SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1328

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Lee

SUBJECT: Public School Construction Financing

DATE: April 12, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

The Committee Substitute (CS) creates the Florida School Construction Financing Commission to study alternative methods of funding school construction and formulate alternative tax policies to meet school construction revenue needs.

The CS is effective upon becoming law.

II. Present Situation:

Public school enrollment growth increases the demand for public school construction and has a ripple effect on the need for facilities at the post secondary level. Comparable and reliable data on unmet educational facility need in each school district is not available. Public school construction is financed through a combination of state and local revenue sources. Generally, local school boards are required to generate a “required local effort” of funding determined through a formula applied to the sixty-seven school districts.

State Sources of Capital Outlay Funding for Educational Facilities

Historically, the state has provided about 25 percent of the total capital outlay funding for educational facilities. The actual percentage varies from year-to-year depending on available funds, but typically ranges from 20 percent to 30 percent. The major sources state sources of capital outlay funding include: the Public Education Capital Outlay and Debt Service Trust Fund, the School District and Community College Capital Outlay and Debt Service Trust Fund, and the Classrooms First Program. A less significant source of funding is provided by the Pari-mutual Wagering Trust Fund.

Public Education Capital Outlay and Debt Service Trust Fund

The Public Education Capital Outlay and Debt Service Trust Fund (PECO) is the primary source of state capital outlay funding for Florida's school districts, community colleges, and the State University System. It is the only state capital outlay fund source for state universities. PECO funds are generated by a 2.5 percent levy on the gross receipts of utility companies and municipal corporations that provide electricity, natural gas, and telecommunication services and those that transmit co-generated electrical power. Over 85 percent of PECO funds is derived from bonds backed by the gross receipts tax. PECO funds are used not only for new construction, but also for remodeling, renovation, repair, and site improvement of educational facilities.

School District and Community College Capital Outlay and Debt Service Trust Fund

Public schools and community colleges receive capital outlay funds from the constitutionally authorized School District and Community College District Capital Outlay and Debt Service Trust Fund (CO&DS). CO&DS funds are derived from motor vehicle license tag fees and are distributed according to the formula established by Article XII, section 9(d) of the State Constitution.

SMART Schools

In November 1997, the Legislature held a special session to address public school capital outlay needs. The resulting legislation, chapter 97-384, Laws of Florida, created the SMART (Soundly-Made, Accountable, Reasonable and Thrifty) Schools Act. The SMART Schools Act appropriated a potential $2.7 billion from General Revenue and the proceeds of School Capital Outlay Bonds backed by the pledge of lottery funds. These appropriations primarily funded three major and one minor program: the Classrooms First Program, the School Infrastructure Thrift (SIT) Program, Effort Index Grants, and the 1998-1999 SMART Schools Small County Assistance Program. Collectively, these programs provide capital outlay funding for school districts to construct new student stations and related core facilities to reduce overcrowding; to renovate, remodel, and repair existing school facilities; and to replace old relocatables. Appropriations for these programs add to local capital outlay sources and state capital outlay sources [i.e., the Public Education Capital Outlay and Debt Service Trust Fund (PECO) and the School District and Community College Capital Outlay and Debt Service Trust Fund (CO&DS)].

The SMART Schools Act required each district to develop and annually update a 5-year district facilities work program, balancing planned capital outlay expenditures and anticipated revenues. The law encouraged districts to build functional, frugal schools in two ways: (1) by limiting the amount that may be spent per student station from PECO funds, and, (2) by rewarding districts for savings realized through frugal construction. The law also encouraged districts to maximize their local effort and authorized monetary awards for districts which build frugally but still cannot meet their student station needs after exhausting available state and local capital outlay resources. The act also established an independent SMART Schools Clearinghouse to recommend frugal design and construction standards, review districts' performance in meeting those standards in their 5-year capital outlay work programs; and to recommend SIT Program awards and Effort Index Grants.

