

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 236a

52nd Legislature, 1st Session, 2015

Tracking Number: .199096.1

Short Title: Charter School Lease Approval

Sponsor(s): Senator Sue Wilson Beffort and Representative James E. Smith and Others

Analyst: David Craig

Date: March 17, 2015

AS AMENDED

The Senate Judiciary Committee amendments retain existing language that makes the contract voidable at the option of the chartering authority, the Public Education Department (PED), or the governing body.

Original Bill Summary:

SB 236 amends multiple sections of the *Charter Schools Act* to:

- require the Public School Capital Outlay Council (PSCOC) to approve charter school lease payments to school districts for use of a school district facility at the local market rate;
- require a charter school to attain, within 18 months, a rating equal to or better than the average New Mexico Condition Index (NMCI);¹
- prevent a charter school from employing a person who is, or has an immediate family member who is, an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods, or facilities;
- provided that, a violation of this provision renders the contract between the person or person's immediate family member and the charter school void;
- render void any contract for which a governing body member, employee, or agent of a charter school participated in selecting awarding or administering the contract with the charter school and for which a conflict of interest exists; and
- require chartering authorities (local school districts or the Public Education Commission, or PEC) to annually review and approve all charter school conflict-of-interest disclosure statements.

Among its other provisions, SB 236 amends the *Public School Capital Outlay Act* to:

- require the PSCOC to develop and implement a standardized facility lease for use by all charter schools for all leases, amendments, and renewals entered into after July 1, 2015; and

¹ The New Mexico Condition Index (NMCI) is a metric used by the Public School Facilities Authority (PSFA) that compares public school building repair costs to statewide educational adequacy standards to determine deficiencies. A high NMCI indicates a facility with greater needs.

- provide that, for leases, amendments and renewals entered into after July 1, 2015, lease payments may reimburse leases developed prior to execution in consultation with the PSCOC using the new standardized facility lease.

Fiscal Impact:

SB 236 does not carry an appropriation.

Fiscal Issues:

SB 236 creates requirements for:

- school districts and the PEC to annually review and approve all charter school conflict-of-interest disclosure statements; and
- the PSCOC to develop and implement a standardized facility lease.

The Public School Facilities Authority (PSFA) analysis indicates that:

- there will be additional review requirements;
- PSFA analysis may be required to provide recommendation to the PSCOC regarding lease award applicants and a comparable local market rate;
- a contracted service provider of local real estate data may be appropriate; and
- the cost to purchase the necessary expertise is unknown, but may be as high as \$50,000 annually.

Substantive Issues:

According to the PSFA bill analysis:

- PSCOC has developed a standardized lease but its use is not a requirement;
- in 2013, PSFA acquired the services of an attorney to draft the standardized lease;
- the standardized lease includes all variables in the document to allow comparisons of one lease to another;
- all services except custodial work are to be paid for by the landlord;
- if a service is not paid for by the landlord, the exception must be provided for in a front-end document;
- requiring the use of a standardized lease could benefit charter schools;
- however, if the potential lessor views the standardized lease requirement as undesirable, then it could make space unavailable to the charter school or increase the lease rate for any perceived inconvenience.

In addition, with regard to the requirement for PSCOC to approve all charter school lease payments to school districts at a local market rate:

- “local market rate” is currently undefined;
- modifications may be required to acquire a space or facility that meets the requirements of educational occupancy and any improvements may be added to the cost of the final negotiated lease rate;

- comparisons between local market rates and lease rates with the cost of improvements may be difficult; and
- local market rate determinations will vary regionally depending upon factors such as vacancy rates of comparable spaces.

Background:

Standardized Leases

On September 3, 2014, PSFA staff presented a Charter School Facilities Issues Brief outlining many policy proposals related to charter school facilities. One of the policy options the issues brief considered was strengthening assistance to charter schools in lease management. The brief indicated the following with regard to charter school leases:

- it is fiscally sound policy to develop a standardized lease instrument that will lead to greater transparency in the use of charter school lease funds;
- one problem with the current lease structure is the variety of leases, which makes it difficult to know if the leases are fair and reasonably structured;
- lack of transparency in charter school leases leads to uncertainty in the way the charter spends taxpayer money; and
- an unstructured lease may also result in maintenance costs since responsibility for maintenance is often unclear in charter school lease language.

The PSFA issues brief also identified the following significant issues:

- current lease documents may not identify the maintenance costs, responsibilities, or amount of square footage the lease covers; and
- since charter schools must be renewed every five years, the uncertainty tied to renewal may cause inflated costs in the lease.

With regard to the creation of a successful lease document, the PSFA issues brief also indicated it has found that the most successful leases contain the following elements:

- defined gross square footage that the lease covers;
- clearly defined lease terms;
- defined types of space the lease covers (such as classroom space or administrative space);
- identification of responsibility for maintenance and custodial duties and costs;
- a statement indicating that the lessor maintains site, facility, and systems in good working order; and
- identification of responsibility for utility costs.

The section of the PSFA issues brief on the potential pros and cons of the policy option for a standardized lease indicated that:

- The pros of this policy option include:
 - making the leases user-friendly for both the state and charter schools;
 - increasing transparency;
 - making the contract process:

- predictable and comparable;
 - easy to understand; and
 - easy to analyze;
- identifying the owners and who benefits from the lease;
 - making the lease customizable; and
 - keeping legal review costs to a minimum.
- The cons of this policy option include:
 - mandating the use of a standardized lease may decrease a charter school’s flexibility to meet unique conditions of the facility or site; and
 - if use of the standardized lease is mandatory, it would require state-level oversight and approval authority.

LESC Charter School Subcommittee and Governance Issues

Since the enactment of the original legislation in 1993, the LESG has maintained an interest in charter schools, with hearings at interim meetings, frequent participation in work groups, and many pieces of committee-endorsed legislation. During the 2014 interim, this interest led to the designation of a Charter Schools Subcommittee which heard extensive testimony on a range of issues and concerns, including the issue of governance.

At a September 2014 Subcommittee hearing, members heard testimony from an assistant Attorney General (AG) and a representative of Albuquerque Public Schools (APS) of the charter school performance frameworks for state-chartered charter schools and locally chartered charter schools.

- The AG testimony outlined the charter school performance framework that the PEC uses for state-chartered charter schools, including provisions referring to governance council requirements that:
 - allow the PEC to rate the board as meeting the standard, working to meet the standard, or falling below the standard; and
 - holds governing boards accountable.
- The APS testimony indicated that, while APS and PEC performance frameworks conform to the framework provisions in current law, differences may occur because of the district’s role as an authorizer of locally chartered charter schools.

In addition, at the September subcommittee hearing, members heard testimony from LESG staff regarding recommendations for effective governance, including the following factors to be considered when establishing a governance framework for charter schools:²

- governance structure;
- corporate documents;
- board expertise and training;

² Taken from the Colorado Charter School Handbook.

- strategic planning and goal setting; and
- election of new members.

When discussing the details of these factors, LESC staff indicated that:

- part of establishing a successful governance structure is documenting the roles and responsibilities for the lead administrator and the governing board;
- charter schools corporate documents should include the creation and maintenance of written bylaws and governing board policies; and
- with regard to board expertise and training:
 - all board members must be trained in basic board function and responsibilities;
 - an orientation for new board members should be developed and delivered; and
 - every board member should be provided a copy of the original charter application, the charter contract, bylaws, and governing board policies.

Committee Referrals:

SEC/SJC/HGEIC/HEC

Related Bills:

CS/SB 8 *Charter School Education Tech Equipment*
SB 128 *Public School Capital Outlay Building Needs*
SB 130a *Public School Lease Purchase Act Definitions*
SB 148aa *Charter School Responsibilities*
SB 257a *Charter Schools & Public Audit Changes*
SB 273a *Charter School Governance*
CS/CS/HB 19 *Charter School Educational Tech Equipment*
HB 166 *Charter School Transportation Agreements*
HB 253a *Charter School Facility 4 Year Plans*