

# CHARTER SCHOOL FACILITIES AND 2015 PUBLIC BUILDING DEADLINE

**AGENCY:** Public School Capital Outlay

**DATE:** August 17, 2016

**PURPOSE OF HEARING:** To get a better understanding of charter school facilities funding as well as progress towards the 2015 public building deadline.

**WITNESS:** Robert A. Gorrell, Director, Public School Facilities Authority; Tony Monfiletto, Director, New Mexico Center for School Leadership; Scott Elder, Interim Chief Operations Officer, and Kizito Wijenje, Capital Master Plan Executive Director, Albuquerque Public Schools

**PREPARED BY:** Marit Rogne

**EXPECTED OUTCOME:** Actionable policy recommendations to continue to balance charter school and public school facility funding.

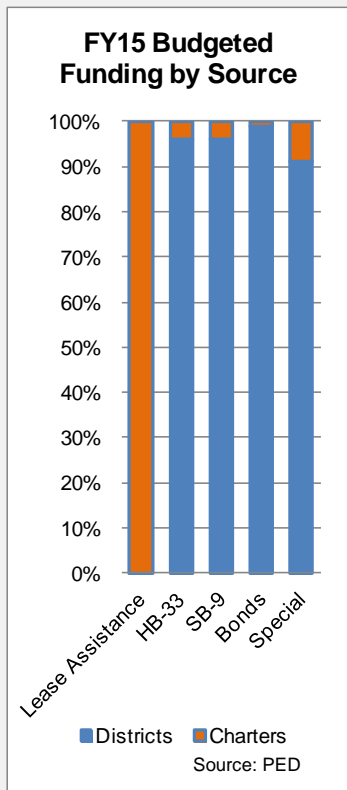
## BACKGROUND INFORMATION

Student enrollment in New Mexico charter schools has grown rapidly since the Great Recession, and has been largely driven by the authorization of many new charter schools since that time. In FY08, charter school enrollment represented only 3 percent of public school students, and in FY16 that number rose to 7 percent. Charter schools generate more operational funding per-student than school districts and charter schools received almost 50 percent of new money appropriated to public schools through the state equalization guarantee distribution (SEG) since FY08. However, there are still concerns that inequities exist in charter schools' access to capital outlay funding.

Charter schools typically have limited access to local school district tax and bond revenues used for school facilities. Instead, they must rely on alternative sources of public and private funds to pay for their facilities. In New Mexico, charter schools are eligible for capital outlay funding if they meet certain criteria intended to ensure they will be reauthorized (longevity of existence); are housed in public facilities or meet certain exemptions, are included in school district facility master plans, and do not move into facilities that are below the statewide average public school facility condition. Although inequities in charter school and traditional public school capital outlay funding persist across the United States, New Mexico is a leader in efforts to equalize funding. A 2014 University of Arkansas report *Charter School Funding: Inequity Expands* praises New Mexico's near-equitable funding distribution: "New Mexico is a rare exception, with a FY11 weighted disparity of only \$365 per pupil, or 3.4 percent, favoring districts."

**Charter School and School District Capital Outlay Funding.** New Mexico charter schools, like school districts, are eligible for capital funding if they meet certain statutory criteria. There are four basic funding sources for charter schools capital outlay: lease assistance and standards-based funding awards, the Public School Capital Improvements Act (SB-9), the Public School Buildings Act (HB-33) and general obligation bonds. In some instances, there is a funding gap between charter schools that meet these criteria and charters that do not, making it unclear if the difference in per-student funding levels is an access or process issue.

***Lease Assistance.*** The Public School Capital Outlay Act (PSCOA) authorizes the Public School Capital Outlay Council (PSCOC) to make lease assistance awards to school districts and charter schools that lease classroom facilities. The PSCOC annually approves award amounts determined by the lesser of the actual annual lease cost or at a rate of \$700 per student adjusted for inflation. For FY17, PSCOC set the per-student reimbursement rate at \$736.25 per student. Lease assistance payments totaled about \$14.9 million in FY16 and are projected to total \$15.6 million in FY17. In FY16, lease assistance awards covered 66.1 percent of charter school lease costs; assuming



**FY15 Capital Outlay Funding Amounts by Source**

	Districts	Charters
Lease Assistance	\$0.00	\$14,096,917.27
HB-33	\$106,264,772.94	\$4,113,548.31
SB-9	\$122,183,498.45	\$5,577,560.55
Bonds	\$274,176,765.49	\$942,133.55
Special	\$17,422,713.05	\$1,748,831.90
All Sources	\$556,473,541.95	\$26,907,872.58

Source: PED

all charter schools that applied for lease assistance funding are eligible for an award, FY17 lease assistance awards appear to cover 74.3 percent of charter school FY17 lease costs.