Classrooms First Program

The Classrooms First Program provides capital outlay funds to all 67 school districts. The program, which will ultimately generate about $2 billion, is funded by state-issued School Capital Outlay Bonds backed by lottery dollars. The bond sales that fund this program are scheduled and sized to comply with federal arbitrage requirements and to meet school districts' demand for funds on an as-needed basis. The proceed of these bonds, like bonded PECO dollars, are distributed to districts as they are ready to encumber funds for constructing each stage of a previously approved project. To date, $565.3 million of the $2 billion in potential bonds have been sold. Only $149.1 million of the $565.3 million has actually been encumbered by districts for ongoing construction.

Each district received a Classrooms First allocation based on a distribution formula weighted for growth in capital outlay full-time student enrollment and the age and size of existing facilities. Some districts were allowed to take their allocation as cash or bond proceeds; others were required to pledge their allocation and receive School Capital Outlay Bond proceeds. A district could either take cash or receive bond proceeds, if the district could meet its 5-year educational plant needs with anticipated revenues. Districts that could not meet their 5-year educational plant needs with anticipated revenues had to pledge their allocations and receive bond proceeds. Districts must use these funds to build "classrooms first" before spending the funds for other facilities. Classroom First funds may not be used to purchase more relocatables.

Classrooms First expenditures are also limited by the nature of the funds received. Bond proceeds may be used for new construction, renovation, or major repair of educational facilities. Cash distributions may be used to construct, renovate, remodel, repair, or maintain educational facilities.

Each district with 10,000 or more full-time equivalent students must spend 25 percent of its Classrooms First allocation on renovation, major repairs, or remodeling, if more than 9 percent of the district's educational facilities are 50 years old or older. This expenditure requirement was primarily intended to target funds to upgrade older schools in urban areas.

School Infrastructure Thrift (SIT) Program

The SIT Program is an incentive fund created to encourage functional, frugal school construction. A school district can receive a SIT award in one of two ways, through:

- Savings realized through functional, frugal construction.
- Savings realized through the operation of charter schools in non-school-district facilities.

The SIT awards are based upon 50 percent of the savings on the statutorily defined cost-per-student station. School districts may use the SIT award for any authorized capital outlay expenditure. Thus far, SIT awards have been made from the General Revenue appropriations for this program. When SIT awards are made from the proceeds of School Capital Outlay Bonds, the potential uses of SIT awards should be limited to bondable projects, such as those uses permitted for bonded PECO allocations. A statutory change is needed to implement this.

As of March 16, 1999, approximately $15.8 million in SIT awards had been distributed to school districts for building new schools under the state required cost per student station. Approximately $18.2 million had been distributed to school districts for savings realized through the operation of charter schools in non-school-district facilities. It is estimated that more than $44 million will be disbursed this year to school districts for SIT awards for the operation of charter schools. Some school districts have chosen to share part of their SIT awards with their charter schools, thus providing capital funding for some charter schools.

Effort Index Grants

The Effort Index Grant Fund is a $400 million long-term, effort-driven incentive program. Effort Index Grants were authorized to assist school districts that have built functional, frugal new student stations, met certain levels of required local effort by spending available state and local capital outlay funds, and still cannot meet their need for new student stations to accommodate growth. If a district meets the eligibility requirements described below and still has need for new student stations, the district is eligible to receive Effort Index Grant funds.

In September 1998, 11 districts applied for Effort Index Grants. Upon an initial desk audit by the Clearinghouse of the information submitted by the districts, only 4 of those districts appeared to meet the statutory eligibility requirements of need and effort to be eligible for an Effort Index Grant. To ensure consistency in definitions and standards applied to all districts, further on-site review may be necessary to determine the actual eligibility of the districts which applied.

1. Expenditures Must be for Eligible Projects

To be eligible for an Effort Index Grant, a district must spend its available capital outlay resources on eligible projects. Eligible projects are those which provide new student stations and associated core facility space to meet student membership requirements in K-12 programs. Effort Index Grants are not provided to replace relocatable classrooms which meet standards.

2. Computation of Required Local Effort

Each school district which applies for an Effort Index Grant must demonstrate their local effort by spending an amount equivalent to the following revenue sources for school construction, the district's:

- Public Education Capital Outlay (PECO) and Capital Outlay & Debt Service (CO&DS) funds,
- Maximum potential bond proceeds from CO&DS trust fund
- Proceeds from Classrooms First Program, or
- One-half cent local option school sales surtax proceeds pursuant to s. 212.055(7), F.S., if fully levied for 5 year period

If after a district has spent this equivalent amount on eligible school construction projects and the district still has need for new student stations, the district will receive state funding through the Effort Index Grant Fund.

