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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB313/aSEC</u>	Sponsor	<u>Sapien</u>
Tracking Number	<u>.206370.2</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Charter School Facilities & Leases</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/10/17</u>
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BILL SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to Senate Bill 313 (SB313/aSEC) requires all public schools to use standardized leases for all new leases, amendments, and renewals, instead of only charter schools, to be eligible for a lease assistance award. Secondly, the amendment removes the provision that would exclude charter schools that receive a D or F school grade for the preceding three consecutive school years from receiving grants from the public school capital outlay fund. Finally, the amendment fixes a technical issue so that the net effective interest rate of a lease purchase agreement entered into on or after July 1, 2017 must not exceed 50 percent of the maximum permitted by the Public Securities Act, instead of prior to July 1, 2017.

Synopsis of Original Bill

Senate Bill 313 (SB313) amends the Charter Schools Act, the Public School Capital Outlay Act, and the Public School Lease Purchase Act to fix ongoing issues with the execution of charter school leases and lease purchase agreements.

SB313 amends the Charter Schools Act to require charter schools to accept facilities offered by school districts unless the charter school can demonstrate the facility does not meet their educational needs. The Charter Schools Act is also amended to fix language so that charter schools must attain a condition index rating (wNMCI) equal to or better than the average condition of all New Mexico public schools within 18 months instead of simply demonstrating how this rating will be achieved. SB313 also adds the requirement that if a charter school is not housed in a public building or subject to a Public Education Department (PED)-approved lease purchase agreement, the governing body of a charter school must certify that either 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.

The Public School Capital Outlay Act is amended to require standardized leases for charter schools, ties lease assistance funding to school performance, and adjusts the calculation of lease assistance funding.

SB313 amends the Public School Lease Purchase Act to require final lease purchase agreements to be approved by PED. It also stipulates a governing body cannot amend or otherwise change an executed lease purchase agreement without PED approval. Lastly, SB313 caps the net effective interest rate for lease purchase agreements at 50 percent of what is currently available.

FISCAL IMPACT

SB313/aSEC does not contain an appropriation.

The Public School Capital Outlay Act authorizes the Public School Capital Outlay Council (PSCOC) to make payments to charter schools and school districts for leased classroom facilities, although the council is not required to make lease assistance payments annually. Lease assistance funding has grown from \$2.8 million in FY05, the first year of lease assistance awards, to an estimated \$15.9 million in FY17. Growth in lease assistance awards is primarily due to an increase in the number of charter schools authorized in the state and increased enrollment in charter schools. Despite declining supplemental severance tax bond revenue, lease assistance funding requests continue to increase.

PED noted the consumer price index (CPI) increase in the per MEM calculation is one of the factors that has contributed to this increase in the lease assistance program. The current Public School Capital Outlay Fund is funded from the supplemental severance tax bonds (SSTBs). This revenue stream has been dedicated solely for projects under the Public School Capital Outlay Act. However, in recent years, many programs have been added to the act. Currently, funds are used to fund the Capital Improvements Act (SB9), the lease assistance program, Construction Industries Division reimbursements, Public School Facilities Authority (PSFA) operating budget, assistance for facility master plans, demolition allocations, and emergency allocations. The annual uses from the fund have increased which means that available revenues for standards-based projects are reduced by the additional programs. Keeping the per MEM calculation flat in the lease assistance program formula will assist in more funding available to be used for standards-based projects.

According to PSFA, by removing the requirement of the PSCOC to annually adjust the per MEM amount by CPI, the PSCOC could utilize a flat budget for lease assistance grants, or a minimal decrease to the per MEM amount, if there is a decrease in the CPI.

SUBSTANTIVE ISSUES

SB313/aSEC is the result of a work group comprised of PSCOC members, Governor's office staff, PED staff, Legislative Education Study Committee staff, Legislative Finance Committee staff, and PSFA staff. The work group was convened to develop recommendations to address concerns that surfaced during review of charter school leases and lease purchase agreements for compliance with the "public building deadline." Reviewing charter school leases to ensure compliance, the following issues were noted:

- Explicit responsibility for oversight of lease and lease purchase agreements and enforcement as cited in Section 22-8B-4.2 NMSA 1978 is unclear.

- Charter schools lack capacity to enter into and administer lease agreements.
- Unnecessary proliferation of gross square footage of public schools.
- Funding from SSTBs decreased as a result of decreased oil and gas revenues and enactment of Laws 2016 (Second Special Session), Chapter 2 (Senate Bill 4).
- PED approved charter schools to enter into lease purchase agreements but the department was not approving the final agreement. PED has recently updated this process and is now reviewing and approving final lease purchase agreements.

