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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 1st Session, 2017**

<b>Bill Number</b>	<u>HB470</u>	<b>Sponsor</b>	<u>Trujillo, L.</u>
<b>Tracking Number</b>	<u>.205461.2</u>	<b>Committee Referrals</b>	<u>HEC/HTRC</u>
<b>Short Title</b>	<u>School for the Arts &amp; Capital Outlay</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>3/5/17</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

House Bill 470 (HB470) exempts the New Mexico School for the Arts (NMSA) from the requirement that charter schools use the same local match percentage as the school district in which they are geographically located for capital outlay projects funded pursuant to the Public School Capital Outlay Act. Instead, the local match for New Mexico School for the Arts would be 50 percent for projects that qualify under the educational adequacy category, and subject to reductions based on the Public School Capital Outlay Council (PSCOC) offset for direct appropriations, provided that the PSCOC may adjust or waive the amount of any direct appropriation offset to or local share required for the school if the school has insufficient or no local resources available.

**FISCAL IMPACT**

HB470 does not contain an appropriation. However, HB470 could have an impact on the Public School Capital Outlay Fund. Currently, New Mexico School for the Arts is required to pay 90 percent of a qualifying project pursuant to the Public School Capital Outlay Act. HB470 would reduce the school's responsibility to only 50 percent of a project. This means the Public School Capital Outlay Fund would be required to pick up an additional 40 percent of costs for qualifying capital outlay projects.

The Public School Capital Outlay Fund is primarily funded by supplemental severance tax bonds (SSTBs). Revenues available for SSTBs are down sharply in recent years because they are closely tied to the declining oil industry. Revenues will continue to decline because of decreased severance tax collection and legislative action that decreases available SSTB bonding capacity and revenue available for public school capital projects. Laws 2015, Chapter 63 (House Bill 263) reduced the statutory limits of senior and supplemental severance tax bond capacities to increase the amount of revenue deposited into the severance tax permanent fund. Beginning in FY19, the available SSTB capacity is estimated to be reduced \$8.9 million annually. Laws 2016 (Second Special Session), Chapter 2 (Senate Bill 4) appropriated \$12.5 million from the Public School Capital Outlay Fund to the Instructional Material Fund in FY17 and authorized up to

\$25 million to be used annually from FY18 to FY22 for instructional materials and student transportation, further reducing available capacity for public school projects. Currently, House Bill 2 appropriates the full \$25 million for FY18.

The New Mexico School for the Arts currently leases their school building from a nonprofit foundation utilizing PSCOC lease assistance. In 2015, New Mexico School for the Arts' nonprofit foundation, NMSA-Art Institute, bought a new building, the Sanbusco Market Center. State law requires charter schools to attain a condition index ration equal to or better than the average condition of all New Mexico public schools within 18 months of moving in. NMSA-Art Institute launched a capital campaign to raise funds to renovate and remodel the property in 2015. To date, NMSA-Art Institute has raised just over \$15 million. The Santa Fe New Mexican reported on March 2, 2017 about \$15 million is still needed.

The Santa Fe New Mexican reported, "The arts school was created by an act of the state Legislature, which also provided it with startup funds. At that time, [New Mexico School for the Arts] said [they] would not return to the state to seek more funding. On Wednesday, [New Mexico School for the Arts] acknowledged that, but given the school's rapid growth and success, 'We didn't know what was in store. ... We didn't understand the organization that we would turn into. We have since more than proven ourselves.'" When consideration was given to the creation of the charter school, New Mexico School for the Arts specifically committed to the Legislature that funding for room and board outreach would not come from state resources in the future, but the school would instead seek funding from private sources.

To date, New Mexico School for the Arts has received \$310 thousand in direct capital appropriations. New Mexico School for the Arts received \$210 thousand to purchase a permanent campus in Santa Fe, contingent upon an equal match from private donations. New Mexico School for the Arts also received \$100 thousand to plan, design, and equip facilities.

While New Mexico School for the Arts receives funding from the state for its charter school, the school must account for arts programming and residential room and board costs separately and secure these funds from private donations. This means capital outlay funds cannot be used for either of these purposes. It is unclear how this would affect capital outlay adequacy standards as they wouldn't be able to include arts programming.

