
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 114
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Urgency: No
Consultant: Kathleen Chavira
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Fiscal: Yes

Subject: Education facilities: Kindergarten-Grade 12 Public Education Facilities Bond Act of 2016

NOTE: This bill has been referred to the Committees on Education and Governance and Finance. A “do pass” motion should include referral to the Committee on Governance and Finance.

SUMMARY

This bill makes changes to the existing School Facility Program and authorizes the Kindergarten-Grade 12 Public Education Facilities Bond Act of 2016 to provide for the issuance of an unspecified amount of general obligation bonds for construction and modernization of education facilities to become effective if approved by voters at the November 8, 2016 statewide general election.

BACKGROUND

Existing law establishes the School Facility Program (SFP) under which the state provides general obligation bond funding for various school construction projects, including new construction, modernization, joint-use facilities, and programs to specifically address the construction needs of overcrowded schools, charter schools, career technical education facilities, and seismic mitigation.
(Education Code § 17070.10 – 17070.99)

The last statewide general obligation bond, Proposition 1D was approved by voters in November 2006. Proposition 1D, authorized \$7.3 billion for K-12 education facilities and \$3.087 billion for higher education facilities and allocated specified amounts from the sale of these bonds for modernization, new construction, charter schools, career technical education facilities, joint use, projects for new construction on severely overcrowded schoolsites, and high performance incentive grants to promote energy efficient designs and materials. In addition, portions of the amounts allocated for new construction and modernization were authorized for purposes of funding smaller learning communities and high schools and for seismic retrofit projects.
(EC §101010-101031)

ANALYSIS

This bill establishes the K-12 Public Education Facilities Bond Act of 2016 to provide for the issuance of an unspecified amount of general obligation (GO) bonds for construction and modernization of education facilities, to take effect only if approved by voters. More specifically it:

1. Requires submission of the Act to voters at the November 8, 2016, statewide general election.
2. As a condition of participation in the program, requires a school district to:
 - A. Comply with existing deferred maintenance provisions.
 - B. Certify that it has a long-range school facilities master plan consistent with the regional sustainable communities strategy plans established pursuant to specified Government Code provisions.
 - C. Conduct an inventory of existing facilities and submit this information to the SAB for purposes of maintaining a statewide school facilities inventory.
3. Requires the Office of Public School Construction (OPSC), in consultation with the California Department of Education (CDE), to recommend regulations to the SAB that provide school districts with flexibility in designing instructional facilities.
4. Requires that the SAB provide a school district with the maximum flexibility in design, new construction, and modernization of school facilities, and further:
 - A. Requires that an applicant who receives a new construction grant ensure that the project incorporates high performance attributes.
 - B. Modifies the use of modernization funds in the following ways:
 - i) Authorizes the use of a modernization apportionment for seismic mitigation purposes including related design, study, and testing costs.
 - ii) Requires that an applicant who receives a modernization grant ensure that the project incorporates high performance attributes.
 - iii) Expands the definition of modernization to include “replacement” as well as modification and authorizes the use of the apportionment to demolish and construct on the existing site if the total cost of providing a new building, including land, would not protect the economic interest of the state and school district.
 - iv) Makes a replacement project eligible for the same grant amount as that authorized for a new construction project.
 - v) Authorizes the SAB to establish any additional requirements deemed necessary to protect the economic interests of the state and educational interests of children.
5. Expands the allowable match for joint use funding to include operational costs and, if the joint use agreement specifies the partner will be responsible for 100 percent of the operational costs for the project for a term of no less than 10

