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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>*HB232/HECS/aSEC</u>	Sponsor	<u>HEC</u>
Tracking Number	<u>.219965.1</u>	Committee Referrals	<u>HEC/HAFC; SEC/SFC</u>
Short Title	<u>Public School Ventilation Improvement Act</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>2/22/21</u>
		Last Updated	<u>3/12/21</u>

BILL SUMMARY

Synopsis of SEC Amendment:

The Senate Education Committee amendment to House Education Committee Substitute for House Bill 232 (*HB232/HECS/aSEC) with emergency clause strikes all provisions in the bill that created a public school ventilation improvement fund and a grant program administered by the Public Education Department (PED). Instead, the bill as amended would require all school districts and charter schools to undertake a ventilation assessment and requires all school districts and charter schools to make appropriate corrective actions identified in the assessment.

Any work required by a ventilation assessment must be performed by a “skilled an trained construction workforce,” defined in the bill as “a workforce in which at least forty percent of the workers are graduates of or registered in and attending an apprenticeship program registered with the Workforce Solutions Department or one to which the department has granted reciprocal approval for the applicable construction occupation.”

Synopsis of HEC Substitute:

The House Education Committee Substitute for House Bill 232 with emergency clause (*HB232/HECS) enacts a new section of the Public School Code to create the “Public School Ventilation Improvement Act.” The act creates a public school ventilation improvement fund in the state treasury and lays out criteria for a grant program administered by PED to accomplish any of the following:

- Install carbon dioxide monitors on an existing heating, ventilation, and air conditioning (HVAC) system;
- Assess, test, and adjust a public school’s HVAC system;
- Repair, upgrade, or replace an existing HVAC system;
- Install a standalone HVAC system.

Each grant applicant is required to obtain an assessment to verify whether an HVAC system is operating in accordance with design parameters, meets the requirements of the New Mexico Mechanical Code, and aligns with Covid-19 response recommendations from the American

Society of Heating, Refrigerating and Air Conditioning Engineers (AHSRAE). The assessment will determine the corrective actions required for a deficient HVAC system, and estimate the cost of necessary repairs, upgrades, or replacements.

Grant funding may be used to fund any of the following expenses:

- Authoring and verifying ventilation system assessments and reports;
- Conducting general maintenance;
- Reading and adjusting ventilation rates;
- Replacing filters to meet a minimum efficiency reporting value (MERV) of at least 13;
- Installing carbon dioxide monitors;
- Installing an entire HVAC system;
- Purchasing portable filtration and air cleaning systems, but only if the HVAC assessment reveals the existing HVAC system cannot meet minimum filtration and ventilation requirements;
- Upgrading HVAC systems to make them more energy efficient, but only if PED determines there is sufficient funding available.

On completion of a grant-funded HVAC system repair or replacement, the school district or charter school is required to submit a report to PED listing the name of all certified technicians, mechanical engineers, and other professionals who completed the assessment and construction, the initial HVAC system operating conditions;

- Any adjustments, repairs, upgrades, or replacements made;
- The final HVAC operating conditions, including the MERV and the ventilation and exhaust rates of classrooms, auditoriums, gyms, restrooms, offices, and other occupied spaces;
- Verification of carbon dioxide monitors;
- Verification of testing from qualified personnel.

PED is required to promulgate rules to execute the grant program by October 1, 2021. At a minimum, administrative rules will need to describe required application content and a methodology to distribute funding. PED would be required to prioritize funding for projects in school districts without sufficient local resources to improve HVAC systems, projects crucial to the reopening of a public schools, and projects required for the health and safety of students and school personnel.

FISCAL IMPACT

The bill does not contain an appropriation.

*HB232/HECS/aSEC does not appropriate funding for ventilation assessments and repairs the bill would require. Funding for this program is also not included in the House Appropriations and Finance Committee substitute for HB2 or in the junior appropriations bill (SB377). In the absence of a legislative appropriation, the bill creates an unfunded mandate on school districts and charter schools. The bill also does not contain a reimbursement mechanism for school districts and charter schools that may have already spent operational funds to purchase high-quality air filters.

School districts and charter schools may decide to use federal Covid-19 relief funds to hire certified assessors to perform HVAC assessments and certified technicians to perform the assessment. According to the Learning Policy Institute, New Mexico is slated to receive \$979 million in federal funding from the federal American Rescue Plan Act, signed into law in March 2020. Of that amount, a majority (\$857 million) will flow directly to school districts and charter schools through the Title I program. HVAC assessments and repair are an allowable use of Covid-19 relief funding,

but using funds for this purpose dilutes the amount of funding available to support direct instruction and address the learning loss expected from nearly a full school year of virtual instruction.

The ventilation assessments and repair work required by the bill are not constrained by any timeframe, which could create significant recurring costs at school districts and charter schools. Based on the provisions in the bill, it is unclear whether HVAC assessments will need to occur annually or even semiannually, but following every assessment, school districts and charter schools are required to conduct repairs and replacements. These requirements will exist in law perpetually, requiring significant annual investments even after the state's initial response to the Covid-19 pandemic.

