LFC Requester:	

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ___ **Amendment** X

Correction ___ **Substitute** ___

Date 02/13/24

Bill No: HB207a

Sponsor: J. Garratt, J. Hernandez

Short Title: PUBLIC SCHOOL CAPITAL OUTLAY GRANTS

Agency Name and Code Number: OSA- 308

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House bill 207 as amended by the House Appropriations and Finance Committee ("HB207a" or "the bill") amends the Public School Capital Outlay Act ("the Act") to require the Public School Capital Outlay Council (PSCOC) to provide lease assistance to school districts, including facilities leased by public schools.

FISCAL IMPLICATIONS

HB207a does not carry an appropriation.

Lease assistance has grown from $700 per membership ("MEM" which is an average of kid counts on specific days of the school year) in fiscal year 2009-2010 (FY10) to $988.83 in FY24.

SIGNIFICANT ISSUES

The PSCOC has routinely made lease assistance awards to both school districts and charter schools throughout the history of the lease assistance program. The lease assistance program dates to 2004 and was primarily designed for charter schools. An increase in charter school lease assistance activity by PSCOC dates to around 2005 when statutory mandates to be housed in public buildings were enacted (see 22-8B-4.2 NMSA 1978 and changes through time). These mandates were later modified to allow charter schools to remain in privately owned properties if they could demonstrate they met educational occupancy standards and/or public buildings were unavailable. The Act was later modified to increase lease assistance distributions in 2006. The majority of funding for lease assistance to charter schools comes from Supplemental Severance Tax Bonds (SSTB's) sold by the Board of Finance.

PERFORMANCE IMPLICATIONS

The Office of the State Auditor notes that in recent years, significant issues have arisen in charter school audit findings as they relate to leases. In most charter schools, the charter school itself does not pay the lease. A private foundation, not subject to government finance laws and regulations, will be the ultimate recipient of lease assistance funds and the payee to the landlord, which may be the foundation itself, a private entity, or some other entity.

In at least one school there are instances where administrators of the school were found to be contractors of the charter school and employees of the school were overseeing their bosses as members of the foundation Board. In this same school, there were issues of prepaid rent amounts from the school to the foundation that were far more than what was required to meet mortgage requirements, and the mortgage itself was not managed properly and included a balloon payment. The foundation had more expenditures than just the mortgage and was sending school staff on out of state travel, meals, gifts, and prizes.

One audit finding for the charter school was due to the foundation's outstanding liability to the school of $1 million for prepaid rent and 20 years to pay it back, but the foundation has a deficit fund balance of $673,315. When coupled with decreasing lease assistance, decreased state funding, and decreasing membership, revenue to the school will decrease, and the independent public accountant noted no financial benefit to the school of the $1 million prepaid rent transaction. The result is a lease arrangement decoupled from mortgages and amounts flowing in and out of charter schools unrelated to capital outlay.

A bill from the previous 2023 legislative session that sought to address school lease payments that were not tied to rent, HB143, did not pass. That bill would have required PSCOC to use a standardized facility lease form for use by all charter schools and specified that lease agreements may only be reimbursed for base rent and be pre-approved by the capital outlay council using the new form. The OSA recommends the Legislature revisit safeguards of lease assistance payments if it is making lease assistance payments to charter schools mandatory.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS