

<b>LFC Requester:</b>	<b>Liu</b>
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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

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

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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 February 22, 2023

Bill No: HB-143

Sponsor: Sarinana  
 Short Title: SCHOOL BOARD GOVERNANCE REQUIREMENTS

Agency Name and Code: NM Public School Facilities Authority  
 Number: 940

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY23</b>	<b>FY24</b>	<b>FY25</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**

**Substitute:**

HB143 Substitute proposes the following changes:

At Section 1 amends Section 22-8B-4 NMSA 1978, to require reasonable lease payments “approved by the PSCOC at the local market rate” for leases between a school district and a charter school for facilities owned by a school district.

\*This section remains the same as the original bill.

At Section 2 amends Section 22-8B-4.2 1978 paragraph C, pertaining to charter school facilities standards in which a new or relocated charter must have a condition rating equal to or better than the statewide average. The bill removes the 18 months grace period, in which a charter school could demonstrate the way in which the facilities will achieve the required rating.

\*This section has been altered from the original.

Section 3 Substitute would amend Section 22-8B-5.2 NMSA 1978 at paragraph A, regarding governing body conflicts of interest precluding an employee of a charter school from having a financial interest in an entity that contracts directly with the charter school. The Bill, if enacted would void the contracts between the charter school and the person or family member.

\*This section has been altered from the original.

Section 4 amends Section 22-8B-5.3 NMSA 1978, regarding charter authority powers and duties, to require the charter authority to review and approve all charter schools’ conflict of interest disclosure statements on an annual basis.

\*This section remains the same as the original.

Section 5 amends Section 22-24-4 NMSA 1978 alters the amended language at paragraph I to require the PSCOC and the charter authorizer to review the leases, amendments and renewals entered after July 1, 2023 and the lease assistance reimbursement shall not be used for operational expenditures for property taxes, utilities, custodial fees, insurance or repairs.

The substitute does not include the language included in the original bill requiring the PSCOC to develop a standardized lease for all new leases, amendments and renewals entered into after July 1, 2023. The substitute also

\*This section has been altered from the original.

The bill will apply to the 2023-2024 school year and thereafter.

Synopsis:

House Bill 143 (HB143) proposes amendments to the School District Campaign Reporting Act and Articles 2, 2C, 5, 8B and 24 of the Public School Code. Specifically, at Section 1, HB143 proposes to amend the definition of “covered office” of the School District Campaign Reporting Act to omit the language pertaining to amount of students in a school district.

At Section 2, HB143 would amend the Public School Code (Code) to include new material requiring the department (PED) to report quarterly to local school boards on attendance data, educator data, and other necessary data in tandem with the department’s quarterly financial data reports.

The Bill amends Section 22-2-14 NMSA 1978 pertaining to local school boards, to include the language, “an individual local school board member” at paragraphs C through I in every instance that reference is made to a local school board and a local superintendent.

Sections 4 and 5 of HB143 offers to amend the Assessment and Accountability Act at Sections 22-2C-4 (D) and 22-2C-11(A)(3) NMSA 1978 by replacing the date in which PED is required to submit progress reports from “before August 5 of each year,” to “on a regular basis

HB143 proposed amendments pertaining to the powers and duties of local school boards. At Section 22-5-4 NSMA 1978, HB143 would require local school boards to establish an annual evaluation process for local superintendents that follow PED guidelines and metrics. Section 22-5-13 NMSA 1978 would be amended to require mandatory training for school board members to include PED rules and “performance based budgeting,” along with the other requirements. HB143 also proposes a new section to the Public School Code that would require local school board meetings to have live audio and video webcasts, available through the school district’s website, and to allow for the submittal of public comments. The recordings would be required to be posted within one week of the meeting and to remain publically available for five years.

The Financial Reporting Act would also be subject to a proposed amendment by HB143. The Bill would amend Section 22-8-13 NMSA 1978 by requiring the PED to provide quarterly financial reports, rather than “each local superintendent or person in charge of fiscal management of a charter school.” Additionally, the word “forms” would be replaced with “a standard report,” and school districts and charter schools would be required to work “in collaboration with the department” to post the financial reports.

