

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House
Number: HB436

Category: Bill
Type: Introduced

Date (of THIS analysis): 2/18/25
Sponsor(s): Rod Montoya and Elaine Sena Cortez
Short Title: Exemptions for Emergency Closures

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: SB340

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 436 (HB436) proposes to amend the All Hazard Emergency Management Act, the Public Health Emergency Response Act, the Riot Control Act, and the Energy Emergency Powers Act, to require that any order, rule or other directive issued by a governmental entity to close or limit businesses or facilities otherwise open to public use or patronage that includes exemptions in whole or in part for some businesses or facilities shall also include exemptions for facilities operated by religious organizations exempt from taxation under Sec. 501(c)(3) of the Internal Revenue Code as places of worship. The bill would require that such facilities be exempted to the same extent as the most permissive exemption provided by the order, rule or other directive.

HB436 would allow a person or an entity alleging harm due to a violation of its terms to seek declaratory or injunctive relief or money damages and would also permit an award for punitive damages upon a showing of malicious application or reckless enforcement of an order.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

HB426 proposes allowing churches to be subject to the most permissive emergency restrictions imposed on any business, implying churches present the same risks (or less) to public health and safety as the least risky businesses. This conclusion is made without respect to the spread of contagious diseases and the reality that churches may present significantly greater risks. Parishioners of churches typically congregate in a single, common indoor space, which presents significant health risks, particularly in the case of threatening contagious respiratory diseases. The same would not be true, for example, of

outdoor merchants, or businesses that do not involve the gathering of members of the public, which are considered lower-risk businesses. HB436 would require that churches be subject to no greater restrictions than such lower-risk businesses during a declared public health emergency. HB436 would thus impose an arbitrary standard that would significantly limit the ability of the state government to meaningfully respond to emergencies.

HB436 would create a cause of action for churches and their parishioners to sue the state government for monetary damages for violation of the bill's terms. The bill does not identify a limit for damages and thus raises the specter of unlimited monetary damages (both compensatory and punitive). Given the breadth of the bill's text and given the variety of businesses that could be affected by an emergency order, virtually any restriction imposed on a church by way of such an order might be portrayed as imposing greater restrictions on a church than those imposed on others considered lower risk businesses. HB436 would invite unknowable and potentially significant financial liability upon the state of New Mexico, effectively holding the state liable for engaging in emergency response activities that may impact churches.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- Is this proposal related to the NMDOH Strategic Plan? Yes No
 - Goal 1:** We expand equitable access to services for all New Mexicans
 - Goal 2:** We ensure safety in New Mexico healthcare environments
 - Goal 3:** We improve health status for all New Mexicans
 - Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

HB436 would create a cause of action for monetary damages for violations of its terms, and the bill does not identify a limit on such damages. If a plaintiff could successfully describe the exemptions for churches under a public health order as being greater than the least restrictive of exemptions, NMDOH could be subject to limitless compensatory damages.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

See “Significant Issues”, above.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

At page 2, line 18, and again at page 4, line 11, HB436 identifies section 12-10-10.1 NMSA as an exception to the authorities described in each of those passages. However, that section would not operate as an exception to the items described in those passages. For example, the requirements regarding exemptions applicable to churches would not limit the ability of the Governor to issue, amend, or rescind orders, rules, or procedures to carry out the provisions of the All Hazard Emergency Management Act. Rather, section 12-10-10.1 would limit the restrictions that could be imposed on churches by way of an order or rule. Similarly, section 12-10-10.1 NMSA would not operate as an exception to the requirement that governing bodies of political subdivisions of the state be responsible for the all hazard emergency management of their respective jurisdictions.

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

8. DISPARITIES ISSUES

None.

9. HEALTH IMPACT(S)

HB436 could have adverse health impacts, insofar as it would hamper the efforts of NMDOH and other governmental agencies in responding appropriately to public health emergencies.

10. ALTERNATIVES

None.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB436 is not enacted, the All Hazard Emergency Management Act, the Public Health Emergency Response Act, the Riot Control Act, and the Energy Emergency Powers Act would not be amended to require that any order, rule or other directive issued by a governmental

entity to close or limit businesses or facilities otherwise open to public use or patronage that includes exemptions in whole or in part for some businesses or facilities shall also include exemptions for facilities operated by religious organizations exempt from taxation under Sec. 501(c)(3) of the Internal Revenue Code as places of worship.

12. AMENDMENTS

None.