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## FISCAL IMPACT REPORT

**SPONSOR** Espinoza **ORIGINAL DATE** \_\_\_\_\_  
**LAST UPDATED** 2/16/15 **HB** 352

**SHORT TITLE** Charter School Capital Outlay Assistance **SB** \_\_\_\_\_

**ANALYST** Chavez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	\$20,170.5		Recurring	PSCOF - charter school payment assistance
	(\$20,170.5)		Recurring	Other PSCOF programs

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 253, SB 128, SB 236, SB 592

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Public Education Department (PED)

Public School Insurance Authority (PSIA)

Public School Facilities Authority (PSFA)

### SUMMARY

#### Synopsis of Bill

House Bill 352 amends the Public School Capital Outlay Act to allow the Public School Capital Outlay Council (PSCOC) to make allocations from the Public School Capital Outlay Fund (PSCOF) to assist charter schools with down payments for classroom facilities to purchase or enter into a lease purchase agreement. The bill limits the amount PSCOC can award to no more than 25 percent of the total cost of the facility and stipulates that funds can be allocated if:

- The charter school has been renewed at least once;
- The charter school has earned a grade of “C” or higher for three consecutive years; and

- The school district in which the charter school resides certifies to the PSCOC that there are no classroom facilities available to provide to the charter school.

## **FISCAL IMPLICATIONS**

PSFA notes that currently there are eight charter schools that may be eligible in 2015 for an award under the new program created by the bill, with a total of 2,373 students. Assuming 100 square feet are needed for each student, potential facility needs total 237,300 square feet at an estimated cost of \$340 per square foot. The estimated need if all eight charter schools applied under the proposed program would be \$80.7 million. At 25 percent, PSFA estimates the cost of this additional program to the PSCOF may be as high as \$20.2 million in 2015.

Revenues to the fund are from supplemental severance tax bonds (SSTBs) and allocations from the fund are authorized by the PSCOC. It should be noted that due to significant reductions in oil and gas prices since the December revenue estimate, the February bonding capacity estimate was reduced significantly. The largest impact from the commodity price decline was seen in SSTB capacity, which was reduced by a total \$124 million over the next five years. For fiscal year 2016, SSTB capacity was revised downward by \$54.2 million. This reduction will have a significant impact on the ability of the PSCOC to award funding for school facilities. The provisions in this bill would further reduce the availability of such funding.

## **SIGNIFICANT ISSUES**

The PSCOF is the source of funding for the standards-based capital outlay program for public schools statewide, as well as the state match for the Public School Capital Improvements Act (SB9), lease assistance program, master plan assistance, and other programs under the Public School Capital Outlay Act (Chapter 22, Article 24 NMSA 1978). PSFA notes that the non-discretionary programs of the PSCOC are SB9 distributions and the operating budget of PSFA. All other programs and awards from the fund are limited by the remaining funding available. PSFA adds that expanding the eligible uses of SSTBs as proposed by this bill would have to compete for funding with the other discretionary programs.

PSFA adds that additional demands on the fund have come in the form of direct legislative appropriations for school busses, pre-kindergarten classrooms and grants to the New Mexico School for the Deaf and New Mexico School for the Blind and Visually Impaired. These additional direct legislative appropriations over the last two fiscal years have totaled more than \$60 million.

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.

PED notes that this statutory requirement has been difficult for some charter schools to adhere to, in spite of significant efforts to remain in compliance. PED adds the lease purchase act can assist charter schools with their capital issues to ensure they are housed in a public facility, but this bill would assist charter schools in accessing funds for their down payments in the purchase of facilities. PED notes this bill appears to provide another alternative to ensure charter operations are not adversely affected by the 2015 deadline.

However, LFC staff notes 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. In addition to this bill, the Legislature is considering waiving these requirements for an additional four years.

Allowing the use of funds from the PSCOF to provide down payments for charter school facilities will decrease the funds available annually for standards-based projects. PSFA notes this bill will further reduce funding available for standards-based awards, which may have Zuni lawsuit implications. It is important to note that the litigant districts have requested the court review the program and allege that both current funding for capital outlay projects and adequacy standards as currently defined are insufficient to meet the needs of school districts. A hearing was originally scheduled in November 2014, but litigant districts agreed to postpone the hearing until after the legislative session. This bill may adversely affect the outcome of that litigation by further reducing PSCOC funds available to award to districts for the standards based program. SB 592 has been introduced to address their concerns. (See Relationship.)

### **ADMINISTRATIVE IMPLICATIONS**

The bill requires the PSCOC to establish guidelines for making awards to charter schools for down payments for purchases or lease purchase agreements. These duties will be absorbed by the Public School Facilities Authority since they serve as staff to the PSCOC. PSFA notes administration of this program may require additional staff.

### **RELATIONSHIP**

House Bill 253 allows PSCOC to grant four additional years to comply with statutory requirements that require charter schools to be housed in public facilities beginning July 1, 2015.

Senate Bill 128 and Senate Bill 236 both amend different sections of 22-24-4 NMSA 1978:

- Senate Bill 128 allows PSCOC to provide for annual allocations up to \$15 million from the Public School Capital Outlay Fund to address building systems needs in existing public school facilities.
- Senate Bill 236 develops a standardized facility lease agreement for charter schools.

Senate Bill 592 expands the definition of school building to include “any related public school structure or facility, including teacher housing in school districts with schools located in sparsely populated, isolated, rural areas.” This could expand the amount of money expended on standards-based projects by increasing what would be eligible for funding under the adequacy standards.

**ALTERNATIVES**

The Legislature may wish to consider changing the minimum requirement of a “C” grade to a “B” grade to ensure capital outlay funding is allocated to the highest quality schools.

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