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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/09
LAST UPDATED 03/18/09 **HB** 466/aHTRC/aSJC

SPONSOR Miera

SHORT TITLE Public School Lease Purchase **SB** _____

ANALYST Aguilar

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	None Indicated		Recurring	General Fund Public School Capital Outlay Fund

(Parenthesis () Indicate Revenue Decreases)

Relates: SB-378, HB-463, HB-464 and HB-465

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Department of Finance and Administration (DFA)
 Taxation and Revenue Department (TRD)
 Attorney General's Office (AGO)
 Public School Facilities Authority (PSFA)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 466 as amended removes the property tax exemption for property leased to a school district or charter school under a lease purchase agreement and used primarily for public school educational purposes.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 466 adds a requirement that an independent appraisal conducted as part of the disposition of real property on which the school district hold a lien be certified by the Taxation and Revenue Department.

Synopsis of Original Bill

House Bill 466 adds language to permit lease purchase arrangements to be exempt from valuation of property taxation purposes. It also adds language to redefine the terms of lease purchase arrangements as well as new language transferring or assigning lease purchase arrangement property. It also designates lease purchase property as public property.

Senate Bill 466 also adds new language stating that taxes can now be imposed by the district on behalf of charter schools located within the local school district. The bill also raises the terms of a lease purchase arrangement from 20 to 30 years. The bill designates funds that can be used to pay for lease purchase arrangements. The bill sets the maximum rate of a proposed tax at 10 mills. The bill states that properties leased under the lease purchase arrangement are now considered legal investments. The lease purchase arrangements are now exempt from state taxes. The governing body of a charter school cannot adopt a resolution or conduct an election unless done so through the local school board.

FISCAL IMPLICATIONS

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

House Bill 466 provides that property pursuant to a lease purchase agreement and is entered into under the Public School Lease Purchase Act and is leased to a school district or locally chartered or state-chartered charter school and is used primarily for public school educational purposes will not be subject to valuation for property taxation purposes. It is unclear why this provision is included since the property is under private ownership and perhaps for profit. This is a direct benefit for property owners only and will not affect a school that is entering in a lease purchase arrangement. Taking these buildings off the property tax rolls will affect total tax rates within that school district

The Attorney General's Office reports:

1. Unconstitutional Taking and Other Liabilities. To the extent that Section 6(B) attempts to make any building or other real property that is subject to a lease-purchase agreement under this Act but is owned by a private entity, public property, that provision appears to be an uncompensated taking and thus would violate the due process clause of the New Mexico Constitution (Art. II, sec. 18) and Amendment XIV of the U.S. Constitution. Any such change in ownership would also likely impose additional obligations on the school district as to such property.
2. Certificates of Participation. To the extent Section 6(A) authorizes a public body holding a lease-purchase arrangement to issue certifications of participation to secure financing, the same constitutional and statutory debt restrictions applicable to that specific type of public body acting as issuer of public debt generally would apply to such a financing.

3. Capital Improvements of Property Subject to a Lease-Purchase Agreement. Public funds in New Mexico cannot be used to improve property owned by a private entity. To the extent Section 5(G) and (H) would authorize a school district to expend public funds to improve a building or other real property owned by a private entity that is the subject of a lease-purchase agreement under this Act, and Section 8 allows public funds for this purpose, these would be improper uses of those funds.

TRD notes that if property is not exempt under the state Constitution, Article VIII, Sec. 3, the legislature cannot by statute make it exempt. The Constitution only allows the legislature to make personal property exempt by statute. Property leased, but not owned, by a school district is not exempt under Article VIII, Sec. 3 since it is not the “property of” the school district. If the school district has only an equitable interest in the property under the lease-purchase agreement, the property is not exempt under Section 7-36-4(B)(2) NMSA 1978.

The bill deletes language that allows a school district or charter school to use local general obligation bonds to fund a lease purchase arrangement. This takes away a possible source of funding for schools to enter into a lease purchase arrangement.

PED reports that of the 67 charter schools in New Mexico, only 27 are partially or fully in public buildings. The lease purchase option is viewed as the primary vehicle that will be used by charter schools to meet the provisions in 22-8B-4.2, which require approval of any new or renewal of existing charters after July 1, 2010 to be in public buildings or meet one of the other exceptions, which includes a facility under a lease purchase agreement that will meet adequacy standards. The Public School Capital Outlay Omnibus bill, Senate Bill 378 (Nava) proposes extending the deadline to 2015.

The bill amends the language to read that certificates of participation and other partial interests in lease purchase arrangements are legal investments in which all insurance companies, financial institutions, and other fiduciaries may properly and legally invest funds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB-378, which is proposing to require that SB-9 funds be distributed to charter schools on a per-member basis and used to enter into a lease purchase arrangement. HB-463, HB-464 and HB-465 are proposing to disallow HB-33 and SB-9 funds to be used for lease purchase arrangements.

TECHNICAL ISSUES

The terms “holder” and “holding” in Section 6 (lines 19 and 20) are unclear.

PA/mc:svb