F I S C A L I M P A C T R E P O R T

SPONSOR Lujan, B **DATE TYPED** 02/16/05 **HB** HJR 9/aHGAC

SHORT TITLE Building Lease Agreements for State, CA **SB**

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SJR 7

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Attorney General (AGO)
Corrections Department (CD)
Energy, Minerals and Natural Resources Department (EMNRD)
General Services Department (GSD)
New Mexico Finance Authority (NMFA)
Public Education Department (PED)

FOR THE CAPITOL BUILDINGS PLANNING COMMISSION

SUMMARY

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee Amendment specifically provides that a lease purchase agreement that results in the build-up of equity is allowable. It authorizes a financing agreement entered into by the state for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the state pursuant to the financing agreement.

Synopsis of Original Bill

House Joint Resolution 9 proposes to amend the New Mexico constitution to allow the state to enter into lease-purchase agreements as long as there is no legal obligation for the state to continue the lease or purchase the property and the lease agreement provides that the lease shall be terminated if sufficient appropriations are not made. The proposed amendment is subject to voter approval.

Significant Issues

When the state enters into a lease-purchase agreement, it can create debt not only by incurring a legal obligation to purchase the property, but also by creating an equitable obligation to purchase the property. As the state makes lease payments, it is building equity which it would lose in the event that the lease-purchase agreement was terminated.

The Supreme Court addressed this issue in *Montano v Gabaldon*, 108 N.M. 94, 766 P.2d 1328 (1989) which dealt with county debt. The court wrote, "we are of the opinion that once the County accepted this lease, it would be obligated to continue making rental payments in order to protect a growing equitable interest in the facility, as well as to protect the County's interest in the title to County land. This is the type of future economic commitment that requires the arrangement be approved by the voters."

It is unclear whether the resolution actually addresses the issue of an equitable obligation created by lease-purchase agreements. (See "Technical Issues" below).

GSD, NMFA, EMNRD and PED all note that allowing the state to enter into lease-purchase agreements could result in cost savings. According to GSD, as of February 2005, the state spends $42.5 million annually on 430 leases. The state could cut operating costs by moving from leased to state-owned buildings.

PED notes that charter schools in particular stand to benefit from the proposed change. Charter schools incur an estimated $5.2 million in lease expenses to secure classroom facilities. The passage of the resolution may allow charter schools to enter into lease-purchase agreements for these facilities. However, the department also notes that the resolution does not require lease-purchase agreements for public schools to be approved by the PED or the Public Schools Financing Authority. The department feels that all leases should be approved prior to occupancy to ensure that facilities meet the statewide standards.

NMFA notes that this change would allow it to purchase or construct buildings and then lease them back to the state for the amount necessary to cover costs and debt service. This would save the state money because NMFA would not include a profit factor in its lease as would a private owner. NMFA also notes that it can issue bonds based on the lease payments from those buildings and can grant mortgages on such buildings.

FISCAL IMPLICATIONS

If approved by the voters, the resolution could result in indeterminate cost savings to the state through reduced operating costs. However, it could also result in the creation of financial obligations to the state, which would reduce the flexibility of future legislatures to establish spending priorities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Joint Resolution 7 proposes to amend the New Mexico constitution to allow the qualified electors of a school district to approve lease-purchase agreements for charter school facilities and excepting those agreements from the debt limitation of the school district.

TECHNICAL ISSUES

NMFA suggests that the following amendment would better meet the goals of the legislation by specifically allowing lease-purchase agreements that result in the build up of equity.

On page 2, lines 12-22, rewrite subsection B to read:

> B. For the purposes of this section and Article 4, Section 29 of the constitution of New Mexico, <u>a financing</u> agreement entered into by the state for the leasing of a building or other real property with an option to purchase <u>for a price that is reduced according to the payments made by the state pursuant to the financing agreement</u> is not a debt if <u>there is no legal obligation for the state to continue the agreement from year to year or to purchase the building or real property.</u>

NMFA's suggested amendment removes the language regarding sufficient appropriations because, it argues, this is existing law.

EF/lg