

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 333aaa

51st Legislature, 1st Session, 2013

Tracking Number: .191802.2

Short Title: School Leases & Interest Conflicts

Sponsor(s): Senators Sue Wilson Beffort and John Arthur Smith and Others

Analyst: Sarah Amador-Guzman

Date: March 12, 2013

AS AMENDED

The Senate Floor amendments delay the requirement that the Public School Capital Outlay Council (PSCOC) develop a standardized facility lease for use by all charter schools for new or renewed leases entered into by July 1, 2014 instead of 2013. Additionally, the PSCOC may provide grants to charter schools for lease payments for leases entered into by July 1, 2014 instead of 2013.

The Senate Judiciary Committee amendments strike the Senate Education Committee amendments. They also remove the base rent standard established for charter school lease agreements and replace it with a requirement that the charter school consult with the Public School Capital Outlay Council prior to the development or execution of a charter school lease agreement.

The Senate Education Committee amendments remove the base rent standard established for charter school lease agreements and remove the requirement for lease agreements to be pre-approved by the Public School Capital Outlay Council.

Original Bill Summary:

SB 333 amends the *Charter Schools Act* to:

- allow the “Public School Capital Outlay Council (PSCOC) to approve” a school district’s lease of available facilities to charter schools within the same geographical region “at the local market rate”;
- require a charter school on or after July 1, 2011 to “attain” within 12 to 18 months of occupancy or relocation to a facility, that the facility receive a condition rating equal to or better than the average New Mexico condition index for all public schools;
- make professional service, goods, or facilities contracts “void,” if conflict of interest violations among the governing body “or employees” with financial interests exist; and
- require an annual review and approval of charter school conflict-of-interest disclosure statements by the chartering authority.

SB 333 also amends the *Public School Capital Outlay Act* to allow the PSCOC to:

- implement changes to leases, amendments, and renewals entered into after July 1, 2013 by a charter school that:

- require the PSCOC to “develop a standardized facility lease for use by all charter schools”; and
- allow the PSCOC to “reimburse only base rent for leases pre-approved by the council using the standardized lease format approved by the council.”

Original Fiscal Impact:

According to the Public School Facilities Authority (PSFA) bill analysis, SB 333 does not make an appropriation, however the impact of additional oversight by the PSCOC may require a budgetary increase for FY 14 to cover increased administrative responsibilities by the PSFA. PSFA estimates recurring annual expenditures at \$95,500 for:

- one additional FTE in the amount of \$85,500; and
- contractual services in the amount of \$10,000 to complete annual market analysis.

Original Substantive Issues:

According to the PSFA bill analysis, SB 333 will:

- increase the responsibility of the PSFA in approving lease agreements between school districts and charter schools;
- establish additional criteria for lease pricing;
- add a specific time requirement for achieving an acceptable facility condition level while still allowing the charter school to occupy the facility for at least 12 to 18 months;
- help standardize lease agreements that could enhance the protection of both the state and charter schools, ensuring that their interests and compliance with state regulations are included; and
- assist in establishing a fixed rental fee or “base rent” that a tenant agrees to pay for the use of the premises.

Background:

According to the PSFA bill analysis, the Public School Capital Outlay Oversight Task Force (PSCOOTF) is charged by statute to monitor the progress and effectiveness of programs administered by the PSCOC and PSFA. As part of their 2012 Interim Work Plan, the Task Force examined a number of issues related to the lease-assistance program and charter school facilities. Charter schools are the primary recipients of the lease-assistance program.

According to the PSFA bill analysis, PSCOOTF identified the following issues for consideration with the lease-assistance programs:

- costs of the program have increased over 20 percent per year, and are now at \$13.5 million;
- over 50 percent of the program funds are used to pay leases for privately owned facilities;
- the majority of charter schools are not in public buildings and there is a possibility that the 2015 statutory deadlines to be in public buildings will be extended and will extend the high cost of the program;

- the statutory allowance for school districts to receive lease payments from charters for underutilized space has been ineffective, resulting in charters leasing from private entities and other public entities;
- the annual adjustment of the disbursement rate by the Consumer Price Index (CPI) is a concern because the CPI may not be an appropriate adjustment for commercial property rents whose prices do not move in concert with consumer prices;
- there is generally insufficient facility knowledge and experience to support effective acquisition and operation of facilities;
- there are no state-issued standard lease documents suitable for public education providers available to public school districts or charter schools for leasing facilities or land; and
- the lack of a standardized lease document results in a lack of consistency and transparency.

Committee Referrals:

SEC/SJC/HEC

Related Bills:

HB 273 *Public School Capital Outlay Lease Payments*
HB 314 *Charter School Facility Procedures*