

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 352

52nd Legislature, 1st Session, 2015

Tracking Number: .199072.1

Short Title: Charter School Capital Outlay Assistance

Sponsor(s): Representative Nora Espinoza

Analyst: David Craig

Date: February 17, 2015

Bill Summary:

HB 352 amends the *Public School Capital Outlay Act* to allow certain charter schools to receive funding from the Public School Capital Outlay Fund (PSCOF) for a lump sum down payment of not more than 25 percent of the total cost to build or lease classroom facilities. More specifically, the bill:

- allows this down payment pursuant to guidelines established by the Public School Capital Outlay Council (PSCOC); and
- includes the following criteria:
 - the charter school has been renewed at least once;
 - the charter school has earned a grade of C or higher, as provided in the *A-B-C-D-F Schools Rating Act*; and
 - the school district in which the charter school is geographically located certifies to the PSCOC that it has no classroom facilities available to provide to the charter school.

Fiscal Impact:

HB 352 does not carry an appropriation.

Fiscal Issues:

The Public Education Department (PED) bill analysis indicates:

- it is uncertain how much this bill would impact the PSCOF;
- the provisions of HB 352 could be a substantial amount if 40 eligible charter schools were to take advantage of this new program; and
- allowing the use of PSCOF funds for providing lump sum payments for the purchase of buildings for charter schools may decrease the funds annually for standards-based projects.

Substantive Issues:

Legislative Education Study Committee (LESC) Testimony

During the December 2014 LESC interim meeting, the committee heard testimony from representatives of the New Mexico Coalition of Charter Schools (NMCCS). Referencing a PowerPoint presentation, the Executive Director of NMCCS noted four parts to the coalition's presentation:

- an explanation of the variety of student needs met by charter schools;
- a response to prevailing criticisms that charter schools:
 - cherry pick their students to avoid at-risk students (with the exception of those schools specifically designed for at-risk populations);
 - do not outperform traditional public schools; and
 - have greater funding costs, and choose to remain small to receive extra funding;
- an exploration of possible consequences of the funding legislation being then considered by the LESC; and
- a recommendation from the NMCCS for legislation, including legislation to allow charter schools who meet criteria such as three consecutive years of school grades of C or better to apply for special funding mechanisms through the PSCOC for down payments, not to exceed 25 percent of the total project on lease-purchase and construction agreements.

Public School Lease Purchase Act and Charter Schools

Provisions of the *Public School Lease Purchase Act* provide the process by which a charter school would have a lease-purchase arrangement approved. One difficulty experienced by charter schools in pursuing a lease-purchase arrangement is access to capital funding in the absence of taxing authority. Previous Legislatures have also used the PSCOF to assist charter schools in meeting the requirement to be in a public building, or in a building subject to an approved lease-purchase arrangement, through the creation of a dedicated fund and assistance program. Provisions for a dedicated fund and assistance program were repealed in 2012 (see "Background," below).

According to the PED analysis:

- in FY 15, 97 charter schools were awarded funds through the lease reimbursement program from the PSCOF;
- of these 97 charter schools, 40 are still not housed in public buildings;
- the statutory requirement to be in a public building by 2015 has been difficult for some charter schools to meet, in spite of significant efforts to remain in compliance; and
- this bill appears to be another alternative to ensure charter operations are not adversely affected by the 2015 deadline.

Background:

Current Law

Current provisions in law require a charter school, on or after July 1, 2015, to be:

- housed in a building 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; or
- subject to a lease-purchase arrangement that has been entered into pursuant to the *Public School Lease Purchase Act*.

However, the following exceptions to these requirements are also included in current law:

- if the facility in which the charter school is housed meets the statewide adequacy standards and the owner is required to maintain those standards at no additional cost to the charter school or state;
- if 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 specifically organized for the purpose of providing the facility for the charter school.

Provisions in current law also indicate that the school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes.¹

In addition, in order to aid charter schools in attaining public buildings, other provisions in current law allow:

- a state-chartered charter school to apply for grant assistance from the PSCOC, subject to certain requirements; and
- the PSCOC to make an award from a Charter School Capital Outlay Fund (CSCOF) if the PSCOC determines that the state-chartered charter school does not have the resources to pay all or a portion of the total cost of the capital outlay project that is not funded with grant assistance from the PSCOF.

However, despite the existing reference in law to the CSCOF, both the language establishing the CSCOF, and the associated program to assist charter schools to be located in public buildings, or in buildings being acquired by charter schools pursuant to a lease purchase agreement, reached the repeal date of July 1, 2012.