According to Santa Fe Public Schools (SFPS), New Mexico School for the Arts also receives capital outlay funds from HB33 (the Public School Buildings Act) and SB9 (the Public School Capital Improvements Act). In the 2015-2016 school year, the latest information available from the Public Education Department (PED), New Mexico School for the Arts received \$106,554 from HB33 and \$150,331 from SB9. New Mexico School for the Arts also received \$119,868 from education technology notes in August 2016.

## **SUBSTANTIVE ISSUES**

HB470 would amend the New Mexico School for the Arts Act, Section 22-15F-4 NMSA 1978, to exempt New Mexico School for the Arts from certain provisions of the Public School Capital Outlay Act. HB470 would exempt New Mexico School for the Arts from local match provisions all other charter schools in the state must follow.

To receive capital funding for standards-based projects, schools must not only meet eligibility criteria, but also provide local match funding to receive the state match. In 2003, the Legislature enacted a state share funding formula to take into account the availability of school district revenue from both bond levies and direct mill levies that support capital outlay. The Public School Capital Outlay Act stipulates that charter schools have the same local match as the school district in which the charter school is physically located. HB470 would exempt New Mexico School for the Arts from these provisions, and instead provide a 50 percent local match for projects that qualify under the educational adequacy category. Currently, New Mexico School for the Arts has a 90 percent local match requirement, the same as the Santa Fe Public School district in which they are located.

HB470 would allow PSCOC to adjust or waive the amount of any direct appropriation offset if the school has insufficient or no local resources available. Statute only allows PSCOC to waive direct appropriation offsets for the constitutionally created special schools: the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf because they don't have any bonding capacity. The law says PSCOC must "reduce any grant amounts awarded to a school district by a percent of all direct non-operational legislative appropriations for schools in that district that have been accepted, including educational technology and reauthorizations of previous appropriations." The Legislature enacted the offset as one of a number of initiatives it has taken to better equalize state funding of capital requests across all of New Mexico's school districts and charter schools. The 2002 report of the Special Master appointed as a result of the Zuni lawsuit specifically highlighted "the disqualifying effect of direct legislative appropriations to individual schools for capital outlay purposes." The offset was enacted to mitigate this concern.

In addition, HB470 would allow the PSCOC to adjust or waive the local match required if the school has insufficient or no local resources available. Current law provides PSCOC the ability to adjust the amount of the local match required if the school meets criteria outlined in Paragraph 9 of subsection B of Section 22-24-5 NMSA 1978. Attachment A provides a breakdown of current waiver criteria.

All other charter schools would be required to continue using the same local share percentage as the school district in which they are geographically located, including both state-chartered charter schools and locally chartered charter schools in Santa Fe. Providing a different match for individual charter schools may disqualify the funding process. Alleged ongoing disparities led Gallup-McKinley County Schools to reopen the Zuni lawsuit two years ago – which had never been closed – and seek judicial intervention to cure what the school district characterizes as ongoing disparities in the current public school capital outlay funding system.

PED noted the provisions contained in HB470 appear to conflict with the philosophical underpinnings of the standards-based system within the Public School Capital Outlay Act. The original formula was developed and based on the premise that the formula should be transparent, objective, and based upon the equity principle. No criteria were used in determining the 50 percent match requirement for New Mexico School for the Arts. The arbitrary percentage of 50 percent does not address all school-age children within the state, which was a cornerstone of the "equalized" standards-based system. This bill only affects one of the 99 approved charter schools.

The Public School Facilities Authority (PSFA) noted that per the 2017-2018 preliminary New Mexico Condition Index (wNMCI) ranking, New Mexico School for the Arts is ranked at

128 with a wNMCI of 25.9 percent. Under the 2017-2018 PSCOC standards-based awards criteria, eligible schools must have a wNMCI greater than 60 percent, and under the systems-based awards criteria, a school must be ranked within the top 100 to be eligible for an award from the council.

