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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/09  
 LAST UPDATED 2/24/09      HB \_\_\_\_\_

SPONSOR Sanchez, M

SHORT TITLE Los Lunas Substance Abuse Facility Use      SB 546/aSJC

ANALYST Archuleta

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>			\$899.0	\$899.0	Recurring	General Fund*

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Joint Resolution 7

\*Estimate provided by Human Services Department

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Department of Finance and Administration (DFA)  
 General Services Department (GSD)  
 Human Services Department (HSD)  
 Corrections Department (CD)

### SUMMARY

#### Synopsis of Senate Bill 546 SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 546 adds the following language to the original bill: The provisions of this section apply to state buildings specifically authorized by law to be acquired pursuant to this section through lease purchase agreements with the authority. Nothing in this section limits or otherwise affects the authority has under other laws to incur debt, acquire and dispose of property or enter into agreements.

#### Synopsis of Bill

Senate Bill 546 authorizes the Property Control Division (PCD) of the General Services Department to enter into agreements to construct a substance abuse treatment facility on state land located in Los Lunas in Valencia County, including:

- Long-term lease of the land to the developer (owner) of the building

- Lease between PCD and the developer (owner) with an option to purchase at the end of the term (a lease-purchase agreement) provided that the lease meets the requirements of the NM Constitution:
  - No obligation to continue the lease annually
  - Termination if appropriations for lease payments are not sufficient
  - If purchased, building title will be in the name of PCD

The NM Attorney General is required to approve the lease contract and financing arrangements for legal sufficiency, and the Capitol Buildings Planning Commission (CBPC) must review the offerors in response to a request for proposals (RFP) and the proposed contract prior to execution.

PCD and Human Services Department (HSD) shall execute a sublease for HSD to occupy the facility for substance abuse treatment. In addition, PCD may sublease to any state agency should the space needed by HSD or its successor be reduced; HSD or its successor has insufficient appropriations; HSD or its successor is relocated by the legislature.

The Secretary of Finance and Administration (DFA) is authorized to transfer funds from HSD operating budget to pay annual lease payments. In addition, both PCD and HSD shall make necessary efforts to secure adequate appropriations for this purpose each year.

The bill also allows the New Mexico Finance Authority (NMFA) to:

- Issue lease purchase revenue bonds to finance the project if PCD determines this is the most cost-effective way to finance the work. NMFA is also allowed to include in the bond issue a maintenance component.
- Use the proceeds of lease revenue bonds to construct or purchase the building
- Use the public project revolving to purchase the lease revenue bonds
- Create a debt service fund for each lease purchase agreement
- Provide an option to purchase the building at a price reduced according to lease payments made

And finally, the bill ratifies and approves a lease purchase agreement that complies with the provisions of the bill, and ratifies and approves a land lease for the property on which the building is located if in compliance with the act.

## **FISCAL IMPLICATIONS**

According to GSD, lease-purchase financing captures agency annual occupancy costs and converts those payments over time into an asset when the building is purchased at a price reduced according to the lease payments made.

According to DFA, lease-purchase financing allows the state to eventually own the building at a price that is reduced by the lease payments that have been made.

Corrections Department notes: if the substance abuse treatment facility ultimately helps prevent certain individuals from ever being sentenced to prison or placed on probation or parole for certain crimes stemming from their substance abuse problems, it could reduce the prison population and probation/parole caseloads to a minimal or perhaps greater degree.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

## SIGNIFICANT ISSUES

According to GSD, this bill establishes in law a methodology for financing and approvals of a lease-purchase agreement between PCD and a private developer or NMFA, as well as allows the NMFA to finance and act as owner in such a transaction. The bill also satisfies the requirements of 15-3-35, NMSA 1978, that the legislature ratify and approve any lease purchase agreement, as well as a long-term land lease after approval by the NM Attorney General and review by the Capitol Buildings Planning Commission.

According to the Attorney General's Office, the amendment to the New Mexico Finance Authority Act authorizing NMFA to acquire buildings through the use of revenue bonds and enter into lease-purchase agreements with state agencies for the acquisition of those buildings appears unprecedented. In effect, it transfers PCD's responsibility for acquiring and leasing state buildings to NMFA.

Again, according to the Attorney General's Office including amounts to cover repair and maintenance in the lease payments raises a question under the constitutional debt provisions. Article IX, Section 8 exempts from its restrictions lease purchase agreements entered into by the state for the purchase of real property, subject to certain limitations. The constitution does not exempt long term services contracts, however. The New Mexico Supreme Court held in Hamilton Test Sys., Inc. v. City of Albuquerque, 103 N.M. 226 (1985), that a long term service contract executed by a municipality constituted a "debt" for purposes of the constitution's debt restrictions. Accordingly, to the extent that PCD's lease obligates PCD to pay maintenance and repair costs in excess of the amount necessary to pay for the building, it may be subject to challenge under Article IX, Section 8.

