



CHARTER SCHOOLS AND THE PUBLIC BUILDING DEADLINE

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PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

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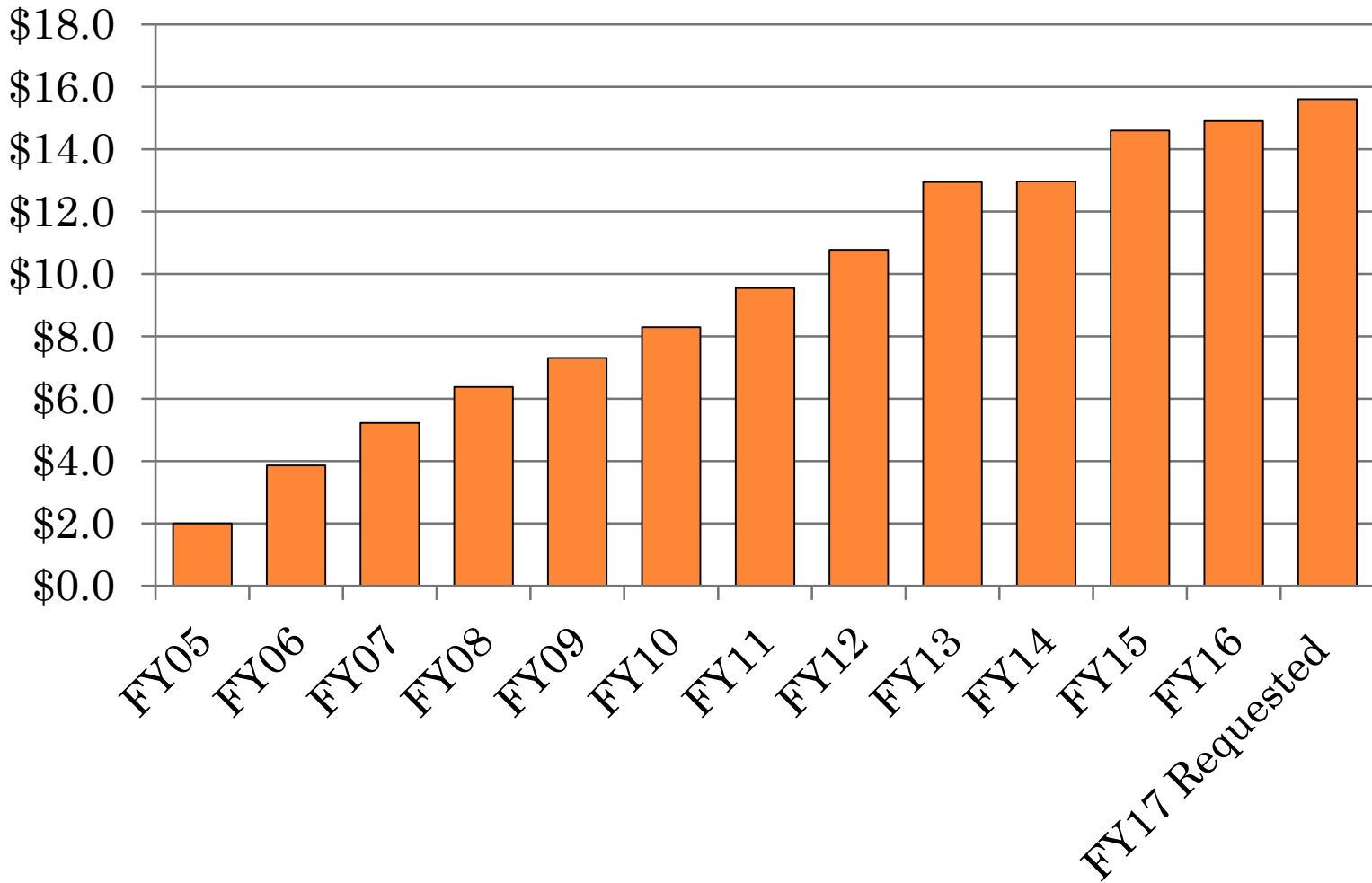
PUBLIC SCHOOL CAPITAL OUTLAY FUND FINANCIAL PLAN IMPACTS

- Worst schools have been replaced over the past 15 years; Council is contemplating shifting from rebuilding entire schools to funding building systems.
 - 1 school qualified for standards-based award in FY17.
 - Legislature removed \$15 million cap on building system initiative during special session.
- Still have large out-year funding commitments for phase II of projects approved in prior fiscal years.
- SSTBs available for public school capital outlay projects decreasing:
 - Declining severance taxes
 - Annual legislative appropriations for prekindergarten classrooms and school busses
 - HB236 (2015) – reduce capacity by \$8.9 million in FY19
 - SB4 (2016 Special) – earmark \$12.5 million in FY17 and \$25 million FY18 through FY22 for instructional materials and student transportation
- Zuni Lawsuit currently ongoing. Plaintiff district wants adequacy standards expanded to cover things that currently are not covered. If Plaintiff district is successful, this will further impact the fund.

LEASE ASSISTANCE FUNDING

- Despite decreased revenues into the fund for public school projects, lease assistance funding requests continue to grow as the number of charter schools continue to grow.
- Lease assistance funding is not mandatory, but is a permissive program.
- Statute allows the Council to make awards from the Public School Capital Outlay Fund for lease payments for classroom facilities leased by school districts and charter schools.
- Award is limited to the lesser of the annual lease payment or \$700 per MEM using the leased facility. Because of fiscal constraints on the fund, the award amount has not been adjusted by the CPI for the last two years.
 - Per-MEM reimbursement rate for FY17 is \$736.25.

