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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/17
LAST UPDATED 2/28/17 **HB** _____
SPONSOR Sapient
SHORT TITLE Charter School Facilities & Leases **SB** 313/aSEC
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				Public School Capital Outlay Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB273, SB64, SB147

SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

Responses Received From

Public School Facilities Authority (PSFA)

Public Education Department (PED)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to Senate Bill 313 makes the following changes:

- Expands the required use of Public School Capital Outlay Council (PSCOC)-approved, standardized leases to all public schools, as opposed to just charter schools;
- Removes a provision limiting eligibility for lease assistance grants for charter schools that received three consecutive years of a D or F school grade; and
- Clarifies that net effective interest rates for public school lease purchase agreements entered into prior to July 1, 2017, must not exceed the maximum permitted by the Public Securities Act (PSA) or 50 percent of the PSA maximum on or after July 1, 2017.

Synopsis of Original Bill

Senate Bill 313 amends the Charter Schools Act, requiring charter schools to accept an offer of an available facility made by a school district unless the charter school can demonstrate that the

facilities being offered do not meet educational programming needs or the facilities are currently used for other educational purposes. The definition of “other educational purposes” is amended to add pre-kindergarten programs and remove teacher training centers, school district administration functions, and other related ancillary services.

The bill requires charter schools to attain, rather than demonstrate, within 18 months of occupancy or relocation of the charter school a New Mexico condition index (wNMCI) rating equal to or better than the average wNMCI. This section restricts a chartering authority from authorizing a new or renewing an existing charter, unless the charter school is housed in a public building or meets one of the exceptions. If the charter school is not in a public building, the governing body of the charter school must certify that a public building is not available or adequate, or the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility of a charter school.

The bill amends the Public School Capital Outlay Act by requiring charter schools that apply to the Public School Capital Outlay Council (PSCOC) for lease assistance grants to use a council-approved, standardized lease for all new leases, amendments, and renewals entered into after July 1, 2017. The bill gives PSCOC discretionary authority to adjusted lease assistance payment amounts annually by the U.S. consumer price index (CPI). Beginning on July 1, 2018, the bill makes charter schools that received a D or F school grade for the three previous consecutive school years ineligible for PSCOC lease assistance grants.

The bill requires PED to give approval of the final lease purchase agreement prior to the charter school’s governing body entering into the agreement. A new section is created in the Public School Lease Purchase Act, restricting a charter school’s governing body from amending or otherwise changing an executed lease purchase agreement without PED’s final approval. The bill requires that net effective interest rates of a lease purchase agreement entered into prior to July 1, 2017, not exceed 50 percent of the maximum permitted by the Public Securities Act.

FISCAL IMPLICATIONS

The Public School Capital Outlay Fund is funded through supplemental severance tax bond proceeds, dedicated for projects under the Public School Capital Outlay Act. In recent years, new programs have been added to the act. Currently, funds are used to fund the Capital Improvements Act (SB9), the lease assistance program, Construction Industries Division reimbursements, PSFA operating budget, assistance for facility master plans, demolition allocations, and emergency allocations. Annual budgeted expenditures for the Public School Capital Outlay Fund have increased, reducing available resources for construction and maintenance awards.

Lease assistance funding has grown from \$2.8 million in FY05, the first year of lease assistance awards, to an estimated \$15.9 million in FY17. Growth in lease assistance awards is primarily due to an increase in the number of charter schools authorized in the state and increased enrollment in charter schools. Despite declining supplemental severance tax bond revenue, lease assistance funding requests continue to increase. PSFA notes providing PSCOC the discretion to annually adjust the per MEM amount by the U.S. CPI, may result in adjustments to budgeted lease assistance grants or the per MEM amount, if there is a decrease in the CPI. PED notes CPI increases have been one factor contributing to increases in the lease assistance program.

PED notes provisions of the bill that remove the eligibility of charter schools with a D or F school grade for the three previous consecutive schools years for PSCOC lease assistance grants may hamper operating budgets for these charter schools. The SEC amendment strikes this provision from the bill.

Changes to the definition of “other educational uses” may allow charter schools to locate in facilities previously restricted for administrative spaces, training centers, and other ancillary services. PED notes this may create cost savings for charter schools and the state by requiring charter schools to use existing available space in lieu of purchasing or building additional facilities.

