.”

## **ALTERNATIVES**

PED notes school districts can currently issue teacher housing revenue bonds if approved by the Public Education Department through the Teacher Housing Revenue Bond Act (22-19A-1 NMSA 1978). These bonds can be repaid through "pledgeable revenue", defined as net income from the housing project and federal payments.

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