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**Purpose:** Explore common facilities challenges for charter schools, including the cost effectiveness of current facilities and lease assistance, as well as potential long-term solutions.

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**Expected Outcome:** A better understanding of charter school facility issues and potential long-term solutions.

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## Charter School Facility Issues: Cost Effectiveness of Current Facilities and Lease Assistance

Charter schools face a range of facilities issues that are distinct from school district facility issues. Charter school facilities were not addressed in New Mexico's initial Charter Schools Act in 1993, which authorized the State Board of Education to authorize charter schools, nor when the Act was reauthorized in 1999, which eliminated state board authorization in favor of local school district authorization. With the significant growth in the number of charter schools and inclusion of a statewide authorizer in 2003, the Public Education Commission (PEC), that is not designed to help its charter schools with facilities, facility issues have become much more complicated for charter schools.

Charter schools historically have had limited access to capital outlay funding. Because of concerns of limited access to capital outlay funding, Section 22-24-4 NMSA 1978 of the Public School Capital Outlay Act was amended in 2005 to authorize the Public School Capital Outlay Council (PSCOC) to use the public school capital outlay fund to make awards to charter schools for lease assistance; however, to protect state investments, Section 22-8B-4.2 NMSA 1978 of the Charter Schools Act was also enacted at the same time to require, by 2010, all charter schools to either be in a public facility or leasing from a non-public entity so long as that entity was financially responsible for maintaining the facility to adequacy standards at no cost to the school (commonly referred to as the public building deadline). At the time, PSCOC was authorized to use up to \$4 million from the Public School Capital Outlay Fund for lease assistance awards at a maximum rate of \$300 per student in FY05 and \$600 per student for FY06 through FY09. At the time, the reimbursement rate was calculated to provide charter schools with approximately 50 percent of their lease costs.

Both acts have since been amended, extending the public building deadline to 2015 and removing the cap on the amount of the public school capital outlay fund that can be used for lease assistance. Additionally, the per-student maximum reimbursement rate was increased to \$700, which can be adjusted annually for the consumer price index by the PSCOC. In FY19, lease assistance funding will cover approximately 66.2 percent of charter school lease costs and all schools have certified that they are in compliance with the public school building deadline, though it is unclear that nonpublic property owners are maintaining adequacy standards at no cost to charter schools.

Between 2005 and 2018, several other changes were made to statutes in an attempt to provide more flexibility to charter schools to address their facility needs. The Lease Purchase Act was enacted in 2007, which authorized charter schools (and school districts) to enter into a facility financing agreement for the lease of a building with a future option to purchase the building for a price that is reduced according to the payments made so long as there is no legal obligation to continue to lease from year to year or to purchase the property. Additionally, the Public School Buildings Act (commonly referred to as HB33) was amended in 2007 and the Public School Capital Improvements Act (commonly referred to as SB9) was amended in 2009 to authorize a per-student distribution amount – not to exceed 10 mills for HB33 and not to exceed two mills for SB9 – from these local property taxes to locally chartered and state-chartered charter schools that meet certain requirements. While all of these efforts have provided more capital outlay revenue to charter schools, there are still multiple issues with each of these solutions and charter schools continue to struggle to enter into reasonable lease agreements and to identify cost-effective facility solutions when purchasing or building new facilities.

## Charter School Facility Challenges

### Charter Schools Have Limited Capital Revenue Sources

Most charter schools use a portion of their state equalization guarantee (SEG) funding to pay for the cost of their facilities, as the basic sources of capital funding for charter schools, such as lease assistance, SB9, HB33, and PSCOC-funded awards are often insufficient on their own.

A majority of both school districts (99 percent) and charter schools (95 percent) received SB9 funds in FY17, and a larger percentage of charter schools (51 percent) received HB33 funds in FY17 than school districts (29 percent).

All PSCOC-funded capital outlay projects are subject to a state and local match formula in the Public School Capital Outlay Act that requires school districts to pay a portion of costs. According to 22-24-5 NMSA 1978, charter schools are subject to the same local match as the school district in which they are geographically located. However, this can be a problem for some charter schools, as they may not have the same ability to pay as the school district in which they are located, and may not be able to raise the local match required.