Charter schools fund the lease amount that is not funded with lease assistance funding with operational funds. A 2013 Legislative Finance Committee program evaluation of the state’s lease assistance program found some charter schools may spend significant percentages of operational funding on facility lease costs. For example, in FY13, the ASK Academy, a charter school in Rio Rancho, used 19 percent of their SEG to supplement lease assistance funding for the lease of a facility. (LESC staff recently found the ASK Academy’s current lease purchase agreement, which totaled \$6.7 million, will result in more than \$9 million in interest payments to their foundation over the life of the agreement).

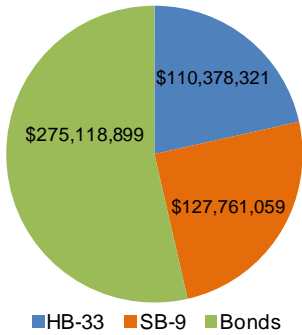
To be eligible for lease assistance funding, a charter school has to either lease the facility or enter into a lease purchase agreement to purchase the facility. Preliminary review of FY17 lease assistance requests identified a number of schools that appear to be requesting lease assistance funding for leases or lease purchase agreements that the charter school is not a party to, raising issues about the enforcement of statutory requirements to be eligible to receive awards.

**Standards-Based Capital Outlay Awards.** Standards-based funding awards may be made to a charter school that has been renewed at least once. Awards are made according to a funding mechanism that prioritizes schools with the greatest facility need. PSCOC ranks the condition of every charter school that has been renewed at least once alongside all district schools according to the weighted New Mexico Condition Index (wNMCI), an objective rating system based on a formula which computes relative facility condition and includes adequate educational spaces.

To date, only one charter school has been awarded a standards-based capital outlay award – the Aldo Leopold Charter School, a state-chartered charter school in Silver City. As more charter schools rise in ranking, they will become eligible to apply for standards-based funding, though there are still statutory provisions that attempt to ensure they do not move into a facility in poor condition with the expectation that the state fund renovations (discussed in further detail on page 5).

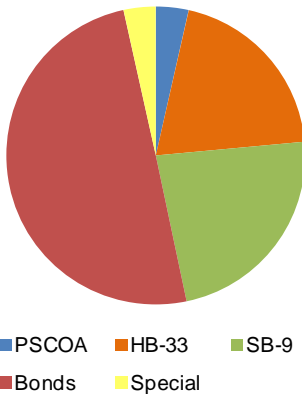
**Public School Buildings Act (HB-33).** The Public School Buildings Act (HB-33) allows school districts to impose a property tax at a rate of no more than 10 mills for a maximum of six years upon approval of qualified voters. The Act requires school districts to allocate HB-33 funding to a charter school (both state and locally chartered) if the charter school provides to the school district in a timely manner the following information necessary for inclusion on the resolution that is submitted to the qualified electors: identification of the capital improvements for which the revenue will be used and the capital improvements must be included in the five-year facility master plan of

**HB-33, SB-9 and Bond Mill Levy Funding Distribution for FY15**



Source: PED

**FY15 Capital Outlay Funding Distribution**



Source: PED

The school district in which a charter school is geographically

the school district if the charter is a locally chartered charter school or of the charter school itself if the charter school is a state-chartered charter school.

HB-33 funds may be used for facilities construction and maintenance, lease-purchase payments, public school grounds, purchasing activity vehicles (APS is statutorily prohibited from using these funds to purchase activity vehicles), and project administration fees. According to the Public Education Department (PED) data, in FY15, school districts received 96 percent of HB-33 funding. Twenty-six charter schools directly received HB-33 funds. In practice, not all charter schools within a school district’s geographic area access funds from the mill levy. It is unclear if this is because charter schools are not included in a five-year facility master plan, if charter school project information was not submitted in a timely manner to be included in the resolution, or some other reasons.

**Public School Capital Improvements Act (SB-9).** The Public School Capital Improvements Act (SB-9) provides capital improvements funding with voter approval at a tax rate not to exceed two mills for a maximum of six years. Like HB-33, SB-9 requires school districts to allocate funding to a charter schools if the charter school identifies the capital improvements of the charter school for which the proposed revenue will be used to the school district in a timely manner for inclusion in the resolution.

SB-9 funds may only be used for purposes outlined in the school district’s individual resolution, but the Act does not require these capital improvements to be included in the facilities master plan specifically (as required by HB-33). SB-9 funding may be used for capital improvements expenditures similar to HB-33, except SB-9 also allows purchasing computer software and hardware for student use. According to PED data, districts received 96 percent of SB-9 funding in FY15. Seventy-three charter schools directly received SB-9 funds. This mirrors HB-33 in that not all charter schools received SB-9 mill levy funds. Again, it is unclear if charter schools that are not receiving SB-9 funding are not providing school districts with their capital improvements in time to be included in the mill levy resolutions or they are not accessing funds for some other reason.

