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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 25, 2024

Bill No: HB207

Sponsor: Garratt and Hernandez
Short Title: PUBLIC SHOOOL CAPITAL OUTLAY GRANTS

Agency Name and Code New Mexico Public School Facilities Authority 940
Number: _____
Person Writing Alyce Ramos
Phone: 505-468-0299 **Email** aramos@nmpsfa.org

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	10000	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A
 Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 207 (HB207) proposes to amend the Public School Capital Outlay Act (PSCOA) to require the lease payment grants, commonly referred to as lease assistance awards, as a mandatory program to the Public School Capital Outlay Fund (PSCOF). It also proposes a \$10M appropriation from the General Fund to the Department of Finance and Administration for FY25 and subsequent fiscal years for the administration of loans by the New Mexico Finance Authority (NMFA) for leasing expenses as required for the administration of charter school facilities. The bill does not have an effective date.

FISCAL IMPLICATIONS

In 2022, HB43 created a new charter school facility revolving fund and authorized the NMFA to make loans to a charter school for the purchase, construction, expansion, or renovation of facilities or to pay off lease-purchase agreements. As a result of HB43, the NMFA is now required, in accordance with Section 6-21-6.16 NMSA 1978, to adopt rules to govern the application procedures, eligibility and disbursement of the charter school facility loans. Section 6-21-6.16 NMSA 1978 also requires the NMFA to report annually to the NMFA Oversight Committee regarding the details of any loans related to the charter school facility revolving fund. It is uncertain how many charter schools applied for loans since the inception of the program and whether additional loan funds are necessary since the report to the NMFA Oversight Committee was due December 1, 2023.

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. The district court held in favor of the litigants and the case is up on appeal to the New Mexico Supreme Court. A mandatory lease assistance program funded by the PSCOF will create a competing interest for available funds for Standards-based and Systems-based capital outlay programs for public schools statewide with potential ramifications for the state if the PSCOF does not remain a discretionary program.

The proposed change from a discretionary to a mandatory program will potentially require continued funding at higher levels, based on the trends reflected in Exhibit A. This will become increasingly difficult for the PSCOF to sustain due to the high cost of construction materials and labor costs that have severely increased the cost of school construction Standards and Systems-based capital projects.

SIGNIFICANT ISSUES

Unlike other PSCOC funding programs, the lease assistance program has built in escalations to address cost of living expenses. In accordance with Section 22-24-4 I(1)(b) NMSA 1978, the PSCOC is required to apply the consumer price index (CPI) of the United States to the prior-year student membership (MEM) rate each year. Exhibit B outlines the PSCOC award history as it pertains to the application of the CPI to the MEM rate each year since 2009.

The lease assistance program has also benefited from amendments to the PSCOF. In 2022, HB43 increased the state’s share of lease assistance to charter schools by changing the methodology for lease reimbursement. As a result of HB43, the calculation of the formula was changed to the total square footage of a leased facility, rather than the eligible classroom and administrative square footage.

Although this program was initially started as one-time funding source it has continued to date making charter schools dependent on the lease assistance awards to sustain and supplement their operational budgets.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

HB207 does not specify any requirements for the loans by the NMSFA.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

- The bill does not have an effective date. It is assumed the effective date is 90 days after adjournment of the Legislature.
- “Loans by the New Mexico Finance Authority (NMFA) for leasing expenses as required for the administration of charter school facilities,” is very broad.

