

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2023 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 3/13/2023
Bill No: SB482s

Sponsor: Shendo
Short Title: STATE-TRIBAL EDUCATION
COMPACT SCHOOLS ACT

Agency Name and Code Number: Public School Facilities Authority - 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)

	FY23	FY24	FY25	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:

At Section 9 of Senate Bill 482 Substitution, The Public School Capital Outlay Act (Section 22-24-3 NMSA 1978) is amended at paragraph J to add “state-tribal education compact schools” to the definition of “school district.” The definition of “state-tribal education compact schools” is added at paragraph M, to mean “schools established pursuant to the State-Tribal Education Compact Schools Act,” which is established in Section 1 of this bill.

FISCAL IMPLICATIONS

Adding “state-tribal education compact schools” to the PSCOA, would allow the PSCOC to fund facility projects for these schools. The PSFA does not have any data on potential “state-tribal education compact schools” enrollment or growth and number of schools; therefore, it is impossible to calculate the potential cost for potential PSCOC funded projects.

Lease Assistance

Per Section 22-24-4, paragraph I, the PSCOC funds the discretionary Lease Assistance program on an annual basis to school districts and charter schools. As this program is defined in the PSCOA, and the SB482 Substitution defines school districts to include the state-tribal education compact schools, these schools would be eligible for lease assistance awards if they lease facilities from public or private entities.

Lease assistance awards are calculated and determined as the lessor of either:

- 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.

In FY23, the PSCOC awarded \$20.6M in lease assistance to 110 charter and district facilities. It is impossible to determine the impact of the inclusion of the state-tribal education compact schools on the Lease Assistance program, without data on the expected number of facilities, MEM count, and lease amounts. The total lease assistance award amount will undoubtedly increase if the schools lease facilities.

SIGNIFICANT ISSUES

ZUNI Lawsuit - PSCOA/PSCOC

The New Mexico Legislature established the PSCOC and the PSFA to implement the Public School Capital Outlay Act, as a result of the Zuni Lawsuit. In the Zuni Lawsuit, the litigants challenged the equity of the state capital outlay distribution. The Court ruled in favor of the litigants and held that public school capital outlay funding in New Mexico violated the State Constitution guarantee: establishment and maintenance of a “uniform system of free public schools sufficient for the education of all children of school age.” As a result of this ruling, “the New Mexico Public School Capital Outlay Act was adopted to ensure that the “physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and minimize safe, functional and durable learning environments in order to for the state to meet its educational responsibilities.” (Section 22-24-2 NMSA 1978).

Through this act, the Public School Capital Outlay Council (PSCOC) funds capital outlay projects at public schools that meet the eligibility for the available funding programs, primarily the Standards and System-based programs, from the Public School Capital Outlay Fund (PSCOF). The PSCOA only applies to public schools and the two constitutional schools, which by definition can include state-chartered charter schools. The SB482 Substitute would add state-tribal education compact schools to the PSCOA, which would result in these schools being included for consideration for funding through the PSCOF, by the PSCOC.

FAD/Ranking

The Public School Facilities Authority (PSFA) maintains the Facility Assessment Database (FAD), which collects data on all public schools in the state, based on assessments that collect condition and age based data for all buildings and building systems, as well as measured educational spaces to compare against adequacy standard minimums. The PSFA uses this data to calculate the weighted New Mexico Condition Index (wNMCI) score for each public school in the state, and is used to compile the annual statewide ranking, listing all public schools in order of their score; this ranking prioritizes schools for capital funding needs, based on the combined system conditions and educational adequacy deficiencies. Both the standards-based and systems-based funding programs use the annual statewide ranking of all New Mexico schools to prioritize schools for funding.

Once these schools obtain facilities, the PSFA will need to assess the state-tribal education compact schools’ potential facilities. This endeavor will reduce the amount of public schools the PSFA can assess per year. Following an assessment, the facility’s wNMCI score will be calculated and the school will be added to the upcoming ranking cycles (updated on the calendar year). Inserting new schools, particularly those potentially housed in aged facilities, will displace schools in the current ranking, which could cause some schools to drop below the eligibility threshold, and therefore not be eligible for PSCOC funding for either Standards or Systems-based projects. The extent of the impact on the ranking is unpredictable.

Per Section 22-24-4.1 B, all public schools are required to meet the statewide Adequacy Standards (6.27.30 NMAC). If the state-tribal education compact schools’ facilities are not required to meet the statewide Adequacy Standards, an inequity in comparison will be created as there will be not minimums or thresholds to meet. This would be an apples to oranges scenario.

Charter schools have a variance applied to the facilities, which waives certain adequacy standards for types of spaces due to the unique education they provide. However, the standards related to life/health/safety, building quality (structure, fire alarms, lighting, temperature, HVAC/air quality, etc.), security, and classroom space are not waived. This rule could be applied to the state-tribal education compact schools, which would allow flexibility in the types of spaces needed to provide a unique education curriculum, while also meeting building quality standards.

