

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 253a

52nd Legislature, 1st Session, 2015

Tracking Number: .198816.1

Short Title: Charter School Facility 4 Year Plans

Sponsor(s): Representative Nora Espinoza and Others

Analyst: David Craig

Date: February 23, 2015

AS AMENDED

The House Education Committee amendments:

- **add the development and pursuit of a four-year plan to meet the public buildings requirement as an exception to requirements that, on or after July 1, 2015, a charter school must be housed in a public building or in a building subject to an approved lease-purchase arrangement; and**
- **strike language allowing the Public School Capital Outlay Council (PSCOC) to grant variances from these requirements for charter schools that have submitted a four-year plan that has been approved by the PSCOC.**

Original Bill Summary:

HB 253 amends the *Charter Schools Act* to allow charter schools to follow a four-year plan to meet requirements to be housed in a public building, or in a building subject to an approved lease-purchase arrangement, on or after July 1, 2015.

Fiscal Impact:

HB 253 does not carry an appropriation.

Fiscal Issues:

The requirement to be in a public building, or in a building subject to an approved lease-purchase arrangement, has been extended once from the deadline of July 1, 2010 to July 1, 2015 (see “Background,” below).

According to the bill analysis by PED:

- the statutory requirement requiring charters to be in a public building by 2015 has been difficult for some charter school to adhere to, in spite of significant efforts to remain in compliance; and
- the provisions of HB 253 appear to be a reasonable methodology to ensure charter operations are not adversely affected by the 2015 deadline, yet ensure a limited timeline to achieve compliance.

According to a Public School Facilities Authority (PSFA) presentation to the Public School Capital Outlay Task Force (PSCOOTF) on September 3, 2014:

- the rising cost of public school funds going to private owners leasing facilities to charter schools prompted the 2005 Legislature to create a deadline of 2010 for charters to be located in public facilities, or meet other requirements prior to authorization or reauthorization (see “Background,” below);
- as the 2010 deadline approached, only a small percentage of charter schools were in public facilities;
- the 2009 Legislature amended the deadline to 2015;
- as of September 3, 2014, only 48 of the 98 charter schools were in a public facility or were leasing from a nonprofit entity specifically organized for the purpose of providing the facility for the charter school; and
- the other 50 charter schools were still located in privately owned facilities.

Substantive Issues:

According to the PSFA bill analysis:

- the Public School Capital Outlay Council (PSCOC) does not have the authority to allow a charter school to move into a new facility or relocate;
- the Public Education Commission (PEC) as the authorizer for all state-chartered charter schools has the authority to approve location or relocation for a state-chartered charter school;
- local charter schools are chartered by their school districts, who have the authority to approve location or relocation for a locally chartered charter school;
- the PSCOC’s role in charter school facilities is to perform assessments on potential facilities for existing or renewed charter schools that wish to locate or relocate to determine if the proposed facility meets educational occupancy (E-Occupancy) standards (see “Background,” below) and meets or exceeds the average New Mexico Condition Index (NMCI);¹
- this information is provided to charter schools and the PEC; and
- PSCOC staff would need to develop standards that establish minimum requirements which would be acceptable for a four-year plan.

Background:

Current Law

Current provisions in law require a charter school, on or after July 1, 2015, to be:

- housed in a building that is owned by:
 - the charter school;
 - the school district;
 - the state;
 - an institution of the state;

¹ The NMCI is a metric used by the PSFA to rank the condition of every school building relative to the statewide adequacy standards. A high NMCI indicates a facility with greater needs.

- another political subdivision of the state;
 - the federal government or one of its agencies; or
 - a tribal government; or
- subject to a lease-purchase arrangement that has been entered into pursuant to the *Public School Lease Purchase Act*.

However, the law also allows the following exceptions:

- if the facility in which the charter school is housed meets the statewide adequacy standards and the owner is required to maintain those standards at no additional cost to the charter school or state;
- if public buildings are not available or adequate for the educational program of the charter school; or
- the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

Provisions in current law also indicate that the school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes.²

In addition, in order to aid charter schools in attaining public buildings, other provisions in current law allow:

- a state-chartered charter school to apply for grant assistance from the PSCOC, subject to certain requirements; and
- the PSCOC to make an award from the Charter School Capital Outlay Fund if the PSCOC determines that the state-chartered charter school does not have the resources to pay all or a portion of the total cost of the capital outlay project that is not funded with grant assistance from the Public School Capital Outlay Fund.

However, both the language establishing the Charter School Capital Outlay Fund and the associated program to assist charter schools to be located in public buildings, or in buildings being acquired by charter schools pursuant to a lease-purchase agreement, reached the repeal date of July 1, 2012.

Educational Occupancy Standards (E-Occupancy)

According to PSFA:

- E-Occupancy is a term based upon the International Building Code and the associated family of companion codes (I-Codes), which classify buildings into groups based not only on specific use and function, but also based upon the expected fire hazards and life-safety properties of those uses and functions;
- the "E," or educational group, is established in recognition of the fact that children, in general, require more safeguards than adults; and

² Statute indicates other educational purposes include: health clinics, daycare centers, teacher training centers, school district administration functions, and other ancillary services related to a school district's functions and operations.

- the PSFA helps charter schools and school districts ensure their facilities meet E-Occupancy standards as determined by the I-Codes, state administrative rules, and other statewide adequacy standards.

Unless the facility is located within the jurisdiction of the City of Albuquerque, the New Mexico Construction Industries Division (CID) of the Regulation & Licensing Department (RLD) is the permitting and inspection authority for the majority of the state of New Mexico and maintains records of certificates of occupancy that have been issued. The Building & Safety Division of the City of Albuquerque Planning Department is the permitting and inspection authority within the City of Albuquerque. They maintain records of certificates of occupancy issued for buildings within their jurisdiction. While the PSFA does not have authority to issue the certificate of occupancy, PSFA has facilities specialists certified in the building codes who can visit a property, conduct a preliminary assessment, and provide a report of their findings.

Committee Referrals:

HEC

Related Bills:

CS/HB 19 Charter School Educational Tech Equipment

HB 166 Charter School Transportation Agreements

HB 253a Charter School Facility 4 Year Plans

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 148 Charter School Responsibilities

SB 236 Charter School Lease Approval

SB 257 Charter Schools & Public Audit Changes

SB 273a Charter School Governance