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August 23, 2010

MEMORANDUM

TO: Legislative Education Study Committee

FR: Mr. Peter B. van Moorsel

**RE: STAFF REPORT: CHARTER SCHOOL LEGISLATION IN NEW MEXICO:
CAPITAL OUTLAY PROVISIONS AND ISSUES**

In New Mexico, public school capital outlay funding is both a local and a state responsibility – both the state and individual school districts must contribute toward facility construction, maintenance, renovation, and demolition – and various mechanisms exist by which state and local funds are made available for such projects. This report addresses the capital outlay provisions in current law as they pertain specifically to charter schools. Attachment 1, *Charter School-Related Capital Outlay Provisions in Statute*, presents these provisions in a matrix because they are codified in several sections of law. The attachment's columns are organized by individual sections of law and its rows are organized by subject areas.

For example, one such subject area is the requirement that, by 2015, charter schools be located in public facilities or facilities subject to a lease-purchase arrangement, with certain exceptions. The *Charter Schools Act* makes the requirement, and both the *Charter Schools Act* and the *Public School Capital Outlay Act* contain provisions aimed at assisting charter schools in locating in a public facility. According to the Public School Facilities Authority, currently 33 charter schools meet, or are projected to meet, the facility criteria by 2015.

Another example is the subject of property taxes imposed by school districts to raise funds for capital improvements. Amendments in 2007 (to the *Public School Buildings Act*) and 2009 (to the *Public School Capital Improvements Act*) required the capital improvements needs of charter schools to be included on district resolutions to impose the mill levies authorized by

the respective acts, if the charter school timely provides the necessary information to the school district for inclusion on the resolution. In addition, the *Public School Lease Purchase Act* provides criteria under which districts are required to include on a resolution to impose a property tax the revenue needed by charter schools to make payments pursuant to lease purchase arrangements.

Finally, two additional attachments are included with the report to address specific issues related to charter schools:

- Attachment 2, *History of Lease Assistance Awards, FY 05 - FY 10*, shows, by fiscal year, the number of schools receiving lease payment awards, as well as the total value of the awards.
- Attachment 3, *Election Status for School Districts with Local and State Charter Schools*, indicates, by district, the election status for both the SB-9 and HB-33 mill levies for districts with charter schools since 2006. Those districts that are highlighted held their respective elections after statute was amended requiring the inclusion of charter school needs in the mill levy resolutions. Charter schools were included in the resolutions of the districts highlighted in orange, and are not included in the resolutions of those highlighted in blue.

Charter School-Related Capital Outlay Provisions in Statute

Subject	Charter Schools Act Chapter 22, Article 8B NMSA 1978	Public School Capital Outlay Act Chapter 22, Article 24 NMSA 1978
<p>Application for Charter and Startup</p>	<p>Requires that an application for a charter include a detailed description of the charter school's projected capital outlay needs, including projected requests for capital outlay assistance.</p> <p>Requires that, prior to the end of the planning year, a charter school must demonstrate that its facilities meet educational occupancy standards.</p> <p>Provides that, on or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless it is housed in a public facility; or is subject to an approved lease purchase arrangement.</p> <p>Further provides that if the charter school is not housed in a public facility, it must demonstrate that:</p> <ul style="list-style-type: none"> • the facility meets the statewide adequacy standards ; and that the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and • public buildings are not available or adequate for the educational program of the charter school; or the owner of the facility is a nonprofit entity organized for the purpose of providing the facility for the charter school. 	<p>Requires the PSCOC to develop a program for assisting charter schools in locating in public buildings or in buildings being acquired by charter schools pursuant to a lease purchase agreement.</p> <p>Permits a charter school to apply to the PSCOC for assistance in locating in a public facility. The application must include: (1) a summary of the efforts that have been made by the charter school to be located in a public facility; and (2) an estimate of the costs necessary to bring the public facilities up to the statewide adequacy standards.</p>
<p>Public Facilities for Charter Schools</p>	<p>Requires the PSCOC to determine whether a charter school's facilities meet educational occupancy standards; and permits the PSCOC to grant a variance if it determines that specific requirements are not appropriate or reasonable for the charter school.</p> <p>Permits the PSCOC to use money in the Charter School Capital Outlay Fund to assist charter schools in locating in public buildings if it determines that the funds are not needed to assist state-chartered charter schools with the local match needed for grants.</p>	<p>Requires PSFA to review the information submitted by the charter school and rank the application with similar applications pursuant to a methodology adopted by the PSCOC.</p> <p>Requires, prior to its occupancy of a public facility, that a charter school notify the PSCOC of the intended use, together with other information as required by PSCOC rule.</p> <p>Requires PSFA, within 60 days of the notification, to assess the facility in order to determine (1) whether it complies with the statewide adequacy standards and (2) the amount of outstanding deviation from those standards. The results of the assessment must be submitted to the charter school, the school district in which the charter school is located, and the PSCOC.</p> <p>Requires the charter school facility, once it is assessed, to be prioritized and eligible for grants in the same manner as all other public schools in the state.</p>

