# LEGISLATIVE EDUCATION STUDY COMMITTEE
# BILL ANALYSIS
## 55th Legislature, 2nd Session, 2022

**Bill Number** HB43/aHEC **Sponsor** Garratt/Dixon/Brown/Hernandez

**Tracking Number** .221336.1 **Committee Referrals** HEC/HAFC;SEC

**Short Title** Charter School Facility Improvements

**Original Date** 2/2/2022

**Analyst** Hathaway **Last Updated** 2/15/2022

## BILL SUMMARY

Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 43 (HB43/aHEC) eliminates the creation of the charter school facility fund and strikes the $10 million appropriation from the original bill. HB43/aHEC creates, instead, a charter school facility revolving fund within the New Mexico Finance Authority (NMFA), authorizing NMFA to make loans to a charter school for the purchase, construction, expansion, or renovation of facilities, or to pay off lease-purchase agreements. HB43/aHEC also creates reporting requirements for NMFA, requiring an annual report to the NMFA Oversight Committee that includes details regarding charter school facility loans.

Synopsis of Original Bill

House Bill 43 (HB43) makes several statutory changes to expand charter schools' access to facility funding.

HB43/aHEC creates two separate funding sources for charter school facility funding: 1) a charter school sub-fund within the public project revolving fund administered by the New Mexico Finance Authority (NMFA), which would allow NMFA to provide loans to charter schools for the purchase, construction, expansion, or renovation of facilities or to pay off lease-purchase agreements; and 2) a "charter facility fund" administered by the Public School Finance Authority (PSFA) on authorization by the Public School Capital Outlay Council (PSCOC), used to pay off charter school lease-purchase agreements. To be eligible for a disbursement from either fund, a charter school's lease-purchase agreement must meet the requirements of the Public School Lease Purchase Act, a charter school must have renewed its charter at least once, and two audits of the charter school must be reviewed.

HB43/aHEC also requires school districts to provide state-chartered and locally chartered charter schools located within their boundaries increased opportunity to lease, purchase, or enter a lease-purchase agreement for all available facilities and land, adding a deadline of notifying charter schools of availability by May 1 each year. HB43/aHEC charges PSFA with annually ensuring notification has been provided to charter schools. Land owned by a school district shall not be considered available if the school district has a justified future use of the land in its five-year facilities master plan.

HB43/aHEC would change the formula for lease assistance funding to be based on the gross square footage of "facilities," rather than "classroom space." The bill defines "facilities" as "the space needed, as determined by the five-year facilities master plan aligned with the statewide adequacy standards, for school activities."

Finally, HB43/aHEC would require school districts to establish a process to collaborate with charter schools inside their geographic boundaries through which charter schools may be included in local bond elections pursuant to the Public School Capital Improvements Act, commonly called "SB9" or "the two-mill levy," and Public School Buildings Act, commonly called "HB33." By June 1 of any year in which a school board will consider a bonding resolution, the school district must name a point of contact responsible for charter school requests and collect a list of the capital improvements each charter school wishes to make.

## FISCAL IMPACT

HB43/aHEC creates a charter school facility revolving fund within the New Mexico Finance Authority (NMFA). The HEC amendment strikes the $10 million appropriation from the original bill, however, the Senate Finance Committee amendment to the House Appropriations and Finance Committee substitute for House Bills 2 and 3 includes a $10 million appropriation to the charter school revolving loan fund contingent on enactment of HB43, or similar legislation. The $10 million appropriation is from the public school capital outlay fund.

As of January 10, 2022, PSFA reports uncommitted balances in the fund for FY22 will reach $395.6 million, with anticipated increases to $795.4 million by FY26.

This bill would increase the amount of funding awarded to some charter schools through the charter school lease assistance program. Currently, lease assistance awards are based on the lesser of two calculations: prior-year student membership (MEM) times a per-MEM rate or actual reimbursement for *eligible* square footage, calculated as classroom square footage plus administrative square footage plus an additional 20 percent of the square footage. HB43/aHEC would amend this second calculation to be based on total square footage, rather than eligible square footage, simplifying the calculation and making some charter schools eligible for a greater amount of funding. Lease assistance awards are certified by PSCOC and made from the public school capital outlay fund, which does not require an appropriation by the Legislature.

## SUBSTANTIVE ISSUES

During the 2021 and 2022 legislative interims, charter school advocates explained increasing access to charter school facility funding was a significant priority. Proposed changes in HB43/aHEC address charter school concerns, including an overly complicated lease assistance program, lack of access to vacant school district space, and a need for permanent charter school facility funding.

