

LFC Requester:	Sunny Liu
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**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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>2/15/19</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB434</u>

Sponsor:	<u>Rep. C. Trujillo, Rep. Karen Bash, et al</u>	Agency Code:	<u>924</u>
Short Title:	<u>CHARTER SCHOOL AUTHORIZATION MORATORIUM</u>	Person Writing Analysis:	<u>Daniel Manzano</u>
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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 1, SJR 9, SB 331, SB 429, SB 315, SB 245

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 424 proposes to institute a moratorium on any new charter school applications in the state of New Mexico, from June 14, 2019 through January 1, 2022.

FISCAL IMPLICATIONS

If this bill is enacted, the Public Education Department (PED) will not be able to comply with the terms of its recently awarded federal grant, lose up to \$22.5 million dollars in federal dollars, and potentially reverting any funds not already sub-granted to eligible entities. Additionally, losing the grant may also have a negative impact on the Department's ability to successfully compete for federal charter school program grant funds in future years.

Additionally, existing high-quality charter schools that would otherwise be eligible for federal expansion and growth support under the grant may be negatively impacted due if the state loses grant funding as a result of the charter moratorium; this essentially penalizes existing charter schools and bars them from accessing federal dollars.

SIGNIFICANT ISSUES

Federal Charter School Program Funds in Jeopardy. In October, 2017, the PED received a \$22.5 million, five-year grant from the US Department of Education (ED). One of the main goals of the grant is to support opening high-quality public charter schools in the State of New Mexico through a rigorous sub-grant application process. The performance outcomes include awarding fifteen (15) sub-grants to new charter schools and seven (7) sub-grants for high-quality schools wishing to expand and grow schools by 2022. This bill would prevent the state from complying with the grant requirements for this federal funding.

Limiting Public School Choice for New Mexico Families. In addition, instituting a charter moratorium curtails family choice with respect to selecting a school that meet the various needs of New Mexico families. Across the state, the PEC's application and review processes for state-authorized schools require significant household support and stakeholder input. As part of the school site visits conducted by the PED on behalf of the PEC, stakeholders have been highly vocal in their support for their charter school through stakeholder interviews. Specifically,

recurring themes include examples of how the charter school serves their needs and offers a public school option that would otherwise not be available to them.

Curtailing Development of Rigorous, Uniform Statewide Authorizing Principles. One of reasons New Mexico was able to regain a federal CSP grant award (after two unsuccessful attempts to secure federal dollars) was due to the demonstrable and increased rigor of charter authorizing practices which include: detailed application and thorough review process of new charter school applications, renewal application review processes, closure of chronically low-performing schools, timely evaluative feedback (including site visits and governing body meeting observations), increased charter school governing body training requirements (6.80.5 NMAC) and the adoption of a sophisticated and comprehensive Charter Performance Framework by the Public Education Commission (PEC), the sole state chartering authority.

Written into the current federal grant application which was approved and funded by ED, was support for the development of uniform, statewide charter authorizing principles that would be customized for New Mexico, modeled after the work of the PEC, from application through renewal, which hold state-authorized charter schools to much more stringent standards of accountability in academic, financial, and organizational performance that ever before. However, state-authorized schools account for approximately half of all charter schools. The state's duty is to support all chartering authorities with tools and resources to support high-quality charter schools.

Fifteen new state-authorized charter schools were approved in the last six years, down from 30 schools in the prior six years. Only one state-authorized charter school was closed from 2008-2013, while 12 state-authorized charter schools closed from 2014-2018. Nearly all state-authorized charter schools have waiting lists, demonstrating high unmet demand. In the last two years, there has been an 8% increase in higher-performing (A and B) schools and a 19% decrease in the lowest performing (D and F) schools from 2017 to 2018, cutting the number of D and F schools down to only two—in both cases, the PEC voted to not renew the charter schools due to chronic low performance. While the health of the charter school sector is stronger than ever before, especially in the state-authorized portfolio of schools (50+), the work of continually improving oversight and monitoring will improve in increasing the overall quality public charter school options, especially when local schools do not meet students' academic needs.

In *Sw. Distrib. Co. v. Olympia Brewing Co.*, 1977-NMSC-050, ¶¶ 23-24, 90 N.M. 502, 508, 565 P.2d 1019, 1025, ¶ 24, the Court held generally that where statutory provisions referenced in the case made a substantive change in the rights and obligations of the parties and was remedial in nature, the general rule was that it was presumed to operate prospectively only. The cases noted in part that although the Act was to take effect immediately, there was no indication that the Legislature intended it to apply retroactively.

In light of *Sw. Distrib. Co. v. Olympia Brewing Co.*, 1977-NMSC-050, HB 434, and in consideration of rights and obligations which may be construed as having vested, whether expressly or impliedly, the bill may clarify further the intent of the bill and precisely what retroactive effect, if any, it is intended to have. Stated another way, the bill may clarify whether it is intended to have any retroactive effect on those entities that have already begun the process of having a charter granted, including those who have submitted a Notice of Intent, for those who have any contracts that have been negotiated, or for those who are pending a decision on a submitted application. This may need to be reconciled with existing case law interpreting retroactive application of new legislation which has any effect on vested property rights.

