

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/18/19  
**Bill No:** SB245

**Sponsor:** Sen. Jacob Candelaria and Sen. Gerald Ortiz Y Pino    **Agency Code:** 924  
**Short Title:** CHARTER SCHOOLS, FACILITIES & CAPITAL FUNDS    **Person Writing:** Daniel Manzano  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	20,000.0	Non-recurring	General Fund Operating Reserve to Public Project Revolving Fund
	30,000.0	Non-recurring	General Fund Operating Reserve to Charter Facility Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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: SB245 amends section The Charter School Act, 22-8B-4 NMSA 1978, to require school districts to make available for lease, lease purchase, or purchase any land or facilities not being used for educational purposes to charter schools that are located within the district. School districts will be required to notify the charter schools by May 1<sup>st</sup> of each year and the Public School Facilities Authority (PSFA) shall ensure that every district that has such available land or facilities provides notification to charter schools.

SB245 also contains clean-up language. Section 2 of this bill contains references to the public school facilities authority which is corrected to read “authority” to match the definition within the Public School Capital Outlay Act (PSCOA). Reference to “No Child Left Behind Act of 2001” is also deleted due to the fact that this Act no longer exists and changed to “Every Student Succeeds Act”. The bill also changes the references of 80th and 120th day to “second reporting date” and “third reporting date”.

Section 2 of the bill changes the “Lease Payment Assistance Program” from the PSCOA from a permissive program to a required program that the Public School Capital Outlay Council (PSCOC) **shall** fund each year. Language is also added to clarify that charter schools may submit their own applications for Lease Payment Assistance if the school district fails to do so on its behalf (p. 11, lines 12-13).

Section 3 creates the non-reverting “Charter Facility Fund” to be used to pay off lease purchase agreements. Section 4 and 5 amend sections of the Public School Capital Improvements Act, PSCIA, (SB-9) and the Public School Building Act, PSBA, (HB-33) to establish a process for charter schools to be included in school district resolutions under these Acts. Section 6 appropriates \$20,000.0 from the general fund to the Public Project Revolving Fund and an additional \$30,000.0 from the general fund to the Charter Facility Fund.

**FISCAL IMPLICATIONS**

Twenty million dollars (\$20,000.0) is appropriated from the general fund to the Public Project

Revolving Fund in FY19 and subsequent years to provide loans to charter schools for renovation, construction, purchase or expansion of a charter school facility or lease purchase agreement.

Thirty million dollars (\$30,000.0) is appropriated to the Charter Facility Fund to be used to pay off lease purchase arrangements. This fund and appropriation will assist many charter schools to pay off current lease purchase arrangements so that they will be in public facilities. This will also reduce the amount of funds that are allocated from the lease assistance program within PSCOA. Currently there are approximately 25 charter schools who are in lease purchase arrangements that have been approved by the Public Education Department (PED).

## **SIGNIFICANT ISSUES**

The current standards-based public school capital outlay program was developed and established in response to a 1998 lawsuit filed in state district court. As this lawsuit has never been closed, it is essential to fully fund the standards based and systems-based award programs, which fulfill the core mission of PSCOC to ensure educational adequacy. To remain compliant with the filed lawsuit, these two programs should be funded before the lease payment assistance is funded. Currently the lease payment assistance program is permissive and gives the PSCOC the discretion not to fund the program in years where they may not be sufficient revenues. Changing this program to be required annually may require the PSCOC to fund a program that is outside of the core function and leave standards-based projects out if there is ever a year when Supplemental Severance Tax Revenues are not sufficient to fund all of the established programs within the PSCOA.

SB245 would require school districts to make available any land or facilities that are not being used for education purposes for lease, lease-purchase, or purchase to charter schools located within their district. This amendment may pose legal questions due to the fact that state-authorized charter schools are separate LEAs and are not associated with the school district. This bill. This bill would require the school district to make their available facilities to these separate entities.

Currently, statute is vague about how and when charter schools are to submit their needs to their respective school districts for inclusion on the resolution to the voters for funds from the PSCIA and the PSBA. These amendments clarify the process for both charter schools and school districts. While the statute requires charter schools to timely submit information, SB245 establishes a submission date of June 1<sup>st</sup>, requires communication and collaboration, and outlines the expectation for the school district to identify a point of contact so that a charter school can timely submit its information.

