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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13
LAST UPDATED 02/26/13 **HB** 354/aSEC

SPONSOR Trujillo, J.

SHORT TITLE Charter School Facility Conditions **SB** _____

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			See Fiscal Implications			Local Property Taxes and the Public School Capital Outlay Fund

(Parenthesis () Indicate Expenditure Decreases)

For the Public School Capital Outlay Oversight Task Force

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of HEC Amendment

House Education Amendment to House Bill 354 requires a charter school to attain a rating equal to or better than the average New Mexico condition index (NMCI) within 18 months of occupancy or relocation. The amendment also clarifies that the Public School Capital Outlay

Council will be required to recommend to a chartering authority the approval or denial of a new charter school and the suspension, nonrenewal, and revocation of a relocating charter schools based on the charter school's NMCI.

Synopsis of Original Bill

House Bill 354 (HB 364) amends Section 22-8B-4.2 NMSA 1978 of the Charter Schools Act to require a new charter school or a charter school that is relocating to submit, within 18 months of occupancy or relocation, a plan by which the facilities will achieve a rating equal to or better than the average New Mexico condition index. Current statute requires these schools to demonstrate the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

The bill also amends Section 22-8B-5.3 NMSA 1978 of the Charter School Act to require charter school applications to meet the new requirements of Section 22-8B-4.2 to be approved, allows a charter school authorizer to decline to approve a charter school that does not meet the provisions of Section 22-8B-4.2.

The bill also amends Section 22-24-5.1 NMSA 1978 of the Public School Capital Outlay Act to allow the Public School Capital Outlay Council (PSCOC) to recommend to a chartering authority to suspension, nonrenewal, or revocation of a new or relocating charter schools that is not in compliance with Section 22-8B-4.2.

The last section of the bill eliminates certain duties of the Public School Facilities Authority (PSFA) related to the deficiencies correction program that has been terminated for a number of years.

FISCAL IMPLICATIONS

HB 354 does not make an appropriation and the impact of its additional oversight role to be assumed by the PSCOC may be minor.

Requiring the PSFA to review new and relocating charter school's facilities to ensure they achieve a rating equal to or better than the average New Mexico condition index (NMCI) may prevent charter schools from purchasing substandard buildings that will later become a liability of the state through the standards-based funding process. This could result in significant savings to Public School Capital Outlay Fund in future years and significant savings in SB9 and HB33 local property tax revenues. The section is also intended to disallow a charter school from moving into a facility that allows them to move up in the standards-based queue in front of district owned buildings that have been in the queue for a number of years.

SIGNIFICANT ISSUES

The language of this bill is intended to require a charter school to provide a plan to show how they will be in a facility with a New Mexico condition index (NMCI) rating at least as good as the statewide average. However, the changes proposed on page 2 only require a charter to submit a plan within 18 months of occupancy or relocation, not to actually achieve an average NMCI rating within 18 months of occupancy or relocation. House Education Amendment address this by requiring a charter school to achieve a New Mexico condition index rating equal

to or better than the statewide average within 18 months of occupancy or relocation. Concerns still exist regarding what is to happen to a charter school that does not meet the 18-month deadline. Neither the bill nor current statute address this; however, for newly authorized charter schools (charter schools authorized to open in FY14), this could be outlined in the charter performance contract.

According to the PSFA

The PSFA analysis indicates the PSFA has been interpreting the current language as requiring a plan (prior to occupancy) that “demonstrates” the “way” the facilities will be brought up to the average conditions within the eighteen month period. This interpretation is based upon Section 22-8B-6E NMSA 1978 which applies to the new charter school application and authorization process and reads as follows:

“E. An application shall include a detailed description of the charter school's projected facility needs, including projected requests for capital outlay assistance that have been approved by the director of the public school facilities authority or the director's designee. The director shall respond to a written request for review from a charter applicant within forty-five days of the request.”

The PSFA currently assists charter schools in identifying their projected facility needs by requiring hybrid Ed Spec/Facility Master Plan (Ed Spec/FMP) submittals with applications. A copy of procedures related to new and relocated charter school facility approval by the PSFA is located at www.nmpsfa.org.

The PSFA indicates the proposed revision does not provide a specific time requirement for achieving the acceptable facility condition level. A charter school may still lease and occupy the facility beyond eighteen months while below the average condition as defined in the bill.

Additionally, the PSFA's analysis notes the changes in the bill formalize the PSCOC issuing a formal recommendation to a chartering authority based on facility condition of a new or renewing New Mexico charter school. The agency notes it is implied, but should be made clearer in the proposed bill that the PSCOC's duty to recommend to a chartering authority to suspend, not renew, or revoke a school's charter would extend to situations when schools do not meet the eighteen month deadline related to facility condition.

ADMINISTRATIVE IMPLICATIONS

The PSCOC and the PSFA will assume minor additional responsibilities as a result of the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 333 will require new or relocated charter school facilities to “attain” a condition rating equal to or better than the current average for New Mexico public schools within eighteen months of occupancy or relocation.

TECHNICAL ISSUES

Page 6, Section E allows the PSCOC to recommend to a chartering authority the suspension, nonrenewal, or revocation of a new or relocating charter school based on the charter school's New Mexico condition index ranking. The new language omits reference to a recommendation for initial authorization of a charter school. The House Education Amendment addresses this.

The Public Education Department (PED) analysis notes the Legislature may want to consider adding similar language to Section 22-20-1 (B)5 NMSA 1978 requiring a plan to be submitted showing how the charter school will achieve an average NMCI within 18 months for charter schools seeking approval of a lease purchase agreement. **The PED further notes that if this language is added to Section 22-20-1 NMSA 1978, Section 22-26A-4 NMSA 1978 of the Lease Purchase Act should also include reference to Section 22-20-1 NMSA 1978.**

OTHER SUBSTANTIVE ISSUES

According to the PED Analysis:

Currently, there are 95 charter schools in the state of New Mexico. One of the biggest issues facing charter schools is that they do not have a sufficient funding source of capital. Pursuant to the property tax code, a charter school has no taxable value of property allocated to it. Therefore, a charter school has no ability to self-impose a debt service or tax levy for major capital needs. Previous legislation now requires charter schools to be included in school district SB-9 and HB-33 tax elections. The funding this would provide to a charter school is limited to its 40th day number of students divided by the total number of students in the school district. Other funding sources of capital dollars for a charter school are through direct legislative appropriations and/or lease assistance payments from the lease payment assistance program.

ALTERNATIVES

Require new or relocated charter school facilities to “attain” a condition rating equal to or better than the current average for New Mexico public schools within eighteen months of occupancy or relocation. This is addressed by the House Education Committee Amendment.

RSG/svb:blm