

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	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: SB245CS 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 1st 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. SB245SEC adds language to allow a school district to develop a facility prioritization plan that identifies which charter schools may lease, lease purchase or purchase available facilities. Language is also added to specify that district-owned land shall not be considered available if the district has justified a future use in its five-year facilities master plan.

SB245CS 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”.

SB245SEC changes Section 2 of the bill amends the “Lease Payment Assistance Program” from the PSCOA by allowing the Public School Capital Outlay Council (PSCOC) to make grants for the entire leased facility, not just for “classroom space for schools”. SB245SEC proposes to change current language in statute removes the stipulation that leasing be for classroom space for schools but broadens the language from “classroom facilities” to just “facilities”.

Section 3 creates the non-reverting “Charter Facility Fund” (CFF) to be used to pay off lease purchase agreements. In SB245SEC, additional language is included to require the council to adopt rules regarding the provision of loans to charter schools for purchase, construction, expansion or renovation of facilities to include minimum criteria for eligibility in those policies that require evidence that lease purchase agreements are in accordance with the Public School Lease Purchase Act and that a charter school has been renewed at least once, as well as require the review of the last two audits of the charter school (p.18, lines 6-15). The language proposed in this section of the bill affecting the Public School Capital Outlay Act would be consistent with and mirrors the substituted language proposed in SB245SEC’s Section 6 for New Mexico Finance Authority Act.

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.

SB245SEC adds in Section 6 to create a new section to the New Mexico Finance Authority Act that requires the New Mexico Finance Authority to adopt policies to provide loans to charter schools for the purchase, construction or expansion of facilities or to pay off lease purchase agreements from the non-reverting Public Project Revolving Fund (PPRF) and include minimum criteria for eligibility in those policies that require evidence that lease purchase agreements are in accordance with the public School Lease Purchase Act and that a charter school has been renewed at least once, as well as require the review of the last two audits of the charter school (p.23, lines 3-8). The language proposed in this section of the bill affecting the New Mexico Finance Authority Act would be consistent with and mirrors the substituted language proposed in SB245SEC's Section 3 for the Public School Capital Outlay Act.

Section 7 appropriates \$20,000.0 from the general fund operating reserve fund to the Public Project Revolving Fund and an additional \$30,000.0 from the general fund operating reserve to the Charter Facility Fund (CFF).

FISCAL IMPLICATIONS

Twenty million dollars (\$20,000.0) is appropriated from the general fund operating reserve to the PPRF 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 CFF 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).

Currently in the PSCOA the PSCOC is allowed to make grants for leased "classroom facilities." However, language in Section 2 as changed in SB245SEC deletes the word "classroom" and allows the PSCOC to make grant for the entire leased facilities regardless if the space is used for classrooms. This may have an impact to the PSCOF if the PSCOC funds portions of the lease even though spaces are not used as classroom space. This may de-incentivize charter schools from entering into leased spaces that are adequate and suitable for their needs. This may cause a proliferation of unused space and/or spaces that are above adequacy. Currently the PSCOC can only fund standards based projects based on the minimum adequacy standards. Anything above adequacy must be funded by the school district or charter school.

SIGNIFICANT ISSUES

SB245SEC 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 would require the school district to make their available facilities to these separate entities. SB245SEC adds language in Section 1 (p.4, lines 3-9) allowing a school district to develop a prioritization plan that identifies

which charter schools may lease, lease-purchase or purchase available school facilities. However, this may conflict with the language on page 3, line 20 that states the district shall make the available facilities to charter schools located in their district. Furthermore, the bill does not impose any requirements regarding the purchase price of available facilities or land. This is a concern because statute does not require that districts apply fair market value.

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, SB245CS establishes a submission date of June 1st, 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 245CS 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 school's 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 245CS 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 1st 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, SB-231 and SB-295 are also proposing clean-up language and technical changes to section 22-24-4 NMSA 1978.

TECHNICAL ISSUES

The following technical issues were pointed out in analysis for SB245 and remain:

Effective date. 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 1st notification deadline and a June 1st submission deadline) could be impacted, affecting compliant implementation.

Geographic location. 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 16-25) 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 facilities and may make land 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 1st 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.

The following are two **new technical issues** as a result of the language in SB245SEC:

Section 1. As addressed in the *Significant Issues* section, there appears to be language that could cause confusion. The first sentence of Subsection F on page 3 outlines how school district facilities or land not currently in use for educational purposes will be made available to charter schools. The third sentence adds in the exception to this by allowing school districts to prioritize which charter schools will have access to facilities and the next sentence withholds land from

charter schools if the district has justified its use in the district's five-year facilities plan. Reading each sentence separately, they would appear to conflict with one another. The Sponsor may wish to address the language and could perhaps do so by restructuring subsection F or inserting clarifying language to ease the reader's understanding.

Charter School Facility Fund, Section 3. While the intent appears to reconcile and ensure that the Public School Capital Outlay Act and the New Mexico Finance Authority Act are aligned, using the exact language in Sections 3 and 6 may not be appropriate. Section 3 of the SB245 specifically creates a Charter Facility Fund to help charter schools pay off lease purchase agreements (Section B), but in SB245SEC, additional language (Subpart C, lines p.18, lines 6-15) is included to require the council to adopt rules regarding the provision of loans to charter schools for purchase, *construction, expansion or renovation of facilities* (p.18, line 7-8). Allowing for funds to pay for "construction, expansion or renovation of facilities" does not appear aligned with the purpose of the Charter School Facility Fund, but instead the Public Project Revolving Fund. The Sponsor may wish to correct the error to ensure that Parts B and C in Section 3 are internally consistent.