3. Computation of Expenditures for Eligibility

The computation of basic capital outlay expenditures for projects must be based on the following:

- Expenditures for projects which provide new student stations and associated core facility space to meet student membership requirements in K-12 programs.
- Expenditures for debt service payments for outstanding capital outlay bonds sold to finance *new* construction, remodeling, renovation, or major repair of educational facilities.
- Expenditures for scheduled payments on outstanding certificates of participation (COPS) used to finance new construction, remodeling, renovation, or major repair of educational facilities.

Expenditures for relocatables which meet standards do not qualify. The computation of basic capital outlay expenditures for projects to be included in the Clearinghouse calculation for Effort Index Grants must only be based on the actual cost per student station or the statutorily defined cost per student station, whichever is less.

4. Allocation of Effort Index Grants

If the calculated district obligation is equal to or greater than the calculated required local effort on eligible expenditures, the district is eligible for an Effort Index Grant. Annually, by November 1, the Clearinghouse must report to the Governor and Legislature on the amount required to fully fund the Effort Index Grants for the following 5 year period. If legislative appropriations are insufficient to fully fund the qualified effort index grants, the Clearinghouse may give priority consideration to districts that have exceeded and maximized their local effort.

1998-1999 SMART Schools Small County Assistance Program

Chapter 97-384, Laws of Florida, authorized the 1998-1999 SMART Schools Small County Assistance Program to supplement the Special Facilities Construction Account. This program assisted small counties that had urgent needs for schools, major building expansions, repairs, or renovations, but had insufficient resources to finance the needed project. Districts that received assistance from this program could not also receive funding from the Special Facilities Construction Account. The law appropriated $50 million for the SMART Schools Small County program from the sale of School Capital Outlay Bonds.

<u>Pari-mutuel Wagering Trust Fund</u>

Some school districts receive funds generated by the tax on pari-mutuel wagering. Each county government receives an equal share of the pari-mutuel tax. The county must provide all or part of the revenue to the district school board if required by local or special law. Otherwise, the revenues are used at the discretion of the board of county commissioners.

Local Capital Outlay Sources Available to School Districts

<u>Nonvoted, Discretionary Capital Outlay Millage Levy</u>

Each district school board may levy up to 2 mills of non-voted, ad valorem tax for the capital outlay purposes defined by s. 236.25(2), F.S. The statute has been amended many times since

1980 to give school districts more flexibility in using this local revenue source. Current law allows the proceeds to be used for:

1. Survey-recommended new construction and remodeling projects, sites and site improvement or expansion, existing sites, and auxiliary, athletic, or ancillary facilities.

2. Maintenance, renovation, and repair of existing school plants or leased facilities.

3. Purchase, lease-purchase, or lease of school buses and other vehicles used in district operations.

4. Purchase, lease-purchase, or lease of new and replacement equipment.

5. Lease-purchase payments on educational facilities and sites; however, these payments may not exceed one half of the proceeds of the millage levied.

6. Repayment of loans and debt service authorized under ss. 237.161 and 237.162, F.S., to purchase school buses, land, and equipment for educational purposes; construct or alter educational facilities; purchase certain insurance; and eliminate major emergency conditions or safety hazards that pose an immediate danger.

7. Compliance with state and federal environmental statutes and regulations governing school facilities.

8. Leasing relocatable facilities and renting or leasing educational facilities and sites.

If a district uses this revenue for unauthorized purposes, the district is penalized by an equal dollar reduction in Florida Education Finance Program (FEFP) funding.

From time to time, the Legislature authorizes other uses of the discretionary capital outlay millage. For example, the General Appropriations Act Implementing Bills for FY 1993-94 and FY 1994-95 allowed districts to use unobligated proceeds of the discretionary capital outlay millage levy for one-time, nonrecurring expenditures for classroom instructional materials, including consumable and non-consumable supplies, materials, textbooks, and equipment.

