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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>SB429/SJCS</u>	<b>Sponsor</b>	<u>SJC</u>
<b>Tracking Number</b>	<u>.214095.1</u>	<b>Committee Referrals</b>	<u>SEC/SJC/SFC</u>
<b>Short Title</b>	<u>Virtual Charter Schools</u>		
<b>Analyst</b>	<u>Stiles</u>	<b>Original Date</b>	<u>2/25/19</u>
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**BILL SUMMARY**

Synopsis of the Bill

Senate Judiciary Committee Substitute for Senate Bill 429 (SB429/SJCS) would add a section to the Public School Code to be cited as the “Virtual Charter Schools Act.” SB429/SJCS would define virtual charter schools in statute. The bill would outline virtual charter school authorizing procedures and contract requirements. The bill would also specify requirements under which virtual charter schools must operate, including provisions pertaining to enrollment limitations, performance requirements, oversight requirements, and funding.

**FISCAL IMPACT**

SB429/SJCS does not contain an appropriation.

SB429/SJCS would eliminate a virtual charter school’s ability to receive capital outlay, lease assistance or facility maintenance funding, or transportation funding. Currently, virtual charter schools are not receiving these funds because they do not have students occupying classroom space and do not transport students. SB429/SJCS would require program cost for virtual charter schools to be calculated by multiplying the program units for basic education by the staffing cost multiplier and adding special education program units, if generated; and national board for professional teaching standards certification program units, only if the certified teacher is a resident of New Mexico and is licensed by the Public Education Department (PED). If a virtual charter school does not meet the performance targets established in its performance framework, PED would be required to withhold 10 percent of the program cost of a virtual charter school until the virtual charter school meets those targets.

In recent years, virtual charter schools have generated significant funds from enrollment growth. Two virtual charter schools generated 25 percent of the total statewide enrollment growth units in FY18. Virtual charter schools are able to grow faster than other charter schools because there are no classroom space limitations. In FY18, enrollment growth accounted for 43 percent of the program units generated by Pecos Academy and 22.8 percent of the enrollment growth units

generated by New Mexico Virtual Academy. Due to a decline in enrollment, New Mexico Connections Academy will not generate any enrollment growth units in FY19; however, LESC staff estimates Pecos Connections will generate 13 percent of the total statewide enrollment growth units in FY19. The chart below shows the amount of each virtual charter school’s program cost in FY18, and the amount the virtual charter schools would have received in FY18 under the provisions of SB429/SJCS.

Virtual Charter School Funding

Virtual Charter School	FY18 Final Funded Program Cost	Estimated FY18 Program Cost with SB429/SJCS	Difference
Pecos Connections	\$4,004,311	\$2,042,065	-\$1,962,246
New Mexico Virtual Academy	\$3,119,223	\$2,955,346	-\$163,877
New Mexico Connections	\$12,370,088	\$8,987,742	-\$3,382,346

Source: LESC Files

## SUBSTANTIVE ISSUES

In December 2017, LESC and the Legislative Finance Committee (LFC) produced a joint report, [\*Financial Responsibility, Governance, and Student Outcomes of Virtual Charter Schools\*](#) (LESC/LFC report). The report made several recommendations to the Legislature based on a study of the state’s virtual charter schools. SB429/SJCS addresses several of the recommendations from the study, as well recommendations from national agencies.

SB429/SJCS would define a “virtual charter school” as a charter school that provides more than 60 percent of instruction to students through online distance learning technologies in which students are separated from their primary teachers by time, space, or both.

**Virtual Charter School Oversight.** SB429/SJCS would permit only the Public Education Commission (PEC) to authorize a virtual charter school that enrolls students on a statewide basis; “statewide” would be defined as enrolling students from more than one school district in the state. Local school boards would be permitted to authorize or renew a virtual charter school attended only by students within the local school board’s school district after the effective date of the Virtual Charter Schools Act; however, the local school board would continue to provide oversight and administrative support for a statewide virtual charter school the local school board currently charters until the statewide virtual charter school’s next charter renewal period. The statewide virtual charter school would be required to seek renewal from PEC unless the statewide virtual charter school limits its enrollment only to students who are residents of the school district. SB429/SJCS would require PEC to monitor and oversee statewide charter schools, although PEC may delegate the responsibility to the Charter School Division of PED, which is consistent with the recommendations from the LESC/LFC report. PED would be required to promulgate rules to carry out these provisions.

SB429/SJCS would require the chartering authority to visit the virtual charter school twice a year to provide technical assistance and determine the status of the virtual charter school and its progress toward its performance framework. If the chartering authority revokes or refuses to renew a virtual charter schools’ contract, the decision would be final and an appeal to the secretary of education would not be permitted; however, the virtual charter school would be permitted to appeal the decision to the district court as provided in section 39-3-1.1 NMSA 1978.

***Virtual Charter School Enrollment Limitations.*** Beginning with charter applications submitted in 2019, SB429/SJCS would prohibit new virtual charter schools from serving students in kindergarten through fourth-grade. A virtual charter school existing on July 1, 2019, would not be permitted to enroll any new kindergarten through fourth-grade students unless the students were enrolled in the immediately preceding year prior to the renewal year.

SB429/SJCS would prohibit a statewide virtual charter school chartered after January 1, 2019, from enrolling more than 200 students per year until the virtual charter school has met or exceeded its annual performance targets. A new statewide virtual charter school chartered after January 1, 2019, would be prohibited from enrolling more than 1,000 students at any time, unless the school's performance exceeds its performance targets and students are passing their courses and are on track toward timely or early graduation and receipt of diplomas of excellence.

A new locally chartered virtual charter school chartered after January 1, 2019, would be prohibited from enrolling more than 200 students per year until the local school board is satisfied that the virtual charter school is meeting or exceeding its performance targets. Presumably, the local school board would create guidelines for capping enrollment if the virtual charter school was meeting performance targets.

SB429/SJCS would prohibit a virtual charter school chartered after January 1, 2019, from accepting full-time students from a “necessarily small school district,” defined as a school district that has fewer than 1,300 students, if the virtual charter school's proposed enrollment for all grades, or the virtual charter school's proposed enrollment for all grades in combination with any other charter school's enrollment of all grades, would be equal to or exceed 10 percent of the necessarily small school district's total membership. Virtual charter schools chartered after January 1, 2019, would further be prohibited from enrolling a student who needs class C or D special education, unless the student's student assistance team or its equivalent, the student's parent or guardian, and medical professionals working with the student agree with the placement.

***Virtual Charter School Applications.*** SB429/SJCS would require a virtual charter school to include a detailed description of how the virtual charter school's management and educational program will be provided. This requirement is consistent with national recommendations. The National Charter School Resource Center, which is funded by the U.S. Department of Education, recommends that if a virtual charter school uses a third-party for management or educational programming, the chartering authority should only award a charter upon its review and approval of a final management agreement.

SB429/SJCS defines “management” as assuming any administrative, operational, supervisory, and evaluative responsibility and overall instructional leadership for the virtual charter school. Management would also include employing, evaluating, promoting, disciplining, discharging, or terminating school employees and developing professional development plans or job-improvement plans to assist employees to improve. Management further include directing the day-to-day activities of a virtual charter school and its licenses and unlicensed employees, contractors, and subcontractors. Management would include maintaining the privacy of student records and performance data at the school site; providing at least 40 percent of the educational programming at the virtual charter school; developing a proposed budget for the virtual charter school and submitting the proposed budget to PED; or implementing the policies of the governing body.

SB429/SJCS would require virtual charter schools to include a detailed description of the way the virtual charter school would meet the individual needs of students, including how it would meet

the needs of students determined to be at-risk or in need of an individualized education plan in its application. A virtual charter school would also be required to include a description of how it will maintain student performance data at the school site and the process it will use to comply with the requirements of the federal Family Educational Rights and Privacy Act of 1974 (FERPA), if sharing student information and performance data with any education-related contractors.