HB143 proposes changes to the Charter Schools Act. At Section 10, of HB143 amends Section 22-8B-4 NMSA 1978, to require “reasonable lease payments approved by the PSCOC at the local market rate” for leases between a school district and a charter school for facilities owned by a school district.

The Bill amends Section 22-8B-4.2 1978 subparagraph C, pertaining to charter school facilities standards in which a new or relocated charter must have a condition rating equal to or better than the statewide average, or demonstrate how the facility will be improved to achieve the required rating within 18 months. HB143 amends the sentence regarding the extension period to require the charter schools to “attain” the required stipulated rating within 18 months, rather than demonstrate “the way in which the facilities will achieve” the needed rating.

At Section 12, HB143 amends Section 22-8B-5.1 NMSA 1978, regarding governing body

training, by adding paragraph B and subsequent subparagraphs 1 through 7, specifying what shall be included in the mandatory training.

Section 13 of HB143 would amend Section 22-8B-5.2 NMSA 1978 at subparagraph A, regarding governing body conflicts of interest precluding an employee of a charter school to serve as a member of the governing body. In addition, *a person cannot be employed at a charter school if that person or immediate family member has a financial interest in an entity that contracts directly with the charter school.* The Bill, if enacted would void the contracts between the charter school and the person or family member.

Section 14 of HB143 amends Section 22-8B-5.3 NMSA 1978, regarding charter authority powers and duties, to require the charter authority to review and approve all charter schools' conflict of interest disclosure statements on an annual basis.

HB143 adds new material to the Charter Schools Act to require that charter school governing body meetings shall have audio and video webcasts accessible on the school websites, and allow for the public to submit comments. The recordings are to be posted online within one week, and remain available for at least five years.

Act Section 16, HB143 amends Section 22-24-4 NMSA 1978, of the Public School Capital Outlay Act. The Bill proposes that the PSCOC may only reimburse base rent for leases pre-approved by the PSCOC using the standardized lease format entered into after July 1, 2023.

Section 17 stipulates that the provisions within HB143 will apply to the 2023-2024 school year and thereafter.

## **FISCAL IMPLICATIONS**

**Substitute: None**

HB143 does not make an appropriation. However, the development of and oversight of standardized leases to be assumed by Public School Facilities Authority (PSFA) may require a budgetary increase for FY24 to cover the administrative responsibilities.

## **SIGNIFICANT ISSUES**

**Substitute:**

**Section 1:**

**The PSFA administers the application process for lease assistance for funding from the Public School Capital Outlay Fund (PSCOF).**

***In a pertinent part of Section 22-8B-4 NMSA 1978 Subsection F states: “An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities ...” Therefore, many of the lease agreements between the charter schools and public entities include the following language in the section of the lease agreement regarding consideration and/or compensation: Lessee shall pay Base Rent to the Lessor at the rate of reimbursement received or allocated to Lessee from the PSCOC.***

**Based on the aforementioned lease agreement language, the PSCOC has applied the MEM**

formula to the lease assistance award. In FY23, 12 of the leases between school districts and charter schools have lease agreements stating the annual lease amounts are based on the PSCOC lease assistance award. This is the most practiced approach. Only one district owned facility does not have this language and has a specified lease amount below the potential award amount based on MEM; therefore it receives lease assistance for the full amount of their annual lease. A few other publicly owned facilities follow the same practice, including pueblos and counties.

Based on the fact that most leases with public entities receive the PSCOC lease assistance based on the MEM formula, the requirement for the PSCOC to approve lease amounts at the *local market rate* would not ensure that such lease amounts are not excessive or unreasonable. Rather, it would only add an extra tier of review by the PSFA to an already laborious process, since the PSCOC receives over 100 applications per year.

Further, it would be nearly impossible for the PSCOC to approve lease amounts at the *local market rate*. There are too many variables in a local market rate comparison to adequately determine the reasonableness of the lease amount. Such factors include the location, age, condition, size, and other unique features used in the assessment of property lease values. Additionally, PSFA does not have qualified staff to perform this function.

