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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>SB624</u>	<b>Sponsor</b>	<u>Sapien</u>
<b>Tracking Number</b>	<u>.211710.3</u>	<b>Committee Referrals</b>	<u>SEC/SJC</u>
<b>Short Title</b>	<u>Ownership of Some Charter School Facilities</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>3/8/2019</u>
		<b>Last Updated</b>	<u></u>

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND THE PUBLIC  
SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**BILL SUMMARY**

Synopsis of Bill

Senate Bill 624 (SB624) would amend the Charter School Act and the Public School Capital Outlay Act to require nonprofit organizations that are organized specifically to purchase facilities for a charter school to enter into a legally binding agreement with the charter school to transfer the facility's title to the charter school immediately upon the nonprofit's final acquisition of the title.

**FISCAL IMPACT**

This bill does not contain an appropriation.

**SUBSTANTIVE ISSUES**

The provisions of SB624 ensure taxpayer dollars do not enrich nonprofit foundations but contribute to public building ownership. It proposes to amend what is commonly referred to as the "public building deadline" of the Charter Schools Act, which restricts a chartering authority from opening or renewing a charter school if it is not in a public facility or if it does not meet other statutory requirements and provisions in the Public School Capital Outlay Act related to eligibility for lease assistance funding.

**Charter School Act Changes.** Section 22-8B-4.2 NMSA 1978 provides four options for charter schools seeking renewal or initial approval to meet the public building deadline. Current statute says they must be:

- In a public facility that is owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies, or a tribal government;
- Subject to a Public Education Department approved lease purchase agreement;

- In a private facility that meets statewide adequacy standards and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state only when the charter school can demonstrate public buildings are not available or adequate for the educational needs of the charter school; or
- In a facility that meets statewide adequacy standards and the owner of the facility is obligated to maintain those standards at no additional cost to the charter school or the state and the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

SB624 would amend the final provision related to leasing from a nonprofit organization that is organized specifically for the purpose of providing the facility for the charter school. SB624 would require a charter school that is leasing from a nonprofit entity that is organized specifically for the purpose of providing the facility for the charter school to show the charter school has entered into a legally binding agreement with the nonprofit that requires the title to the facility to be transferred to the charter school immediately after the nonprofit entity acquires ownership of the facility.

**Public School Capital Outlay Act Changes.** In parallel fashion, the bill amends the Public School Capital Outlay Act, which allows the Public School Capital Outlay Council (PSCOC) to make lease payments for classroom facilities under certain circumstances. Under SB624, for the PSCOC to make lease payments on behalf of a charter school that is organized specifically for the purpose of providing a facility for the charter school, the charter school must show it has entered into a legally binding agreement with the nonprofit entity specifically organized to provide a facility for the charter school, which requires the nonprofit entity to transfer title to the facility to the charter school immediately after the nonprofit entity acquires ownership of the facility.

The bill amends both the Charter School Act and the Public School Capital Outlay Act to ensure that all charter schools leasing from a nonprofit entity are immediately subject to these requirements. Charter schools are typically renewed on a five-year cycle. Charter schools that have just been renewed in 2018 may not be subject to the requirements of the public building deadline for another five years. The amendment in the Public School Capital Outlay Act ensures charter schools leasing from a nonprofit organized to provide a facility for the charter school will be immediately subject to these requirements to be eligible for lease assistance funding.

**Background on Public School Capital Outlay.** Public school capital outlay funding, used to purchase capital assets like buildings, is both a local and state responsibility in New Mexico. The current standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by the Gallup-McKinley County Public Schools and the Grants-Cibola County Public Schools. The State district court found that through its public school capital outlay funding system the state was violating that portion of the state constitution that guarantees establishment and maintenance of a “uniform system of free public schools sufficient for the education of, and open to, all children of school age” in the state. The court ordered the state to “establish and implement a uniform funding system for capital improvements... and for correcting past inequities” and set a deadline at the end of the 2001 legislative session. The court appointed a special master to review the state’s progress.

Although the quality of school facilities has improved significantly since the lawsuit, litigant school districts are still concerned the system is inequitable. These alleged ongoing disparities led Gallup-McKinley County Schools (GMCS) two years ago to reopen the *Zuni* lawsuit – which had never been closed – and seek judicial intervention to cure what the school district characterizes as

ongoing disparities in the current public school capital outlay funding system. For example, GMCS is concerned that property-wealthy school districts are able to build public school facilities significantly above adequacy without taxing themselves to the same extent that voters in the GMCS school district tax themselves.

### **ADMINISTRATIVE IMPLICATIONS**

The Public School Facilities Authority (PSFA) staff currently reviews compliance with Subsection D of Section 22-8B-4.2 NMSA 1978 as it relates to lease payment awards.

### **RELATED BILLS**

SB245, Charter Schools, Facilities & Capital Funds, would amend portions of the Charter School Act, the Public School Capital Outlay Act, the Public School Capital Improvements Act, and the Public Buildings Act concerning charter school facilities.

SB230, Pre-K Classroom Facilities Initiative, amends the Public School Capital Outlay Act.

SB231, Public School Capital Outlay Calculations, amends the Public School Capital Outlay Act.

SB295, School Facilities Authority Expenditures, amends the Public School Capital Outlay Act.

### **SOURCES OF INFORMATION**

- LESC Files
- Public School Facilities Authority (PSFA)
- Public Education Department (PED)

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