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FISCAL IMPACT REPORT

SPONSOR Espinoza **ORIGINAL DATE** 2/10/15
LAST UPDATED 2/18/15 **HB** 253/aHEC

SHORT TITLE Charter School Facility 4 Year Plans **SB** _____

ANALYST Gudgel/Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 352
 Conflicts with Senate Bill 236

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public Education Department (PED)
 Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of House Education Committee Amendment

The House Education Committee amendment for House Bill 253 changes the requirements of the Charter Schools act by adding a provision to the requirement that charter schools be housed in a public facility beginning July 1, 2015 by demonstrating that the charter school has developed and is following a four-year plan to fulfill that requirement. The previous version of HB 253 allowed the Public School Capital Outlay Council (PSCOC), which may currently grant variances to a charter school, to include a four-year plan to be in a public facility. This bill removes that language and instead inserts it into Subsection D of 22-8B-4.2 NMSA 1978, the section containing the requirement for charters to be in public facilities or meet other requirements. This has the affect of allowing the charter school authorizers, rather than the PSCOC, to determine a charter school's compliance with Subsection D.

Synopsis of Bill

House Bill 253 amends the Charter Schools Act to allow the Public School Capital Outlay Council (PSCOC) to authorize a variance to a charter school that includes granting four

additional years to comply with statutory requirements that require charter schools to be housed in public facilities beginning July 1, 2015. (See Significant Issues for specifics of the publicly-owned facility provisions.)

FISCAL IMPLICATIONS

This bill does not contain an appropriation. PSCOC and PSFA staff would be required to implement and monitor the provisions of the bill, including communicating the results of conformance with Subsection D and the new four-year plan to the Public Education Commission (PEC) and local school districts.

SIGNIFICANT ISSUES

Current law prohibits new charter schools from opening and existing charters from being renewed on or after July 1, 2015 if they are not housed in a public facility or do not meet one of the enumerated exemptions (“public facility requirements”). Charter schools that are not housed in public facilities either have to have a lease-purchase agreement to purchase a facility, or 1) be housed in a facility that meets the statewide adequacy standards (and the owner is obligated to maintain those standards) and certify that no other public buildings are available or adequate for the educational program of the charter school OR 2) be housed in a facility that meets the statewide adequacy standards (and the owner is obligated to maintain those standards) and the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

The law currently requires the Public School Capital Outlay Council to determine whether a facility meets the above “public facility requirements” and allows the PSCOC to “grant a variance” from specific requirements for a charter school when the PSCOC determines the specific requirements are not appropriate or reasonable for a charter school. Current language related to the granting of a variance is permissive and does not require the PSCOC to grant a variance.

In practice, the PSCOC should be making the determination whether a charter school is in compliance with the “public facility requirements” (consistent with Subsection F which states it is up to PSCOC to make the determination) and notifying the charter school authorizer (either local school district or Public Education Commission) if the charter school is in compliance or not. The authorizer makes the final decision regarding allowing the charter school to open or renew. PSFA notes PSCOC does not currently have the authority to allow a charter school to move into a new facility or to relocate. Rather, the authorizer has the authority to approve location or relocation for charter schools.

Language proposed in the bill allows a charter school to provide a four-year plan to fulfill the requirements of the “public facility requirement.”

While the deadline provided for in law is July 1, 2015, not all charter schools would be required to meet the requirements of Subsection D on that date. Rather, existing charter schools will be required to be in compliance with the “public facility requirements” upon the renewal of their charter. Information obtained from PSFA shows that, of the state-chartered charter schools up for renewal between 2015 and 2019, a total of 31 schools out of 59 are currently not in compliance with the “public facility requirements.” The following list shows the number of

state-chartered charter schools not in compliance with the “public facilities requirements”:

- Renewal date July 1, 2015: 10 charter schools, out of 20 total schools up for renewal.
- Renewal date July 1, 2016: 4 charter schools, out of 6 total schools up for renewal.
- Renewal date July 1, 2017: 7 charter schools, out of 15 total schools up for renewal.
- Renewal date July 1, 2018: 1 charter school, out of 6 total schools up for renewal.
- Renewal date July 1, 2019: 9 charter schools, out of 12 total schools up for renewal.

Over half of state-chartered charter schools are not in compliance with the “public facility requirements.” Conversations with PSFA staff indicate that PEC has not required compliance with the “public facility requirements” as a condition for renewal for the 10 state-chartered charter schools that are up for renewal for 2015.

Of the locally-chartered charter schools up for renewal between 2015 and 2019, a total of 8 schools out of 39 are currently not in compliance with the “public facility requirements.” The following list shows the number of locally-chartered charter schools not in compliance with the “public facilities requirements”:

- Renewal date July 1, 2015: 3 charter schools, out of 10 total schools up for renewal.
- Renewal date July 1, 2016: 3 charter schools, out of 7 total schools up for renewal.
- Renewal date July 1, 2017: 0 charter schools, out of 5 total schools up for renewal.
- Renewal date July 1, 2018: 0 charter schools, out of 2 total schools up for renewal.
- Renewal date July 1, 2019: 2 charter schools, out of 5 total schools up for renewal.

PSFA adds the PSCOC’s role in charter school facilities is to perform assessments on potential facilities for existing or renewed charter schools to determine if a proposed facility meets educational occupancy standards and meets or exceeds the average New Mexico condition index (wNMCI). This information is provided to the charter schools and the authorizer.

PED notes the methodology outlined in the bill appears to be reasonable to ensure charter operations are not adversely affected by the 2015 deadline yet ensure a limited timeline to achieve compliance. However, the requirement to locate in a public facility was first enacted in 2005 with a July 1, 2010 deadline. The law was first enacted in 2005. When enacted, the provisions applied to both new charter schools and charter schools seeking renewal beginning July 1, 2010 was not as expansive as it currently is. In 2009, the law was amended to allow a lease purchase agreement to satisfy the “public facility requirements” and the date was pushed back to July 1, 2015

ADMINISTRATIVE IMPLICATIONS

PSFA states additional staff may be needed to establish criteria, review, and provide a recommendation of the four-year plan for approval by the PSCOC. However, LFC staff believes the requirements of this bill should not create significant additional administrative burden than currently exists. PSFA staff notes that, because the date has been pushed out in the past, PSCOC has not had to evaluate any requests to date.

RELATIONSHIP

House Bill 352 amends the Public School Code to allow certain charter schools to receive funding from the Public School Capital Outlay Fund for a down payment to build or enter into a

lease-purchase agreement to acquire classroom facilities.

SB 236 amends Subsection C of Section 22-8B-4.2 NMSA 1978 by changing the language “demonstrates” to “attains” a wNMCI rating equal to or greater than the state average. The requirements of this bill will be slightly modified by SB 236 if both bills are passed.

OTHER SUBSTANTIVE ISSUES

PSFA indicates its facilities database shows there is existing underutilized educational space within existing statewide inventory that could be used to accommodate charter schools’ facility needs.

ALTERNATIVES

Given this requirement has been in law since 2005, the Legislature may wish to investigate the underlying problems leading to the extension and address those difficulties directly. PED notes the major obstacle for charter schools meeting the requirements of Section 22-8B-4.2 NMSA is limited financial resources and no taxing power, noting that additional solutions will need to be sought to assist charter schools in accessing capital funds.

KC/aml/bb