

CHARTER SCHOOL FINANCING

Background

In New Mexico, charter schools were created by the Legislature in 1992 through passage of the Charter School Act.¹ The original legislation only allowed traditional public schools to convert to charter schools. In 1999, in response to growing demand for more school choice, the Legislature fundamentally changed the Charter School Act - to allow the creation of district-authorized charter schools in addition to conversion schools.² In 2006, the Legislature again amended the Charter School Act to allow the newly created Public Education Commission (PEC) to also authorize charter schools - independently of a local school district. In FY18, there were approximately 100 charter schools educating over 23,500 students in over 2.3 million square feet of leased space.³

The vast majority charter schools lease facilities and apply annually for lease assistance awards, a program of the Public School Capital Outlay Council (PSCOC). In FY18, awards were \$15.4 million based on enrollment (\$736.25 per student), or by actual least – whichever is less.⁴ Charter schools lease facilities because unlike school districts, they cannot issue public debt to raise money to build facilities.

A concern for policy makers was the rising cost of the Lease Assistance awards which grew from \$2 in FY05 to over \$15 million in FY18. The latest PSCOC Financial Plan (attached) indicates a projected reduction in funding for Lease Assistance Awards in FY19 of \$12 million.

New Mexico Charter School Facility Leases

The 1999 amendment to the Charter School Act envisioned that some charter schools would be in available school district facilities, as stated in Section 22-8B-4(F.):

“The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease

payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations."

It became clear early on that identifying available school district space in which to operate was challenging. Many charter schools met their needs by leasing private facilities; typically, these are former commercial spaces, and other privately owned buildings.

To assist charters schools with the added cost of leasing facilities, and in the hope of incentivizing school districts to identify or otherwise make available existing school district space, the Legislature in 2005 amended the Public School Capital Outlay Act making lease payments for classroom facilities, including facilities leased by charter schools, a permissible use of the Public School Capital Outlay Fund.

The impact of the lease costs on charter schools operating budgets is substantial. In 2015, approximately 70% of a charter schools' lease cost was paid for with lease assistance grant awards from the PSCOC (the rest presumably comes from charter school SEG funding).⁵

Requirement to be in Public Facilities

A concern of policy makers about charter schools early on was the fact that a growing amount of public dollars (SEG) was being expended on leasing privately owned facilities. In 2005, the legislature amended the Charter School Act by adding 22-8B-4.2 NMSA which read:

“On or after July 1, 2010, an application for a charter shall not be approved and an existing charter shall not be renewed unless the charter school:

(1) is housed in a public building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; and

(b) subject to evaluation and prioritization and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; or

(2) if it is not housed in a public building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.”

In 2009, this section was amended, changing the deadline from “On or after July 1, 2010” to “On or after July 1, 2015”.⁶

Despite the concern that public dollars were being expended on leasing privately owned facilities, the flow of funds continues to “nonprofit” foundations (See: 22-8B-4.2(D)(2)(b) NMSA). According to the Public School Facilities Authority, 38% of all charter schools (37) are housed in a public building described in 22-8B-4.2(D)(1) NMSA. Conversely, approximately 60 charter schools continue to operate in privately owned facilities.⁷

¹ Section 22-8B-4 NMSA 1978.

² During the late 1990's, advocates of a voucher system in New Mexico lobbied for a law to create a voucher system but the legislature favored instead the amendment of the Charter School Act to create new district chartered charter schools.

³ PSFA 2018-2019 Lease Assistance Applications.

⁴ PSFA 2017-2018 Lease Assistance Awards.

⁵ PSCO Oversight Task Force presentation "Charter Schools in Public Buildings: Current Status" September 3, 2014.

⁶ See Attachment A. for current section of statute.

⁷ PSFA 2018-19 Lease Assistance Application analysis worksheet 07/20/18. Some Charter School leases are LWOP's – Lease with Option to Purchase. These leases provide for property ownership to transfer to the charter school at the end of a specified term, usually 20 or 30 years.

PSCOC Financial Plan

(millions of dollars)

