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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13

SPONSOR Stapleton LAST UPDATED _____ HB 273

SHORT TITLE Public School Capital Outlay Lease Payments SB _____

ANALYST Gudgel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

House Bill 273 amends the Public School Capital Outlay Act, removing the statutory requirement to increase lease assistance payments by the consumer price index (CPI) annually. The Public School Capital Outlay Council will be able to decide whether to increase lease assistance payments by the CPI or not.

FISCAL IMPLICATIONS

Section 22-24-4 NMSA 1978 of the Public School Capital Outlay Act allows the Public School Capital Outlay Council (PSCOC) to expend funds in the Public School Capital Outlay Fund annually for grants to school districts and charter schools for the purpose of making lease payments for classroom facilities. Grants are limited to the lesser of the actual lease payments or \$700 per MEM (full-time equivalent student) adjusted by the consumer price index of the prior year.

The consumer price index (CPI) adjustment was first implemented in FY09. From FY 2009 to FY 2013 the Consumer Price Index (CPI) increased lease assistance awards by 6.3 percent, or more than \$1.2 million.

The program primarily funds charter school leases. Recent LFC staff program evaluation of the lease assistance program and charter school facilities issues noted **charter school costs are increasing with lease payments quadrupling over the past nine years.** From 2005 to 2013 the number of charter schools has almost tripled, from 34 schools in 2005 to 96 in 2013.

Lease assistance awards have more than quadrupled from \$2.8 million in FY05 to \$13.4 million in FY13, with no limit on increases. Currently there is no limit on the awards that can be made from the PSCOF for lease assistance payment grants. As the number of charter schools grows and the demands to fund lease payments increases, funds available for the core missing of school construction are decreased.

Currently, the priority uses of supplemental severance tax bond (SSTB) proceeds provided in the Public School Capital Outlay Act are: the Public School Capital Improvement Act (SB-9) state match distributions, lease-payment assistance, facility master plan assistance, reimbursements to the Construction Industries Division, and the PSFA's operating budget. These priority uses cause the capacity for school construction to fall by approximately 20 percent. Any increase in the funding towards the priority of other uses further diverts money that is necessary to maintain the overall facility condition index for New Mexico's public school buildings.

SIGNIFICANT ISSUES

The Lease Assistance Program started in 2004, as part of the Public School Capital Outlay Fund Section 22-24-4 NMSA 1978. While the program is not specific to charter schools, the program has mainly benefitted charters. The program was initially capped at \$4 million, but the cap was removed and an annual adjustment tied to the Consumer Price Index (CPI) was established. Program awards have increased 377 percent from 2005 to 2013. At the current rate of expansion, an estimated \$50 million annually would be expended by 2021, diverted from other public school capital outlay projects.

At the September 2012 PSCOC meeting, the Council recommended making no increase to the lease assistance awards, and ultimately funded lease reimbursements at \$733 per MEM for the 2012-2013 school year, the same per MEM amount awarded for the 2011-2012 school year, questioning the value of an annual CPI adjustment. The issue was presented to the Public School Capital Outlay Task Force (PSCOOTF) during the interim. The Public School Facilities Authority (PSFA) testified that there is no direct correlation between the CPI and any annual fluctuations in lease assistance payments.

Additionally, the LFC staff program evaluation noted that lease assistance payments should be funded based on justified per-square-foot costs or square foot per MEM as determined by the PSCOC rather than with an established per MEM amount in Statute that is adjusted annually by the CPI.

OTHER SUBSTANTIVE ISSUES

The full LFC staff program evaluation, Public Schools Facilities Authority Charter School Facilities Lease Assistance and Capital Outlay Planning (January 14, 2013) can be read at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/Charter%20School%20Facilities%20Lease%20Assistance%20and%20Capital%20Outlay%20Planning.pdf>

According to PSFA Analysis

The Public School Capital Outlay Oversight Task Force (PSCOOTF) is charged by statute to monitor the progress and effectiveness of programs administered by the PSCOC and PSFA. As part of their 2012 Interim Work Plan, the Task Force examined a number of issues related to the lease assistance program and charter school facilities. Charter schools are the primary recipients of the lease assistance program.

Some of the issues identified for consideration were as follows:

- Program costs have increased over 20 percent per year, and are now at \$13.5 million.
- Over 50 percent of the program funds are used to pay to leases of privately owned facilities.
- The majority of charter schools are not in public buildings. There is a risk that the 2015 statutory deadlines to be in public buildings will be extended and will extend the high cost of the program.
- The statutory allowance for school districts to receive lease payments from charters for underutilized space has been ineffective resulting in charters leasing from private entities and other public entities.
- The annual adjustment of the disbursement rate by the CPI is a concern because the CPI may not be an appropriate adjustment for commercial property rents whose prices do not move in concert with consumer prices.
- There is generally insufficient facility knowledge and experience to support effective acquisition and operation of facilities.
- There are no state-issued standard lease documents suitable for public education providers available to public school districts or charter schools for leasing facilities or land.
- The lack of standardized lease document results in a lack of consistency and transparency.

RSG/svb