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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/11

SPONSOR HEC LAST UPDATED _____ HB 283/HECS/aHJC

SHORT TITLE School Lease & Lease-Purchase Requirements SB _____

ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

House Bill 283 as originally introduced was Public School Capital Outlay Oversight Task Force and Legislative Education Student Committee sponsored legislation.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public School Facilities Authority (PSFA)

Public Education Department (PED)

Not Received

Department of Finance and Administration

SUMMARY

Synopsis of HJC Amendment

HJC amendment makes several technical corrections and prohibits PSFA from making a lease assistance grant to a charter school whose lease-purchase agreement has not been approved.

Synopsis of Original Bill

House Bill 283 makes several amendments to different sections of law relating to public school facilities. The bill exempts school districts from seeking Board of Finance Approval when leasing facilities to a charter school. The bill prohibits, beginning with FY12, new charter schools from opening and existing charter schools from relocating into a facility that receives a condition rating below the average condition for all New Mexico public schools for that year. The bill also requires PSFA approval of all lease-purchase agreements entered into by school districts and charter schools, and prohibits the PSFA from making a lease assistance grant to a school district or charter school whose lease-purchase agreement has not been approved.

FISCAL IMPLICATIONS

The PSFA indicates the bill will have minimal fiscal impact on the agency. The agency will be able to reassign the duties of 1 FTE to accomplish the requirements of this bill. PSFA indicates they may incur some expenses for legal fees related to developing a “standardized” lease agreement or require leases to be reviewed by an attorney for legal sufficiency as a prerequisite to receive lease assistance. The agency estimates that \$10 thousand dollars for a legal services contract to review leases annually can be absorbed.

The PSFA indicates the bill has the potential to save the state millions of dollars. There are currently no requirements that PSFA or PED review or approve lease-purchase agreements. Requiring PSFA to review proposed lease-purchase agreements and to ensure that charter schools are located in facilities that meet the state adequacy standards will prevent districts and charter schools from locating in second-rate buildings that later become a liability to the state. As a facilities condition index increases, the state is required to fund its proportionate share of construction project costs.

Public school and physical plant improvements have stalled over the past 2 years due to limits on funding, and have begun to worsen in FY11. The average FCI for school buildings in New Mexico has been flat at approximately 36 percent over the past 2 years, and increased to 37 percent this year (if a building costs \$100 thousand and has an FCI of 37 percent, that building needs \$37 thousand in repairs – a lower FCI indicates less repairs needed). Average annual investments in facilities required by the state to keep facilities’ condition from further declining is approximately \$134 million. Currently, unfunded needs for public school facilities in New Mexico total about \$4.05 billion.

SIGNIFICANT ISSUES

PED is required to review and approve proposed lease-purchase agreements pursuant to the Lease Purchase Act, and generally coordinates with PSFA when doing so.

PSFA indicates that typically, start-up charters lack proper planning for facility needs and often have to make last minute decisions to locate in temporary spaces that don’t meet their needs. The bill will require these charter schools to match their needs with the available resources promoting the successful opening of the charter and the proper accommodation of students and staff.

The distribution of lease assistance funding to charter schools and school districts has increased from \$300/MEM in FY05 (\$2 million) to \$722/MEM in FY11 (\$9.8 million). A cap of \$7.5

million annually was removed in 2009 possibly impacting the PSCOC's ability to fund projects under the standards-based capital process that is funded by the same revenue source.

It is uncertain what the growth rate of the program will be going forward due to the increased number of charter schools and the use of lease assistance reimbursements as a funding stream for lease-purchase agreements. Lease-purchase agreements are viewed as the primary vehicle that will be used by charter schools to meet the provisions in Section 22-8B-4.2 NMSA 1978. This section requires charter schools to be in public buildings or to meet one of the exceptions, which includes a facility that will meet adequacy standards acquired through a lease-purchase agreement.