OTHER SUBSTANTIVE ISSUES

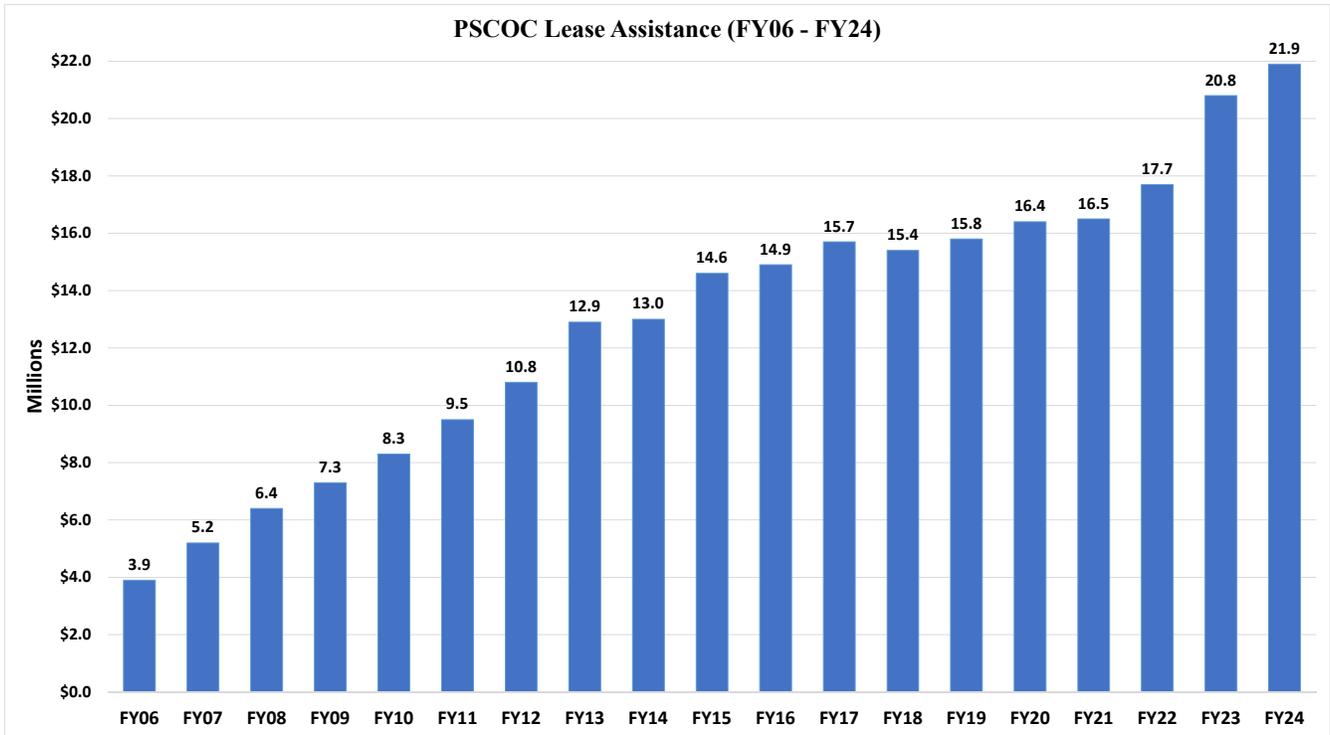
Use of state funds for loans to charter schools to enhance a private facility will be in violation of the Anti-donation clause.