PSFA estimates replacing or upgrading an HVAC system to MERV 13 will cost approximately \$500 thousand to \$5 million per school site, depending widely on the state of the current system and the size of the school. To ensure new HVAC systems are functional and code compliant, PSFA notes HVAC replacement projects often require additional upgrades to associated building systems, including electrical, roof, ceilings, and insulation, which can increase the cost of the projects substantially.

PSFA also notes modern HVAC systems designed to cycle higher quantities of air at a faster rate consume additional energy, resulting in higher operating costs at school districts. Typically, the Legislature accounts for increases in utility costs within the public school funding formula, suggesting HB232/HECS may require increases to the state equalization guarantee distribution in subsequent fiscal years.

Analysis by PSFA notes Albuquerque Public Schools spent \$7.5 million to upgrade to MERV 13 filters in accordance with PED guidance in Fall 2020. PSFA explains this cost will recur quarterly to meet ASHRAE recommendations that the filters be replaced on a quarterly basis.

SUBSTANTIVE ISSUES

Minimum air quality requirements were listed as a requirement for school reentry in a PED memo to all school superintendents, charter school leaders, and school board members on October 15, 2020. To reopen for in-person instruction, PED requires schools to upgrade to air filters with a MERV 13 rating. If MERV 13 filters are unavailable or incompatible with a building's current HVAC system, PED will allow schools to reopen using the highest MERV filter compatible with current systems, provided that those schools must also take steps to improve air circulation, like running central air fans continuously, opening windows and doors, and deploying box fans and portable air purifier systems. The last-minute air quality guidance drove school district costs up substantially and resulted in many schools being unable to open on their original schedule.

School districts and charter schools likely still need support to bring their HVAC systems into compliance with PED guidance and ASHRAE recommendations. In the months since the guidance was issued, a number of school districts informally asked the Public School Capital Outlay Council (PSCOC) and PSFA to help purchase new air filters, but consensus from PSCOC members was that air filters qualify as an operational expense, and funding them through the Council will set a tenuous precedent that the public school capital outlay fund can be used to cover operational expenses. A number of school districts may have spent operational funds, cash reserves, or federal governor's emergency education recovery (GEER) funds to correct HVAC filter deficiencies. While the actual demand is difficult to estimate, PSFA anticipates an increase in the number of

schools that apply for systems-based awards for HVAC system replacement in FY22, given PED requirements and the substantial focus on preventing the spread of Covid-19.

While the bill requires “consultation” with PSFA, *HB232/HECS/aSEC circumvents the state’s current needs-based system of funding for public school construction projects administered by PSFA and the Public School Capital Outlay Council (PSCOC). In the two decades since the original *Zuni* lawsuit ruling, policymakers have built a system of public school facility funding that evaluates school conditions against statewide “adequacy standards” and prioritizes funding for schools in the poorest condition according to the weighted New Mexico condition index (wNMCI). HB232/HECS does not require PED to prioritize funding to schools with the highest facility needs, instead requiring the department create a new ranking methodology to prioritize funding to school districts with insufficient local revenues and schools that need HVAC system upgrades to safely reopen.

As a result, *HB232/HECS/aSEC may further disequalize the state’s capital outlay funding system, which was found in a December 2020 ruling in the *Zuni* capital outlay lawsuit to have exacerbated “gross disparities” between property-poor and property-wealthy school districts. At a minimum, school districts and charter schools receiving a grant for HVAC system upgrades should be subject to direct legislative offsets, typically applied to school districts that receive a direct appropriation to reduce the amount of state funding for a future project by the amount of the appropriation.

OTHER SIGNIFICANT ISSUES

To respond to airborne particulates of the virus responsible for the Covid-19 pandemic, PSFA’s analysis notes the federal Centers for Disease Control and Prevention (CDC) and ASHRAE recommend schools replace or renovate HVAC systems to meet three goals;

- Increase outdoor air ventilation rates to dilute and flush virus particulates from the building;
- Install more restrictive air filters to capture virus particulates;
- Install supplemental air cleaning devices and technologies.

Analysis from the Department of Health also emphasizes the importance of ventilation to reduce the presence of airborne virus particulates and notes increased ventilation can have lasting impacts on the building occupants’ health by fighting other respiratory illnesses.

ALTERNATIVES

The sponsor should consider creating the grant program as a supplemental program awarded by PSCOC and administered by PSFA. PSFA is equipped with the technical expertise to help school districts and charter schools administer complicated HVAC upgrade projects and already does so on an annual basis during the systems-based awards program. Standalone programs administered by PSFA have successfully met the increased demand of facility needs in responding to emergencies. For example, following a fatal 2017 shooting at Aztec High School in northern New Mexico, the state made a commitment to fund up to \$10 million per year from FY19 to FY22 to improve security infrastructure at public schools.

Alternatively, the sponsor may wish to allow the existing systems-based awards program to handle the demand for HVAC system upgrades on a case-by-case basis. The systems-based award program allocates state funds to schools demonstrating the highest facility needs, and PSFA provides technical support to school districts each step of the way, from project applications to construction. Moreover, the systems-based program is designed to equitably distribute limited state

resources by requiring school districts with high property wealth to use more of their local revenue on construction projects.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)
- Department of Health (DOH)

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