

<b>LFC Requester:</b>	<b>Becerra</b>
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**AGENCY BILL ANALYSIS  
2021 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** 2/26/2021  
**Bill No:** SB401

**Sponsor:** Michael Padilla  
**Short Title:** CAREER TECHNICAL  
EDUCATION UNDER PED

**Agency Name and Code**    PED-924  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY21</b>	<b>FY22</b>	<b>FY23</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined

(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: Senate Bill 401 (SB401) proposes to clarify the scope of the Public Education Commission’s (PEC) duties to those addressing their primary function, the authorization of state-chartered charter schools. The bill would amend statute to reflect more accurately PEC’s actual, and minimal, involvement in several other areas – including suspension of local school boards, career and technical education, the Indian Education Act, the Hispanic Education Act, and the School Library Material Act.

**FISCAL IMPLICATIONS**

SB401 does not contain an appropriation.

SB401 would require PEC, as a state commission, be legally represented by the Attorney General’s Office (AGO) (see, “Significant Issues,” below). Currently, PED pays for PEC’s contract for representation by private attorneys. These contracted services have cost PED approximately \$452 thousand for three years.

**SIGNIFICANT ISSUES**

SB401 proposes to amend several sections of the Public School Code to reflect more accurately and consistently PEC’s involvement, and in some cases lack of involvement, in areas of public education law and policy other than the authorization of state-chartered charter schools.

As indicated, PEC’s primary function is the review, and approval or disapproval, of applications to authorize state-chartered charter schools, including renewal, suspension, and revocation of state-level charters. These matters occupy the bulk of its time, work, public meetings, and hearings; SB401 merely proposes to amend statute to better clarify this responsibility. Section 1 of the bill would amend the Public Education Department Act by removing reference to the PEC’s advisory function on policy matters, and instead, specifically address its primary function of authorization of state-chartered charter schools. Section 1 would further require that AGO undertake legal representation of the PEC as a state commission, rather than allowing it to contract for private legal representation, which may include significant expense (see, “Fiscal Implications,” above). As an example, representation by private attorneys at the recent December 9-12, 2020 meeting of the PEC incurred costs of \$10,530. In the past, AGO has represented PEC at their public meetings for purposes of advising with regard to compliance with the Open Meetings Act.

Section 2 of the bill addresses possible suspension of local school boards. The Public School Code currently requires the Secretary of Public Education consult PEC before suspending from authority a local school board or school official who has failed to execute their duties to such an extent that suspension is the only viable path to correcting course for that district or official. PEC is not in any realistic position to be aware of these issues relative to local school boards or officials, and even current law provides only that it *may* offer alternative actions for the Secretary's consideration; statute does not require PED or the Secretary actually undertake any such recommendations. Suspension of a local school board is an exceptional remedy provided for the resolution of exceptional circumstances, only undertaken in rare instances after all other possible remedies have been considered and attempted, or rejected. The requirement that the Secretary consult with a body not even tangentially involved with the governance of local school boards to solicit advice that need not even be considered, simply adds an unnecessary impediment to an already involved and fraught bureaucratic process.

Section 3 of SB401 addresses an ongoing internal conflict in the Charter Schools Act regarding the withholding and administration of the two percent of a charter school's state equalization guarantee (SEG) distribution for their technical support. Section 22-8B-13 NMSA 1978 specifically authorizes either a school district, in the case of locally chartered charter schools, or the Charter Schools Division (CSD), for state-chartered charter schools, to withhold and use that two percent for support of a charter school. While the PEC may be the established authorizing body for state-chartered charter schools, it is CSD, a division of the PED, which possesses the necessary expertise, competence, and day-to-day resources to provide actual support and assistance to charter schools in navigating the many requirements of federal and state law, regulation, and policy. Indeed, it is CSD that currently provides support and guidance to charter schools as a matter of course. However, Section 22-8B-9(B)(8) NMSA 1978 requires the inclusion of a detailed description in the charter contract of how the *chartering authority* will use the withheld two percent. As noted, PEC, as the chartering authority, neither withholds nor uses these funds, and this element of the charter contract is not addressed in contracts for state-chartered charter schools. Striking this paragraph, would resolve this contradiction in the Charter Schools Act, and accurately reflect the reality of state-chartered charter school operation and support.