In conclusion, the requirement for the PSCOC to approve reasonable lease payments at the local market rate for district owned facilities leased to charter schools is unnecessary. The current practice of basing lease assistance awards on MEM for the charter schools leasing from school districts, achieves the requirement that “*the payments do not exceed the sum of the lease reimbursement rate,*” per Section 22-8B-4 NMSA 1978 Subsection F.

#### Section 2:

Removing provision to allow charter schools to lease and occupy the facility for eighteen months prior to fulfilling the facility condition requirement, strengthens the requirement that a facility must meet or exceed the New Mexico Condition Index for a charter school to move into.

#### Section 5:

HB143 would require only the reimbursement of base rent from the PSCOF. To this end, the PSFA lease assistance application requires the applicant to exclude any operational or improvement costs to the lease amount in its application. PSFA staff reviews each lease to ensure that only the fixed rental fee (base rent) for the use of the premises is eligible for lease assistance. Therefore, this requirement may not be necessary.

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#### Original Bill:

#### Section 10:

The PSFA administers the application process for lease assistance for funding from the Public School Capital Outlay Fund (PSCOF). The application requires the applicant charter school to identify whether the facility is leased from a private owner, a public entity or a foundation established to provide a facility for the charter school. For the FY23 application cycle there were 29 facilities leased from public entities. 25 of the facilities leased from public facilities during the FY23 lease assistance cycle were awarded lease assistance from the PSCOC based on the MEM portion of the Public School Capital Outlay Act (Act) formula, outlined at Section 22-24-4 (J) NMSA 1978.

In accordance with Section 22-24-4 I the lease assistance award is based on the lesser of the two calculations: prior-year student membership (MEM) multiplied by a per-MEM rate, or actual annual lease payments owed for leasing a facility.

Lease Assistance Formulas:

- Lease Assistance based on MEM: (Average of the prior year's 80th and 120th school days MEM) x (MEM rate) = \$ potential award amount

-or-

- Lease Assistance based on actual lease amount: actual annual lease amount stated in the lease, less any operational costs owed for leasing a facility. (Note: The applicant must submit an invoice from the lessor and evidence of payment to the lessor to receive reimbursement.)

The basis for the MEM lease amount awards to charter schools leasing from public entities is attributable to the language contained in the leases between the public entities and the charter schools. Many of the lease agreements between the charter schools and public entities include the following language in the section of the lease agreement regarding consideration and/or compensation: *Lessee shall pay Base Rent to the Lessor at the rate of reimbursement received or allocated to Lessee from the PSCOC.*

Based on the aforementioned lease agreement language, the PSCOC has applied the MEM formula to the lease amount award. This application of the formula to the lease assistance award program has facilitated the lease application review and recommendation of the lease amount to the PSCOC process by the PSFA.

Based on the fact that most leases with public entities receive the PSCOC lease assistance based on the MEM formula, the requirement for the PSCOC to approve lease amounts at the *local market rate* would not ensure that such lease amounts are not excessive or unreasonable. Rather, it would only add an extra tier of review by the PSFA to an already laborious process, since the PSCOC receives over 100 applications per year.

Further, it would be nearly impossible for the PSCOC to approve lease amounts at the *local market rate*. There are too many variables in a local market rate comparison to adequately determine the reasonableness of the lease amount. Such factors include the location, age, condition, size, and other unique features used in the assessment of property lease values.

#### Section 11:

Per Section 22-8B-4.2, subparagraph C, charter schools cannot move into or relocate into a new facility unless the New Mexico Condition Index rating is equal to or better than the statewide average rating for that year. The intent of this requirement is to prevent charter schools from moving into subpar facilities. The PSFA assesses potential facilities and calculates the rating to ensure the statute requirement is met. If the requirement is not met, a charter school can either find a different facility to move into or decrease the rating to meet the statute requirement. To improve the New Mexico Condition Index rating for a facility, building systems that are beyond expected life span or in poor condition must be updated or replaced. The amount of system upgrades needed are dependent on the rating and number and type of system deficiencies. Most charter schools work with landlords and architects to make the necessary improvements prior to occupying the facility; however, the current statute language allows for charters to *demonstrate* "the way in which the facilities will achieve the required rating" within eighteen months of occupancy. PSFA interprets the current language as a required plan (prior to occupancy) to make

the necessary improvements in an effort to decrease the rating. PSFA must review and approve the demonstrated plan prior to the charter school moving into the facility with a rating lower than the statewide average.