***SB9 and HB33.*** While all charter schools are eligible to receive a local property tax distribution pursuant to SB9 and HB33 mill levies, certain requirements must be met for a charter school to receive these distributions. First, locally-chartered charter schools must be included in the school district's facility master plan (FMP) and a state-chartered charter school must have its own FMP. Additionally, the charter school must also be included in the school district's resolution submitted to voters. Because these mill levies are issued up to every six years, charter schools that are not included in a current resolution have to wait until the next mill levy election to be eligible for funding, including newly authorized charter schools.

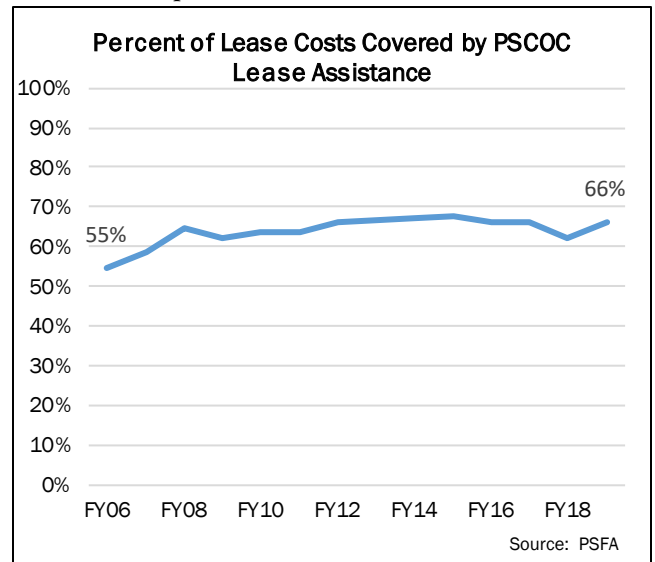
***Standards- and Systems-Based Awards.*** Charter schools are only eligible for standards- and systems-based funding awards as long as their charter has been renewed at least once and meet certain statutory requirements. To date, three charter schools have received a standards-based award for planning and design, although only one was used, 10 charter schools received deficiency corrections or roof awards, and 30 received an FMP award to help charter schools complete this facility planning document.

State law attempts to ensure charter schools do not move into subpar facilities and get ranked as higher need schools. Section 22-8B-4.2 NMSA 1978 requires charter schools that open or relocate beginning in 2011 to move into facilities that are in at least as good condition as the average statewide school. This

generally means very few charter schools will rise to the top of the weighted New Mexico condition index (wNMCI) ranking that the Public School Capital Outlay Council uses to make standards- and systems-based awards. Some concerns should be mitigated for those schools that are in non-public facilities, because state law requires the non-public owner to maintain the adequacy standards at no cost to the school; however, in practice, many private property owners are completing construction projects but passing the costs along to charter schools in the form of increased annual lease payments.

*Lease Assistance.* Although lease assistance was never intended to be the primary source of charter school facility funding, it has covered more than 60 percent of annual lease costs over the last 10 years. Unlike standards-based or systems-based awards, lease assistance is a discretionary program, and has grown by 6.6 percent in the last four years while every other PSCOC program has remained flat or decreased.

The FY19 lease assistance award cycle highlighted several issues with charter schools meeting the requirements necessary to receive lease assistance. Most charter schools over-reported their gross square footage allowable for lease assistance pursuant to Section 22-24-4 NMSA 1978. Statute only allows reimbursement for leased classroom space, but costs for other leased spaces were being submitted for reimbursement. Prior to FY19, charter school gross square footage was self-reported, and PSFA assessment revealed that of the 93 schools that received lease assistance in FY18 and applied for lease assistance in FY19, 87 percent, or 80 schools, over-reported their square footage. Of these, 23 percent over-reported their square footage by more than 10 thousand square feet.