LEASE ASSISTANCE FUNDING HISTORY



“PUBLIC SCHOOL BUILDING” REQUIREMENTS

- As of July 1, 2015, for a new charter school to be able to open or a new charter school to be renewed, one of the following facility agreements must exist:
 - 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

HISTORY (SECTION 22-8B-4.2 (D))

- Laws 2005, Chapters 221 and 274 enacted the “public building” deadline with an initial date of authorization or renewal of July 1, 2010. Initially, lease purchase agreements were not part of the law.
- Laws 2007, Chapter 366 added lease purchase agreements to the list of acceptable facilities arrangements.
- Laws 2009, Chapter 258 extended the deadline to July 1, 2015.
- Under all versions of the law, PSCOC is responsible for determining whether facilities of a charter school meet the public building requirements.

PSCOC TO ENFORCE

- Paragraph F of Section 22-8B-4.2 states the Public School Capital Outlay Council shall determine whether facilities of a charter school meet the “public building” requirements of Paragraph D.
- Before an authorizer issues a new charter or renews an existing charter, the authorizer (local school district or PEC) should be confirming with the PSCOC that the charter school meets the public building requirements of Section 22-8B-4.2.
- In practice, this is NOT happening and charter schools that are not in compliance with the public building requirements are being authorized and renewed.

LEASE PURCHASE REQUIREMENTS (2006)

- Article 9, Section 11 of NM Constitution prohibits school districts from becoming indebted except for the issuance of bonds backed by property taxes.
- In 2006, Constitution amended to allow lease purchase agreements.
 - The agreement must not create a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and
 - the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments.

PUBLIC SCHOOL LEASE PURCHASE ACT

- A “Lease Purchase Agreement” is an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced by lease payments. A portion of each lease payment reduces the principal and a portion is paid in interest.
- Must be approved by PED after governing body determines a lease agreement is in the best interest of the district or charter school.
 - PED approval has always been required by the Public School Lease Purchase Act.

LEASE PURCHASE TERMS

- Final payment must be made within 30 years of date of execution.
- Agreement must specify the principal and interest component of each payment made under the lease purchase agreement.
- Net effective interest rate shall not exceed 12%.
- Cost of improvements funded by the district or charter above the lease payments constitute a lien on the real estate.
- Agreement is assignable, without additional cost, to a school district or charter school or the state.
- Any amendments except amendments that improve the building without additional financial obligation to the charter or district, must be approved by PED.

FY17 PSCOC FACILITY REVIEW

- For the 2016-2017 lease reimbursement cycle, PSCOC reviewed charter school facility agreements (leases and lease purchase agreements) submitted to ensure compliance with the public building deadline.
- The Council determined any charter school with a charter contract period beginning July 1, 2015 or July 1, 2016 is subject to the public building requirements.

2016 PSCOC FACILITY REVIEW CONT.

- 103 charter school lease applications submitted.
 - 78 charter schools were found to be in compliance with the public building requirements (either because they are not yet subject or they meet one of the four enumerated facility agreements) and submitted all required documentation.
 - 25 charter schools were not in compliance with the public building requirements or they did not submit the required documentation.

COMPLIANCE ISSUES NOTED

- Lease terms do not specify the owner is required to maintain adequacy standards or lease terms provide conflicting/confusing provisions;
- Charter school submitted what they indicated was a lease purchase agreement, but that agreement was not approved by PED;
- Approved lease purchase agreements have terms that are inconsistent with statutory requirements;
- Unclear if lease payments are being made toward the purchase of a facility (no amortization schedule);

FY17 PSCOC LEASE ASSISTANCE AWARDS

- Awarded 100 percent of maximum allowable lease assistance to charter schools in compliance with the public building requirements of Section 22-8B-4.2.
- Awarded 50 percent of maximum allowable lease assistance to charters with compliance issues and allowed until December 31st to come into compliance.
 - If a charter comes into compliance by December 31st, it will receive 100 percent of the annual maximum allowable award for FY17.
 - If a charter school remains out of compliance, it will only receive 50 percent of the allowable lease assistance award for FY17.

FY18 AND SUBSEQUENT FISCAL YEARS

- Authorizers should be working with PSCOC to ensure compliance with the public building requirements **BEFORE** a new charter school opens or an existing charter school is renewed.
 - PSFA issued letter to authorizers highlighting public building deadline and PSCOC review prior to making authorization and renewal decisions.
 - 23 charter schools up for renewal consideration in December.
 - Authorizers need to update their procedures to ensure PSCOC is notified of consideration of new charter schools or existing charter renewals.
- Intent of PSCOC to ensure compliance in future years for charter schools to be eligible for awards.

NEXT STEPS

- PSCOC and PSFA are continuing to work to streamline the review process and identify issues that need the Legislature's attention. Statutes need to be reviewed to address a number of issues identified in the current lease reimbursement cycle.
- Potential PSCOOTF endorsed legislation - PSCOC members will make recommendations to the PSCOOTF for consideration.
- Consideration of requiring a uniform, standardized lease for the purpose of lease assistance funding.