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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/2019

SPONSOR Sapient LAST UPDATED _____ HB _____

SHORT TITLE Ownership of Some Charter School Facilities SB 624

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Fiscal Impact					

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB230, SB231, SB245, SB295.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

Senate Bill 624 amends the Section 22-8B-4.2 (D) NMSA 1978, part of the Charter Schools Act, to require that, if charter school facilities are not public buildings or subject to an approved lease-purchase arrangement (per the Public School Lease Purchase Act), the facility should meet statewide adequacy standards (which the owner of the facility is contractually obligated to maintain at no additional cost) and must either demonstrate that no public buildings are available or adequate to meet the school’s educational program needs or the building is owned by a nonprofit entity specifically organized to provide a facility for the charter school (often a charter school’s foundation). The bill further requires a charter school operating in a facility owned by such a nonprofit entity to demonstrate it has entered into a legally binding agreement that will require the nonprofit to transfer title of the facility to the charter school immediately after the nonprofit entity’s acquisition of title to the facility.

SB624 also amends the Public School Capital Outlay Act to require charter schools receiving lease assistance to be in compliance with Section 22-8B-4.2 (D) NMSA 1978. In addition, the bill requires a charter school receiving lease assistance to make payments to a nonprofit entity to provide proof of a legally binding agreement and that the nonprofit entity transfer title

immediately to the charter school on the acquisition of title to the facility.

The bill also makes minor technical changes to the Public School Capital Outlay Act.

This bill was endorsed by the Legislative Education Study Committee and the Public School Capital Outlay Oversight Task Force.

FISCAL IMPLICATIONS

No significant fiscal implications.

SIGNIFICANT ISSUES

Proposed Section 22-8B-4.2 (D) NMSA 1978 provides a new charter school shall not open and an existing charter shall not be renewed unless the school is either 1a) housed in a public building, (1b) housed in a building that is subject to a lease-purchase agreement that has been approved pursuant to the Public School Lease Purchase Act, (2a) housed in a facility that meets statewide adequacy standards and the school has demonstrated there is no adequate public building available or (2b) housed in a facility that meets statewide adequacy standards owned by a nonprofit entity and, if the school is making lease payments to the nonprofit entity, it has demonstrated it has an agreement that will transfer the title of the facility immediately after the entity's acquisition of the title.

Any lease-purchase arrangement entered into by a public school must comply with the requirements of the Public School Lease Purchase Act, and, as such, Item 1b does not actually provide additional requirements on schools in lease-purchase arrangements. Because a school is only required to comply with one of the four above criteria, Item 1b effectively exempts schools in lease-purchase arrangements from any other requirements under Section 22-8B-4.2 (D) NMSA 1978 under both current law and the proposed changes made by SB624.

Furthermore, while Item 2b does not specifically state it only applies to lease-purchase arrangements, SB624 effectively ensures any arrangement that would fall under Item 2b becomes a lease-purchase arrangement if any lease payments are made by requiring a title transfer agreement. However, if Item 1b is maintained, schools that make lease payment to a nonprofit entity as described in 2b but fail to comply with the requirement to have a title transfer agreement in place may still be in compliance with the Item 1b and are thus exempted from any additional requirements imposed by SB624.

Item 1b would be applicable to all schools that might otherwise fall under Item 2b if the arrangement required under 2b is interpreted as a lease-purchase arrangement for purposes of the Public School Lease Purchase Act, which defines a "lease-purchase arrangement" as:

an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, which periodic lease payments composed of principal and interest components are to be paid to the holder of the agreement and pursuant to which the owner of the building or other real property may retain title to or a security interest in the building or other real property and may agree to release the security interest or transfer title to the building or other real property to the school district for

nominal consideration after payment of the final periodic lease payment.

If the arrangement required within Item 2b is interpreted to fall under the Public School Lease Purchase Act's definition of lease-purchase arrangement, any school in such an arrangement would be subject to the requirements of the Act. Under such an interpretation, the existence of Item 1b would allow any school that might otherwise be subject to the additional requirements imposed by SB624 (via Item 2b) to escape those requirements.

The above issues could be resolved by removing Item 1b. It may also be desirable to specify if the arrangement required by Item 2b should be considered a lease-purchase arrangement for purposes of the Public School Lease Purchase Act.

RELATIONSHIP

This bill relates to Senate Bill 245, which expands the charter facilities eligible for lease assistance under the Public School Capital Outlay Act and provides additional funding for charter school facilities, but SB624 does not appear to conflict with the text or intention of SB245.

This bill relates to Senate Bill 230, Senate Bill 231, and Senate Bill 295, which also amend the Public School Capital Outlay Act.

TECHNICAL ISSUES

SB624 does not define the term "owner," but this analysis assumes ownership does not require an entity to hold title to a facility, because the bill requires the transfer of title occur "immediately after the nonprofit entity's acquisition of title to the facility," implying that the entity is the owner of the facility but does not necessarily hold title.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PSFA notes that without SB624, enactment of SB245 could result in the foundation, a private entity, owning a facility paid for with state funds. In its analysis of SB245, the agency raised concerns that this could violate the New Mexico Constitution's anti-donation clause.

ER/gb