

LFC Requester:	Sunny Liu
----------------	-----------

**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: Date 2/7/19
Original Amendment _____ Bill No: SJR9
Correction Substitute _____

Sponsor: Sen. William Soules Agency Code: 924
Short PUBLIC EDUCATION Person Writing Daniel Manzano
Title: COMMISSION, CA Phone: 505-670-3820 Email Daniel.Manzano@state.nm.us

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:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SJR9 proposes to convert the Public Education Commission (PEC) with a State Board of Education that would determine public school policy, distribute public school funds and control and manage the public education department and the administration, operation and finance of public schools. The State Board of Education would consist of 5 elected members and 4 members appointed by the Governor (all in staggered terms). The board would appoint a Superintendent to manage the Public Education Department under the direction of the State Board of Education. During the transition from the public education commission to the state board of education, the elected members of the commission shall serve as the state board of education until January 1 following the general election in 2022.

If approved, this would next need to be submitted to the public for approval in the next general election or at a special election.

FISCAL IMPLICATIONS

The bill does not clarify whether or not the State Board of Education members are paid. Additionally, it is not clear what the fiscal impact of bringing this resolution, if enacted, to a vote during an election.

SIGNIFICANT ISSUES

Most recently, the New Mexico Constitution was amended in 2003 to move away from a State Board of Education and Department of Education as described in the current bill. After just 16 years, this bill proposes to return public education to a previous governance structure. It is not clear what the intended outcome of the change would achieve.

This change would limit the Executive's power to directly set the vision for the state's education on behalf of the voting electorate. Under the proposed governance structure, the Executive would be able to appoint five of the members who would be presumably aligned and there would be four elected members to potentially provide balance.

One major concern with this resolution is the fact that the presently-elected PEC members would be automatically seated as the State Board of Education for the next four years, positions of authority for which they were not elected. Additionally, the current role and scope of the PEC is limited to the oversight of state-authorized charter schools – not the broad oversight of the entire agency, including selecting the agency's head.

There are several complex matters that the Public Education Department works on and must complete on a daily basis in order to comply with state and federal law, and legal requirements that makes passing this Senate Joint Resolution impractical and would place the core mission of the agency at risk. The department has state plans that require certain approvals and requirements beyond the control of the agency. The state plan would be subject to challenge if the actions taken to create or amend the plans while effective are completed as an action items in an open meeting.

In a recent District Court currently on appeal, the District Court ruled that the department had violated the Open Meetings Act when it provided a written determination following that did not mirror the motion ultimately voted on by the PEC. If there is a similar occurrence for other significant matters that the agency is responsible for carrying out, that could result in significant impacts, such as the agency being out of compliance with federal law or state law, or court enjoinders.

Recently issued findings and conclusions by the District Court, in Yazzie/Martinez, which noted, among other things, Defendants have violated their duty over the control, management, and direction of all public schools. The findings and conclusions also provide that an injunction is hereby issued enjoining the defendants to take immediate steps, by no later than April 15, 2019 to ensure to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.

The findings and conclusions also noted that in order to assure not only that the State of New Mexico takes the steps necessary to execute the required short-term reforms, but also to ensure that long-term comprehensive reforms are implemented by the State, the Court will retain jurisdiction over the case. The state would need to ensure it is complying with the intent of the court in its substantial findings and conclusions issued which in excess of 600 pages. However, interpreted, it is unclear how the PEC would be able to comply with the Court's mandates, while the Court has maintained jurisdiction over the case.

Additionally, the Division of Vocational Rehabilitation is identified as a division under stature. The division works with various boards or councils as provided by law, and makes decisions based on federal funds, and its state plan with fairly similar requirements as the ESSA plan. The role of the PEC in making determinations over the Division of Vocational Rehabilitation as action items in an open meeting may be conflict with those responsibilities of the other existing boards or councils, or the currently existing state plan applicable to vocational rehabilitation services.

PERFORMANCE IMPLICATIONS

According to the Charter Schools Act, 22-8B-16 NMSA 1978, the PEC's powers and duties are delineated as follows:

The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a

previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.

The proposed State Board of Education would presumably be the sole chartering authority of state-authorized charter schools. Should the resolution be enacted and passed by voters, there would be a need to ensure that charter schools across the state are made aware of any impact to current policies, practices or charter contracts.

ADMINISTRATIVE IMPLICATIONS

If SJR9 is enacted, and the resolution passes in an election of New Mexico voters, the Executive would need to consider how to ensure a seamless transition of authority, ensuring both the Board and the Department understand their respective roles and responsibilities. There may be implications of the appointed Cabinet Secretary, and other governor-appointed staff at the Department.

Currently, the work of the PED's Charter School Division is outlined in the Charter School Act, 22-8B-17 NMSA 1978 as follows:

- The "charter schools division" is created in the department. The division shall:
- A. provide staff support to the commission;
 - B. provide technical support to all charter schools;
 - C. review and approve state-chartered charter school budget matters; and
 - D. make recommendations to the commission regarding the approval, denial, suspension or revocation of the charter of a state-chartered charter school.

While the bill's proposed governance changes may not have a direct implication for how the CSD currently operates—under the direct supervision of the PED leadership, however also responsive in providing support to the Commission—neither does this resolution clarify or resolve issues at point and other legal questions relating to authority or ultimate decision-making power on matters related to charter schools.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill has implications for the Article 2 of the Public School Code, 22-2 NMSA 1978, Public Education Department and Commission, the Public Education Department Act, 9-24 NMSA 1978, and the Charter Schools Act, 22-8B NMSA 1978.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequences of not enacting this bill is that the Public Education Department would continue operating as a cabinet department headed by a Secretary of Education appointed by the Governor and confirmed by the Senate, as Article XII, Section 6 of the New Mexico Constitution currently reads.

AMENDMENTS