It appears many charter schools lack the capacity to comply with lease assistance requirements. Aside from over-reporting gross square footage, 20 percent of charter school applications for lease assistance had deficiencies, including submission of expired leases, failure to provide a written notification of the intent to continue the lease, and failure to include and submit critical exhibits referenced in the leases such as rent schedules or legal property descriptions. Based on PSFA staff review, some leases contained onerous provisions for the charter school, including the subrogation of insurance and issues pertaining to liability and indemnification. Some charter school applicants who were contacted by PSFA about their applications seemed to have little or no knowledge of the requirements of the lease assistance application or the provisions contained in their own leases.

Despite these issues, PSCOC voted in September to fund lease assistance in FY19 based on the same methodology as FY18, effectively overfunding leased space, contrary to law. However, PSCOC instructed PSFA to work with charter schools to resolve these issues and ensure charter schools understand statutory requirements, with

The total cost of lease assistance funding for FY19 is \$15.7 million, compared with \$15.4 million in FY18. The PSCOC voted to use the same methodology as last year to distribute lease assistance awards in FY19.

the expectation that charter schools will be held to statutory requirements for lease assistance in FY20 and subsequent years.

### **Charter Schools Have Few Options to Finance Facilities**

Many charter schools are choosing to finance the purchase of their facilities, but often face challenges. Charter schools cannot incur debt, but can get facility financing pursuant to a lease purchase agreement, or finance facilities through their foundations, which are able to seek loans from commercial lenders. There are challenges with both models.

***Lease Purchase Agreements.*** There are some persistent issues with lease purchase agreements. To begin, the requirement that a charter school must obtain PSFA and PED approval before entering into a lease purchase agreement is not always being followed, and there is a lack of coordination between PSFA and PED in terms of lease purchase agreement approval. Based on PSFA discussion with charter school administrators, there appears to be a lack of capacity for some charter schools to obtain and administer lease purchase agreements. Additionally, arrangements between charter school foundations and third party lessors are not always transparent in the submitted documentation. Lastly, some lease purchase agreements appear to assign facility ownership to the foundation upon final payment by the charter school.

***Loans.*** Because charter schools cannot legally secure loans, often they get loans through their foundations. Charter school foundations often have difficulty obtaining loans because the five-year charter school renewal cycle makes some lenders hesitant to enter into agreements with charter foundations. Some lenders provide loans to foundations with higher than expected interest rates, possibly because of the perceived risk of the loan. Additionally, some charter schools have difficulty raising down payments.

The New Mexico Finance Authority (NMFA) provides loans charter schools can use to purchase facilities from the public project revolving fund. However, charter schools must meet certain requirements to be considered for an NMFA loan, including being renewed at least once prior to the loan and being able to demonstrate administrative and financial capacity to NMFA. To date, only two charter schools have received an NMFA loan from the public project revolving fund, and only one has paid off the NMFA loan. It appears that both of these charter schools received NMFA loans only because they were backed by the school district or the county in which the charter school was located.

The only charter schools who have received NMFA loans are Digital Arts & Technology Academy (DATA) in Albuquerque and Cottonwood Valley Charter School in Socorro.

Charter schools often have issues finding affordable, adequate facilities. According to the Charter School Facilities Initiative's 2017 publication *An Analysis of the Charter School Facility Landscape in Albuquerque*, 33 percent of charter schools in Albuquerque had to delay their opening date due to facility-related issues.

### **Charter Schools Face Obstacles to Facility Acquisition**

***Lack of Available Facilities.*** Charter schools often face challenges identifying available public space. The 1999 amendment to the Charter School Act envisioned that some charter schools would find space in available school district facilities. Section 22-8B-4 NMSA 1878 stipulates that the school district in which a charter school is geographically

located must provide a charter school with available facilities unless the facilities are currently used for other educational purposes. However, in practice, it is not clear this is always happening. In addition, some charter schools have rejected available school district space, arguing that the facilities are not appropriate for the charter school's specific needs.

Many charter schools also struggle to find facilities in the geographic area they are intending to serve. For this reason, many charter schools ultimately settle for imperfect buildings and lease agreements.

