

LFC Requester:	Rachel Gudgel
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**AGENCY BILL ANALYSIS
2015 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 January 27, 2015
Bill No: SB 236

Sponsor: Sen. Sue Wilson Beffort **Agency Code:** Attorney General's Office
Short CHARTER SCHOOL **Person Writing** Joshua R. Granata, AAG
Title: LEASE APPROVAL **Phone:** 827-6088 **Email** jgranata@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

Senate Bill 236 is an act that proposes to amend Section 22-8B-4 to -5 and Section 22-24-4. The act would require the Public School Capital Outlay Council (PSCOC) to approve lease payments in order for charter schools to use school district facilities. The act would require that new charter schools and charter schools that wish to relocate cannot do so unless the school, within 18 months of occupancy or relocation, attains a rating equal to or better than the average NM condition index. Also, violations of a conflict of interest by member of the school’s governing body or an employee of a charter school, and certain family members, would render contracts between the school and the individual void, rather than voidable. Further, the act would also require the PSCOC to develop a standardized facility lease for use by all charter schools. Lastly, the act would provide that the Public Education Commission assumes an additional duty to annually review and approve all charter school conflict of interest disclosure statement.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

As the act is drafted, it is unclear whether the PSCOC has the authority to approve the lease agreements between the school district and the charter school. Section 22-24-6(B) provides that the PSCOC has the power to “investigate all applications for assistance from the fund,” and “certify the approved applications.” It is unclear whether the lease agreement discussed in SB 236 is an “application” pursuant to the Public School Capital Outlay Act. Additionally, Section 22-24-4(E) provides that the PSCOC shall “review all requests for assistance from the fund.” Again, it is unclear whether the lease agreement is a request for assistance from the fund.

As the act is drafted, Section 22-24-4(I) requires the PSCOC to develop a standardized facility lease to be used by all charter schools for all new leases, amendments and renewals after July 1, 2015. Again, it is unclear whether the PSCOC has the authority granted by the legislature to carry out this duty. Section 22-24-5.1(B) gives the PSCOC the power to “take such actions as are

necessary to assist school districts in implementing” projects, however, it is not clear whether this section applies to the developing of a standardized lease for the parties.

Lastly, as drafted, Senate Bill 236 imposes an additional duty upon the Public Education Commission, but provides no appropriation for additional staff.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 128 proposes to amend Section 22-24-4 to allow for an increase in funds allocated to the public school capital outlay fund and the manner in which the money can be used. Additionally, the term in which the money can be used is increased from two to three years.

TECHNICAL ISSUES

Section 22-8B-4(F), line 16, uses the discretionary word “may” regarding reasonable lease payments between the charter school and the school district. Perhaps the word “shall” should be used in order to ensure that the agreement for lease payments are reasonable.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the bill is not enacted, situations will arise in which charter schools can comply with the act by “demonstrating” how a proposed facility will achieve a rating equal to or better than average NM condition index. In practice, however, significant problems may arise which delay a school from actually attaining an appropriate NMCI rating. The result is that children would remain in a facility without an appropriate rating, and the Public Education Commission, which has oversight authority, has to decide what action, if any, to take against the charter school.

AMENDMENTS

See above “Technical Issues”.