

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/HB 283a

50th Legislature, 1st Session, 2011

Tracking Number: .185733.1

Short Title: School Lease & Lease-Purchase Requirements

Sponsor(s): Representatives W. Ken Martinez and Rick Miera

Analyst: Peter B. van Moorsel

Date: March 12, 2011

**HOUSE EDUCATION COMMITTEE SUBSTITUTE
FOR HOUSE BILL 283**

AS AMENDED

The House Judiciary Committee amendments:

- specify that the term “Board of Finance” means the “State Board of Finance”;
- strike a reference to lease agreements because that section of the bill (Section 4) does not address lease agreements; and
- provide that only charter schools (and not school districts) must obtain approval of lease-purchase agreements before applying for lease-payment grants.

Original Bill Summary:

Effective July 1, 2011, CS/HB 283 amends current provisions of three sections of law to require approval of school lease-purchase agreements. Among its provisions, CS/HB 283:

- Amends statute regarding the sale of public property to exempt school district leases of facilities to a locally chartered or state chartered charter school from State Board of Finance approval.
- Amends the *Charter Schools Act* to require:
 - that on or after July 1, 2011, a new charter school may not open and an existing charter school may not relocate unless:
 - the facilities of the new or relocated charter school has a New Mexico Condition Index (NMCI) score equal to or better than the average condition for all New Mexico public schools for that year; or
 - the charter school demonstrates the way in which the facilities will achieve a rating equal to or better than the average NMCI within 18 months of occupancy or relocation of the charter;

- that each local school board or governing body of a charter school must have Public School Facilities Authority (PSFA) approval before entering into a lease-purchase agreement for a building to be used as a school building or a related school structure;
 - that an application for a charter include a PSFA-approved description of the school's projected facility and capital outlay needs, including projected requests for capital outlay assistance; and
 - that PSFA respond to a request for review of the detailed description within 45 days of a written request by the charter applicant.
- Amends statute governing school construction to:
 - require that each local school board or governing body of a charter school must have PSFA approval before entering into a lease-purchase agreement for a building to be used as a school building or a related school structure;
 - require that, to gain this approval, the school board or charter school governing body must submit to the PSFA a written application that includes, for approval of a lease-purchase agreement or a reopening of an existing structure, a description of the structure to be leased or reopened, including:
 - its location;
 - square footage;
 - interior layout and facilities, such as bathrooms, kitchens, and handicap access;
 - a description of the prior use of the structure; and
 - a description of how the facility and supplemental shared facilities and resources will fulfill the functions necessary to support the educational programs of the school district or charter school;
 - require that PSFA must approve an application for the approval of a lease-purchase agreement or for the reopening of an existing structure if PSFA reasonably determines that:
 - the buildings to be reopened or leased for purchase meet the statewide adequacy standards; or
 - the buildings can be brought into compliance with those standards within a reasonable time and at a reasonable cost and that money or other resources will be available to bring them into compliance; and
 - the buildings to be reopened or leased for purchase have, an NMCI score equal to or better than the average NMCI for all New Mexico public schools for that year.
 - Prohibits a school district or a charter school from applying for lease payment assistance¹ unless the lease-purchase agreement has been approved pursuant to the above requirements.

¹ For school year 2009-2010, the Public School Capital Outlay Council made approximately \$8.1 million in Lease Assistance Awards to 77 public schools and locally and state-chartered charter schools in 21 school districts, based on \$724.71 per student.

Fiscal Impact:

CS/HB 283 does not contain an appropriation.

Fiscal Issues:

PSFA notes that the distribution of lease assistance funding to charter schools and school districts has increased from \$300/MEM in FY 05 (totaling \$2.0 million) to \$724/MEM in FY 11 (totaling \$9.8 million). The \$7.5 million annual cap on lease assistance funding was removed in 2009, which may impact the ability of the Public School Capital Outlay Council to fund projects under the standards-based capital process, which is funded by the same revenue source.

Substantive Issues:

Currently, the Public Education Department coordinates with the PSFA when reviewing and approving proposed lease-purchase agreements, in accordance with the *Public School Lease Purchase Act*.

PSFA notes in its analysis of CS/HB 283 that start-up charters may lack proper planning for facility needs; and as a result, the charter schools may locate in temporary spaces that don't meet their needs. According to PSFA, CS/HB 283 would enable charter schools to match needs to available resources prior to occupancy, and thereby make decisions that may contribute to the success of the charter and the proper accommodation of students and staff.

PSFA reports that it could absorb the additional responsibilities pursuant to CS/HB 283, noting that the authority currently assists charters in assessing proposed facilities to be leased with an option to purchase when requested. Physical assessments are already being conducted on all current leased school facilities in order to measure the facility condition index as well as adequacy for purposes of ranking in NMCI database.

Background:

The *Charter Schools Act* requires 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 PSFA, currently 33 charter schools meet, or are projected to meet, the facility criteria by 2015.

Related Bills:

HB 120 *New School & School Building Moratorium*