The amended language at Section 11 will result in a hard-lined deadline of eighteen months from occupancy for the charter school to *attain* the required rating, rather than simply developing a plan to meet to achieve the required rating. However, the bill does not provide guidance on the consequences or procedures if the charter school does attain a sufficient rating within the eighteen-month timeframe, thereby making the requirement unenforceable.

This provision still allows charter schools to lease and occupy the facility for eighteen months prior to fulfilling the facility condition requirement. Therefore, the school will operate and students will occupy the below-index average facility during the eighteen months grace-period, while significant repair or renovation work is being performed to meet the deadline.

PSFA has only had two charter schools use the eighteen month provision in statute; neither was able to complete the upgrades necessary to improve the condition rating within the eighteen month timeframe and requested extensions. PSFA is unable to enforce any consequences if a charter school is already leasing and occupying the facility and is unable to sufficiently improve the condition rating.

#### Section 16:

HB143 would require the PSCOC to develop a standardized facility lease for use by charters after July 1, 2013. Charter schools enter into leases or sub-lease agreements with a variety of public and private owners or foundations. While most of these agreements have very basic commonalities, each one varies in term, length and detail. Therefore, it would be very difficult to develop a “standard” lease document for the lease of facilities by charter schools, who by their very nature differentiate in terms of facility requirements and needs.

Because the PSCOC would be required to develop standardized lease documents, the charter schools and lessors would undoubtedly call upon PSFA staff to field potential legal questions pertaining the documents. This could have potential legal consequences for the PSFA and PSCOC.

Further, HB143 would require only the reimbursement of base rent from the PSCOF. To this end, the PSFA lease assistance application requires the applicant to exclude any operational or improvement costs to the lease amount in its application. PSFA staff reviews each lease to ensure that only the fixed rental fee for the use of the premises is eligible for lease assistance. Therefore, this requirement may not be necessary.

HB143 would require the PSCOC to use pre-approved standardized lease documents such as leases, amendments, and renewals entered into after July 1, 2023. However, it does not state whether lease purchase arrangement documents are inclusive of this requirement. Lease purchase arrangement documents are complicated and require the expertise of a licensed real estate attorney.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

**Substitute:**

The inclusion of the local market rate benchmark in determining a reasonable lease amount would increase the responsibility of the PSFA and require additional, qualified staff to conduct market value assessments.

Original Bill:

The inclusion of the local market rate benchmark in determining a reasonable lease amount would increase the responsibility of the PSFA and require additional, qualified staff to conduct market value assessments. It would also require additional staff to assist charter schools and lessors in the use of the standardized lease formats.

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

### **TECHNICAL ISSUES**

Substitute:

None

Original Bill:

The proposed language at Section 16 regarding the proposed amendment to Public School Capital Outlay Act is vague and confusing. It is unclear if the leases, amendments and renewals apply to lease purchase arrangements. In addition, it is unclear if it is discretionary for the PSCOC to provide base rent only on pre-approved standardized lease documents or whether it is the intent of the Bill to require the PSCOC to provide lease assistance for only those leases that use pre-approved standardized lease formats. If the latter is the intent, the word “shall” should be used as opposed to the word “may.”

### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

Substitute:

None

Original Bill:

A definition of the term “base rent” or a description of what is not included might be necessary at Section 22-24-4 NMSA 1978 at Subparagraph J (newly renumbered to reflect the proposed changes). The term “base rent” should be defined to reflect that base-rent does not include amounts for such items as property taxes, utility charges, custodial fees, insurance, repairs, etc.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Substitute:

The amendments to the articles and statutes regarding charter schools, charter school leases, and other requirements for charter schools will not take effect. The charter schools, governing bodies of charter schools and school boards will continue to operate in the way they do currently.

Original Bill:

The amendments to the articles and statutes regarding school boards, governing bodies of charter schools, charter school leases, and other requirements for charter schools will not take effect. The charter schools, governing bodies of charter schools and school boards will continue to operate in the way they do currently.

### **AMENDMENTS**