

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 226a

49th Legislature, 1st Session, 2009

Short Title: School Facility Private Use Liability

Sponsor(s): Senator Timothy M. Keller and Others

Analyst: Peter B. van Moorsel

Date: March 12, 2009

AS AMENDED

The Senate Floor Amendment strikes certain Senate Finance Committee (SFC), thereby:

- restoring the condition that no more than \$1.0 million be paid for each insurance coverage occurrence;
- deleting the new section created by the SFC amendment; and
- restoring the new section created by the Senate Education Committee (SEC) amendment.

The Senate Finance Committee amendments:

- strike the SEC amendments that created the new section of the *Public School Code*;
- strike the appropriation from the bill;
- require that the policy established in rule relating to the use of school facilities by private persons relate only to liability and risk issues and not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used;
- delete the condition that no more than \$1.0 million be paid for each insurance coverage occurrence;
- create a new section of the *Public School Code* to:
 - require the local school board of a public school district that is not a participant under the *Public School Insurance Authority Act* to establish by rule a policy to be followed by public school districts relating to the use of volunteers and to the use of school facilities by private persons; and
 - permit the district to insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury, or property damage related to the use of school facilities by private persons; and
- change the effective date of the bill to July 1, 2010 (from July 1, 2009).

The Senate Education Committee amendment creates a new section of the *Public School Code* to:

- require the local school board of a public school district that is not a participant under the *Public School Insurance Authority Act* to establish by rule a policy to be followed by the public school district relating to the use of volunteers and to the use of school facilities by private persons; and
- permit the local school board to insure, by negotiated policy, self-insurance or any combination thereof, against claims of bodily injury, personal injury, or property

damage related to the use of school facilities by private persons; provided that the coverage shall be for no more than \$1.0 million dollars for each occurrence.

Original Bill Summary:

SB 226 amends the *Public School Insurance Authority Act* to enable the New Mexico Public School Insurance Authority (NMPSIA) to:

- promulgate rules to establish a policy to be followed by participating members relating to the use of volunteers and the use of school facilities by private persons; and
- insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury, or property damage related to the use of school facilities by private persons. The coverage is subject to the following provisions:
 - no more than \$1.0 million shall be paid for each occurrence; and
 - the coverage shall apply only if the participating member was following the policy adopted by NMPSIA.

SB 226 also appropriates funds to the Public School Insurance Fund for insurance claims arising from the use of school facilities by private persons.

Original Fiscal Impact:

\$200,000 is appropriated from the General Fund to the Public School Insurance Fund for expenditure in FY 10. Unexpended or unencumbered funds revert to the General Fund. The NMPSIA analysis reports that, historically, losses incurred due to claims resulting from the use of school premises by outside groups have averaged \$100,000 per year, and that annual premiums for this additional coverage are estimated to cost between \$50,000 to \$100,000. NMPSIA adds that it is difficult to accurately project the exact cost, as districts have not reported all after-school use of facilities to NMPSIA.

NMPSIA also notes that, if statewide usage of school facilities by private persons increases, the amount appropriated in SB 226 may be insufficient. NMPSIA therefore recommends an amendment that would make the requirement for NMPSIA to provide the insurance contingent on the availability of funds.

Amended Issues:

The Senate Education Committee amendment (and the Senate Floor Amendment, which deleted certain Senate Finance Committee amendments) would allow Albuquerque Public Schools to provide insurance for the private use of public school facilities.

Original Issues:

According to NMPSIA, schools that allow building use by outside groups may obtain coverage in one of two ways:

- the school district is named as an additional insured person on the user’s policy, (i.e., Boy Scouts, Lions Club); or
- limited additional premises liability insurance is provided through NMPSIA and billed to the user through a Tenant User Liability Insurance Policy (TULIP). Examples of TULIP purchasers are private individuals requesting to use school facilities for wedding receptions or potluck dinners. NMPSIA reports, however, that participation in the TULIP program is low and that a limited number of insurance companies are interested in writing this coverage.

Related Bill:

HB 332 *Public School Facility Insurance Coverage* (similar)