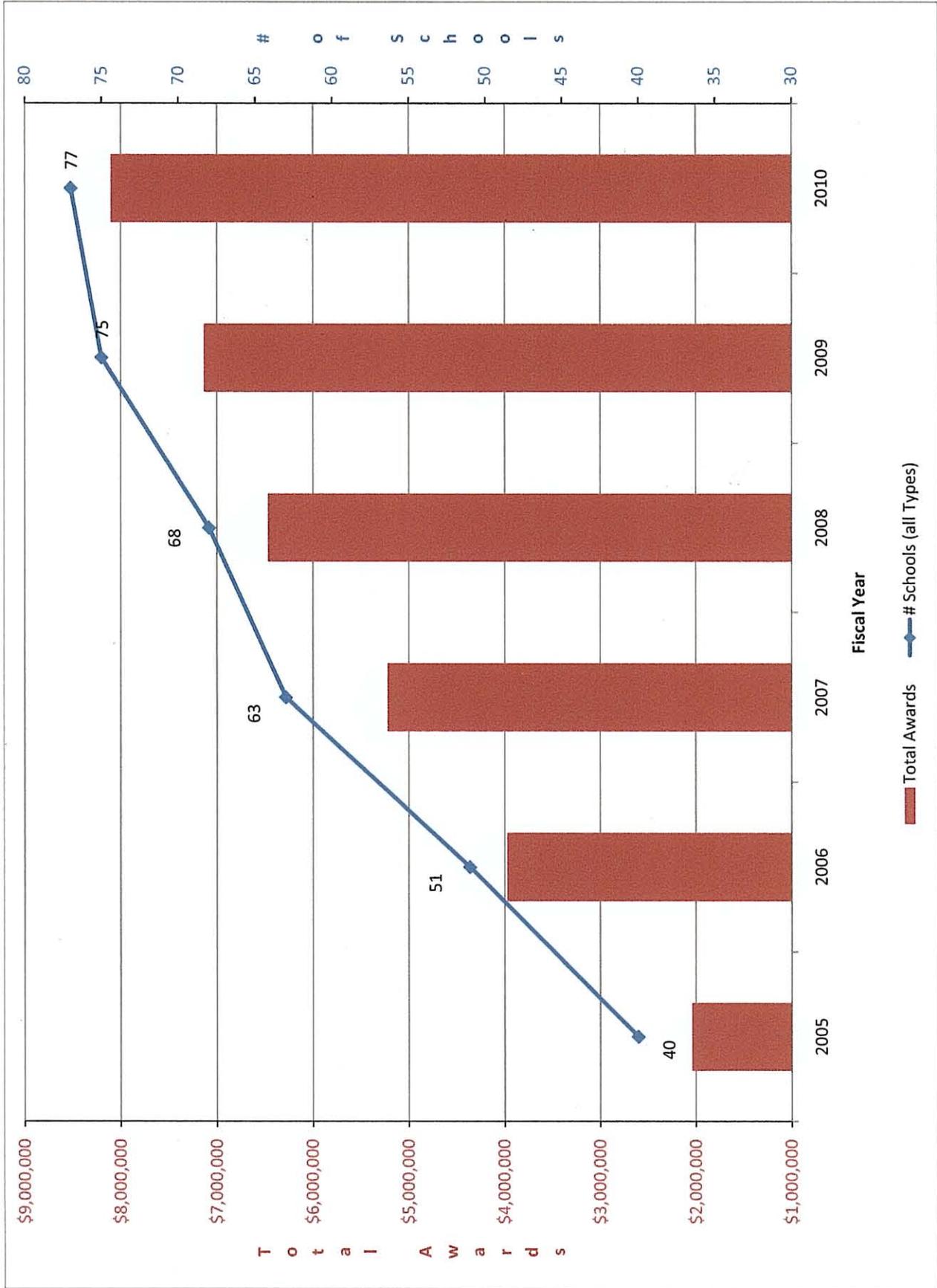
Charter School-Related Capital Outlay Provisions in Statute