**General Obligation Bonds.** Similar to HB-33 and SB-9, general obligation (GO) bonds allow school districts to impose a property tax for school district and charter school capital improvements upon voter approval. Unlike HB-33 and SB-9, GO bonds are debt that must be paid back. However, bonds provide a greater amount of flexibility because school districts can craft general bond language. Bond measures must provide voters with an overview of the intended use of funds, but there are limited restrictions regarding use of bonds. As expected, total bond funding exceeds HB-33 and SB-9 amounts combined in FY15. It is unclear how school districts provide charter schools access to bond funding, and in fact, school districts are not required to allocate any of their GO bond funds to support charter school facilities.

located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate established by PSCOC. See Section 22-8B-4 (F) NMSA 1978.

If a school district is seeking approval of a disposition of real property that includes a building, it must submit evidence that the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district. See Section 1.5.23.9 (B) NMAC

Upon reviewing charter schools for compliance, the following issues have been noted:

- Some charter schools

**Conclusion.** School districts employ a variety of strategies for capital outlay revenues. For example, the strategy in FY15 for Taos was to spend almost all bond money on charter schools. Las Cruces had a different strategy which utilized both SB-9 and HB-33 funding, with SB-9 funding favoring district schools (\$14.41 per MEM to charter schools, \$259.22 to district schools) and more equitable HB-33 funding to charter schools (\$274.41 to charter schools, \$377.40 to district schools). These disparities make it difficult to make broad statements about an overall state strategy. Also, the most recent revenue data available from PED is not always reflective of practice. For example, FY15 data for Albuquerque Public Schools (APS) shows charter schools did not receive any bond money. However, APS has a charter facility pilot program which requires participating charter schools to submit per MEM funding to APS. Since APS is required to maintain these charter school facilities, the money is still funding charter school facilities even though the money is flowing through the district, thus inflating discrepancies in reported per MEM funding.

**Conditions of Capital Outlay Funding.** Two statutory provisions seek to ensure charter schools are housed in public buildings when available and to ensure charter schools do not move into subpar facilities.

**2015 Public Buildings Deadline.** Pursuant to Subsection D of Section 22-8B-4.2 NMSA 1978 of the Charter Schools Act, as of July 1, 2015, a new charter school cannot open and an existing charter school may not be renewed unless it meets one of the following “public building” deadlines:

- Be housed in a public facility that is owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government, or one of its agencies or a tribal government;
- Be subject to a PED approved lease purchase agreement;
- Be in a facility that meets the statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state and the public buildings are not available or adequate for the educational program of the charter school; or
- Be in a facility that meets the statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state and the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

The PSCOC is responsible for determining whether charter school facilities are in compliance with these requirements. PSCOC is reviewing all charter schools to ensure they are in compliance with this requirement. It is important to note that not all charter schools must comply with this law. Currently, only those schools that were authorized to begin operations or were renewed for a new charter period beginning on July 1, 2015 are required to comply. By FY20,

claim they have a lease purchase agreement; however, it is unclear the lease purchase option has been exercised.

- Terms of some lease purchase agreements appear to favor property owners. For example, in one instance, the property owner will be paid more than twice the purchase price after accounting for interest payments.
- Some lease purchase agreements appear to assign the ownership interest to a foundation upon the final payment.
- It is unclear if leases with private and non-profit entities subject the property owner to pay to maintain the facility so it meets adequacy standards.
- Several charter schools are not leasing with nonprofit entities that were organized for the purpose of providing a facility to the charter school.
- Many lease purchase agreements previously approved by PED appear to be lease agreements with the option to purchase where it is unclear the option has been exercised.

all charter schools will be required to comply. 102 charter schools must be in compliance with the law in FY17. Public School Facilities Authority (PSFA) staff are reviewing leases to ensure compliance. Preliminary review by PSFA, PED, and LESC staff suggests many charter schools may be out of compliance. The PSCOC recently noted charter schools must be in compliance and if they are not they should not be able to receive lease assistance funding because they should not be authorized. Because PSCOC is statutorily required to ensure compliance, local and state authorizers should work with PSCOC and PSFA staff to validate compliance; to date, this is not happening.

The current provision was originally enacted in 2007 with a deadline of July 1, 2010. This provision was amended in 2009 to extend the deadline to July 1, 2015. Multiple issues have been noted by upon review of compliance that are noted in the sidebar.