SB313/aSEC amends the Charter Schools Act, the Public School Capital Outlay Act, and the Public School Lease Purchase Act to address these concerns, as outlined below.

The Charter Schools Act. SB313/aSEC amends the Charter Schools Act, which requires a school district in which a charter school is geographically located to offer available facilities, unless the facilities are currently used for other educational purposes, pursuant to Subsection F of Section 22-8B-4 NMSA 1978. SB313/aSEC would require charter schools to accept an available facility, unless the charter school can demonstrate the facilities offered do not meet the educational needs of the school. Subsection F is further amended to add prekindergarten and school-based health clinics to the definition of “other educational purposes” and removes teacher training centers, school district administration functions and other ancillary services related to a school district’s functions and operations from the definition. This will save charter schools and the state thousands of dollars by requiring them to use existing available space in lieu of purchasing or building additional buildings causing a proliferation of space statewide.

Several changes to Section 22-8B-4.2 NMSA 1978 would correct unforeseen issues and ensure the original intent of the section. Subsection C currently requires charter school facilities to receive a rating equal to or better than the average condition of all New Mexico public schools as measured by the wNMCI to open or relocate, or demonstrate within 18 months of occupancy the way in which facilities will achieve this rating. SB313/aSEC fixes language so that instead of simply demonstrating how this rating will be achieved, charter schools must attain a condition index rating equal to or better than the average condition of all New Mexico public schools within 18 months.

SB313 also amends Subsection D of Section 22-8B-4.2 NMSA 1978, commonly referred to as the “public building deadline.” SB313/aSEC would change the language of Subsection D to clarify that a chartering authority cannot authorize a new charter or renew an existing charter unless they meet the public building requirements. If a charter school is not housed in a public building or subject to a PED-approved lease purchase agreement, SB313/aSEC adds language requiring the governing body of a charter school to certify that either 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. Currently, statute restricts a chartering authority from “opening” a new charter school if they are not housed in a public facility or a facility that meets other statutory requirements. This new language takes this a step further and does not allow an authorizer to authorize a charter unless it meets the public building requirements.

The Public School Capital Outlay Act. SB313/aSEC amends the Public School Capital Outlay Act, Section 22-24-4 NMSA 1978, to require public schools to use a PSCOC-approved, standardized lease for all new leases, amendments, and renewals as of July 1, 2017.

SB313/aSEC also changes provisions in the Public School Capital Outlay Act related to lease assistance funding amounts. SB313/aSEC eliminates the requirement that PSCOC adjust the lease assistance amount annually by the percentage change year-to-year of the CPI; this adjustment would become a discretionary option for PSCOC.

The Public School Lease Purchase Act. SB313/aSEC amends sections of the Public School Lease Purchase Act. First, changes in Section 22-26A-4 NMSA 1978 requires the final lease purchase agreement to be approved by PED. This fixes an issue with PED only approving proposed lease purchase agreements. SB313/aSEC also adds new material to the Public School Lease Purchase Act stipulating a governing body cannot amend or otherwise change an executed lease purchase agreement without the approval of PED, and cannot modify agreements after receiving PED approval. This amendment will prevent a charter school or school district from making any proposed changes to a lease purchase agreement after PED has approved the original agreement.

SB313/aSEC adds new language requiring the net effective interest rate of a lease purchase agreement entered into on or after July 1, 2017 to be no more than 50 percent of the maximum permitted by the Public Securities Act (which is 12 percent, pursuant to Subsection B of Section 6-14-3 NMSA 1978).

SB313/aSEC also makes technical changes, changing the language from “lease purchase arrangement” to “lease purchase agreement” in the Charter Schools Act, the Public School Capital Outlay Act, and the Public School Lease Purchase Act throughout the bill.

ADMINISTRATIVE IMPLICATIONS

According to PSFA, if SB313/aSEC is enacted, it would reduce the administrative burden for PSFA staff. In recent years, staff was charged with ensuring that charter schools were in compliance with the public buildings requirement or met one of the exceptions in order to be considered eligible for lease assistance grants. Under SB313/aSEC, responsibility is shifted to the charter school’s authorizer. In addition, reviewing charter school leases take a considerable amount of time and expertise. The use of a PSCOC-approved standardized lease would ensure that all requirements are being met and would allow for a streamlined review of leases. The PSCOC-approved standardized lease would require collaboration with PED and the Public Education Commission prior to dissemination for use by public schools. PSFA developed a standardized lease agreement several years ago; the requirement to adopt a standardized lease would not have a significant impact on PSFA.

RELATED BILLS

Related to HB273, Charter School Changes, a bill that makes multiple changes to laws pertaining to charter schools and the public school funding formula.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority
- Public Education Department

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