House Bill 283 requires PSFA approval of lease-purchase agreements entered into by charter schools and school districts, and the reopening of a structure as a school. School districts and charter schools will be required to submit to the PSFA a written request for approval of lease-purchase agreement or reopening that contains a description of the structure to be leased or reopened, including location, square footage, interior layout and facilities, a description of the prior use of the structure and a description of how the facility will fulfill the functions necessary to support the educational programs of the school district or charter school.

PSFA must approve an application for the approval of a lease-purchase agreement or for the reopening if:

- the buildings to reopened or leased meet the applicable statewide adequacy standards or can be brought into compliance with standards within a reasonable time and reasonable cost and that money or resources will be available to the school district or charter school to do so; and
- the buildings to reopened or leased have a facility condition index equal to or better than the average condition for all New Mexico public schools for that year.

Charter schools will be required to have PSFA approval of a lease-purchase agreement prior to applying for a lease payment grant.

Beginning with FY12, the bill prohibits new charter schools from opening and existing charter schools from relocating unless the facilities of the new or relocated charter school receive a condition rating equal to or better than the average condition for all New Mexico public schools that year, or the charter can demonstrate within 18 months of occupancy or relocation the way in which the facilities will achieve a rating at least equal to the statewide average condition index.

These provisions will assist charter schools in occupying and acquiring facilities that are safe and suitable for educational purposes, as well as, sufficient time to bring the proposed facilities up to an acceptable condition rating. These provisions will also protect the charter, districts and state from enormous expenditures of capital outlay to bring the facilities up to the statewide adequacy standards through the standards-based capital outlay process.

PSFA indicates that based on the current NMCI average of all public schools in New Mexico of 29.84%, there are 20 (25%) charter schools occupying facilities that are worse condition than the average and 61 (75%) that are in better condition than the average. See Attachment.

The bill also amends the Charter Schools Act to require a charter school applicant to include a detailed description of the charter school's projected facility needs, including projected requests for capital outlay assistance that have been approved by the director of the PSFA. The PSFA

must review a charter applicant's request within 45 days. This will ensure that the charter school will be entering into a facility that receives a condition rating at least equal to the average condition for all New Mexico schools for that year.

ADMINISTRATIVE IMPLICATIONS

PSFA indicates there will be additional burden placed on the agency in reviewing and approving proposed facility plans, including responding to a prospective new charter school applicant's request within 45 days.

PSFA staff currently assists charter schools in assessing proposed facilities under a lease or lease purchase agreement when requested. The PSFA is already conducting physical assessments on all leased school facilities in order to measure the facilities condition index as well as adequacy for purposes of ranking in NMCI database. PSFA indicates the requirements of this bill will not cause a significant increase in workload.

The State Board of Finance (SBOF) indicates that exempting school district leases to charter schools from the SBOF jurisdiction will not have a significant impact on SBOF workload. On average, five school district leases come to the SBOF for approval each year, and less than one of those school district leases per year are entered into with charter schools.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB120 would ban the creation of any new charter schools that have not entered their initial planning year until 2017 (*amended to 2014, but tabled by HCPAC*). This would reduce the potential new leases submitted to PSFA.

TECHNICAL ISSUES

PED indicates there may be a potential conflict with section 22-26A-4 of the Lease Purchase Act. This section of statute requires the approval of the PED before a school district or charter school enters into a lease-purchase arrangement. This section of statute may also need to be amended to include that PSFA approval is also needed pursuant to the proposed changes within this bill.

PED also suggests the addition of language adding language to section 22-20-1 that is comparable to Section C of 22-8B-4.2.

The bill removes PSFA approval of leases from the new paragraph G under §22-20-1 which creates a technical issue as only charter schools are eligible to receive lease assistance under a lease-purchase agreement pursuant to 22-24-4 (see Amendments).

OTHER SUBSTANTIVE ISSUES

Recent LFC evaluation of select charter schools identified ongoing issues with charter school leases. Charter schools need guidance in the lease arrangements they enter and should be required to solicit help from the Public Schools Facilities Authority (PSFA). Key recommendations from the evaluation include requiring review and approval of proposed facilities in new applications by PSFA's planning and development division.

