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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>SB245/SECS</u>	<b>Sponsor</b>	<u>SEC</u>
<b>Tracking Number</b>	<u>.213329.1</u>	<b>Committee Referrals</b>	<u>SEC/SFC</u>
<b>Short Title</b>	<u>Charter Schools, Facilities &amp; Capital Funds</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>1/29/2019</u>
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**BILL SUMMARY**

Synopsis of SEC Committee Substitute

The Senate Education Committee Substitute for SB245 (SB245/SECS) would amend portions of the Charter Schools Act, the Public School Capital Outlay Act, the Public School Capital Improvements Act, the Public Buildings Act, and the New Mexico Finance Authority Act concerning charter school facilities. This bill would amend the Charter School Act to require the Public School Facilities Authority (PSFA) to ensure school districts that have available land or facilities notify charter schools annually of their availability. Additionally, SB245/SECS would allow school districts to make land available for lease, lease purchase, or purchase to the charter schools located in their school district in addition to the current statutory requirement of available facilities. SB245/SECS would amend the Public School Capital Outlay Act to change the methodology for calculating lease assistance reimbursements so that it is based on facility space instead of classroom space. This bill would create a new section of the Public School Capital Outlay Act to create the charter facility fund, and would require the Public School Capital Outlay Council (PSCOC) to adopt rules to provide loans to charter schools for the purchase, construction, expansion or renovation of facilities. SB245/SECS would amend the Public School Capital Improvements Act, commonly referred to as SB9 funds, and the Public School Buildings Act, commonly referred to as HB33 funds, to clarify the process by which a charter school is included in a school district's resolution of proposed capital improvements that is submitted to voters for their approval. Lastly, SB245/SECS would create a new section of the New Mexico Finance Authority Act to require the New Mexico Finance Authority (NMFA) to adopt policies for the public project revolving fund to provide facility loans to charter schools.

**FISCAL IMPACT**

The bill appropriates \$20 million from the general fund operating reserve to the public project revolving fund for expenditure in FY19 and subsequent fiscal years to provide loans to charter schools for the renovation, construction, purchase, or expansion of a charter school facility or to pay off a lease purchase agreement. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to any other fund.

SB245/SECS also appropriates \$30 million from the general fund operating reserve to the charter school facility fund for expenditure in FY19 and subsequent fiscal years to pay off charter school lease purchase agreements. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to any other fund.

## **SUBSTANTIVE ISSUES**

SB245/SECS amends multiple acts to address issues concerning charter school facilities, as outlined below:

**The Charter School Act.** SB245/SECS amends the Charter School Act to allow school districts to make land available to charter schools in their school district, in addition to the existing requirement that school districts with available facilities not currently used for educational purposes make those facilities available for lease, lease purchase, or purchase to charter schools located in their school district. PSFA must ensure annually that school districts with available land or facilities notify charter schools of their availability no later than the 1st day of May of each year. SB245/SECS would stipulate that a school district may develop a facility prioritization plan that identifies which charter schools may lease, lease purchase, or purchase available school district facilities. SB245/SECS would also require that school district-owned land would not be considered available to a charter school if the school district has justified future use of that land through its five-year facilities master plan.

**The Public School Capital Outlay Act.** SB245/SECS would change the methodology for calculating lease assistance reimbursements. Currently, lease assistance reimbursements are based on either actual lease payments or \$700 multiplied by the student membership (MEM) using the leased *classroom* space and adjusted by the percentage change between the penultimate calendar year and the immediately preceding calendar year of the consumer price index (CPI) for the United States – whichever is less. SB245/SECS would amend this methodology so that it would be calculated based on either actual lease payments or \$700 multiplied by the MEM using the leased *facilities* and adjusted by the percentage change in the CPI, whichever is less. SB245/SECS would define “facilities,” as those “determined by the five-year facilities master plan aligned with statewide adequacy standards for school activities.”

SB245/SECS would add a new section to the Public School Capital Outlay Act creating the charter facility fund as a nonreverting fund in the state treasury to pay off charter school lease purchase agreements. The bill would require PSFA to administer the fund, and PSCOC to adopt rules to provide loans to charter schools for the purchase, construction, expansion, or renovation of facilities, including evidence that lease purchase agreements are made in accordance with the Public School Lease Purchase Act, that a charter school’s charter has been renewed at least once, and review of the last two audits of the charter school.