***The 2015 Public Building Deadline.*** A statutory requirement known as the public building deadline seeks to ensure charter schools are housed in public buildings when available to limit the amount of public dollars spent on leasing privately owned facilities. A charter school cannot open and an existing charter school cannot be renewed unless it meets one of the requirements stipulated in 22-8B-4.2 NMSA 1978, which requires schools to be:

- housed in a public building;
- be subject to a lease purchase agreement; or
- be in a private building that meets the state average wNMCI, which the owner is obligated to maintain to those standards at no additional cost, and
  - demonstrate that either no public buildings are available or adequate, or
  - the owner of the facility is a nonprofit entity organized specifically for the purpose of providing a facility to the charter school.

According to PSFA, 75 percent of all charter schools, or 68 schools, are currently housed in a public building as described in Subsection D-1 of Section 22-8B-4.2 NMSA 1978. Approximately 28 charter schools continue to operate in privately-owned facilities.

While all charter schools are in compliance with the public building deadline, some charter schools reported experiencing issues coming into compliance. Some charter schools struggle to find a private space that meets statewide adequacy standards and, further, negotiate a lease that includes the provision that landlords must maintain those adequacy standards at no extra cost. Landlords are often reluctant to agree to these terms, and when they do, lease costs increase.

## Potential Solutions

The myriad of facility challenges charter schools face suggests the need for long-term charter school facility solutions that are equitable, reliable, and sustainable. While charter schools also struggle with facility issues on a national level, many states and localities have implemented policies worth examining. Additionally, New Mexico already has a promising charter school facility framework in place that could serve the state, charter schools, and students well with full implementation.

***Create a Centralized Database of Available Public Facilities.*** A centralized database of all unused school district space would enable new charter schools to identify potential school district partnerships. According to the National Alliance for Public Charter Schools' *School District Facilities and Charter Public Schools*, at least 28 states have enacted policies that try to provide charter schools with better access to school district facilities.

Another potential solution is requiring charter schools to accept public building space that is offered to them. For example, La Academia Dolores Huerta did not accept public facilities offered to the charter school in Las Cruces, and then struggled with facility issues.

Another option is providing charter schools the right of first refusal to purchase or lease, at or below fair market value, any available public building. In this case, the database containing available school district space could be extended to include all available public building space. For example, Delaware law requires the state department of education and state department of administrative services to publish a list of all vacant and unused buildings and portions of buildings owned by the state or school districts that may be suitable for charter schools.

***Co-location.*** Co-location of school district schools and charter schools on a centralized campus could provide opportunities for school districts and charter schools to share resources, such as gyms, auditoriums, and athletic fields. For example, Green Valley Ranch in Colorado houses multiple Denver Public School sites as well as charter schools. Financial incentives might help encourage school districts and charter schools to find opportunities for colocation.

An example of colocation in Albuquerque is NACA, which initially was housed in portables on the Wilson Middle School campus.

***Utilization of Tax and Bond Revenues.*** Albuquerque Public Schools (APS) charter facility pilot could serve as a model for collaboration between school districts and charter schools. APS pooled the mill levy and distributed according to a ranked methodology for locally-authorized charter schools that chose to participate.

Currently, the Public School Lease Purchase Act gives the charter school governing body the responsibility for determining if a lease purchase agreement is in the best interest of the charter school. Another option may be increased training for charter school governing bodies around lease purchase agreements or a set standard of cost-effectiveness.

***State Support.*** Increased coordination between PSFA and PED would ensure charter schools comply with current requirements. Additional state support by PSFA or PED to help charter schools navigate the process to obtain charter school facilities and determine the cost-effectiveness and potential benefits and drawbacks of lease arrangements would likely benefit both charter schools and the state. For example, a designated position at PSFA or PED could help review charter school leases. Alternatively, charter school authorizers, the Public Education Commission and local school districts, could fulfill this role. The role of charter school authorizers could be expanded as an accountability measure as well. Charter school authorizers could examine lease and lease purchase agreements upon authorization and renewal. Staff from the National Alliance for Public Charter Schools suggested contemplating a mechanism for providing high-performing charter schools with preferential access to facility funding.

***State-funded Loan Program.*** Another option is a state-funded, low cost loan program to provide charter schools with facility funding. This would help offset the high cost of private financing. Appropriations to the public project revolving fund specifically for charter school facilities could help increase charter school access to affordable facility financing, and has currently been proposed by the New Mexico Coalition for Charter Schools.