

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 873 Special Facility Construction Account

SPONSOR(S): Diaz, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1064

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee		Cherry	Fudge
2) Appropriations Committee			
3) Education Committee			

SUMMARY ANALYSIS

The Special Facility Construction Account (SFCA) provides construction funds to school districts which have urgent construction needs but lack sufficient resources. The bill modifies current law regarding the SFCA to incorporate technical changes suggested by the Department of Education and options recommended by the Office of Program Policy Analysis and Government Accountability (OPPAGA) to improve the effectiveness of the construction projects funded by the SFCA. Specifically, the bill:

- Modifies school district participation requirements pertaining to new construction funding and discretionary capital improvement millage funding.
- Changes the annual deadline for district school boards to certify final phase construction plans as complete and in compliance with the required codes.
- Specifies that a representative of the department must chair the Special Facility Construction Committee (SFCC); and
- Modifies requirements relating to application review, student enrollment projections, educational plant surveys, and project cost overruns.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The SFCA is established as part of the Public Education Capital Outlay (PECO) and Debt Service Trust Fund to provide construction funds to school districts that have urgent construction needs but lack sufficient resources, and has no reasonable expectation of raising the needed funds over the next three years from authorized sources of capital outlay revenue.¹ A district may not receive funds for more than one approved project in any 3-year period.² The department must encourage a construction project that reduces the average size of schools in the district.³

Typically, the projects that receive funds through the SFCA are located in rural areas and that have an insufficient tax base to fund large construction projects.⁴ The state's smaller school districts, which serve fewer than 20,000 students, generally raise considerably less through local discretionary property taxes than larger Florida school districts.⁵ To improve the effectiveness of programs funded by the SFCA, the OPPAGA recommended the following:

- Clarify the types of projects that are eligible for funding.
- Clarify the department's rule in making funding decisions.
- Require that the department conduct educational plant surveys.
- Require the department to approve the final construction plans for funded projects.
- Change the membership of the project selection committee; and
- Require districts to levy the maximum discretionary millage prior to their application.⁶

District Effort and Participation Requirement

To receive funds from the SFCA, districts must, at the time of request for funds and for a continuing period of 3 years, levy the maximum millage against their nonexempt assessed property value or raise an equivalent amount of revenue from the school capital outlay surtax.⁷ Additionally, districts must apply unencumbered Capital Outlay and Debt Service funds, PECO new construction funds, and discretionary capital improvement millage funds to the project.⁸ The district must also forego all fixed capital outlay funding for a period of 3 years.⁹ This leaves participating districts with limited ability to pay for other fixed capital outlay needs.¹⁰

Construction Plans

District school boards must certify that final phase III construction plans are complete and in compliance with the building and life safety codes before August 1.¹¹ This deadline does not provide the department sufficient time to review the construction plans before such plans are considered by the

¹ Section 1013.64(2)(a), F.S.

² *Id.*

³ *Id.*

⁴ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>, at 1.

⁵ *Id.*

⁶ *Id.* at 12.

⁷ Section 1013.64(2)(a)8., F.S.

⁸ Article XII, section 9(d) of the Constitution of the State of Florida requires the revenues derived from the licensing of motor vehicles to be placed monthly in the school district and community college capital outlay and debt service fund in the state treasury and used only as specified.

⁹ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹⁰ *Id.*

¹¹ Section 1013.64(2)(a)12., F.S.

