

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

<b>Original</b>	<input type="checkbox"/>	<b>Amendment</b>	<input checked="" type="checkbox"/>	<b>Date</b>	<u>2-27-17</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>SB313/aSEC</u>

<b>Sponsor:</b>	<u>Senator John M. Sapien</u>	<b>Agency Code:</b>	<u>924</u>
<b>Short Title:</b>	<u>CHARTER SCHOOL FACILITIES &amp; LEASES</u>	<b>Person Writing</b>	<u>Aguilar/Ortiz</u>
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**SECTION II: FISCAL IMPACT**

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	See Fiscal Implications Below			

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis of Senate Education Committee (SEC) Amendment: The SEC amendment adds language to require both school districts and charter schools to use a standardized lease to be eligible for lease payment assistance. The original language added in SB313 requiring the use of a standardized lease only required charter schools to do so. This amendment will require both school districts and charter schools to use the standardize leases and does not single out charter schools.

The original bill contained language to amend the PSCOC Act by not allowing charter schools that received a D or F school grade for the three previous consecutive school years to

be eligible for PSCOC lease assistance grants. The SEC amendment deleted this language.

The original bill added language that the net effective interest rate of a lease purchase agreement entered into prior to July 1, 2017 shall not exceed 50% of the maximum permitted by the Public Securities Act. It was noted in the PED analysis that it was not certain if there were legal issues with requiring a charter school or school district to amend an approved lease purchase arrangement retroactively. The SEC amendment fixes this issue by adding and striking language so that the 50% maximum only affects lease purchase agreements entered into on or after July 1, 2017.

Synopsis: SB-313 makes several capital outlay amendments, pertaining to charter schools, in the Charter Schools Act, Public School Capital Outlay Act (PSCOA) and the Lease Purchase Act.

## **FISCAL IMPLICATIONS**

Section 3 of the bill no longer requires the Public School Capital Outlay Council (PSCOC) to adjust the lease assistance amount annually by the consumer price index. The Lease Assistance program has grown from \$2 million in FY05 to approximately \$14.9 million in FY17. The CPI increase in the per membership calculation is one of the factors that has contributed to this increase in the program. The current Public School Capital Outlay Fund (PSCOF) is funded from the Supplemental Severance Tax Bonds (SSTB's). This revenue stream has been dedicated solely for projects under the PSCOA. However in recent years many programs have been added to the act. Currently funds are used to fund the Capital Improvements Act (SB-9), the lease payment assistance program, Construction Industries Division reimbursements, Public School Facilities Authority (PSFA) operating budget, assistance for master facility plans, demolition allocations, and emergency allocations. The annual uses from the fund have increased which means that available revenues for standard based projects are reduced by the additional programs. Keeping the per membership calculation flat in the lease assistance program formula will assist in more funding available to be used for standards based projects.

## **SIGNIFICANT ISSUES**

Section 1 of SB-313 amends a section of the charter school act requiring charter schools to accept space provided by a school district unless the charter school can demonstrate that the facilities do not meet the educational programming needs of the charter school. This will assist charter schools to meet the deadline to be housed in a public building. This will also 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. This section also adds Pre-kindergarten programs 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. Essentially this definition change requires school districts to provide charter schools with available facilities unless the space is being used for school based health clinics, daycare centers and pre-k kindergarten programs.

Section 2 of this bill requires charter schools to "attain" within 18 months of occupancy or relocation of the charter school a New Mexico condition index rating equal to or better than the average New Mexico condition index. Adding the word attain makes it clear that the charter school is required to receive this rating versus demonstrating that they will. This section also

restricts a chartering authority from authorizing a new or renewing an existing charter, unless the charter school is housed in a public building or meets one of the exceptions in statute. Currently statute restricts a chartering authority from “opening” a new charter school if they are not housed in a public facility. This new language takes this a step further and does not allow the authorizer to even authorize unless they are housed in a public facility.

Section 3 of the bill requires charter schools that apply to the Public School Capital Outlay Council (PSCOC) for lease assistance grants to use a standardized lease for all new leases, amendments, and renewals entered into after July 1, 2017. This may be problematic to require private landlords to use a standard lease. This section also amends the PSCOC Act by not allowing charter schools that received a D or F school grade for the three previous consecutive school years to be eligible for PSCOC lease assistance grants. This is a core accountability function; high performing charter schools that are improving student achievement should continue to receive funding, those that are not should not. The focus needs to be on kids and what is in their best interest. It is important to note that charter schools falling under these provisions may not be able to fund their current leases without the lease payment assistance funds and may hamper their current operating budgets.

Section 4 of the bill changes “lease purchase arrangement” to “lease purchase agreement” throughout the Lease Purchase Act. “Lease purchase arrangement” is a broader term referring to other transactional items between the lessor and lessee. The change makes it clear that the focus is on the actual document or agreement.

Section 5 of the bill clarifies that a charter school shall not enter into a Lease purchase arrangement without PED approving the final lease purchase arrangement and that the lease purchase agreement is not modified after the governing body receives department 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.

Section 6 adds a new section stating that a governing body shall not amend or otherwise change an executed agreement without the approval of PED. This will also ensure that PED reviews any changes or amendments to all agreements before they are executed by a charter school or school district.

Section 7 adds language that the net effective interest rate of a lease purchase agreement entered into prior to July 1, 2017 shall not exceed 50% of the maximum permitted by the Public Securities Act (PSA). This language may be problematic and should be amended. Any lease arrangement that has already been approved by PED that has an interest rate above 50% of the maximum permitted by the PSA will have to be amended. It is not certain if there are legal issues with requiring a charter school or school district to amend an approved lease purchase arrangement retroactively due to the passage of this bill. This section of statute is also not clear if the intent is to limit all future lease arrangements not to exceed the 50%?

Section 9 also adds language that the lease purchase agreement shall not be modified after the governing body receives PED approval. This aligns with the proposed amendments in Section 5 and 6 of the bill.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Section 3 conflicts with SB-64. Both bills are making different amendments to the same section of law. This bill also relates to HB-273.

#### **AMENDMENTS**

The legislature should consider, on page 22, line 23, strike “prior to” and replace in lieu thereof “after”