Obtaining Facilities

The SB482 substitution does not define criteria, standards or rules for the facilities these schools would obtain and be housed within. Per Section 22-8B-4.2 NMSA 1978, a new charter school cannot move into and an existing charter school cannot relocate into a facility that does not have a wNMCI score that meets or exceeds the statewide average. This is intended to disallow charters from moving into sub-par facilities that would become a burden on the school and the state. To confirm a facility meets this requirement, PSFA assesses all potential facilities that charter schools consider obtaining and calculates the wNMCI score.

If the state-tribal education compact schools are not required to meet a minimum threshold of quality or standards, the schools would be able to move into subpar facilities without repercussions. If added to the wNMCI ranking, the school facilities will then fall into the top of the list to be eligible for PSCOC funding and become the financial responsibility of the state to fund the replacement or repair of the facility. Additionally, this will displace other schools that have had increasing wNMCI scores and have been awaiting the opportunity to meet eligibility for PSCOC funding.

At a minimum, the facilities in which the state-tribal education compact schools are housed in must meet building code, Educational-occupancy, and life/health/safety requirements. This may be difficult to require due to the fact that these school will likely be located on tribal land, and therefore are not required to meet state and city codes.

As written, the state-tribal education compact schools would not qualify for lease purchase, as the Lease Purchase Act is defined in Section 22-26A-3, not the PSCOA.

Local/State Match

The substitute does not address the local / state match provision, which requires the financial responsibility of all PSCOC funded projects to be shared between the state and the local district. Each school district has a specified local share percentage, calculated each year, as defined at Section 22-24-4.1, paragraph B, and calculated in part using the property tax valuation of the district. The SB482 substitute does not define a mechanism to determine the local share calculation.

Assuming the potential state-tribal education compact schools will be located on tribal land, the schools would not have a definable taxable base. Therefore, the schools may potentially have a 0% local share and be fully financed by the state, much like the Zuni school district.

State-chartered charter schools are assigned the local share of the school district in which the charter school is geographically located. The same rule that applies to state-chartered charter schools could apply to the state-tribal education compact schools.

However, the state-tribal education compact schools would receive federal funding to operate and/or to fund construction projects, unlike public schools funded by the state. This creates an

inequity and complication to determine a mechanism to calculate potential local and state funding for these schools

Federal Funding

Tribal schools are federally funded. If the state-tribal education compact schools receive both federal funding and state funding for facilities from the PSCOF, this would create an inequity to public school districts in the state, which cannot leverage federal funding. The BIA and BIE fund tribal school facility improvement and repair projects through the Site Assessment Capital Improvement Program, which bases eligibility of the facility condition index (FCI).

Impact on BIE Schools and School Districts

It is impossible to know the number and size of the potential state-tribal education compact schools, and the affect it will have on the existing BIE schools (federal) and school districts (state). The enrollment at the existing nearby BIE tribal schools and public schools will undoubtedly decrease as students transfer to the new state-tribal education compact schools. This would result in decreased funding to the district schools, underutilized space within the facilities (more space than needed), increased pressure to maintain facilities that are larger than needed, etc. Much like state-chartered charter schools draw students out of school districts in which they are physically located, causing a decreases in enrollment at the district schools.

Exemption from Statutes

At Section 4, paragraph B, SB482 states state-tribal education compact is exempt from all state statutes and rules applicable to school districts, state-chartered charter schools, local school boards or governing bodies of charter schools regarding the curriculum, assessment and evaluation requirements of a school except for those statues and rules made applicable pursuant to the State-Tribal Education Compact Schools Act.” This exemption creates a disparity between all other public schools in the state that are required to adhere to state statures for a large variety of statutes and rules in order to benefit the students of New Mexico. Statutes regarding the facilities of the potential state-tribal education compact schools should be enforced to prevent low quality facilities being deemed acceptable.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The PSFA will need to assess all potential or obtained facilities for the “state-tribal education compact schools. If there is a large influx of facilities needing PSFA assessments in a short amount of time (one year), additional staff may be needed to continue the current cycle rate of public school assessments.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The potential state-tribal education compact schools could continue to leverage federal funding for facility needs, rather than the PSCOA funding facility needs. The BIA and BIE have funding programs available to repair, improve and replace school facilities on tribal land.

At a minimum, the state-tribal education compact schools should be required to comply with the New Mexico Building Code and statewide Adequacy Standards. This will prevent life/health/safety issues from prevailing and potentially causing harm to the inhabitants.

To protect the BIE schools from substantial decrease in enrollment caused by the transfer of students to the state-tribal education compact schools, a cap on the number of state-tribal education compact schools allowable and enrollment at each should be identified.

A mandate could be implemented to require the BIE offer existing facilities to the state-tribal education compact schools. This will reduce the need for new facilities and increase efficiency of existing underutilized school facilities.

Criteria, standards and rules for the facilities these schools would obtain and be housed within should be defined. The rule applying to charter school facilities, per Section 22-8B-4.2 NMSA 1978, should be applied to the state-tribal education compact schools. This would require a potential facility to have a wNMCI score that meets or exceeds the statewide average. This would disallow the schools from moving into sub-par facilities that would become a burden on the school and the state.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State-Tribal Education Compact Schools Act will not be enacted, and state-tribal compact schools will not come to fruition.

AMENDMENTS