Sections 4 through 6 of the bill address PEC's lack of involvement in career and technical education policy. Those sections also make technical changes throughout, to reflect the shift of focus from "vocational" education, previously often seen as a lesser path than academic education, to "career and technical education" (CTE), a fully viable partner-path with academic education as a means for students to achieve success after completion of their educational careers. These proposed amendments likewise, and logically, change references to the "Instructional Support and Vocational Educational Division" to its successor in interest, the "Career and College Readiness Bureau" of PED.

Section 4 would make PED the governing authority for the establishment and implementation of policies for all state plans addressing CTE. These proposed amendments merely portray the current reality of the situation: It is PED who already acts in these capacities, while PEC lacks the necessary expertise and program familiarity to be effective in this role.

Section 5 likewise addresses another incongruity in current law. Due to a misreading of the requirements of the federal Carl D. Perkins Vocational and Technical Education Act, PEC has long been acting as sort of "pass-through" agency for receipt of Perkins funds. It was originally

supposed that the Perkins Act required a “commission” be recipient of the federal funds distributed for state implementation of the act. However, after PED recently sought guidance on this question from the U.S. Department of Education (USDE), that Department clarified that this was far too restrictive an interpretation of the Perkins requirements. USDE affirmed PED is qualified to act as initial recipient of those funds under the federal law, and the proposed amendments to Section 22-14-3 NMSA 1978 would reflect that, and necessarily centralize state-level authority for the implementation of the federal Perkins Act and state CTE law under PED, removing yet another unnecessary layer of bureaucracy from state policy. Further, Section 22-1-12 NMSA 1978, enacted in 2019, created an eight-year pilot project to fund high-quality CTE programs and monitor their effects on student outcomes. That section established PED as the entity to administer that program. It is better that one state-level entity administer the various state and federal CTE programs, and PED has the expertise and capacity to accomplish that work.

Section 6 of SB401 proposes amendments to statute that currently require the College and Career Readiness Bureau to undertake its duties “subject to the policies of the [PEC]”. As noted, PEC does not administer or implement any policies relevant to CTE. Again, PED is better and more appropriately situated to act in this regard.

Section 7 would strike the requirement that PED’s Instructional Materials Bureau make reports to PEC concerning implementation of the School Library Material Act upon request of the Commission. PEC is neither mentioned nor involved in any other way, either in law or in rule, in the administration of the School Library Material Act. The Instructional Materials Bureau of PED notes there have been no appropriations to the School Library Material Fund in at least the last 8 years, and no reports have been made to PEC in at least that time. The proposed amendments to this section merely reflect the continued lack of involvement by PEC in this issue.

Section 8 strikes a requirement in the Indian Education Act that members of the PEC meet with the Indian Education Advisory Council, and other state and tribal officials to assist in coordinating activities related to the education of tribal students. PEC already assigns a commissioner as liaison to the Indian Education Advisory Council.

SB401 Section 9 would strike a requirement that the Hispanic Education Advisory Liaison advise the commission on the development and implementation of the state plan for public education as it relates to Hispanic students. This proposed amendment is consistent with other proposed amendments in SB401 that reflect PEC’s actual and minimal involvement in the development and implementation of New Mexico state plans for public education.

## **PERFORMANCE IMPLICATIONS**

Few, for PED. The department already undertakes most of the duties and responsibilities that current law assigns to PEC and SB401 would officially transfer to PED. In those cases where actions by PED would be affected by the provision of the bill, it would reduce administrative burden and extra, unnecessary effort.

## **ADMINISTRATIVE IMPLICATIONS**

If enacted, the provisions of SB401 may require PED to reassess and amend some sections of

relevant administrative rule.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**AMENDMENTS**