

Fiscal Impact of New Charter Evaluation Criteria in AB 1505 (Revised)

Background

In 2019, Governor Newsom signed into law Assembly Bill (AB) 1505 (Chapter 486/2019). This bill made significant changes to requirements for charter school petitions, including approval criteria, review timelines, renewal criteria and the appeal process. Portions of AB 1505 were operative starting January 1, 2020, but most became effective July 1, 2020.

The following changes to the charter petition process are now in place:

- The time frame for charter authorizers to review new or renewal charter school petitions is now 90 days, an increase from the previous 60 days.
- Findings and recommendations by the potential authorizer must be published at least 15 days before the final public hearing.
- Additional criteria are listed as reasons for denying a new charter school petition.

The new criteria that, if met, constitute reasons to deny a charter petition (Education Code sections 47605(c)(7) and (8)) are as follows:

1. The charter school is demonstrably unlikely to serve the interests of the entire community; and
2. The authorizing school district is not positioned to absorb the fiscal impact of the proposed charter school.

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New Charter Evaluation Criteria (Fiscal Impact)

AB 1505 limits use of the fiscal impact criteria to new charter petitions and existing charter schools that are adding one or more sites or grade levels (through a material revision) to what is already authorized.

Specifically, the two new criteria for denial of a charter school petition, per AB 1505, are as follows:

1. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include

consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:

- a. The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.
 - b. Whether the proposed charter school would duplicate a program currently offered within the school district and if the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.
2. A school district is not positioned to absorb the fiscal impact of the proposed charter school. This criterion is met if the school district meets any of the following conditions:
- a. Has a qualified interim certification and the county superintendent of schools, in consultation with the Fiscal Crisis and Management Assistance Team (FCMAT), certifies that approving the charter school would result in a negative interim certification.
 - b. Has a negative interim certification.
 - c. Is under state receivership.

Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

County Superintendent of Schools Certification

Education Code Section 47605(c)(8) states that a school district can deny a charter petition if the district has a qualified interim certification and its approval of the petition would result in it having a negative interim certification. If a district cites this change from qualified to negative certification as the reason for denial, the county superintendent of schools needs to certify, in advance of the denial, that the charter school approval would indeed result in a negative certification.

This type of county office review and analysis is needed only in the circumstances described directly above. If a district has a negative budget certification or is under state receivership, the statute is clear that the process ends at the school district, and the county office is not involved and not responsible for affirming or changing a prospective certification. The county superintendent would have already reviewed the district's financial status as part of their obligation under Education Code Section 1240, and if a negative certification is in place, that determination is final. This is also true in cases of state receivership. A county superintendent's involvement is required only when granting a charter school petition would change a district's certification status from qualified to negative.

If the school district has a positive budget certification or a "lack of going concern" designation (Education Code section 42127.6), the rules that define it as not positioned to absorb the fiscal impact of the proposed charter school do not apply, because the code specifies only a qualified or negative interim budget certification, or state receivership. In addition, the inability to absorb the fiscal impact of the proposed charter school is determined based on a qualified or negative

interim budget certification, which typically occurs only at the first and second interim reporting periods. For the limited purposes of AB 1505, budget determinations at third interim, unaudited actuals or budget adoption (if applicable) do not apply as a determinant of fiscal distress.

County Office Authorizers

Education Code Section 47605(c)(8) does not specifically mention a county board of education; however, Education Code Section 47605.6(b)(7) states, “Any other basis that the county board of education finds justifies the denial of the petition.” This indicates that a county board of education has the authority to determine whether or not the fiscal impact provision applies to charter school petitions submitted directly to a county office of education and for which the county office is the potential authorizer.

District and County Office Considerations

As county superintendents fulfill their responsibility outlined in Education Code Section 47605(c)(8), FCMAT provides the following guidance:

- The most recent interim financial report should be used when making this determination.
- Consider whether the projected change in ADA (and associated change in revenue), net of expenditure reductions, is large enough to change its budget certification based on the data in the petition and what is known when it is submitted.
- Understanding the estimated number and grade span of the charter school’s students that would come from the authorizer’s district is essential in calculating the loss of revenue. The district should also analyze which schools or locations are expected to lose enrollment if the petition is approved. The petitioner’s intent to enroll forms, or even a Proposition 39 Request for Facilities form, if applicable, could be used for this purpose.
- If a district with a qualified budget certification intends to use fiscal impact as a reason for denial, it will need to work closely with its county office to validate whether a change in certification will occur if the charter petition is approved. A district cannot wait until its board votes on the denial to start discussions with its county office; the analysis and county superintendent of schools’ certification need to occur before the district makes the final decision regarding the charter petition.
- A county office of education should ensure that determination of the fiscal impact is performed by staff who normally perform AB 1200 functions such as review of a district’s interim certification; usually these are different staff than those who would review the appeal of a charter petition.

FCMAT’s Role

The reference in AB 1505 to the county superintendent of schools performing its function in consultation with FCMAT when complying with Education Code Section 47605(c)(8) (qualified

to negative certification due to the charter petition) does not mean that FCMAT will perform an independent analysis of every district's denial of a charter petition for reasons of fiscal impact. FCMAT will serve as a resource and, if requested by the county superintendent, will review the same information that the county superintendent used and provide an opinion.

Conclusion

For any school district with a qualified interim certification that uses the fiscal impact determination and reasoning to deny a petition for a new charter school, the county superintendent must determine whether or not the district's approval of the petition would result in its interim budget certification changing from qualified to negative, as set forth in Education Code Section 47605(c) (8). FCMAT is available for consultation on the subject, if needed. A proactive approach, working with school districts before a determination is considered, is always best because it fosters a mutual understanding of timelines, definitions and expectations.

This fiscal alert does not constitute legal advice. Information and instructions about establishing charter schools can be found on the CDE's website at <https://www.cde.ca.gov/sp/ch/>.

For additional charter school and authorizer resources, please visit <https://www.fcmat.org/charter-and-authorizer>.