

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2022 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 February 3, 2022
Bill No: HB43

Sponsor: Reps. Garratt, Dixon, Brown,
and Hernandez
Charter School Facility
Improvements

**Agency Name and
Code Number:** PED - 924
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	\$10,000.0	Recurring	PPRF

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
	(\$10,000.0)		Recurring	PSCOF
	(\$700.0)	(\$700.0)	Recurring	PSCOF
	\$700.0	\$700.0	Recurring	Charter School Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Bill 119 (HB119), Adjust Certain School Distributions; and Senate Bill 78 (SB78), Charter School Changes.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 43 (HB43) makes a number of proposed statutory changes to expand charter schools’ access to facility funding.

HB43 amends the Public School Facilities Authority (PSFA) and Public School Capital Outlay Council’s (PSCOC) charter school lease assistance program to be based on facility space, rather than classroom space.

The bill creates two separate funding sources for charter school facility funding:

- 1) the public project revolving fund administered by the New Mexico Finance Authority (NMFA), following the adoption of NMFA policies to provide loans to charter schools for the purchase, construction, expansion, or renovation of facilities; and
- 2) a “charter facility fund” administered by the Public School Finance Authority (PSFA) on authorization by the Public School Capital Outlay Council (PSCOC), used to pay off charter school lease-purchase agreements.

To be eligible for a disbursement from either fund, a charter school’s lease-purchase agreement must meet the requirements of the Public School Lease Purchase Act, a charter school must have renewed its charter at least once, and two audits of the charter school must be reviewed. The bill would appropriate \$10 million to the public project revolving fund.

HB43 would also require school districts to notify locally chartered charter schools and state-chartered charter schools within their boundaries of any land or facilities eligible for lease, purchase, or lease-purchase. Land shall not be considered available to a charter school if the school district has a justified use for the land in its five-year facility master plan.

HB43 would require school districts to establish a process by which charter schools inside their geographic boundaries may be included in local bond elections pursuant to the Public School Capital Improvements Act (SB9) and the Public School Buildings Act (HB33). By June 1 of any year in which a school board will consider a bond resolution, the school district must name a point of contact responsible for charter school requests and collect a list of the

capital improvements each charter school wishes to make.

FISCAL IMPLICATIONS

HB43 would appropriate \$10 million from the public school capital outlay fund (PSCOF) to the public project revolving fund for expenditure on charter school projects in FY23 and subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert to any fund.

HB43's amendments to the lease assistance program would increase the amount of funds the program allocates to charter schools. Currently, charter schools receive lease assistance based on square footage of classroom space. The bill would allow PSCOC to award lease assistance funding for the total square footage of each charter school. LESC's analysis of a nearly identical bill in 2020 (SB318) suggests the bill would require approximately \$700 thousand in new lease assistance awards from the PSCOF, freeing up the same amount for some charter schools to use on other operational needs like direct classroom instruction.

HB43's amendments to the SB9 and HB33 local election process may result in additional local revenue to school districts that would be disbursed to locally chartered and state-chartered charter schools within their boundaries. The bill would not change how the SB9 state match is calculated.

SIGNIFICANT ISSUES

Charter schools that choose to purchase or construct a new facility have limited financing options. The Public School Capital Outlay Act focuses primarily on making needs-based awards for schools in the poorest condition in the state. Many charter schools do not meet the eligibility threshold for needs-based awards from PSCOC and instead resort to private financing of renovations or new construction. HB43 would create two new public financing options, one administered by PSFA and PSCOC and another managed by NMFA.

Charter schools are also unable to approach voters for facility improvement bonds in the same manner as school districts. Each year, school districts generate more than \$100 million in local capital funds through SB9 and HB33 bond elections. Current law allows charter schools to submit information to school districts for inclusion in local bond elections, but does not have a detailed process by which this information must be used. HB43 clarifies the process in current law by establishing a June 1 deadline for charter school requests and requiring school districts to establish a point of contact for bond resolutions. These adjustments ensure charter schools have a predictable legal process by which they may receive a portion of school districts' bond revenues.

Given difficulties purchasing or constructing school-owned spaces, charter schools typically enter lease or lease-purchase agreements with school districts or private property owners. The charter school lease assistance program distributes public school capital outlay funds to charter schools to pay a portion or all of a charter school's lease. Charter schools must use other operational funding to cover the remaining portion of their lease not covered by the lease assistance program. By increasing the amount of facility space eligible for coverage by the lease assistance program, HB43 may result in more operational funding directed to the classroom. However, the bill may result in funding for nonacademic spaces that fall outside the statewide adequacy standards, a set of standards established by PSCOC that constitute the minimum requirements a building must meet to operate an educational program.

The creation of a PSCOF loan program specifically for charter schools may circumvent the statutory public school capital outlay awards processes, two needs-based processes which prioritize state funding for schools in the worst condition in the state. The current needs-based system was created as the result of the *Zuni* capital outlay lawsuit, where the court found differences in local property wealth among school districts contributed to inequitable revenues for school facilities. Using the PSCOF to make awards directly to charter schools may dilute the funding available for needs-based standards and systems awards and challenge the state's ability to meet the requirements of the *Zuni* lawsuit. However, given that charter schools cannot raise local taxes, a dedicated funding source may be what charter schools need to ensure their facility funding is equitable with school districts.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

The PED currently reviews charter school lease purchase agreements as required by the Public School Lease Purchase Act. HB43 would likely have little bearing on this process, but would require the PED to communicate with NMFA, PSFA, and PSCOC to ensure loans are made only to charter schools with lease-purchase agreements in compliance with the law.

School districts would be required to execute two new administrative functions: 1) notifying charter schools of district-owned facilities and land available for lease, purchase, and lease-purchase; and 2) establishing a process by which charter schools may participate in local bond elections.

NMFA would be required to administer loans to charter schools from the public project revolving fund. NMFA must adopt policies for the fund to provide loans for purchase, construction, expansion, or renovation of charter school facilities or to pay off lease-purchase agreements.

PSCOC would be required to administer loans to charter schools from the newly-created charter facility fund. PSCOC must adopt rules to provide for the renovation, construction, purchase, or expansion of charter schools and the paying-off of charter school lease-purchase agreements from the fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB43 relates to HB119, Adjust Certain School Distributions, which adjusts the SB9 state match formula to create an additional per-MEM distribution to school districts imposing a two-mill levy; and SB78, Charter School Changes.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

HB43 includes a \$10 million recurring appropriation for charter school facilities, an amount that may be insufficient to address the actual need for facilities on an ongoing basis. School districts generate more than \$100 million per year in local taxes for school improvements, and PSCOC makes facility awards ranging from between \$200 million and \$400 million annually for school renovations statewide.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A