- years, eliminates the requirement that the partner contribute no less than 25 percent of project costs.
6. Requires the California Department of Education (CDE), Division of the State Architect (DSA), Office of Public School Construction (OPSC), and Department of Toxic Substances Control (DTSC) to develop an interagency plan, by July 1, 2016, to:
 - A. Streamline the school facility construction application, review and audit processes to reduce time and improve efficiency.
 - B. Identify a single entity within the CDE as a full-service agency to assist school districts in navigating the school facilities construction process.
 7. Declares the Legislature's intent that the State Allocation Board (SAB) review and revise operative regulatory language before July 1, 2016, to reduce duplicative review, approval and audit processes.
 8. Requires the board to assign priority for funding to school districts that demonstrate participation in a community-based effort to coordinate educational, developmental, family, health, and other comprehensive services through public and private partnerships and outlines the criteria that demonstrate such participation.
 9. Makes the following technical changes:
 - A. Repeals provisions requiring an evaluation of the construction and modernization costs of small high schools.
 - B. Repeals provisions establishing eligibility calculation adjustments on the basis of multi-track year-round operation.
 - C. Repeals other obsolete eligibility calculation adjustments.
 - D. Corrects an erroneous cross-reference.
 - E. Makes various technical changes.

STAFF COMMENTS

1. ***Need for the bill.*** Funding for the School Facilities Program is virtually gone and there is a backlog in applications for state assistance. At the same time there have been ongoing complaints about the current program's complexity and design, as well as questions about whether the program created in 1998 is aligned to the state's current policy objectives. The "winding down" of the current program, and the Governor's call for change (see staff comment #3), present an opportunity to rethink the administrative and programmatic structure of the State Facilities Program, learn from its strengths and weaknesses, and better align program design with the state's policy objectives. This bill begins that process.

2. **Current status of the School Facilities Program (SFP).** According to the Office of Public School Construction (OPSC), as of February 2015, approximately \$200.7 million remained in bond authority in the SFP. The majority of this bond authority exists for the Seismic Mitigation and Charter School programs (about \$171 million). Bond authority for new construction and modernizations programs has essentially been depleted, respectively, since July 2012 and May 2012.

Since 2009, the SAB has been making "unfunded approvals" which represented approved projects waiting to convert to funding apportionments when bonds are sold and cash becomes available. In addition, since November 1, 2012, the State Allocation Board (SAB) has maintained an "Applications Received Beyond Bond Authority" list. This list is presented to SAB for acknowledgement, but not approval. Because the applications are not fully processed for final grant determination, the project funding amounts on the list are only estimates. As of January 2015, the list indicated 116 new construction applications totaling \$571 million and 200 modernizations applications of about \$330 million.

3. **Related budget activity.** Amid concerns about the complexity and structure of the current program and the state's increasing debt service obligations, the Governor has proposed significant changes to the way school facilities are funded. In order to allow districts to better meet their facilities needs at the local level, the Governor's 2015-16 budget proposes to:
 - A. Expand revenue generation tools at the local level by expanding local funding capacity and increasing caps on local bond indebtedness;
 - B. Restructure developer fees to set one level for all projects at a level between existing Level II and Level III fees subject to local negotiation; and
 - C. Expand allowable uses of Routine Restricted Maintenance Funding to authorize the pooling of these funds over multiple years for modernization and new construction projects.

The Governor has also noted that he is prepared to engage with the Legislature and education stakeholders to shape a future state program that is focused on districts with the greatest need, including communities with low property values and few borrowing options, as well as overcrowded schools.

4. **Debt Service.** According to a recent report by the Legislative Analyst Office (LAO), *Addressing California's Key Liabilities*, as of April 1, 2014, the state has \$75.1 billion in general obligation bonds, and about \$10.2 billion in lease revenue bonds (10 percent of which is for the California State University) outstanding. This does not include \$31 billion in general obligation and lease revenue bonds authorized but not yet sold. According to the Legislative Analyst's Office (LAO), debt service is expected to make up about 6 percent of the General Fund for the next few years, if no new bonds are issued, as General Fund (GF) revenues and debt service are expected to grow at similar rates. The LAO noted that bond payments are the first funding priority of the GF. The debt service must be paid

annually, even if it means that other spending priorities (including education, health, social services, and prisons) have to be cut or taxes have to be raised in order to balance the budget.

Since 1998, voters have approved approximately \$35 billion in statewide general obligation bonds to construct or renovate K-12 school facilities and almost \$10 billion for higher education facilities. This bill would authorize an unspecified amount of bonds for this purpose. The Committee may wish to consider:

- A. What is the fiscal capacity of the state to issue yet more debt in order to meet its infrastructure needs?
- B. How much of that debt can/should the state be issuing for purposes of constructing and renewing public school facilities versus other infrastructure needs?
- C. Are there other sources of revenue for meeting school district facility needs? What is the fiscal capacity at the local level for this purpose?
- D. How much of the overall need can realistically be met at the local level?

