

<b>LFC Requester:</b>	<b>Katie Chavez</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date**    23 February 2015  
**Bill No:**    SB 592

**Sponsor:**    Sen. George K. Muñoz  
**Short**        Public School Capital Outlay  
**Title:**        Uses

**Agency Code:**    Attorney General's Office  
**Person Writing**        Luis Carrasco, AAG.  
**Phone:**    827-6040        **Email**    LCarrasco@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

Senate Bill 592 (“SB592”) is an act that proposes to amend several sections of the New Mexico Statutes Annotated to expand the uses for which certain state revenues may be used. SB592 would amend the statutes governing the issuance of supplemental severance tax bonds to authorize such bonds to be used to finance “public school capital outlay projects or other purposes” provided pursuant to the Public School Capital Outlay Act or the Public School Capital Improvements Act, whereas the current version of those statutes authorize expenditures only for “public school capital outlay projects” and exclude any reference to “other purposes.”

SB592 would add a new definition for the term “school building” to the Public School Capital Outlay Act, the Public School Capital Improvements Act, the Public School Buildings Act, and the statutory provisions governing the issuance of school district general obligation bonds and the permitted uses of the Public School Capital Outlay Fund. Under the new definition, a “school building” would include public school buildings, public school administration buildings, or any related public school structure or facility, including teacher housing in school districts with schools located in sparsely populated, isolated, rural areas, that are owned, acquired or constructed by a school district as necessary to carry out the functions of the school district.

SB592 would also amend the statute governing authorized uses of the Public School Capital Outlay Fund to authorize the Gallup-McKinley County and Zuni Public School Districts to expend in each of fiscal years 2016 through 2020, the lesser of \$3,000,000 or the amount in debt service payments due for bonds issued by the school district multiplied by the percentage representing the state share of a project for the school district as established by NMSA 1978, Section 22-24-5, and the lesser of \$1,000,000 or the amount in loan payments due multiplied by the percentage representing the state share of a project for the school district as established by NMSA 1978, Section 22-24-5, respectively.

SB592 makes other non-substantive changes to enhance the structure and comprehension of each of the statutes described above, to reflect changes to the names of certain state agencies, and to make reference to extant statutory sections as opposed to references to session laws.

**FISCAL IMPLICATIONS**

Because the Attorney General's Office ("AGO") acts as counsel to the State Board of Finance, which has responsibility for selling the severance tax bonds that would be used to fund public school capital outlay projects, the AGO will be involved in reviewing all capital outlay projects for compliance with Article IX, Section 14 of the New Mexico Constitution, otherwise known as the "Anti-Donation Clause." Where SB592's expanded uses of public monies for public school capital outlay projects results in an increase in the amount of reviews it must conduct to ensure compliance with the Anti-Donation Clause, the AGO will expend greater resources and staff time in conducting those reviews. An appropriation to the AGO to meet the greater workload would be appropriate and necessary.

## **SIGNIFICANT ISSUES**

SB592's proposed amendments expanding the use of public monies to construct, maintain, furnish or otherwise improve teacher housing in sparsely populated, isolated, and rural areas should not offend the Anti-Donation Clause, so long as the school district (or another public entity) owns such facilities and leases the facilities to teachers in exchange for rent or services at fair market value. Aside from the constitutional concern, it is not clear whether school districts are prepared to, or possess the resources necessary to act as and fulfill the responsibilities of landlords to the teachers who would occupy the facilities, in addition to the responsibilities of administering public education within their districts.

## **PERFORMANCE IMPLICATIONS**

As noted above, if the AGO will be called upon to increase resources dedicated to assisting the State Board of Finance in connection with public school capital outlay projects, additional resources will be expended by the AGO. In light of current staffing and funding shortages the AGO is experiencing, if no appropriation to the AGO for additional resources to perform the additional work is made, the AGO's performance with regard to other duties and responsibilities will be diminished.

## **ADMINISTRATIVE IMPLICATIONS**

As noted above, additional AGO staff time and other expenditures will likely be dedicated to assist the State Board of Finance in meeting increased project review demands under SB592.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

N/A

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The status quo will remain. Supplemental Severance Tax Bonds may be used only for “public school capital outlay projects,” and not for “other purposes” pursuant to the Public School Capital Outlay Act or the Public School Capital Improvements Act. No definition of the term “school building” will be added to the Public School Capital Outlay Act, the Public School Capital Improvements Act, the Public School Buildings Act, and the statutory provisions governing the issuance of school district general obligation bonds and the permitted uses of the Public School Capital Outlay Fund that will permit the public monies authorized thereunder to be used to construct, improve or furnish any school related structure or facility, including teacher housing in school districts with schools located in sparsely populated, isolated, rural areas. The Gallup-McKinley County and Zuni Public School Districts will not be authorized to make the debt service and loan payments described above.

### **AMENDMENTS**

It may be prudent to augment SB592’s expansion of the use of public monies for capital outlay projects for teacher housing to specify that such uses of public funds must be provided under terms and arrangements satisfying the provisions of the Anti-Donation Clause.