

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 130a

52nd Legislature, 1st Session, 2015

Tracking Number: .197795.2

Short Title: Public School Lease Purchase Act Definitions

Sponsor(s): Senator Mimi Stewart

Analyst: Kevin Force

Date: February 20, 2015

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The Senate Education Committee amendments:

- include several additional instances where “and charter school” or “or charter school” is appended to “school district,” as noted in “Substantive Issues,” below; and
- clarify that lease-purchase arrangements are assignable, without cost, by both school districts and charter schools to both school districts and charter schools.

Original Bill Summary:

SB 130 proposes to amend the *Public School Lease Purchase Act* in several respects, by:

- striking the act’s current definitions for “local school board” and “school district”;
- replacing those terms with a definition for “governing body,” which means:
 - the governing structure of a charter school, as set forth in its charter; or
 - a local school board, as the governing structure of a school district;
- throughout the bill, replacing the term “local school board” with the newly defined term, “governing body”; and
- where the bill refers to “school districts,” adding “and/or a charter school,” as appropriate; and
- repealing Section 22-26A-19 (“Lease Purchase Arrangements for Charter Schools”), which limits elections for the imposition of property taxes to defray the costs of lease-purchase arrangements to local school boards, a power not afforded to charter schools and their governing bodies, as the limitations prescribed by that section are no longer necessary, considering the proposed definitions.

Fiscal Impact:

SB 130 does not contain an appropriation.

Original Substantive Issues:

Currently, except as limited by Section 22-26A-19, which SB 130 would repeal, the *Public School Lease Purchase Act* provisions defines:

- “local school boards” as *including* the governing body of a locally chartered or state-chartered charter school; and
- “school district” as *including* a locally chartered or state-chartered charter school, (emphasis added).

While this language is in the definition section of the act, “includes” is not appropriate definitional language. “Means” is the term generally accepted for describing statutory definitions. “Includes” is ambiguous, and in this case, when used in lieu of “means,” creates additional issues, because:

- “local school board” and “governing body,” like “school district” and “charter school,” are not really interchangeable terms; and
- when these definitions are applied throughout the act, inclusion of the alternative terms can yield ambiguous and even meaningless. For example:
 - Section 22-26A-6(D)(1) may be read as providing for a charter school that is located within another charter school, or itself, to notify its own governing body that the charter school has been approved for a lease-purchase agreement; and
 - in Section 22-26A-8, “school district” is used to identify defined boundaries for the purpose of identifying “qualified electors,” despite the fact that charter schools, as such, do not have “qualified electors” in the sense that that term is being used here, as a defined geographic and political area.

In contrast, under the proposed amendments, the original intent of current law is preserved, while eliminating the potential confusion created by the improperly worded definitions that mistakenly equate differing terms:

- The proposed definition for “governing body” allows for separate reference to local school boards without implicating charter school governing bodies, thus preserving those functions and powers that are specific to school boards, such as the power to adopt resolutions and to hold elections for the imposition of taxes.
- The removal of the similarly inclusive definition of “school district,” and subsequent, separate reference, throughout the act, to districts *and* charter schools, or districts *or* charter schools, as appropriate, allows the two terms to be used either independently of each other, or together, avoiding the confusion created by the conflation of the two terms in current law.

Background:

During the 2014 legislative interim, the Legislative Education Study Committee (LESC) formed a Charter Schools Subcommittee, in order to:

- correct internal and external inconsistencies within the *Charter Schools Act*; and
- address a number of other issues that had come to the committee’s attention in the past.

Among those issues the subcommittee examined was the fundamental question of definitions, which included consideration of areas of law outside the *Charter Schools Act*. Confusion of terms was especially problematic in the *Public School Lease Purchase Act*, whose provisions often rely upon the discreet geographic boundaries of school districts, which are frequently inapplicable to charter schools. After extensive testimony from staff and outside experts, the subcommittee's work turned to the drafting of potential legislation for the current session, including SB 130, in an attempt to resolve ambiguities, conflicts, and confusion that had arisen over time, due at least in part to piecemeal amendment to statute, as well as inconsistent application of terms throughout the problematic statutes.

Committee Referrals:

SEC/SJC

Related Bills:

HB 19 *Charter School Educational Tech Equipment*
SB 128 *Public School Capital Outlay Building Needs*
SB 236 *Charter School Lease Approval*