This bill has also been referred to the Committee on Governance and Finance which has jurisdiction over legislation pertaining to state and local government revenue mechanisms. The Governance and Finance Committee may more appropriately consider this bill in the context of the state's overall debt service and infrastructure needs.

5. ***Related Joint Informational hearing.*** On February 18, 2015, this Committee held a joint informational hearing with the Budget Subcommittee on Education on *K-12 SCHOOL FACILITY PROGRAM: HISTORY, CURRENT STATUS, AND FUTURE OPTIONS* to review the Governor's school facilities proposals. Among other things, the Committee heard testimony from several participants about the need to simplify the current program processes and regulations, the need for a "one-stop-shop" to assist in navigating the program, and the need for greater flexibility in design of school facilities as well as the use of funding to incentivize and support joint use projects and community schools. Additionally, while the state's growing debt service is of concern, it was unclear whether local districts have the capacity to generate sufficient revenue at the local level to meet their ongoing facility needs for deferred maintenance, modernization and new construction. This bill begins to respond to some of these issues through the proposal of various programmatic changes.
6. ***Related and prior legislation.*** There have been several attempts to authorize education facility construction bonds since 2009. A summary of current and prior efforts includes the following:

RELATED LEGISLATION

AB 148 (Holden, 2015) declares the Legislature's intent to place a \$1.1 billion bond measure before voters in 2016 to fund modernization and new construction of school facilities.

AB 1088 (O'Donnell, 2015) declares the Legislature's intent to enact legislation to create a Kindergarten-University Public Education Facilities Bond Act, to be placed before voters in an as yet to be specified year, and provide for the issuance of an unspecified amount of general obligation bonds for construction and modernization of education facilities. The bill also deletes a number of obsolete School Facility Program provisions.

AB 1433 (Gray, 2015) authorizes a Higher Education facilities: Recommitment to Higher Education Bond Act of 2016 to provide for the issuance of an unspecified amount of general obligation bonds to provide aid to the California Community Colleges, the University of California, the Hastings College of the Law, and the California State University to construct and modernize education facilities.

PRIOR LEGISLATION

AB 2235 (Buchanan, 2014) made changes to the School Facility Program and authorized the Kindergarten-University Public Education Facilities Bond Act of 2014 to provide for the issuance of \$4.3 billion in general obligation (GO) bonds for construction and modernization of education facilities, to become effective only if approved by voters at the November 4, 2014, statewide general election. Some provisions of AB 2235 were similar to those in this bill. AB 2235 awaited action on the Senate Floor but was subsequently moved to the Inactive File.

AB 41 (Buchanan, 2013) expressed the Legislature's intent to place a Kindergarten-University facilities bond on the 2014 ballot. AB 41 was held by the author in the Assembly Education Committee.

SB 45 (Corbett, 2013) expressed the Legislature's intent to place a Kindergarten-University facilities bond on the next statewide general election. The bill was held by the author in the Senate Rules Committee.

SB 301 (Liu, 2013) expressed the Legislature's intent to place a Kindergarten-University facilities bond on the 2014 ballot. SB 301 was held by the author in the Senate Rules Committee.

AB 331 (Brownley, 2011) expressed the Legislature's intent to place a Kindergarten-University facilities bond on the 2012 ballot. AB 331 was held in the Assembly Appropriations Committee in 2012.

AB 822 (Block, 2011) would have placed a higher education facilities bond on the November 2012 ballot. AB 822 was held in the Assembly Appropriations Committee in 2012.

AB 220 (Brownley, 2009) would have placed a \$6.1 billion Kindergarten-University facilities bond on the November 2010 ballot. AB 220 was held in the Senate Appropriations Committee.

SB 271 (Ducheny, 2009) would have placed an \$8.6 billion higher education facilities bond on the November 2010 ballot. SB 271 was held in the Senate Appropriations Committee.

SUPPORT

California Association of School Business Officials (CASBO)

OPPOSITION

None received.

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