SIGNIFICANT ISSUES

In 2016, a work group, comprised of PSCOC members and staff from the Governor’s office, PED, LESC, LFC, and PSFA, convened to address concerns about charter school lease and lease purchase agreement compliance with the “public building deadline.” After reviewing charter school leases to ensure compliance, the following issues were noted:

- Explicit responsibility for oversight of lease and lease purchase agreements and enforcement as cited in Section 22-8B-4.2 NMSA 1978 was unclear;
- Charter schools lacked capacity to enter into and administer lease agreements;
- Unnecessary proliferation of gross square footage of public schools was occurring;
- Funding from supplemental severance tax bonds decreased as a result of decreased oil and gas revenues and enactment of Laws 2016 (Second Special Session), Chapter 2, (Senate Bill 4); and
- PED had approved charter schools to enter into lease purchase agreements but was not approving the final agreement. PED has recently updated this process and is now reviewing and approving final lease purchase agreements.

According to PSFA, the bill changes the definition of “other educational purposes” to include school-based health clinics, daycare centers, and pre-kindergarten programs but exclude teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations. By doing so, these administrative spaces would be required to be offered to charter schools within the school district’s geographical boundary. Districts may be required to build or otherwise attain new facilities to fulfill their functions and operations. School district administrative facilities, teacher training centers, and other ancillary services facilities are wholly funded by the districts and are not eligible for funding under PSCOC programs.

PSFA reported public school facilities in award year 2015-2016 reached 62 million gross square footage (GSF) statewide, an increase of about 476 thousand GSF from award year 2014-2015. According to PSFA, the state increased public school facilities about 9.5 million GSF, or 18 percent, in the past 10 award years despite a 3.5 percent growth in student enrollment. In award year 2015-2016, student enrollment decreased slightly from 340.4 thousand to 339.6 thousand students, signaling a lower need for school facilities expansion in future award years.

Award Year	Total Square Footage	Student Enrollment
2005-2006	52,522,205	328,111
2006-2007	53,254,678	325,731
2007-2008	54,878,283	329,261
2008-2009	55,052,858	323,882
2009-2010	57,028,422	325,542
2010-2011	58,315,030	330,142
2011-2012	58,566,971	334,838
2012-2013	59,820,451	338,223
2013-2014	60,001,999	339,223
2014-2015	61,536,237	340,365
2015-2016	62,012,115	339,613

The bill amends Subsection D of Section 22-8B-4.2 NMSA 1978, commonly referred to as the “public building deadline,” clarifying that a chartering authority cannot authorize a new charter or renew an existing charter unless they meet specific public building requirements. If a charter school is not housed in a public building or subject to a PED-approved lease purchase agreement, the bill’s provisions require the governing body of a charter school to certify that either public buildings are not available or adequate for the educational program of the charter school or the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school. Currently, statute restricts a chartering authority from “opening” a new charter school if they are not housed in a public facility or a facility that meets other statutory requirements. This new language takes this a step further and does not allow an authorizer to authorize a charter unless it meets the public building requirements.

ADMINISTRATIVE IMPLICATIONS

The bill would reduce administrative burdens for PSFA. Responsibility for ensuring charter schools are in compliance with the public buildings requirement or meet one of the exceptions in order to be considered eligible for lease assistance grants is shifted from PSFA to the charter school’s authorizer. The review of charter school leases can take a considerable amount of time and legal expertise. The use of a PSCOC-approved standardized lease would ensure that all requirements are being met and would allow for a streamlined review of leases. The PSCOC-approved standardized lease will require collaboration with PED and the Public Education Commission (PEC) prior to dissemination for use by charter schools.

The amending language for A-B-C-D-F Schools Rating Act would require PED, during the application period, to provide PSFA the list of charter schools who received a D or F for the immediately preceding three consecutive school years. The SEC amendment strikes this provision from the bill.

RELATIONSHIP

This bill relates to HB273, which provides flexibilities and penalties for charter schools based on performance, SB64; which removes the sunset clause for the PSFA broadband deficiencies correction program; and SB147, which phases in a new local-state match formula for public school capital outlay awards over a five year period.

TECHNICAL ISSUES

On page 22, line 23, PED recommends striking “prior to” and replacing with “after.” PED notes language prohibiting the net effective interest rate of a lease purchase agreement entered into prior to July 1, 2017, from exceed 50 percent of the maximum permitted by the Public Securities Act (PSA) may be problematic. Any lease arrangement that has already been approved by PED that has an interest rate above 50 percent of the maximum permitted by the PSA would have to be amended. It is not certain if there are legal issues with requiring a charter school or school district to amend an approved lease purchase arrangement retroactively due to the passage of this bill. It is also unclear if this section of statue is intended to limit all future lease arrangements from exceeding the 50 percent limit. The SEC amendment addresses this issue.

OTHER SUBSTANTIVE ISSUES

The average statewide wNMCI improved from 40.5 percent in FY05 to 17.1 percent in FY16. Provisions of the bill requiring charter schools to attain, rather than demonstrate, within 18 months of occupancy or relocation of the charter school a wNMCI rating equal to or better than the average wNMCI may be difficult given the low statewide average.

SL/jle