## **OTHER SIGNIFICANT ISSUES**

The New Mexico School for the Arts was established in 2008 with the enactment of Senate Bill 34 as a statewide residential state-chartered charter high school that provides New Mexico students who have demonstrated artistic abilities and potential with the opportunity to pursue a career in the arts. The New Mexico School for the Arts Act is subject to all provisions of the Charter Schools Act except the school is allowed to have admissions requirements and enrollment preferences.

With initial enactment, the school was prohibited from receiving public funding for arts programming and room and board costs. Senate Bill 34 required New Mexico School for the Arts to separately account for these costs and the revenue received from private sources to pay those costs. In addition, the New Mexico School for the Arts Act stipulates that the school board is responsible for soliciting grants and donations from private sources for these purposes. Failure of the school to secure adequate funding for these purposes was listed as grounds for denial or revocation of the charter.

The 2013 enactment of Senate Bill 164 amended the New Mexico School for the Arts Act to allow New Mexico School for the Arts to seek public funding for arts programming and room and board for those students financially unable to pay the full cost. This 2013 amendment prohibited the use of the school's state equalization guarantee (SEG) distribution for arts programming and room and board expenses for students at New Mexico School for the Arts. However, New Mexico School for the Arts may use other general fund appropriations made in the General Appropriations Act, other direct legislative appropriations, or other public funding sources for arts programming and student room and board.

Students at New Mexico School for the Arts take academic classes from 9:20 a.m. until 2:00 p.m. daily. Academic programming is funded by SEG distribution and complies with New Mexico PED standards. Afternoons are dedicated to study of the artistic discipline of a student's choosing, with an extended day that ends at 4:45 p.m. The costs of the arts programs, the residential program, outreach, and various other activities are met through fees and private philanthropy through the nonprofit affiliate, the NMSA-Art Institute.

According to New Mexico School for the Arts, the NMSA-Art Institute raises more than \$100 thousand annually from private donors to provide financial aid to students for room and board. Additionally the NMSA-Art Institute raises more than \$2 million annually to pay for arts classes and outreach.

The NMSA-Art Institute asks each family to pay an annual Arts Fee of \$1,000 per student to offset part of the cost of the arts programming; the NMSA-Art Institute provides \$6,500 per student for arts programming per year. Ability to pay the arts fee is not a criterion for acceptance into the school. For the 2015-2016 school year, the total room and board fee was \$9,500; however, residential scholarships were available. According to New Mexico School for the Arts, the 2016-2017 residential operation costs are budgeted at \$248,559. Residential student room

and board is assessed on a sliding scale basis that is approved by the Public Education Commission and based on family income, as shown below.

<b>Sliding Fee Scale for the Residential Program: Annual Family Taxable Income (for a family of 4)</b>	<b>Rate</b>	<b>Fee Amount</b>
\$75,000 or more	100%	\$9,500
\$60,000 - \$74,999	80%	\$7,600
\$45,000 - \$59,999	60%	\$5,700
\$30,000 - \$44,999	40%	\$3,800
\$25,000 - \$29,999	20%	\$1,900
Under \$25,000	10%	\$950

Source: NMSA

**RELATED BILLS**

Relates to HB273, Charter School Changes, which removes the local match requirement for charter school capital outlay grants.

Relates to SB147, School Capital Outlay State-Local Matches, which proposes to replace the current state and local match formula for PSCOC projects.

**SOURCES OF INFORMATION**

- LESC Files
- Public School Facilities Authority
- Public Education Department

**MCR/rab**

**Standards-Based Waiver Criteria - 22-24-5 (B)(9)**

If the mill levy is equal to or greater than	<b>10.0</b>	the district is eligible, <b>OR</b>
if the MEM count is equal to or less than	<b>800</b>	and
the percent of free or reduced fee lunch is equal to or	<b>70%</b>	and
the state share is less than	<b>50%</b>	and
the mill levy is equal to or greater than	<b>7.00</b>	the district is eligible, <b>OR</b>
If the school district has an enrollment growth rate over the	<b>2.5%</b>	and
pursuant to its 5-year FMP, will be building a new school	<b>2 years</b>	and
the mill levy is equal to or greater than	<b>10.0</b>	the district is eligible

Source: PSFA