ALTERNATIVES

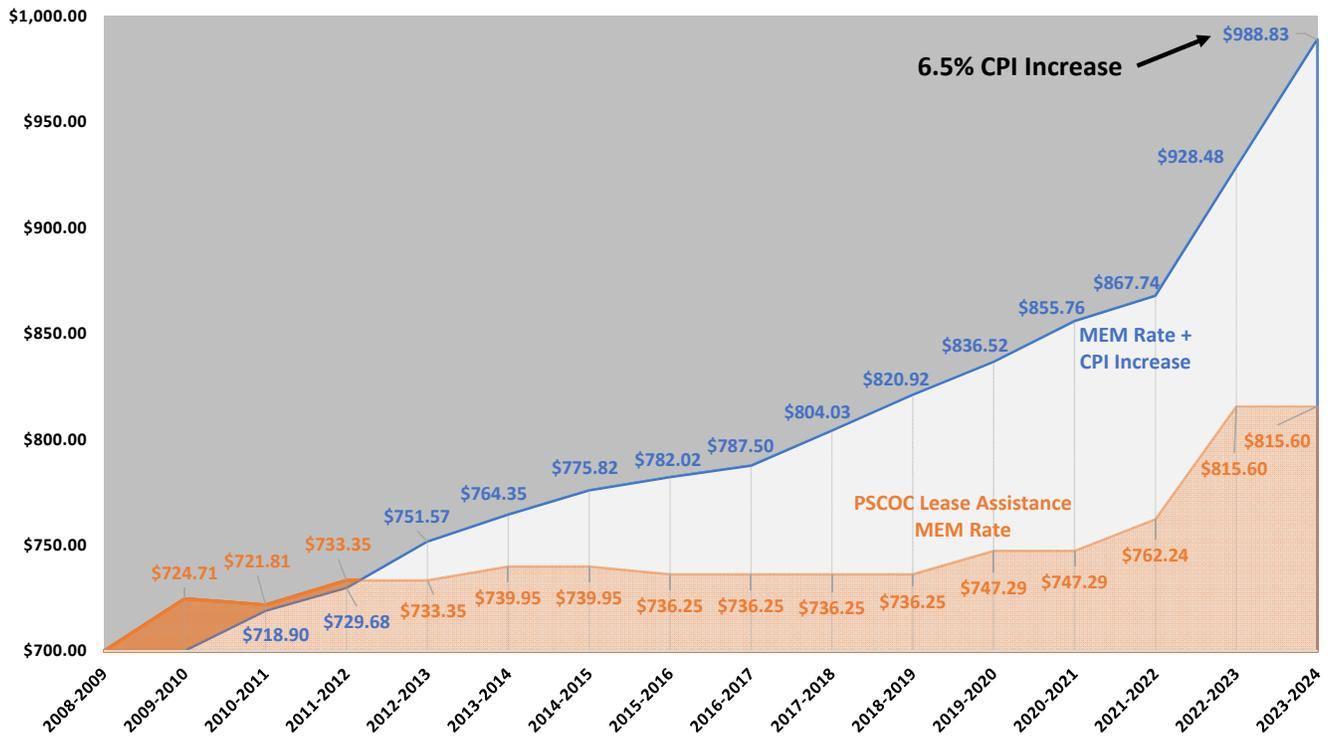
WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PSCOC will continue to have the discretionary authority to fund lease assistance in relation to their primary function which is to fund and build public schools based on highest needs and assure adequacy statewide.

AMENDMENTS



Lease Assistance MEM Rate with Annual CPI Increase



Fiscal Year	Year	Annual CPI % Change Jan-Dec	MEM Rate + CPI Increase (Maximum Allowable PSCOC Rate per MEM)
FY09	2008-2009		
FY10	2009-2010	0.1%	\$700.00
FY11	2010-2011	2.7%	\$718.90
FY12	2011-2012	1.5%	\$729.68
FY13	2012-2013	3.0%	\$751.57
FY14	2013-2014	1.7%	\$764.35
FY15	2014-2015	1.5%	\$775.82
FY16	2015-2016	0.8%	\$782.02
FY17	2016-2017	0.7%	\$787.50
FY18	2017-2018	2.1%	\$804.03
FY19	2018-2019	2.1%	\$820.92
FY20	2019-2020	1.9%	\$836.52
FY21	2020-2021	2.3%	\$855.76
FY22	2021-2022	1.4%	\$867.74
FY23	2022-2023	7.0%	\$928.48
FY24	2023-2024	6.5%	\$988.83

PSCOC Rate per MEM (per award cycle spreadsheets)	Percent Change
\$700.00	
\$724.71	3.53%
\$721.81	-0.40%
\$733.35	1.60%
\$733.35	0.00%
\$739.95	0.90%
\$739.95	0.00%
\$736.25	-0.50%
\$736.25	0.00%
\$736.25	0.00%
\$736.25	0.00%
\$747.29	1.50%
\$747.29	0.00%
\$762.24	2.00%
\$815.60	7.00%
\$815.60	0.00%