**The Public School Capital Improvements Act and The Public School Buildings Act.** SB245/SECS amends the Public School Capital Improvements Act (commonly referred to as SB9 funds) and the Public School Buildings Act (commonly referred to as HB33 funds) to clarify the process by which a charter school is included in a school district’s resolution of proposed capital improvements that is submitted to voters for their approval. SB245/SECS would specify that a school district would collaborate with the charter schools in their school district to establish a process for the charter schools to submit necessary information to the school district. While this requirement has always been in place, SB245/SECS makes it more specific. SB245/SECS would require that a charter school submit the necessary information for inclusion in the resolution,

including identification of the capital improvements for which the proposed revenue would be used, no later than the 1<sup>st</sup> day of June of the calendar year in which the resolution would be considered (instead of just “timely”) and would require a point of contact in each school district for charter schools to submit information.

**The New Mexico Finance Authority Act.** SB245/SECS would add a new section to the New Mexico Finance Authority Act to require NMFA to adopt policies for the public project revolving fund to provide loans to charter schools for the renovation, construction, purchase, or expansion of a charter school facility or to pay off a lease purchase agreement that include evidence that lease purchase agreements are made in accordance with the Public School Lease Purchase Act, that a charter school’s charter has been renewed at least once, and review of the last two audits of the charter school.

SB245/SECS also includes technical changes, such as changing “public school facilities authority” to “authority” and changing references from the “eightieth day” to the “second reporting date.”

**Lease Assistance Issues.** Under current statute, lease assistance reimbursements are limited to classroom space as defined by the statewide adequacy standards in New Mexico Administrative Code. During the FY19 lease reimbursement cycle, through site visits and space validations at charter schools, PSFA discovered many charter schools were claiming lease reimbursement funding for spaces other than classrooms, such as hallways and mechanical closets, contrary to statute. Because charter schools were either measuring their facilities incorrectly or misinterpreting law, it appears some charter schools have been persistently over claiming lease reimbursements. During the FY19 award cycle, PSFA estimated charter schools were claiming \$3 million in reimbursements for unallowable spaces in FY19, or 20 percent of the total lease reimbursement requests. The PSCOC considered reducing lease reimbursement awards to comply with statutory requirements, but amid concerns from charter schools that they had not been notified timely of the potential change and concerns that PSFA staff did not adequately understand how facility space is used by charter schools, PSCOC ultimately decided not to make changes to the calculation of lease reimbursements in FY19 and directed PSFA to continue to work with charter schools to establish a process that complies with statute for the FY20 lease reimbursement cycle.

**Public School Capital Outlay Funding.** Public school capital outlay funding, used to purchase capital assets like buildings, is both a local and state responsibility in New Mexico. The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by the Gallup-McKinley County Public Schools and the Grants-Cibola County Public Schools. The State district court found that through its public school capital outlay funding system the state was violating that portion of the state constitution that guarantees the establishment and maintenance of a “uniform system of free public schools sufficient for the education of, and open to, all children of school age” in the state. The court ordered the state to “establish and implement a uniform funding system for capital improvements... and for correcting past inequities” and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review progress.

Although the quality of school facilities has improved significantly since the lawsuit, litigant school districts are still concerned the system is inequitable. These alleged ongoing disparities led Gallup-McKinley County Schools (GMCS) two years ago to reopen the *Zuni* lawsuit – 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. For example, GMCS

is concerned that property-wealthy school districts are able to build public school facilities significantly above adequacy without taxing themselves to the same extent that voters in the GMCS school district tax themselves.

**RELATED BILLS**

Relates with SB230, Pre-K Classroom Facilities Initiative, which amends the Public School Capital Outlay Act.

SB231, Public School Capital Outlay Calculations, which amends the Public School Capital Outlay Act.

SB295, School Facilities Authority Expenditures, which amends the Public School Capital Outlay Act.

**SOURCES OF INFORMATION**

- LESC Files
- Public Education Department (PED)
- Public School Facilities Authority (PSFA)

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