2011-2012 Preliminary Rank Report by wNMCI, Charter Schools Only

Rank	District	School Name	Gross Area (Sq. Ft.)	Weighted NMCI	In Public Building?	Renewal Year
08-09-02	Questa	Roots & Wings Community School	28,491	112.30%		2011
3	Espanola	Carinos Charter	42,366	98.57%	Yes	2011
16	ABQ-State Chartered	Media Arts Collaborative	10,800	73.46%	Lessee/Pur	2013
17	Santa Fe	Tierra Encantada Charter	28,000	72.34%		New-2013
19	Jemez Valley	San Diego Riverside	16,968	71.29%	Yes	2014
20	Silver-State Chartered	Aldo Leopold Charter	9,063	71.04%		New-2013
27	Las Cruces	La Academia Dolores Huerta	12,400	66.92%		2014
100	Albuquerque	Robert F. Kennedy	28,673	48.97%	Yes	2011
136	Albuquerque	Public Academy for Performing Art	40,408	46.00%	Yes	2011
153	ABQ-State Chartered	Cottonwood Classical	13,836	44.06%		2013
167	Albuquerque	El Camino Real Academy	64,661	42.07%		2012
213	ABQ-State Chartered	Southwest Secondary Le	30,128	37.93%		New-2013
217	Albuquerque	Twenty-First Century	25,432	37.52%		New-2013
233	Albuquerque	Los Puentes Charter Sc	19,579	36.36%	22-88-4.2	2012
239	ABQ-State Chartered	Cien Aguas International School	12,852	35.79%		2014
253	Santa Fe	Turquoise Trail Charter School	63,681	33.26%	Yes	New-2013
256	Albuquerque	Nuestros Valores Charter	11,719	34.98%	Yes	2011
274	ABQ-State Chartered	Gilbert L. Sens Charter H.S.	16,016	33.39%		2014
283	Albuquerque	La Academia de Esperanza	16,678	32.60%	22-88-4.2	2012
311	Albuquerque	South Valley Academy	37,888	30.17%	22-88-4.2	New-2013
317	Statewide Average wNMCI	Statewide Average wNMCI		29.84%		
329	Albuquerque	The Learning Community Charter	26,426	28.57%	22-88-4.2	2011
333	Albuquerque	Montessori of Rio Gran	14,704	26.19%	Yes	2014
361	Las Cruces-State Chartered	Alma d' Arte HS	32,023	25.71%	Yes	2014
376	West Las Vegas	Rio Gallinas Charter School	4,312	24.26%	Yes	2012
395	Roswell	Sidney Gutierrez Middle School	10,110	22.86%	Yes	2014
413	Albuquerque	Digital Arts & Tech Ac	47,032	20.76%		2012
415	Carlsbad	Jefferson Mont.	7,683	20.62%	Yes	2012
447	Jemez ME	Lindrieth Heritage Charter	11,378	19.03%	Yes	2011
483	Albuquerque	Academia de Lengua y Cultura	10,393	15.66%		2013
513	Gallup McKinley	Middle College High School	3,314	13.02%	Yes	2013
521	ABQ-State Chartered	Academy of Trades & Technology	30,179	12.32%		New-2013
536	Socorro	Cottonwood Valley	9,376	11.33%		New-2013
552	ABQ-State Chartered	Creative Ed Prep #1	15,334	8.93%		2014
573	Questa	Red River Valley Charter	7,360	6.66%	Yes	2011
576	ABQ-State Chartered	East Mountain High School	39,846	6.39%	22-88-4.2	New-2013
581	Santa Fe	Monte Del Sol	26,773	6.22%	22-88-4.2	New-2013
593	ABQ-State Chartered	Cesar Chavez Community	20,000	5.29%	22-88-4.2	2014
601	Jemez Valley	Watawona Charter HS	11,860	4.36%		2012
613	Cimarron	Moreno Valley High School	15,966	3.38%		2012
618	Albuquerque	SIA Tech	11,564	3.06%	Yes	2014
620	ABQ-State Chartered	Southwest Intermediate Learning	39,691	2.99%		New-2013
622	ABQ-State Chartered	North Valley Academy	39,034	2.94%		2013
623	ABQ-State Chartered	Horizon Academy West	35,073	2.92%		2013