PERFORMANCE IMPLICATIONS

This bill would have a direct impact on two FTE grant-supported staff in the PED's CSD who were hired to manage the grant and coordinated grant-funded activity that support the entire state. While, the loss of the grant would no impact on current non-grant staff, the impact to the charter sector would be great—see the *Significant Issues* section—given that federal CSP grant funds support development of work that benefits the entire state, including uniform, statewide guidance for chartering practices and additional technical assistance and training to charter schools. Additionally, the review of received applications are left hanging in the balance if all statutory processes are followed until the date indicated in the bill. See next section for expanded details.

ADMINISTRATIVE IMPLICATIONS

18 Notices of Intent (NOIs) received for new charter school applicants. The proposed charter moratorium in HB 434 also has immediate administrative implications for the 2019 cycle, which is already in progress. According to the Charter School Act, 22-8B-6B, which states the following:

B. No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of their intent to establish a charter school. Failure to notify may result in an application not being accepted.

In accordance with statute, this processed has already been conducted. NOIs were due this year on January 8, 2019 and 18 were received and posted to the PEC's website.¹ According to statute, the PEC must make a decision on all submitted applications received by June 1st according to statute which further states:

C. A charter school applicant shall apply to either a local school board or the commission for a charter. **If an application is submitted to a chartering authority, it must process the application [emphasis added].** Applications for initial charters shall be submitted by June 1 to be eligible for consideration for the following fiscal year; provided that the June 1 deadline may be waived upon agreement of the applicant and the chartering authority.

I. The chartering authority **shall receive and review all applications for charter schools submitted to it [emphasis added].** The chartering authority shall not charge application fees.

According the PEC's approved calendar, it is scheduled to meet on June 14, 2019.² Among

¹ See the PEC's webpage for an archive of all submitted NOIs, new and renewal applications submitted to the state which can be accessed at: <https://webnew.ped.state.nm.us/bureaus/public-education-commission/submitted-applications/>. NOIs can be accessed directly at: <https://webnew.ped.state.nm.us/2019-notices-of-intent/>

² The PEC's approved calendar can be accessed directly at: <https://webnew.ped.state.nm.us/wp-content/uploads/2018/11/2019-PEC-Meeting-Calendar.pdf>

other business, one item on the agenda for June meetings is reserved for formally accept for review all applications received by June 1st. Thus, to comply with this bill, if enacted, would mean that the PEC could receive several applications (e.g. in the last 3 years, only 1-3 applications are submitted from the NOIs received) that must be received and reviewed. Yet, the process would be curtailed for any new charter applications submit according to statutory deadlines and requirements and these would not receive a decision at all.

Statutorily Required Processes In-Progress Negatively Impacted. According to HB 434, from June 14, 2019, no new applications for charter schools shall be accepted or approved (p. 1, lines 18-21)—this deadline comes after the statutorily determined due date for charter applications which is June 1st. Therefore, any **applications received by June 1st, which is well before June 14th, must be processed**, that is, received and reviewed. The concern is that decisions for state-authorized applications are not made until August since state requires decisions to be made by September 1st (22-8B-6K NMSA 1978) and before those decision is made, the Charter Schools Act also requires that community input hearings be held (customarily in July, after applications are received and reviewed) pursuant to 22-8B-6J NMSA 1978.

The fiscal and administrative costs associated with the review of new charter applications are not insignificant. The CSD undertakes the following to ensure a rigorous and comprehensive review of all new charter applications received, including the following action steps:

- Conduct several trainings (under way now) for applicants that submitted NOIs before applications are due
- Thorough, objective review processes requiring contractual support for external reviewers, including in-person capacity interviews, widely considered best practice
- Coordinate and schedule community input hearings across the state; and
- Prepare final recommendations and application materials prior to PEC meetings

Thus, Sponsors may wish include clarifying language in the bill to address actions to be taken or not taken with respect to prospective charter school applicants that have already submitted NOIs and have potentially undertaken actions incurring costs related to time and effort. Per statute, only new charter school applicants that have timely submitted NOIs in January are eligible to submit applications by June 1st.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There are several other bills that would need to be considered in relation to HB 434, chiefly among them SB 1 and SJR 9. Other related, would be SB 245, SB 331, SB 429 and inclusive of SB 315.

TECHNICAL ISSUES

As pointed and discussed at length in the Administrative Implications section, the June 14th date is problematic because it comes well after applications are due, and would require the chartering authority to act on submitted application (i.e. receive, review, and presumably rule on as well). The Sponsors may wish to change the date of the moratorium to January 1, 2020 to January 1, 2022, allowing the current process underway to continue without interruption, and can preclude the next cycle of NOIs.

OTHER SUBSTANTIVE ISSUES

A charter moratorium is costly to the state since it puts in jeopardy significant amounts of federal dollars that would otherwise go to other states, and it damages the Department since losing grant funding adversely impacts the state's ability to secure such funding in the future. Additionally, the charter moratorium curtails family voice and input on this matter, limiting public school options.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, the NMPED will be able to use the \$22.5 million in federal dollars to support high-quality charter schools and families will continue to have access to a valuable option to traditional public schools.

AMENDMENTS