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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 2nd Session, 2018**

<b>Bill Number</b>	<u>HB41</u>	<b>Sponsor</b>	<u>Smith/Ivey-Soto</u>
<b>Tracking Number</b>	<u>.208838.3</u>	<b>Committee Referrals</b>	<u>HSIVC/HEC</u>
<b>Short Title</b>	<u>Charter School Facility Ownership</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>1/29/18</u>
		<b>Last Updated</b>	<u></u>

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

**BILL SUMMARY**

Synopsis of Bill

House Bill 41 (HB41) proposes to amend the Charter Schools 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**

The bill does not contain an appropriation.

**SUBSTANTIVE ISSUES**

The provisions of HB41 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 Schools 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. 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 (PED)-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.

HB41 proposes to amend the provision related to leasing from a nonprofit organization that is organized specifically for the purpose of providing the facility for the charter school (page 3, lines 22-25, and page 4, lines 1-4). HB41 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.

Other changes to Subsection D of Section 22-8B-4.2 NMSA 1978 are technical in nature and do not change current requirements.

**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 HB41, 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 Schools 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 2017 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.

## **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.

## **TECHNICAL ISSUES**

According to PSFA, the demonstration of the charter school entering into a legally binding agreement does not specify if it will include PED approval of the agreement similar to the requirements of the Public School Lease Purchase Act Section 22-26A-4 NMSA 1978.

This bill does not address ownership of the facility if the charter school is closed by its authorizer.

**RELATED BILLS**

Related to HB39, School District Tax Revenue Distribution, which requires school districts to distribute a charter school's share of local tax revenue in the event the charter school's share is distributed to a school district.

**SOURCES OF INFORMATION**

- LESC Files
- Office of the Attorney General
- Public School Facilities Authority

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