30

25%

25%

25%

25%

25%

61

75%

75%

75%

75%

75%

75%

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Rank	District	School Name	Gross Area (Sq. Ft.)	Weighted NMCI	In Public Building?	Renewal Year
624	Albuquerque	Bataan Military Academy	14,664	2.86%		2012
629	ABQ-State Chartered	Southwest Primary Learning	42,898	2.74%		New-2013
633	Albuquerque	Career Academic & Tech Academy	13,332	2.44%		2012
642	Albuquerque	Montessori ES	29,997	2.02%	22-88-4.2	New-2013
630	Taos	Taos Municipal Charter	19,300	1.62%	22-88-4.2	2013
633	ABQ-State Chartered	Amy Biehl HS Old Fed.	37,293	1.49%	Yes	New-2013
636	ABQ-State Chartered	La Promesa Early Learning	8,400	1.40%		New-2013
638	Albuquerque	Alt. Institute of Math and	18,372	1.38%	Yes	New-2013
660	Aztec	Mosaic Academy Charter	9,024	1.09%		New-2013
667	Albuquerque	Alice King Community School	20,804	0.83%		2011
670	Santa Fe	Academy Tech. and the Classics	23,160	0.53%		New-2013
676	Albuquerque	Gordon Bennell Charter	12,737	0.34%	Yes	2013
678	ABQ-State Chartered	International School at Mesa del Sol	3,376	0.13%		2014
679	Taos	Vista Grande High School	3,302	0.09%		2012
680	Las Cruces	Las Montanas Charter HS	27,633	0.08%		2012
681	Taos	Anansi Charter	3,197	0.06%	Lease/Pur	2011
683	Albuquerque	La Resolana Learning Acade	4,132	0.00%		2011
686	Bernalillo-State Chartered	Village Academy	3,984	0.00%		New-2013 w/conditions
706	Albuquerque	Christine Duncan Community	13,344	0.00%		2011
707	Albuquerque	Corrales International Sch	16,260	0.00%		2013
708	Albuquerque	Mountain Mahogany Communit	11,284	0.00%		New-2013
709	ABQ-State Chartered	Native American Community	23,089	0.00%	Yes	2011
710	Albuquerque	Ralph J. Bunche Academy	6,066	0.00%		2011
712	Albuquerque	The Alb. Talent Dev. Secom	13,300	0.00%		2012
714	Deming	Cesar Chavez Charter HS	11,447	0.00%	Yes	2011
715	Goodsden	Anthony Charter MS/HS	3,411	0.00%	Yes	2013
716	Santa Fe-State Chartered	NM School for the Arts	43,183	0.00%		2014
717	Los Lunas-State Chartered	School of Dreams Academy	13,348	0.00%		2014
718	ABQ-State Chartered	ACE Leadership High School	6,786	0.00%		2013
719	ABQ-State Chartered	Albuquerque School of Excellence	23,123	0.00%		2013
720	ABQ-State Chartered	Albuquerque Sign Language Academy	7,171	0.00%	Yes	2013
721	ABQ-State Chartered	South Valley Preparatory School	7,488	0.00%		2013
722	ABQ-State Chartered	Tierra Adentro	7,762	0.00%		2013
723	Rio Rancho-State Chartered	The ASK Academy	13,918	0.00%		2013
724	Santa Fe-State Chartered	The Masters Program	9,333	0.00%	Yes	2013
725	Taos-State Chartered	Taos Integrated School for the Arts	9,002	0.00%		2013
726	ABQ-State Chartered	The New America School	8,496	0.00%		2014
727	Taos-State Chartered	Taos Academy Charter School	6,382	0.00%		2014

TOTAL/AVERAGE

81

19,380

17.14%

34

Schools with "XK-XK-XK" rankings are projects that received partial funding through a previous standards-based award. The rank is formatted by award year followed by the rank from that award cycle. These projects may be eligible for additional phase funding upon submission of an application in current or future award cycles.