

LFC Requester:	Ellen Rabin
-----------------------	--------------------

**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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:

Original **Amendment**
Correction **Substitute**

Date 2/25/19
Bill No: SB624

Sponsor: <u>Sen. Sapien</u>	Agency Name and Code Number: <u>924 PED</u>
Short Title: <u>OWNERSHIP OF SOME CHARTER SCHOOL FACILITIES</u>	Person Writing: <u>Daniel Manzano</u>
	Phone: <u>505-670-3820</u> Email: <u>Daniel.Manzano@state.nm.us</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 245 and SB 245/aHEC
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 624 amends the Charter School Act, 22-8B-4.2 NMSA 1978, which currently requires charter schools to be housed in facilities that meet statewide adequacy standards and facility owners to maintain those standards at no additional costs to the charter school or state. The bill adds language to further require that charter school who makes lease payments to a non-profit entity that is organized for the purpose of providing a facility to the charter school enter into a legally binding agreement with the nonprofit to transfer the title of the facility to the charter school immediately after the nonprofit entity acquires title to the facility. The bill also requires that this legally binding agreement be in place if the charter school receives lease payment assistance funds.

Section 2 of the bill amends The Public Schools Capital Outlay Act, 22-24-4 NMSA 1978. Specifically, Subsection I of 22-24-4 NMSA 1978, will reference and be consistent with the proposed changes in 22-8B-4.2 NMSA 1978 requiring legally binding agreements between charter schools and related non-profit entities specifically organized for the purpose of providing a facility to the charter school that require immediate transfer of title to the charter school upon the nonprofit entity's acquisition of the facility. The bill also proposes that in Subsection K of the Public Schools Capital Outlay Act, 22-24-4 NMSA 1978, that portion of costs to paid from the PSCOF must follow methodology referenced in Subsection B of 22-24-5 NMSA 1978, expanding the considerations beyond Paragraph 5 to include that entire subsection (p. 12, line 6 and lines 20-21). This change would allow for the PSCOC to consider additional criteria previously limited to what is outlined in 22-24-5B(5)(a)-(q). The bill is also makes clean-up changes to 22-24-4 NMSA 1978, changing Public School Facilities Authority to "Authority" and changes references of 80th day to "second reporting date".

SB 624 is endorsed by the Legislative Educational Study Committee and the Public School Capital Outlay Oversight Task Force.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. However, provisions of the bill requiring nonprofit entities to transfer title to their facility to the charter school as a requirement for lease assistance from Public School Capital Outlay Fund (PSCOF) may impact funding awards made by the Public School Capital Outlay Council (PSCOC) as these building will now be ranked and eligible for future PSCOC funds.

SIGNIFICANT ISSUES

The provisions in this bill will protect state funds which are used to purchase buildings for state purposes (education of New Mexico students) through a flow-through process. Currently, there are nonprofit entities (typically, charter school foundations) that are set up specifically to assist charter schools in obtaining a publically-owned school building. These nonprofit entities are established due to the fact that charter schools do not have the ability to raise capital outlay funds through local obligation bonds and are not allowed to incur debt without going to the local voters due to the fact that they do not have a property tax base like a school district. Therefore, these nonprofit entities are set up to secure private financing or loans to purchase buildings. These nonprofit entities will then lease the building to the charter school, which usually cover the principal and interest payments on the loan. Charter schools can use several state funding sources to pay the lease payments (SB-9, HB-33, Lease payment assistance funds or operational funds). It is critical that state funds and assets are protected and are used to support intended state purposes.

ADMINISTRATIVE IMPLICATIONS

The Public School Facilities Authority will be required to collect and review all the legally binding agreements before recommendations are made to the PSCOC for funding lease assistance payments. The PED's Charter School Division in conjunction with the Office of General will need to ensure it update guidance to charter schools wishing to work with non-profit entities established for the specific purpose providing a facility for the charter school.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB-230, SB-231, SB-245CS and SB-295 are also proposing clean-up language and technical changes to section 22-24-4 NMSA 1978.

TECHNICAL ISSUES

On page 3, it appears Sponsors use redundant language that does not create clarity for the reader and makes this section confusing. Specifically, 22-8B-4.2D(2)(a) NMSA 1978 in this bill as represented on lines 5-10 read exactly as 22-8B-4.2(2)(b) represented on lines 15-20. SB 624 proposes to combine (a) and part of (b) together, deletes the part of (b) moved to (a) and then duplicates five lines of language from (a) in (b), and adds new language as well. The bill reads as follows, with bolded font for emphasis:

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) **the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state and public buildings are not available or adequate to meet the educational program needs of the charter school; or**

(b) [~~either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2)~~ **the facility in which the charter school is**

housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act, the owner of the facility is contractually 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; provided that if the charter school makes lease payments to a nonprofit entity specifically organized for the purpose of providing a facility for the charter school, the charter school demonstrates that it has entered into a legally binding agreement requiring the nonprofit entity to transfer to the charter school the title to the facility immediately after the nonprofit entity's acquisition of title to the facility.

In to ensure clarity and ease of reading, below is another way to potentially restructure the language which the Sponsor may wish to consider:

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state and either

(a) public buildings are not available or adequate to meet the educational program needs of the charter school; or

(b) ~~and~~ the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school; provided that if the charter school makes lease payments to a nonprofit entity specifically organized for the purpose of providing a facility for the charter school, the charter school demonstrates that it has entered into a legally binding agreement requiring the nonprofit entity to transfer to the charter school the title to the facility immediately after the nonprofit entity's acquisition of title to the facility.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THE BILL?

By not enacting the bill, statute would be permissive of charter schools bring able to make lease purchase payments to a nonprofit entity specifically organized for the purpose of providing the facility to the charter school without first entering into a legally binding agreement requiring said nonprofit entity to immediately transfer title and ownership of the facility to the charter school once acquired. Not enacting the bill allows for nonprofit entities to keep property purchased with state dollars out of the hands of its intended recipients (public charter schools serving New Mexico students).

AMENDMENTS

See *Technical Issues* section above.