***2011 Average Weighted New Mexico Condition Index Requirement.***

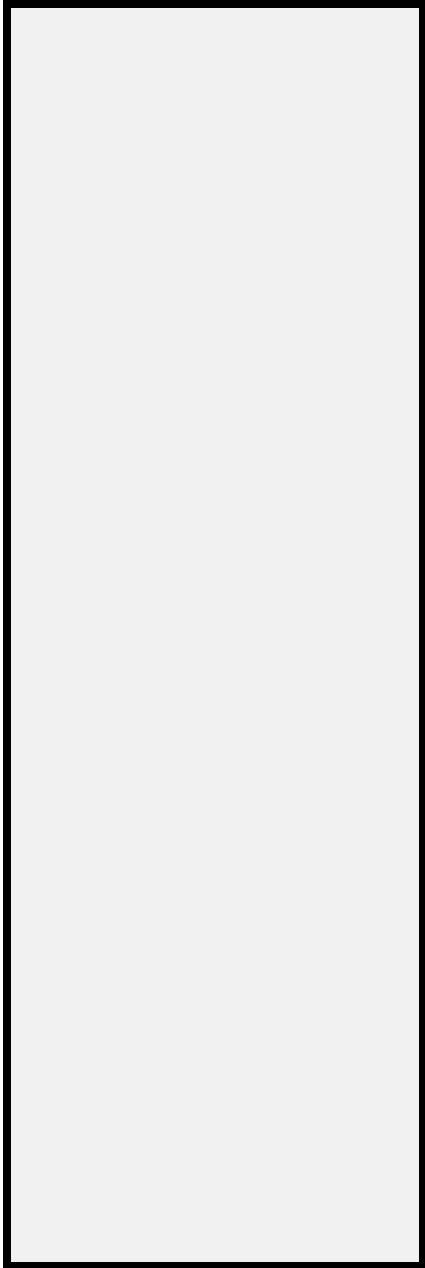
Pursuant to Subsection C of Section 22-8B-4.2 NMSA 1978 of the Charter Schools Act, as of July 1, 2011, a new charter school shall not open and an existing charter shall not relocate unless:

- The facilities of the charter school, as measured by the New Mexico conditions index (wNMCI), receive a rating equal to or better than the average condition of all New Mexico public schools for that year; or
- The charter school demonstrates the ways in which the facilities will achieve a rating equal to or better than the average New Mexico conditions index within eighteen months of occupancy or relocation of the charter school.

This provision was included to ensure charter schools do not jump the standards-based funding queue by moving into subpar facilities. Concerns have been voiced that this provision places a burdensome requirement on charter schools that is not consistent with requirements for school districts.

***Challenges.*** The New Mexico Coalition for Charter Schools reported several challenges related to facilities. They indicated charter schools cannot acquire debt, so they must find other ways to borrow money for facilities. However, PED staff has indicated this is not accurate, though many banks may be hesitant to make loans to charter schools because of concerns that charter schools are only renewed for a period of five years and renewed based on performance, making loans risky. Additionally, charter schools often have difficulty raising down payments. Many charter schools have established nonprofit foundations to assist with securing facilities.

Charter schools often struggle to find space in public buildings, and there is no public database listing available facilities. When public space is not available, charter schools must find a facility that meets statewide adequacy standards and negotiate a lease that includes a provision that the landlord must maintain these adequacy standards at no extra cost. Landlords are often reluctant to agree to these terms, and when they do, leases are expensive. Nationally, charter schools



are struggling to find affordable, adequate facilities.

***Other States' Strategies.*** Equitable access to capital funding and facilities is an issue for charter schools across the United States. In their March 2016 report, *The Health of the Charter Public School Movement: A State-by-State Analysis*, the National Alliance for Public Charter Schools created a model state law to support high-quality public charter schools and ranked states according to how well their laws aligned to the model law. New Mexico ranked 16th overall and the report noted that New Mexico state law “includes some of the model law’s provisions for equitable access to capital funding and facilities.”

The report provided suggestions to increase charter school access to capital funding and facilities. Two of these suggestions were “equal access to existing state facilities programs available to non-charter public schools” and “right of first refusal to purchase or lease at or below fair market value a closed, unused, or underused public school facility or property.” In some states, such as Arizona, Delaware, Indiana, and South Carolina, law requires the state department of education to compile and publish a list of vacant and unused buildings suitable for charter schools. In other states, such as Tennessee, school districts in which one or more charter schools operate are required to annually catalog all vacant properties suitable for charter schools. Charter schools are offered the “first right of refusal” to any surplus school district property in eight states, including Arkansas, California, and the District of Columbia. Some New Mexico charter schools have listed access to public facilities as a challenge in meeting the 2015 public buildings deadline.

## QUESTIONS