***Charter School Lease Assistance.*** The charter school lease assistance program was established in FY05 to help charter schools cut facility costs by covering a portion of their leases. The program was originally designed to cover approximately 50 percent of each charter school's lease costs, but between FY08 and FY18, the actual funded amount hovered between 60 percent and 70 percent. By basing lease assistance calculation on “facility” square footage rather than “classroom” square footage, the bill would increase the state’s share of lease assistance funding to approximately 65 percent of the actual cost of charter school leases.

HB43/aHEC also includes provisions to allow NMFA or PSFA and PSCOC to “pay off” charter school lease-purchase agreements, which could potentially reduce the need for lease assistance funding as more properties are purchased by charter schools.

***Vacant School District Space.*** HB43/aHEC would require school districts with vacant buildings or land to make those facilities available to charter schools. Currently, law requires school districts in which a charter school is geographically located to provide a charter school with available facilities for the school’s operations, but districts do not often make vacant space available to charter schools and turning to the market to find lease spaces appropriate to operate a school tends to be expensive. HB43/aHEC could reduce the cost of charter school leases by affording charter schools access to public buildings owned by charter schools. However, the actual cost of these new leases from school districts remains unclear.

***Access to Facility Funding.*** According to analysis by NMFA, HB43/aHEC would require the finance authority to create a charter school facility fund to make loans to charter schools for the purchase, construction, expansion, or renovation of facilities or to pay off lease-purchase agreements.

Additionally, the bill would require school districts to meaningfully collaborate with charter schools to improve access to local property tax funds. Under current law, charter schools are eligible to receive property tax funds from the Public School Capital Improvements Act and the Public School Buildings Act, but the onus is on charter schools to contact school districts with facility needs. Anecdotal evidence suggests school districts may not meaningfully engage with charter school property tax funding requests, which hampers charter school access to funding for capital improvements. HB43/aHEC would require school districts to establish a point of contact and a process to engage charter schools, removing a potential barrier for charter schools to access property tax funding.

## ADMINISTRATIVE IMPLICATIONS

PSFA would be required to ensure school districts make charter schools aware of facility availability by May 1 of each year. School districts may choose to develop a facility prioritization plan that identifies which charter schools are eligible to lease, lease-purchase, or purchase available facilities.

NMFA would be required to operate a $10 million appropriation in the PPRF and establish charter school policies within the PPRF.

School districts would be required to establish a process to involve charter schools in the bond resolution process, including, at a minimum, a point of contact who must collect charter school capital improvement requests on June 1 of any year a school district approaches voters with a bond issue.

## ALTERNATIVES

NMFA notes HB43/aHEC could be changed to appropriate $10 million to the NMFA rather than the PPRF to establish a charter school loan fund outside the PPRF. NMFA noted such a fund would be easy for it to operate and may result in more charter-school-friendly and innovative policies if not constrained by PPRF indentures and rating criteria. The HEC amendment addresses this by creating a separate fund outside of the PPRF.

## OTHER SIGNIFICANT ISSUES

***The Zuni Capital Outlay Lawsuit.*** HB43/aHEC amends the Public School Capital Outlay Act and the Public School Capital Improvements Act, two sections of law recently found by the 11th Judicial District Court to be unconstitutional. In December 2020, the court issued a ruling in the *Zuni* lawsuit finding the two acts have exacerbated "gross disparities" between property-wealthy and property-poor school districts. The plaintiff school districts, now Gallup-McKinley County and Zuni Public Schools, argue the school districts' lack of taxable property makes it impossible for the districts to fund "outside-of-adequacy" spaces, which are freely available to property-wealthy school districts with enough local revenue to construct them independent of the PSCOC awards project.

Public school capital outlay funding, used to purchase capital assets like buildings, is both a local and state responsibility in New Mexico. The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by the Gallup-McKinley County Schools (GMCS) and the Grants-Cibola County Public Schools. The state district court found through its public school capital outlay funding system the state was violating that portion of the state constitution that guarantees establishment and maintenance of a "uniform system of free public schools sufficient for the education of, and open to, all children of school age" in the state. In 2000, the 11th Judicial District Court ruled in the *Zuni Public District v. State of New Mexico* lawsuit that New Mexico's public school capital outlay system violated constitutional requirements and ordered the state to establish and implement a uniform funding system for capital improvements and for correcting past inequities.

Although the quality of school facilities has improved significantly since the lawsuit, litigant school districts are still concerned the system is inequitable. These alleged ongoing disparities led GMCS to reopen the *Zuni* lawsuit—which had never been closed—and seek judicial intervention to cure what the school district characterizes as ongoing disparities in the current public school capital outlay funding system.

## RELATED BILLS

Relates to SB78, Charter School Changes, which was a duplicate of HB43 prior to the HEC amendment.

Relates to HB119, Adjust Certain School Distributions, which amends the Public School Capital Improvements Act, commonly known as "SB9."

## SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority (PSFA)

- New Mexico Finance Authority (NMFA)

**JKH/hg/mb/ctf**