Special Facility Construction Committee (SFCC).¹² Small districts do not have the expertise to determine if an architect used the most cost-effective school design or overbuilt the school.¹³ As a result, such districts may not identify features that do not add value or may incur controllable cost overruns.¹⁴

Special Facility Construction Committee

The SFCC is responsible for a preapplication review of a school district's funding requests for special facility construction projects. The SFCC is composed of:

- Two department representatives;
- A representative from the Governor's office;
- A representative selected annually by the district school boards; and
- A representative selected annually by the superintendents.¹⁵

The law does not specify which representative serves as the committee chair but in practice a department representative serves this role.¹⁶ Additionally, the law authorizes a project review subcommittee, convened by the SFCC, to review preapplications.¹⁷ The subcommittee is composed of:

- Two department representatives; and
- Two staff from school districts that are not eligible to participate in the Special Facility Construction program.¹⁸

The SPCC and the subcommittee evaluate the ability of the projects to relieve critical needs and rank the requests in priority order.¹⁹ The statewide priority list for special facilities construction must be submitted to the Legislature in the Commissioner of Education's annual capital outlay legislative budget request at least 45 days before the legislative session.²⁰

Application Review

Within 60 days after receiving the preapplication review request, the SFCC or subcommittee must meet in the school district to review the project proposal and existing facilities.²¹ The law, however, does not specify a deadline for the school districts to submit the preapplications for review by the committee or subcommittee.²² In practice, to meet the deadline for the commissioner to submit the capital outlay legislative budget request, the department convenes the committee meeting in August of each year.²³

Determining Critical Need

To determine whether a school district's proposed construction project is a critical need, the SFCC or subcommittee must consider:

- The capacity of all existing facilities within the district as determined by the Florida Inventory of School Houses;
- The district's pattern of student growth; and

¹² Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 1013.64(2)(b), F.S.

¹⁶ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

¹⁷ Section 1013.64(2)(a)1., F.S.

¹⁸ *Id.*

¹⁹ Section 1013.64(2)(a)1. and (c), F.S.

²⁰ Section 1013.64(2)(c), F.S.

²¹ *Id.*

²² Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

²³ *Id.*

- The district's existing and projected capital outlay full-time equivalent student enrollment as determined by the department.

Laws governing educational facilities plans²⁴ require such plans to be based on demographic, revenue, and education estimating conferences.²⁵

Educational Plant Surveys

To be considered for funding through the SFCA, the construction project must be recommended in the most recent survey or surveys by the school district under the rules of the State Board of Education.²⁶ School districts may:

- Contract with a private consultant to conduct the educational plant surveys,
- Request the department to conduct facility reviews; or
- Conduct the surveys in-house.²⁷

Since 1998, school districts have hired private consultants to conduct surveys for 19 of the 24 projects that received funding through the SFCA, "in part, because the districts believed this provided an independent, third-party assessment of their facilities' needs."²⁸ Often these consultants also worked for firms that designed or constructed the facilities.²⁹ Between 2010 and 2015, 13 school districts requested funding, which included 5 districts that contracted with private consultants to conduct the educational plant surveys.³⁰

Project Cost Overruns

Project costs are limited by the statutorily established maximum cost per student station.³¹ However, the law is silent regarding cost increases and changes in project scope.³² The department identified three projects since 1998 in which the final cost exceeded the amount that the committee originally approved.³³

Effect of Proposed Changes

The bill modifies current law regarding the SFCA to incorporate technical changes suggested by the department and options recommended by OPPAGA to improve the effectiveness of the construction projects funded by the SFCA.³⁴

The bill preserves the prohibition on a school district from receiving SFCA funding for more than one approved project within a 3-year period. However, the bill extends this prohibition to any time during which any portion of the district's participation requirement remains outstanding. As a result, this modification may help to allocate SFCA funds for targeted construction projects to meet critical need.

²⁴ Sections 1013.31 and 1013.35(2)(a)1., F.S.

²⁵ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3-4.

²⁶ Section 1013.64(2)(a)2., F.S.

²⁷ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

²⁸ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>, at 8.

²⁹ *Id.*

³⁰ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

³¹ Section 1013.62(6)(b)1., F.S., *see also* Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4. Cost per student station includes contract costs, legal and administrative costs, fees of architects and engineers, furniture and equipment, and site improvement costs. Cost per student station does not include the cost of purchasing or leasing the site for the construction or the cost of related offsite improvements. Section 103.64(6), F.S.

³² Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 4.

³³ Office of Program Policy Analysis and Government Accountability, *Special Facility Construction Projects Appear Needed, but Have Excess Capacity* (Report No. 11-02), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1102rpt.pdf>, at 11.

³⁴ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 3.

District Effort and Participation Requirement

The bill clarifies that a school district's participation requirement is equivalent to all unencumbered and future revenue acquired during a 3-year period, beginning with the year of the initial appropriation and the next two years from Capital Outlay and Debt Service funding, PECO new construction funding, and discretionary capital improvement millage funding. In addition, the bill:

- Requires that beginning in the 2019-2020 fiscal year, a school district seeking SFCA funding for a construction project must have levied the maximum discretionary capital improvement millage against its nonexempt assessed property value, as authorized in law,³⁵ or an equivalent amount of revenue from the school capital outlay sales surtax, as authorized in law,³⁶ for a minimum of three years prior to the request and for a continuing period necessary to meet the district's participation requirement;
- Removes the requirement that a school district's participation requirement be satisfied within a 3-year period.
- Reduces from 1.5 mills to 1.0 mill, the value of the discretionary capital improvement millage that a school district with a new or active project must budget annually until the district's participation requirement is met.

A district school board must set the discretionary capital improvement millage levy rate at a public meeting.³⁷ The school capital outlay surtax is subject to approval by voter referendum.³⁸

Construction Plans

The bill makes June 1 the annual deadline for the district school boards to certify their final phase III construction plans as complete and in compliance with the building and life safety codes. This modification addresses an existing issue regarding insufficient time for the department to review the construction plans before such plans are considered by the SFCC. The modified deadline will allow the department to:

- Review the construction plans before convening the committee meeting in August of each year; and
- Advise the committee whether the construction plans are economical and compliant with the required codes.³⁹

Special Facility Construction Committee

The bill codifies current practice by specifying that a representative of the department must chair the SFCC. This modification will allow the department to designate one of its two representatives to the SFCC to serve as the committee chair. The bill does not alter the composition of either the SFCC or the project review subcommittee.

Application Review

The bill specifies that a school district may request a preapplication review of the district's construction project proposal at any time. However, if the district school board seeks inclusion in the department's next annual capital outlay legislative budget request, the district must make the preapplication review request before February 1.

Additionally, the bill changes the deadline for the committee or subcommittee to complete the preapplication review from 60 days to 90 days after receiving the preapplication review request.

³⁵ Section 1011.71(2), F.S.

³⁶ Section 212.055(6), F.S.

³⁷ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 7.

³⁸ *Id.*

³⁹ Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 1064 (Dec. 4, 2015), at 5.

Determining Critical Need

The bill modifies the way the SFCC and project review subcommittee determines whether a proposed construction project is a critical need. The bill requires the use of capital outlay enrollment projections that are based on demographic, revenue, and education estimating conferences rather than the enrollment projections determined by the department. This modification aligns the change in projecting student enrollment to existing laws governing educational facilities plans.⁴⁰

Educational Plant Surveys

The bill requires proposed special facility construction projects to be included in the most recent survey or survey amendment that is collaboratively prepared by a school district seeking SFCA funding and the department. This modification will allow the department to better assess the need for special facility construction projects and provide assurance to other school districts and the general public that the SFCA funds are spent on critically needed capital projects.⁴¹

The bill also precludes a district, in preparation of a survey, from using a consultant who is employed by or receiving compensation from a third party that designs or constructs a project recommended by the survey.

Project Cost Overruns

The bill authorizes SFCA funds to be used to pay for cost overruns necessitated by a disaster as defined in law⁴² or an unforeseeable circumstance beyond the district's control as determined by the SFCC.

B. SECTION DIRECTORY:

Section 1. Amends s. 1013.64, F.S., relating to the Special Facility Construction Account.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Section 252.34, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.