Subject	Charter Schools Act Chapter 22, Article 8B NMSA 1978	Public School Capital Outlay Act Chapter 22, Article 24 NMSA 1978
Lease Payment Assistance		<p>Requires the school district to make a lease assistance application for a charter school located in the school district, but provides that if the school district fails to make an application on behalf of a charter school, then the charter school may submit its own application.</p> <p>Authorizes charter schools to use lease assistance grants to make payments toward lease-purchase arrangements that have been approved pursuant to the <i>Public School Lease Purchase Act</i>.</p>
Standards-based Grant Assistance	<p>Provides that locally chartered charter school facilities are eligible for state and local capital outlay funds and requires that they be included in the school district's five-year facilities plan.</p> <p>Requires that the facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 meet educational occupancy standards required by applicable New Mexico construction codes.</p> <p>Requires that the facilities of a charter school whose charter has been renewed at least once be evaluated, prioritized, and made eligible for grants in the same manner as all other public schools.</p> <p>Allows charter schools housed in leased facilities to use standards-based grant assistance to provide additional lease payments for leasehold improvements made by the lessor.</p> <p>Permits money in the Charter School Capital Outlay Fund to be used for making grants to state-chartered charter schools to assist with the local match needed for an approved public school capital outlay project.</p>	<p>Provides that no school district's application for grant assistance from the fund shall be approved unless the PSCOC determines that it includes the capital needs of any charter school located in the school district or the school district has shown that the charter school's facilities have a smaller deviation from the statewide adequacy standards than other district facilities included in the application.</p> <p>Requires that the PSCOC apply the statewide adequacy standards to charter schools to the same extent that they are applied to other public schools.</p> <p>Provides that the local share of a state-chartered charter school is equal to the local share of the school district in which it is physically located.</p> <p>Establishes that lease-purchase arrangements entered into by charter schools (or school districts) are considered public school capital outlay projects and are eligible for grant assistance.</p> <p>Provides that if the PSCOC finds that the state-chartered charter school does not have the resources to pay all or a portion of the local share of a capital outlay project, to the extent that money is available in the Charter School Capital Outlay fund, the PSCOC shall award the amount necessary to pay for the project from the fund.</p>
Public School Capital Outlay Oversight Task Force (PSCOOTF)		<p>Requires that the PSCOOTF appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs.</p>

