

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 2/10/2021
Bill No: HB232

Sponsor: Sheryl Williams Stapleton
PUBLIC SCHOOL
Short Title: VENTILATION IMPROVEMENT ACT

Agency Name and Code Number: PED-924

Person Writing: John Sena
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 232 (HB232) proposes the “Public School Ventilation Improvement Act” within the Public School Code. HB232 would require the Public Education Department to reward "ventilation program grants" to school districts for mechanical ventilation system improvement projects in public schools. Grants may be used to assess, test and adjust a public school's mechanical ventilation system and, if necessary or cost-effective, to repair, upgrade or replace the existing heating, ventilation and air conditioning system or install a stand-alone mechanical ventilation system. Allowable expenses would include ventilation assessments, verification, general maintenance, reading and adjustment of ventilation rates, filter replacement to meet a minimum efficiency reporting value of at least thirteen, carbon dioxide monitor installation and whole-system installation or replacement. Grants may also be used to reimburse a school district for mechanical ventilation system capital improvements that were contracted and performed after August 1, 2020.

HB232 creates the non-reverting "public school ventilation improvement fund" in the state treasury.

The Public Education Department (PED) would be required to administer the new program. The department shall promulgate a rule to carry out the provisions of the Public School Ventilation Improvement Act no later than October 1, 2021.

The effective date of the provisions of this act is July 1, 2021.

FISCAL IMPLICATIONS

HB232 does not contain an appropriation.

At this time, it is unclear if there will be a separate appropriation or if there will be a source of funding identified in the General Appropriations Act. Without an appropriation, the department would be unable to enact provisions of this bill.

SIGNIFICANT ISSUES

Covid-19 response. The Covid-19 pandemic has raised many issues related to the efficiency and effectiveness of school ventilation systems. Because research found the disease to be airborne,

school officials across the county have worked to ensure school ventilation systems contained appropriate filtration to reduce spread of Covid-19. In New Mexico, schools were required to install the highest rated filters ventilation systems could accommodate and adopt other measures to reduce the spread of the disease. Already, many school districts and charter schools have worked to upgrade systems and many may continue to do so. It is likely some may use at least a portion of federal funding from the recently passed Coronavirus Response and Relief Supplemental Act (CRRSA). New Mexico schools will receive approximately \$400 million, allocated based on federal Title I status, in order to address Covid-19-related issues.

Impacts to capital outlay funding. It is unclear if the state and local match percentage used to fund Public School Capital Outlay (PSCOC) projects will be applied to the grants funded in this bill. As a result of the Zuni lawsuit filed in 1999, Judge Joseph L. Rich ordered the state to establish and implement a uniform funding system for capital improvements of New Mexico school districts and for correcting past inequities. In response to the judge's order, New Mexico changed the way in which the state funds public school capital outlay expenditures by making extensive amendments to the Public School Capital Outlay Act (PSCOA). One of the amendments implemented a state-share formula based upon a local school district's property tax wealth and its local effort.

ADMINISTRATIVE IMPLICATIONS

Currently, the PED has only two full-time employees (FTE) in the Capital Outlay Bureau. Both FTE's are classified as financial coordinators who are currently responsible for the fiscal administration of approximately 300+ direct legislative appropriations, annual SB-9 appropriations made to 88 school districts and approximately 90 charter schools, totaling approximately \$19 million dollars per year, and the G.O.B. library funds that are allocated to every school district and charter school semi-annually. The PED Capital Outlay Bureau is also responsible for reviewing and approving/disapproving property disposition requests and lease purchase arrangements submitted by school districts and charter schools. Responsibilities also include tracking the status of all SB-9 and HB-33 elections and assisting with setting the appropriate tax rates and calculating and monitoring of the bonded indebtedness for all 89 school districts biannually.

PED may not have the capacity nor the expertise within its current staffing to administer the new program proposed in HB232.

Lastly, the date for rule promulgation, October 1, 2021, may not allow the PED enough time to conduct stakeholder engagement, draft a qualitative rule, publish a Notice of Rulemaking, receive public comment, and adopt a final rule by the date specified in HB232.

TECHNICAL ISSUES

Section 3 Subsection F allows retroactive reimbursements to be made for expenditures made after August 1, 2020. There may be issues with retroactive payments if the source of funds is from severance tax bonds. This section may need to be reviewed by the State Board of Finance.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The legislature may consider adding this program to the PSCOA instead of the Public School Code. The Public School Facilities Authority (PSFA) is the state agency currently responsible for the administration of all programs within this Act and serves as staff to the PSCOC. The PSFA has approximately 50 full-time employees, with many of them having significant architecture and construction backgrounds. The PSFA may have more capacity and expertise to administer this type of program.

The PSCOA currently has a “Systems-Based Program” that seems to duplicate the program proposed in this bill. The systems based program allows school districts and charter schools to apply for funds to improve different types of systems that will prolong the life of a building without having to rebuild a school or conduct a major renovation. The replacement or repair of an HVAC systems as proposed within this bill would qualify for a system-based award under the current program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

School districts and charter schools can continue to apply for system-based awards through the PSCOC or use local resources to pay for HVAC upgrades or replacements.

AMENDMENTS

None as of 2/10/2021.