

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 120

50th Legislature, 1st Session, 2011

Tracking Number: .183514.1

Short Title: New School & School Building Moratorium

Sponsor(s): Representative Mimi Stewart and Others

Analyst: Pamela Herman and Peter B. van Moorsel **Date:** February 10, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

HB 120 places a temporary, six-year moratorium on the opening of new public schools in New Mexico.

HB 120 provides that, between January 1, 2011 and January 1, 2017:

- a chartering authority shall not accept an application for, or approve, a new charter school; however, if the charter school has been authorized and is in its planning year on January 1, 2011, it may continue to full operational status if its chartering authority approves; and
- there shall be no new public schools constructed or opened unless:
 - construction or opening was approved before January 1, 2011; or
 - the Public School Facilities Authority (PSFA) certifies to the Public School Capital Outlay Council (PSCOC) that a school must be replaced because of health and safety or adequacy standards and the PSCOC approves the recommendation.

The moratorium created in HB 120 does not affect repairs and renovations of existing non-charter public schools.

Fiscal Impact:

HB 120 does not contain an appropriation.

Fiscal Issues:

- According to the Public Education Department (PED), passage of HB 120 would produce potential savings in state dollars used for new school construction and for lease assistance funding for charter schools.
- The PSFA estimates that the moratorium could reduce requests for lease assistance funds for charters in their first year of operations by an annual average of approximately \$660,000, based on the amount paid out in FY 09, FY 10, and FY 11.

- The PSFA does not provide an estimate of cost savings on new non-charter school construction.
- PSCOC awards are made from the Public School Capital Outlay Fund, which is supported, not from the General Fund, but with supplemental severance tax bond proceeds, which, pursuant to the *Severance Tax Bonding Act*, are considered to be a dedicated source of funding for public school capital outlay.
- HB 120 would redirect funds awarded by the PSCOC to school districts for new school construction. While the amount of funds awarded each year by the PSCOC for new school construction (as opposed to repairs, renovations, and additions to existing facilities) varies, redirecting funds from new construction may increase the amount available for needed repairs and renovations to older facilities around the state.
- For example, in FY 10, the total of PSCOC new and Phase 2 awards was approximately \$131 million. That included the partial costs of at least four entirely new schools. The state share of those four buildings was:
 - new Las Cruces High School: approximately \$47.9 million, which is 67 percent of the total phase cost of approximately \$71.2 million;
 - new Las Cruces Middle School: approximately \$20.7 million, 67 percent of the total phase cost of approximately \$30.9 million;
 - replace Tibbetts Middle School in Eunice: almost \$1.0 million, 59 percent of the total phase cost of approximately \$1.7 million; and
 - replace Crownpoint Elementary School: approximately \$1.1 million, 84 percent of the total phase cost of approximately \$1.3 million.
- A moratorium on opening of new schools, whether charter or non-charter, would also save school districts the cost of starting up new schools. While current estimates of such costs are not available, in 2006 Rio Rancho Public Schools estimated the one-year cost of opening new schools as follows:
 - an 800-student elementary school: approximately \$1.2 million;
 - an 800-1,000 student middle school: approximately \$1.6 million; and
 - an 1,800-2,200 student high school: approximately \$4.3 million.

Technical Issues:

PSFA notes that the Facilities Condition Index applies a high weight factor to “adequacy of space” of existing school facilities, and may warrant the construction of an addition, or in some cases in high growth areas, an entire additional school. PSFA states that the provisions of HB 120 may limit the ability of the PSCOC to address these situations, undermining the integrity of the standards-based capital outlay process.

Although HB 120 provides an exception to the moratorium for opening of new schools where PSFA certifies to the PSCOC that a school must be replaced “because of adequacy standards,” the sponsor may wish consider offering an amendment to make an explicit exception for enrollment growth in the school district.

Substantive Issues:

HB 120 embodies a recommendation of the 2010 interim Government Restructuring Task Force to impose a moratorium on new public schools and new higher education campuses (SB 173, *Post-secondary School Building Moratorium*).

- HB 120 represents one of several proposals that grew out of concerns of the Task Force about efficiencies and cost-effectiveness of public education, in an era of “substantially reduced revenue, with public schools the single largest component of general fund appropriations.”
- Reducing costs to the Public School Capital Outlay Fund can affect the state’s “average Facility Condition Index (FCI)”¹. According to PSFA, current unfunded needs for school facilities in New Mexico total approximately \$4.05 billion, and the average annual required state investment in facilities to keep the FCI from worsening is approximately \$134 million. Therefore, reducing the funding burden on the Public School Capital Outlay Fund through new construction could have the affect of slowing FCI level increases, meaning that the overall condition of school conditions could improve or at least not worsen if needed repairs and renovations can be addressed.

The Charter Schools Division of PED, in its analysis of HB 120, states that, if a moratorium were placed on new charter schools, the state would lose a significant amount of federal charter school grant funding.

- The Federal Charter School Program Grant provides financial assistance to start-up charter schools during their first three years of operation, as well as administrative funds to PED for the management and monitoring of grants.
- If no new charter schools opened during the period of the moratorium, federal start-up funds for those schools would not be needed. Charter schools in the planning stages or that opened just prior to imposition of the moratorium could be affected by withdrawal of federal funds, however.

PED also states that a moratorium on new construction could have a detrimental impact on the construction industry across the state. However, the proposed moratorium would not reduce the amount awarded by PSCOC from the Public School Capital Outlay Fund; it would just redirect awards from new construction to renovations and additions to maintain the FCI. The nature, but not the amount, of public school construction activity in the state would not change.

Background:

According to the PSCOC, public school capital outlay differs from other public sector infrastructure:

- the process is a result of legislation in response to the Zuni lawsuit, which raised issues of equity in the funding of school capital construction across the state;
- New Mexico school buildings are ranked objectively by greatest needs, and all school districts are eligible for funds on a level playing field;

¹ PSFA provides the following example to illustrate the Facility Condition Index: if a building costs \$100,000 and has an FCI of 37.0 percent, that building needs \$37,000 in repairs; therefore, lower FCIs are better.

- the state uses its limited resources to take care of the worst needs at the top of the list first, thus maximizing the “bang for the buck,” with funding based on a state-local match;
- to help address the state budget crisis, PSCOC has determined only to fund projects that are “shovel-ready” and have already received a design or prior-phase construction award;
- in calendar years 2009 and 2010, PSCOC reverted \$8.7 million and \$13.3 million, respectively, to the Capital Outlay Fund for reallocation, via audits of construction project closeouts with school districts;
- PSFA is focusing on raising utilization rates for existing facilities and is pioneering better measures, like facility cost per student and per square foot, to help districts build schools that are more efficient, cost-effective, and sustainable; and
- PSFA is also focused on helping schools with preventive maintenance to preserve the \$1.5 billion in new school construction funded by the Legislature since 2002.

Related Bills:

SB 173 *Post-secondary School Building Moratorium*