The LESC/LFC report showed while the funding formula treats virtual charter schools similarly to brick-and-mortar schools, in FY17 the three virtual charter schools in the state spent 50 percent of their combined \$15 million for curriculum and other educational services provided by two out-of-state, for-profit companies. The report stated these expenditures lacked oversight and transparency, and invoicing from curriculum providers lacked detail. SB429/SJCS provides a detailed description of what constitutes management and requires transparency consistent with the recommendations from the LESC/LFC report.

***Virtual Charter School Contracts.*** SB429/SJCS would limit the term of a virtual charter school contract to no more than three years, with the exception of the contract for a new virtual charter school, which may be four years to include a planning year. The contract would be required to include a detailed description of the chartering authority's duty, including the processes and procedures the chartering authority will use for ongoing oversight and evaluation of governance, operational and financial performance, and the academic performance and progress of students. These requirements are consistent with local and national recommendations.

The LESC/LFC report recommends virtual charter school contracts contain details to provide transparency and to allow increased oversight by a chartering authority. The National Charter School Resource Center, notes a carefully crafted virtual charter school contract should detail the level of academic, financial, and organizational performance required for renewal of the charter. It additionally recommends the contract identify the data the virtual charter school is responsible for providing to the authority and the contract should be clear about the school's obligation to share data.

SB429/SJCS would require a virtual charter school to be subject to the Procurement Code, and notwithstanding the Procurement Code, a virtual charter school would not be permitted to enter into a sole source contract. Additionally, except for small purchases made pursuant to Section 13-1-125 NMSA 1978, the chartering authority would be permitted to require any request for proposals or procurement to be subject to its review. A virtual charter school would not be permitted to artificially divide any requests for proposals or procurement to simulate a small purchase.

SB429/SJCS would require a virtual charter school's contract for management or educational services to include clear identification of all the fees to be paid to the contractor; detailed invoices from the contractor; a statement of the respective roles and responsibilities of the governing body, the virtual charter school staff, and the management or educational services provider; performance evaluation measures and time lines; the methods of contract oversight and enforcement; the conditions for renewal and termination of the contract; and the process by which the virtual charter school would be required to comply with federal FERPA requirements if sharing student data and performance with any education-related contractor and how the virtual charter school will maintain student data and performance data at the school site.

## **ADMINISTRATIVE IMPLICATIONS**

SB429/SJCS would require the charter school authority to take on oversight responsibilities specific to virtual charter schools.

## **OTHER SIGNIFICANT ISSUES**

A 2015 virtual charter school study by the Center for Research on Education Outcomes showed, on average, annual academic gains of virtual charter school students are equivalent to 180 fewer days of learning for math, and 72 fewer days for reading when compared with students in brick-and-mortar charter schools. The LESC/LFC report found similar performance for New Mexico virtual charter schools, showing the average fourth through eighth-grade virtual charter school student at New Mexico Virtual Academy and New Mexico Connections Academy experienced between 91 and 161 fewer days of learning than the average brick-and-mortar school student from FY15 to FY16.

The LESC/LFC report on virtual charter schools indicated two of the state’s virtual charter schools appeared to select curriculum providers prior to charter authorization, suggesting the schools intended to contract with Connections for curriculum and online services before putting out a requests for proposals for the services. SB429/SJCS requires a virtual charter school be subject to the Procurement Code, and requires the chartering authority to approve any sole purchases. The chartering authority may also require requests for all proposals and personal service contracts over \$60 thousand dollars.

SB429/SJCS would require virtual charter schools to proctor state or national tests students are required to take, and allows for virtual charter schools to contract with one or more school districts, universities or colleges, political subdivisions of the state, or tribal governments for the use of appropriate testing sites.

## **RELATED BILLS**

SB429/SJCS is related to HB434, Charter School Authorization Moratorium.

## **SOURCES OF INFORMATION**

- LESC Files

**AMS/mc/mhg**