SB 245 provides in part that the charter facility fund is created as a non-reverting fund in the state treasury consisting of appropriations, gifts, grants, and donations, and it provides that the fund shall be used to pay off a lease-purchase agreement. The new provisions may clarify further what is to occur if a charter school closes, and the precise impact this provision will have on those circumstances.

NMSA 1978, § 22-8b-12.1 *Closure; Chartering Authority Protocols; Chartering Authority Duties; Distribution of Assets* provides in part that when a charter school is closed, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school and then to the state treasury to the credit of the current school fund. The provisions may clarify further whether any of the charter facility funds should

go towards payment of any of the closing or closed charter school's outstanding obligations.

The provisions may also clarify further whether anything beyond the closing or closed charter schools assets should go towards satisfying any outstanding payroll obligation or debts to creditors, specifically in light of these new provisions. If nothing beyond the assets should go towards satisfying outstanding debts or obligations, the provisions may clarify further whether this should be true regardless of whether there is any other existing agreement purporting to bind the charter school funds or funds possessed by other state or local entities.

These further clarifications may help prevent attempts by creditors to obtain funds from these state funds, or funds possessed by the state or local agencies for other purposes. Clarifying this for not just the charter facility fund, but for other funds as well, will help avoid arguments that by specifying these funds should be excluded for payment of obligations, but not specifying anything about other funds, courts should interpret this to mean that the intent was for other funds to be subject to payment for outstanding obligations.

NMSA 22-26A-5 provides that a governing body shall not enter into a lease purchase arrangement without the approval of the department, and that lease purchase arrangements shall provide that there is no legal obligation for the school district or charter school to continue the lease purchase arrangement from year to year or to purchase the building or other real property. The provisions introduced in SB 245 may clarify further whether any part of the new or amended provisions should be specified within the terms of each lease purchase arrangement as well.

The new provisions use the term lease purchase agreement. The provisions may further clarify whether this term is to be used interchangeably with lease purchase arrangement, in light of the fact that the term lease purchase arrangement is defined by statute, but the term lease purchase agreement is not expressly referenced in NMSA 1978, § 22-26A-3 *Definitions*.

## **ADMINISTRATIVE IMPLICATIONS**

While there may not be any direct administrative implications to the Public Education Department, the PSFA may be directly impacted if the bill is enacted as written. The bill requires PSFA to develop a process for ensuring school districts are notifying charter schools when facilities are available before May 1<sup>st</sup> of each year. The PED's Charter School Division can provide contact information for charter schools to assist the PSFA communicate with charter schools. While the PSFA maintains a Facilities Assessment Database that has the condition of every school building in the state, this database does not currently indicate which buildings, classrooms or land are not being used for educational purposes. The PSFA should provide input regarding its ability to acquire relevant data to comply with the requirement. The PSCOC and PSFA will need to develop guidelines and a process to allocate funds from the Charter Facility Fund, to include an application and ranking methodology.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB-230 and SB-231 are also proposing clean-up language and technical changes to section 22-24-4 NMSA 1978.

## **TECHNICAL ISSUES**

The bill does not contain an effective date and the Sponsors may wish to include one, since depending on the effective date, the new proposed date requirements that are established in the bill (May 1<sup>st</sup> deadline and a June 1<sup>st</sup> deadline) could be impacted, affecting compliant implementation.

For improved clarification, the Sponsors may wish to either insert the word “geographically” or “physically” into the amended Section 1, subsection F for clarity (p.3, lines 15-24) so that the proposed language reads as follows:

A school district that has available land or one or more available facilities not currently used for other educational purposes shall make the land and facilities available for lease, lease-purchase or purchase to the charter schools [**physically**] located in the school district for their operations and shall notify them of that availability no later than May 1<sup>st</sup> of each year.

A locally-authorized charter school is both physically located in the school district and is a school that is also part of the district. A state-authorized charter school can be physically located in same geographic location as a school district, but is considered independent and not a part of the school district.