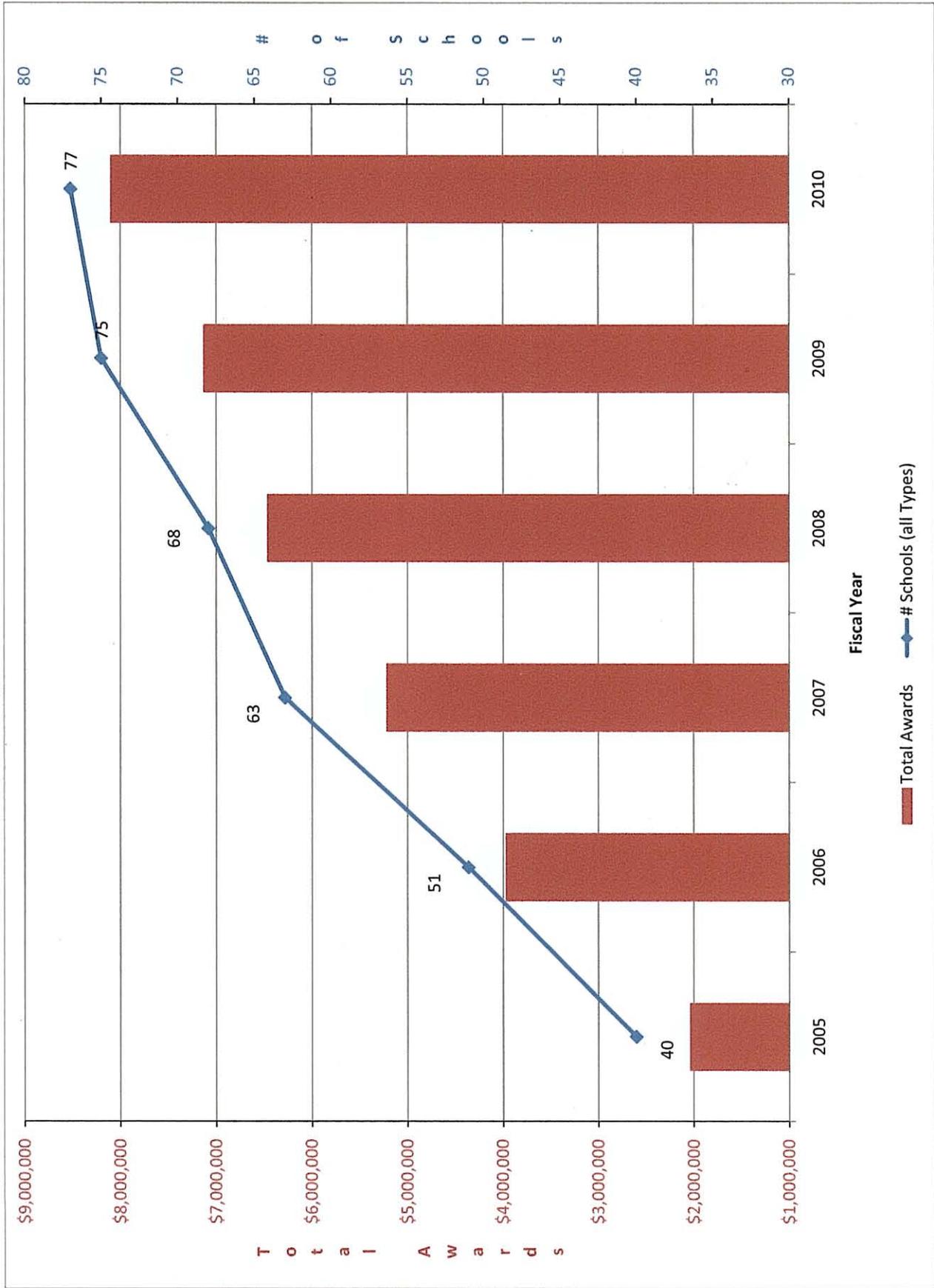
Charter School-Related Capital Outlay Provisions in Statute

	Public School Capital Improvements Act (SB-9) Chapter 22, Article 25 NMSA 1978	Public School Buildings Act (HB-33) Chapter 22, Article 26 NMSA 1978	Public School Lease Purchase Act Chapter 22, Article 26A NMSA 1978
Subject	Requires that, on or after July 1, 2009, a resolution submitted to the voters to impose an SB-9 levy must include capital improvements funding for a charter school located in the district if the charter school timely provides the necessary information to the school district for inclusion in the resolution that identifies the capital improvements of the charter school for which the revenue will be used.	Requires that an HB-33 resolution submitted to the voters must include capital improvements funding for a charter school located within the school district if: • the charter school timely provides the necessary information to the school district for inclusion on the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used; and • the capital improvements are included in the five-year facilities plan of the school district, or the state-chartered charter school.	Provides that, if a charter school has notified a local school board that it has been approved to enter into a lease purchase arrangement and has identified revenue from a proposed property tax as a source of needed funds, the local school board must include the tax revenue needed by the charter school in the resolution if its charter has been renewed at least once; and may, in its discretion, include the tax revenue needed by the charter school in the resolution if the charter school is a locally chartered charter school prior to its first renewal term.
Distribution of tax revenues/state match.	Provides that the amount of tax revenue to be distributed to each charter school included in the resolution shall be in the same proportion as the enrollment of the charter school is to the total enrollment in the school district. In determining a school district's total enrollment, students attending a state-chartered charter school within that school district shall be included. Requires that no distribution may be made to an approved charter school that had not commenced classroom instruction in the prior school year. Requires PED to certify to the county treasurer the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school. Requires the district to distribute a portion of its SB-9 state match distribution to each charter school in the school district. The amount of the distribution must be in the same proportion as enrollment of the charter school is to the total enrollment in the school district. No distribution may be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, PED must certify to the school district the amount to be distributed to each charter school. If capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements.	Provides that the amount of tax revenue to be distributed to each charter school included in the resolution shall be in the same proportion as the enrollment of the charter school is to the total enrollment in the district. Provides that in the case of an approved charter school that had not commenced classroom instruction in the prior school year, the estimated full-time-equivalent enrollment in the first year of instruction, as shown in the approved charter school application, shall be used, subject to adjustment. Requires PED to certify to the county treasurer the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school.	Provides that, if the tax revenue for a charter school is included in the resolution and if the tax is approved in an election, the local school board must distribute an amount of the tax revenue to the charter school to be used in the lease purchase arrangement.
Permitted Uses of Mill Levy Proceeds	Defines "capital improvements" as including payments made pursuant to lease-purchase arrangements.	Defines "capital improvements" as including payments made pursuant to lease-purchase arrangements.	

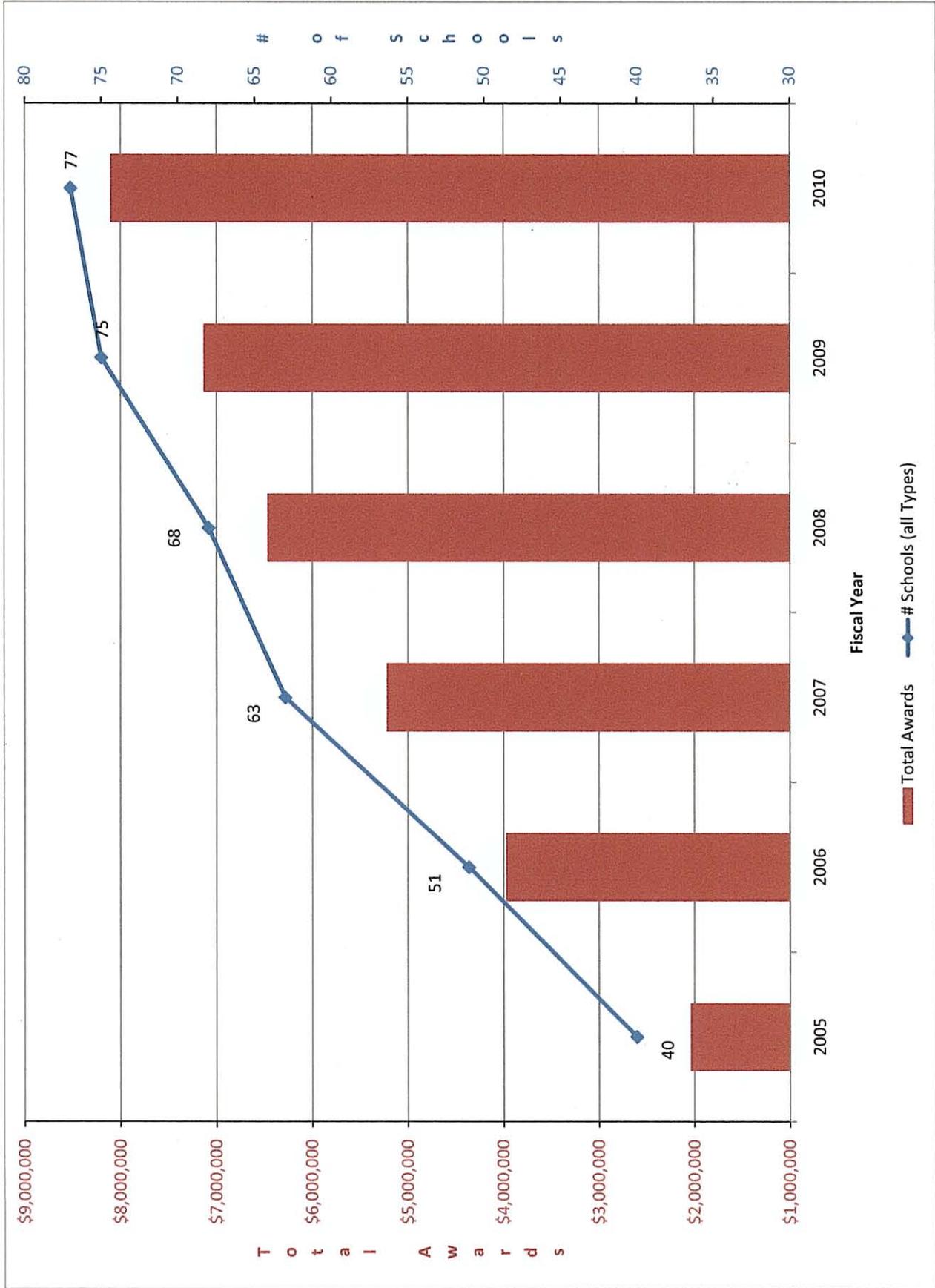
HISTORY OF LEASE ASSISTANCE AWARDS, FY 05 - FY 10