June 6, 2018

I. SOURCES & USES						
<i>SOURCES:</i>						
		FY18 est.	FY19 est.	FY20 est.	FY21 est.	FY22 est.
1	Uncommitted Balance (Period Beginning)	12.5	42.6	49.6	0.6	0.6
2	SSTB Notes (Revenue Budgeted July)	26.5 *	106.9	91.0	111.6	100.2
3	SB4(Instructional Materials or Transportation Distribution)	12.5 *				
4	SSTB Notes (Revenue Budgeted January)	32.3	75.7	47.6	50.2	35.3
5	Long Term Bond	81.4 *	0.0	0.0	0.0	0.0
6	Project Reversions - ESTIMATE	9.9	2.7	2.4	0.6	0.6
7	Operating Reversions (Based on FY16 Audit)	1.8				
8	Advance Repayments	2.2	0.8	1.2	4.0	0.0
9	Subtotal Sources :	179.1	228.7	191.8	166.9	136.6
<i>USES:</i>						
10	Capital Improvements Act (SB-9)	18.4	17.8	18.4	18.4	18.4
11	Instructional Materials or Transportation Distribution	25.0	7.0	7.0	7.0	7.0
12	Security SB239(up to \$10.M FY19-FY22/HB306 (\$6.0M)		10.0	10.0	5.0	5.0
13	Lease Payment Assistance Awards	15.4	12.0	12.0	12.0	12.0
14	Master Plan Assistance Awards	0.5	0.4	0.4	0.4	0.4
15	BDCP	0.2	1.9			
16	BDCP Awards YTD	3.3	1.1			
17	PED (Pre-K)	5.0				
18	PSFA Operating Budget	5.6	5.1	5.1	5.1	5.1
19	CID/SFMO Inspections	0.4	0.5	0.5	0.5	0.5
20	Emergency Reserve for Contingencies YTD	0.9	1.0	1.0	1.0	1.0
21	Awards YTD	51.7				
22	Awards Planned 2018Q3	10.1				
23	Awards Planned in Remaining Quarters & Out Years	0.0	122.3	136.8	116.9	86.6
24	Subtotal Uses :	136.5	179.0	191.2	166.3	136.0
25	Estimated Uncommitted Balance Period Ending	42.6	49.6	0.6	0.6	0.6

II. PROJECT AWARD SCHEDULE SUMMARY							
		FY18 est.	FY19 est.	FY20 est.	FY21 est.	FY22 est.	Total
26	2012-2013 Awards Cycle (Const.) :	1.5	0.0	0.0	0.0	0.0	1.5
27	2013-2014 Awards Cycle (Const.) :	6.2	3.7	0.0	0.0	0.0	9.9
28	2014-2015 Awards Cycle (Const.) :	18.3	14.4	0.0	0.0	0.0	32.7
29	2015-2016 Awards Cycle (Design) :	1.5	0.0	0.0	0.0	0.0	1.5
30	2015-2016 Awards Cycle (Const.) :	10.1	16.2	0.0	0.0	0.0	26.4
31	2017-2018 Awards :	24.2	0.0	0.0	0.0	0.0	24.2
32	2018-2019 Awards Scenario :	0.0	87.9	75.1	32.2	0.0	195.2
33	2019-2020 Awards Scenario :	0.0	0.0	61.7	0.0	0.0	61.7
34	2020-2021 Awards Scenario :	0.0	0.0	0.0	84.7	0.0	84.7
35	2021-2022 Awards Scenario :	0.0	0.0	0.0	0.0	86.6	86.6
36	Subtotal Uses :	61.9	122.3	136.8	116.9	86.6	524.4
*Actual SSTB/LTB Sale							524.4

22-8B-4.2. Charter school facilities; standards.

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

C. On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

(1) is housed in a building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease-purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

E. Without the approval of the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

History: Laws 2005, ch. 221, § 3; 2005, ch. 274, § 2; 2007, ch. 366, § 17; 2009, ch. 258, § 1; 2011, ch. 69, § 2.

Cross references. — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

The 2011 amendment, effective July 1, 2011, added Subsection C to require new and relocated charter schools to use facilities that meet the average condition of public school facilities or to demonstrate the way in which the facilities will achieve the average condition of public school facilities; and added Subsection E to require the public school facilities authority to approve lease-purchase agreements.

The 2009 amendment, effective April 8, 2009, in Subsection A, after "and before", changed "July 1, 2010" to "July 1, 2015"; in Subsection B, after "charter school", deleted "that is in existence, or has been approved, prior to July 1, 2005" and added "whose charter has been renewed at least once"; after "grants may be used", deleted "as" and added "to provide"; and after "leasehold improvements", added "made by the lessor"; in Subsection C, after "July 1", deleted "2010, an application for a charter shall not be approved" and added "2015, a new charter school shall not open", in Paragraph (1) of Subsection C, after "housed in a", deleted "public"; deleted former Subparagraph (b) of Paragraph (1) of Subsection C, which provided that the building must be eligible for grants pursuant to the Public School Capital Outlay Act; deleted former Paragraph (2) of Subsection C, which provided that the building must meet statewide adequacy standards and be leased with an option to purchase; added Subparagraph (b) of Paragraph (1) of Subsection C; and in Paragraph (1) of Subsection D, after "Subsection A of this section", deleted "shall determine whether facilities of a charter school meet".

The 2007 amendment, effective July 1, 2007, added Paragraph (2) of Subsection C to require charter schools to meet the statewide adequacy standards for buildings on or after July 1, 2010.