<u>Voter-approved Millage Levies/Bonds</u>
A district school board may levy ad valorem tax in excess of the constitutional cap of 10 mills for up to two years with voter approval and for voter-approved bond issues backed by ad valorem taxes.

<u>Optional Capital Outlay Surtax</u>

In 1995, the Legislature authorized a local option “half-penny” sales tax for capital outlay. Each district school board may levy, with approval by referendum, a discretionary sales surtax of up to 0.5 percent on all items subject to state sales tax (except for amounts exceeding $5,000 on any item of tangible personal property or long distance service). School districts may use the proceeds of the tax to fund school capital outlay projects, technology implementation, and to pay debt service on bonds, but may not use the proceeds for operating expenses. Each district that levies the surtax must freeze discretionary noncapital property taxes for at least 3 years at the assessment level of the year prior to implementing the surtax.

Seven counties are levying the surtax at the maximum rate of 0.5 percent: Bay, Escambia, Gulf, Jackson, Monroe, Santa Rosa and St. Lucie Counties.

Local Government Infrastructure Sales Surtax

County governments may dedicate all or part of their local government infrastructure sales surtax for school-related infrastructure. Okaloosa levies and dedicates a full cent to the local school board. Manatee and Sarasota counties allocate part of their one cent levy for education capital outlay.

Impact Fees

Impact fees are fees assessed on new development to fund infrastructure needs brought about by the new development. Impact fees have been levied by counties and municipalities to fund the expansion of water and sewer facilities, the construction of road improvements, the construction of school facilities and park expansion. The fees are levied by local governments pursuant to their home rule authority granted by Article VIII of the Florida Constitution rather than authorized by statute.

The concept behind impact fees is stated in the case of *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So.2d 314 (Fla. 1976) as follows: “The cost of new facilities should be borne by new users to the extent new use requires new facilities, but only to that extent.”[1] In order to withstand legal challenge, an impact fee levied by a local government must meet what the courts term the dual rational nexus test. First, there must be a reasonable connection between the need for additional capital facilities and the growth in population generated by the new development. Second, the local government must show a reasonable connection between the expenditures of the funds collected and the benefits accruing to the new development. In order to show this reasonable connection, the ordinance authorizing the fee “must specifically earmark the funds collected for use in acquiring capital facilities to benefit the new residents.”[2]

Fifteen counties impose impact fees on new residential construction for school-related capital improvements. A phone survey conducted by the Legislative Committee on Intergovernmental Relations indicates that these fifteen counties collected a total of $69.67 million dollars in school impact fees for the fiscal year 1997-98. According to Dr. James Nicholas of the University of Florida, the average residential school impact fee is $1,199, while the average multi-family impact fee is $701. The highest school impact fee assessed for a single family dwelling is $2,828 by

[1]*Contractors and Builders Association of Pinellas County v. City of Dunedin*, at p. 321.

[2]*Hollywood, Inc. v. Broward County*, 431 So.2d 606, 611-12 (Fla. 4th DCA), *review denied*, 440 So.2d 352 (Fla. 1983).

Orange County. The lowest school impact fee assessed by a county is $135 by Citrus County for all categories of residential housing.

III. Effect of Proposed Changes:

The Florida School Construction Financing Commission is created to study school impact fees, recommend alternatives, and report findings to the Speaker of the House, the President of the Senate, and the Governor by February 1, 2000. The commission is composed of four members appointed by the President of the Senate, four members appointed by the Speaker of the House, four members appointed by the Governor and the Commissioner of Education or his designee.

The call of the commission is to study alternative methods of funding school construction and formulate tax policies that consider school construction revenue needs and the availability of alternative funding mechanisms. Finally, the report is to include recommended statutory changes to state tax law.

The bill appropriates $75,000 to the Legislative Committee on Intergovernmental Relations to employ technical support and to incur expenses to support the activities of the commission. The LCIR is authorized to reimburse Commission members for their travel and per diem expenses.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislative Committee on Intergovernmental Relations is to receive a $75,000 general revenue appropriations to employ technical support and incur expenses related to the official duties of the Florida School Construction Financing Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.