



SENATE BILL 554: School Building Leases.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2016-2017 General Assembly

Committee:	Senate Finance	Date:	June 24, 2016
Introduced by:	Sens. Meredith, Curtis, Tillman	Prepared by:	Drupti Chauhan Staff Attorney
Analysis of:	Second Edition		

SUMMARY: *Senate Bill 554 would provide additional flexibility to local boards of education to enter into leases for school buildings and facilities. The bill would also amend a provision related to the fast-track charter school application process.*

CURRENT LAW: Local boards of education can enter into leases of real or personal property for use as school buildings or school facilities. Leases that are for terms of less than 3 years are not subject to the approval of the board of county commissioners. Leases for terms of 3 years or longer are allowed if the following are met: (i) the budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation; (ii) an unencumbered balance remains in the appropriation that can pay in the current fiscal year the money obligated by the lease for that year; (iii) the leases are approved by the board of county commissioners; and (iv) any construction, repair, or renovation of the property is in compliance with energy guidelines.

Local boards of education can enter into contracts for the construction, repair, or renovation of leased property if the budget resolution includes money authorizing the obligation; an unencumbered balance remains in the appropriation that can pay in the current fiscal year the money obligated for that year; and the construction, repair, or renovation is in compliance with energy guidelines.

BILL ANALYSIS:

Section 1 of the bill changes the term "operational" leases to "operating" leases and provides that construction, repairs, or renovations would also have to be in compliance with guidelines related to science laboratory areas.

Section 2 of the bill re-enacts the laws that expired July 1, 2015 that allowed local boards of education to enter into capital leases and build-to-suit capital leases with private developers.

Capital Leases

Capital leases are leases that are considered to have the economic characteristics of ownership such as legal title to the property is transferred to the lessee, and lease term are equal or exceeds 75% of the asset's useful life.

Local boards of education could enter into capital leases which may also contain agreements related to construction, repairs, or renovations. The local board of education would not have to own the property on which the building is built and the lease may provide that the private developer is responsible for repairs and renovations.

Construction, repair, or renovation work would not be subject to Article 8 of Chapter 143, which sets forth the various requirements for letting public contracts.

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Limitations would be placed on capital leases including (i) the prohibition of non-substitution clauses restricting the rights of the local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by a capital lease and (ii) the required inclusion of a clause that states that the lease does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners-- no deficiency judgment can be rendered against a local board of education or other local government unit under the lease.

A capital lease is subject to approval by the Local Government Commission (LGC) to the extent that the lease satisfies one or more of the conditions relating to financing agreements requiring approval by the LGC. These conditions are (i) the agreement extends for at least 5 years, (ii) the agreement obligates the unit to pay sums of money to another, regardless of whether the other is a payee, or (iii) the agreement obligates the unit to payments of over \$500,000.

A capital lease cannot contain any agreement with respect to student assignment.

Build-to-Suit Capital Leases

Build-to-suit capital leases are capital leases that provide for the construction of new facilities or renovations of existing facilities by the private developer that are estimated to exceed \$300,000. The provisions of capital leases apply to build-to-suit capital leases, as well as the additional following provisions: (i) the local board of education must adopt a resolution to approve the lease and give 10 days notice of the meeting at which the resolution will be adopted and include certain findings; (ii) the resolution must be submitted to the county commissioners who must affirm or reject the resolution; (iii) design services must be done by qualified individuals and in compliance with requirements related to construction of school facilities; and (iv) the private developer must seek competition and minority business participation as well as meet other requirements for bids and prime contractors.

In addition, local boards of education may enter into predevelopment agreements before entering into build-to-suit capital leases, but these must be approved by the county commissioners. Real property can be sold, leased, or transferred to a private developer for build-to-suit capital leases, but any transfers by a local board of education must be approved by the board of county commissioners.

Section 3 of the bill makes a conforming change.

Section 4 of the bill provides that the local capital outlay fund must include appropriations for lease payments for operating leases, capital leases, and build-to-suit capital leases.

Section 4.5 of the bill would amend a provision related to the fast-track charter school application process to require these fast-track applications to be decided by the State Board of Education within 120 days of the date of submission.

EFFECTIVE DATE: The bill would become effective July 1, 2016 and applies to contracts entered into on or after that date.