¹ Statute indicates other educational purposes include: health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

Charter School Capital Outlay Fund

In the 2007 regular legislative session, two pieces of legislation were enacted relating to charter schools:

- Laws 2007, Chapter 214 added new sections of the *Public School Capital Outlay Act* that among its provisions:
 - require the PSCOC to develop a program for assisting charter schools to be located in public buildings or in buildings being acquired by charter schools pursuant to a lease-purchase agreement; and
 - create the Charter School Capital Outlay Fund (CSCOF); and
 - included a repeal date of July 1, 2012 for the program provisions and the CSCOF with the unencumbered fund balance reverting to the Severance Tax Bond Fund.
- Among its provisions, Laws 2007, Chapter 334:
 - made a \$4.5 million appropriation from Severance Tax Bond proceeds to the CSCOF; and
 - included a reversion date of June 30, 2011 for projects funded with Severance Tax Bond proceeds.

On June 30, 2011 the State Board of Finance requested reversion of any unexpended dollars in the CSCOF based on the provisions of Laws 2007, Chapter 334. Of the \$4.5 million appropriated to the fund:

- \$3.14 million was expended; and
- \$1.36 million reverted to the Severance Tax Bond Fund.

The unexpended amount that reverted to the Severance Tax Bond Fund was due to the prerequisite of eligibility for a standards-based award that charter schools be renewed at least once pursuant to provisions in the *Charter School Act*. Because of this requirement, state-chartered charter schools that were only recently created were deemed ineligible for a standards-based award. When the CSCOF reached its sunset date, a fund no longer existed for PSCOC to provide assistance to charter schools for locating in a public building or in a building being acquired by charter schools pursuant to a lease-purchase agreement.

Legislative History of Charter School Facilities Standards

A brief timeline of the enactment of charter school facilities standards, and related issues and policy proposals, includes the following:

- in 2005, the Public School Capital Outlay Oversight Task Force (PSCOOTF) and the LESC both endorsed legislation that was enacted to:
 - require the facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2010 to meet educational occupancy standards (E-Occupancy) required by applicable New Mexico construction codes;
 - set July 1, 2010 as the deadline for a charter school to be in a public building to have a charter application approved or an existing charter renewed; and

- create two exceptions by which a charter school may stay in a nonpublic building:
 - a suitable public building was unavailable and the building owner is contractually obligated to maintain adequacy standards at no additional cost to the charter school or state; or
 - the charter school is housed in a facility owned by a nonprofit entity specifically organized to provide a facility for the charter school and the owner maintains the facility to adequacy standards at no additional cost to the charter school or the state;
- in 2007, legislation was endorsed by PSCOOTF and enacted that allowed a third exception from the public buildings requirement for charter schools that are leasing a building that meets statewide adequacy standards and is being leased under a lease-purchase agreement;
- in 2009, legislation was endorsed by PSCOOTF and enacted that extended from July 1, 2010 to July 1, 2015 the deadline for charter schools to be located in a public building or in a building subject to an approved lease-purchase agreement; and
- in 2011, legislation was endorsed by PSCOOTF and the LESC and enacted that required:
 - the facilities of a charter school that are approved on or after July 1, 2005 and before July 1, 2015 to meet E-Occupancy standards required by applicable New Mexico construction codes;
 - 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 an New Mexico Condition Index (NMCI)² 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; and
 - the Public School Facilities Authority approval of charter school lease-purchase agreements.

Finally, in 2012, legislation was endorsed by both PSCOOTF and the LESC that removed the sunset date and repeal of the CSCOF and the associated program to assist charter schools to be located in public buildings or in buildings being acquired by charter schools pursuant to a lease-purchase agreement, but that bill failed to pass. Therefore, without the ability to levy taxes to meet the matching requirements for grant assistance from the PSCOF, a fund does not currently exist to provide assistance to charter schools for locating or relocating in a public building or in a building being acquired by charter schools pursuant to a lease-purchase agreement.

Committee Referrals:

HEC/HAFC

² The NMCI is a metric used by the PSFA to rank the condition of every school building relative to the statewide adequacy standards. A high NMCI indicates a facility with greater needs.

Related Bills:

CS/HB 19 *Charter School Educational Tech Equipment*
HB 166 *Charter School Transportation Agreements*
HB 253 *Charter School Facility 4 Year Plans*
SB 8a *Charter School Education Tech Equipment*
SB 128 *Public School Capital Outlay Building Needs*
SB 130a *Public School Lease Purchase Act Definitions*
SB 148 *Charter School Responsibilities*
SB 236 *Charter School Lease Approval*
SB 257a *Charter Schools & Public Audit Changes*
SB 273 *Charter School Governance*