HSD notes the following: substance Abuse has grown to epidemic proportions in New Mexico communities. Effective treatment can significantly reduce these costs by allowing individuals to become productive participants in their families and communities. In recognition of this problem the New Mexico 2007 and 2008 Legislatures appropriated a total of \$10.9 million dollars of funds (capital and general funds) for initial program planning and to program, plan and construct a Substance Abuse Treatment and Training Center in Los Lunas (LL SATTC) The LL SATT center will have two facilities:

Intensive Outpatient Treatment and Training (IOPTT) facility: The 31,000 sq. ft lease-to-purchase "green" facility will provide substance abuse (SA) treatment for up to 840 men, women and adolescents annually; and house a training center that provides cutting edge training for up to 1,200 persons annually Projected construction completion: July 2010.

Women (with children) Residential Treatment (WRT) facility: The Women’s Residential Treatment shall provide 16 beds for women; 24 beds for their children thru age 11. It will be a 20,000 sq. ft. “green” state facility built through the standard General Service Department capital project process. Projected construction completion: August 2010

Both facilities will be constructed on state land on Morris Road north of the new Valencia County Judicial Complex.

A contractor shall construct on state property at the Los Lunas corrections site the building to be utilized as the Intensive Outpatient Treatment and Training facility. The contractor shall be selected through the “Request for Proposals” (RFP) for leased office space process. GSD will enter into a lease with option to purchase agreement with selected proponent and sublease the facility to HSD. HSD will need to transfer rent funds to GSD via MOU/JPA so GSD can pay lessor rent.

The Human Services Department (HSD) has selected a provider who will provide SA services in the facility. The lease will be for a twenty year period with an option to purchase clause allowing the state to purchase the facility during or at the end of the lease term. Section 15-3-35 NMSA 1978 requires ratification and approval of any financing agreement under which a state agency shall occupy a building that contains an option to purchase for a price that is reduced according to purchase according to the lease payments. 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to a state agency if the sale, trade or lease is for a consideration of one hundred thousand dollars or more. The bill specifies a “temporary provision” allowing GSD to enter into a lease purchase agreement and lease of land given that it is in compliance with the bill.

## **PERFORMANCE IMPLICATIONS**

HSD indicates that the services proposed in Senate Bill 546 relate to Goal 4, Task 4.2: Improve access, quality, and value of mental health and substance abuse services identified in the Governor’s Performance and Accountability Contract; and the Human Services Department (HSD) Strategic Plan Goal 4, Task 4.2: Reduce adverse impacts of substance abuse and mental illness on individuals, families, and communities; as well as the Strategic Plan Goal 4, Task 4.3: Promote recovery and resiliency for high-risk and high-need individuals with mental illness and/or substance abuse by increasing access to housing, education, employment, transportation and positive social interactions.

## **ADMINISTRATIVE IMPLICATIONS**

Because it requires the Attorney General’s prior approval, the bill will increase the responsibilities of the Attorney General’s Office accordingly.

HSD, in collaboration with the GSD, has issued a “Request for Proposal” for design, construction, finance and facility management services for a leased office facility (IOPT). HSD and GSD will review all proposals, select a contractor, review all plans and monitor construction of the facility to insure compliance with all requirements of the RFP.

HSD will need to transfer rent funds to GSD so GSD may make rent payments to lessor per the lease with option to purchase agreement. GSD will enter into a sublease with HSD for the space.

## **RELATIONSHIP**

Relates to Senate Joint Resolution 7

## **TECHNICAL ISSUES**

According to HSD, the language specifying that the New Mexico Mortgage Authority may issue lease purchase revenue bonds if it is deemed the most cost effective method to construct, occupy and acquire the building may be problematic. HSD understands the lease revenue bonds may need to be issued if the state opts to acquire the building. However, if the decision is made to issue bonds to construct the facility, this could cause substantial delays in the completion of the building and delay the provision of services projected to begin in July 2010.

The RFP that has been issued specifies that the building will be constructed by a private lessor and be paid via lease payments. The lease will contain an option to purchase clause which will require future funding if the state opts to purchase the facility.

The Resolution's description of the location of the proposed building is not clear. The Corrections Department currently utilizes a facility at 1000 Main Street, Los Lunas, New Mexico, and that facility is commonly known as the Los Lunas Campus or the Los Lunas Training Campus. The Department desperately needs that facility for its treatment programs. If the bill is intended to remove the use of that facility from the Department, this would cause an undue hardship on the Department. Otherwise, the Department would have no objections to the bill, and in fact would fully support it.

## **OTHER SUBSTANTIVE ISSUES**

HSD indicates that the LLSATT is designed to be the pre-eminent substance abuse treatment program in New Mexico. Points of excellence include but are not limited to: close linkage to courts, law enforcement, community providers and consumer/family groups; innovative, extensive training; comprehensive evaluation; data driven management; wide range of integrated, cutting-edge evidenced-based practices; Continuous Quality Improvement processes. State-of-the-art technology will be utilized in every major area of the center, including program and treatment, facility management, outcome management, and business operations.

CD notes that substance abuse treatment for individuals always has the potential to reduce the number of new criminal convictions and probation/parole violations, and thus also to help reduce NMCD's prison population and probation/parole caseloads.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

PCD will be unable to enter into a lease purchase agreement for a building located the substance abuse treatment facility located in Los Lunas.

DFA suggests that in the current economy, it may be difficult to find other financing methods for constructing a substance abuse treatment and training facility for HSD on the land that is owned by PCD in Los Lunas.