HISTORY OF LEASE ASSISTANCE AWARDS, FY 05 - FY 10



HISTORY OF LEASE ASSISTANCE AWARDS, FY 05 - FY 10





**ELECTION STATUS FOR SCHOOL DISTRICTS
WITH LOCAL AND STATE CHARTER SCHOOLS**

DISTRICTS	SUCCESSFUL ELECTION DATE	MILLS	LOCALLY AUTHORIZED	STATE AUTHORIZED	NEXT ELECTION
Public School Capital Improvements Act (SB-9)					
ALBUQUERQUE	2/6/2007	2.000	24	24	2013
AZTEC	2/6/2007	2.000	1		2013
BERNALILLO	2/6/2007	2.000		1	2013
CARLSBAD	2/7/2006	2.000	1		2012
CIMARRON	2/3/2009	2.000	1		2015
DEMING	2/6/2007	2.000	1		2013
ESPANOLA	No Election		1		2010
GADSDEN	2/7/2006	2.000	1		2012
GALLUP	2/2/2010	2.000	1		2016
JEMEZ MOUNTAIN	2/3/2009	2.000	1		2015
JEMEZ VALLEY	2/6/2007	2.000	2		2013
LAS CRUCES	2/2/2010	2.000	2	1	2016
LAS VEGAS WEST	2/6/2007	2.000	1		2013
LOS LUNAS	2/6/2007	2.000		1	2013
QUESTA	2/6/2007	2.000	2		2013
RIO RANCHO	2/7/2006	2.000		1	2012
ROSWELL	2/6/2007	2.000	1		2013
SANTA FE	2/7/2006	2.000	4	2	2012
SILVER CITY	2/6/2007	2.000		1	2013
SOCORRO	2/6/2007	2.000	1		2013
TAOS	2/6/2007	2.000	3	2	2013

Public School Buildings Act (HB-33)					
ALBUQUERQUE	2/3/2010	3.874	24	24	2016
ALBUQUERQUE		4.344			
CARLSBAD	2/2/2010	2.000	1		2016
CIMARRON	4/11/2006	3.000	1		2011
LAS CRUCES	4/1/2008	3.000	2	1	2014
LOS LUNAS	2/6/2007	3.000		1	2012
SANTA FE	2/3/2009	1.500	4	2	2015