

LFC Requester:	Helms
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 01/25/23
Bill No: [HJR7](#)

Sponsor: Block **Agency Name and Code**
Short Title: PUBLIC SCHOOL ADMIN OFFICE, CA **Number:** PED - 924
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	N/A	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with:

[SJRI, State Board of Education](#)

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Joint Resolution 7 (HJR7) proposes an amendment to Section 6 of Article XII of the New Mexico Constitution, which would abolish the Public Education Department (PED) as a Cabinet-level agency and replace it with the existing Public Education Commission (PEC) to administer school law and funding for the public schools. The bill would likewise replace the Secretary of Education with a State Superintendent of Education, to be hired by the PEC. The current PED would be renamed the “Public School Administrative Office”.

FISCAL IMPLICATIONS

The joint resolution does not contain an appropriation.

To approve this change, voters would have to pass a constitutional amendment. Based on the New Mexico Secretary of State’s ballot sample printing costs, the estimated cost per constitutional amendment is \$125,000-\$150,000, depending upon the size and number of ballots and if additional ballot stations are needed, according to the Secretary of State.

SIGNIFICANT ISSUES

HJR7 is one of several proposals this legislative session that would return administration and oversight of public education in the state to its 20th Century incarnation, prior to the public education constitutional amendments and legal reforms of 2003-2004, although HJR7 would also severely curtail state-level oversight authority of public education. The joint resolution proposes to replace the PED as the supervising agency of public education in New Mexico with the PEC. The PEC, the current members of which would continue in their office until the next appropriate election, would administer education policy and fiscal policy in the state and appoint a Superintendent of Public Instruction, to replace the Cabinet Secretary of Public Education. This Superintendent would have the ability to hire professional and clerical staff sufficient to carry out the powers and duties of their office, as provided by law. The PED, relegated to administrative duties, would be renamed the Public School Administrative Office, and would be created separately as an executive agency. All parties named in the joint resolution, including the PEC, the State Superintendent, and the Public School Administrative Office are explicitly enjoined from interfering with the powers and duties of local schoolboards, school districts and governing bodies of charter schools.

Under the proposed governance structure, statewide consensus on education policy would be more difficult and the execution of a unified vision of public education in the state would be prevented. Unfettered local authority as proposed by HJR7 will almost certainly result in the proliferation of mutually discordant local policy, which could exacerbate incongruent proficiency levels and lead to unequal and inequitable outcomes among students. The need for a unified public education vision and comprehensive oversight of local authorities has most recently been emphasized in the *Martinez* and *Yazzie* lawsuit. It is difficult to see how the state could effectively execute its duties under the lawsuit if statewide oversight of local education is eliminated as proposed by HJR7. If the statewide education authority is removed by the constitutional amendment, responsibility, liability, and culpability would necessarily devolve to the local school boards and governing bodies, who might be ill-prepared to defend their actions and local oversight in court.

It is important to note that the decision in *Martinez* and *Yazzie* was partly predicated upon considerations of equal protection and due process, found in Section 18 of Article II of the New Mexico Constitution, the Bill of Rights, and its relationship to the guarantee in the Education Clause (Article XII, Section 1) that requires a “*uniform system* of free public schools sufficient for the education of, and open to, *all the children* of school age in the state shall be established

and maintained.” Maintenance of a properly uniform system of education would be difficult to achieve with 129 local school district authorities and approximately 100 charter schools all exercising independent authority without oversight. Eliminating the PED and state authority over public education, as HJR7 proposes to do in the wake of *Martinez* and *Yazzie*, would place these most vulnerable students in uncertain educational circumstances when the Court’s directive the State of New Mexico was to better protect these students and ensure they receive a *uniform and sufficient* education.

Another concern about this legislation is that in the next several years the current PEC members would be automatically seated as the State Board of Education until the expiration of their current terms, placing them in positions of authority for which they were not appointed or elected, and for which they may not be qualified.

Another concern about this legislation is that in the next several years the current PEC members would shift from authorization and limited oversight of state-chartered charter schools to an administrative board in charge of public school funding and financial accounting (without infringing upon local authority) and hiring the State Superintendent. These are functions for which the current members of the PEC were simply not appointed or elected and for which they are arguably and potentially not qualified. The current duties of the PEC, as noted, are focused on authorization and oversight of state-chartered charter schools, a much more limited purview than that proposed by HJR7. The PED, on the other hand, addresses many complex issues of federal, state, and tribal law daily that the passage of HJR7 may imperil with the relative inexperience of the currently seated PEC.

OTHER SUBSTANTIVE ISSUES

Some of the changes proposed by HJR7 do not seem to have been fully considered. For example, without the authority to oversee the powers and duties of local school authorities, governing bodies of charter schools would essentially have no effective oversight. Schoolboards, at least, are subject to election by the voters resident in their school district under the Local Election Act (Chapter 1, Article 22 of the NMSA 1978). Governing bodies of charter schools are not so elected. Neither potential recall actions nor non-incumbent candidates could be put before voters whose children attend charter schools. With the delegation of state oversight authority to local school boards proposed by HJR7, aggrieved students and families would lack recourse with the governing body or head administrator of a charter school, except with the courts.

In Subsection F of Section 1 of HJR7, the legislature is charged with undertaking a thorough review of public school laws to identify those provisions that infringe upon the powers and duties of local school authorities and, presumably, amend or repeal them, although that is not explicitly stated. Such a review would be insufficient, however, to address all the changes required by this reversion to a State Board of Education and abolition of state-level authority. The Public Education Act, which establishes the PED as a cabinet-level executive agency, and subordinates the PEC to the PED as an administratively attached agency would also require amendment or repeal.

PERFORMANCE AND ADMINISTRATIVE IMPLICATIONS

Comprehensive administrative action would be required if HJR7 passes the legislature, and the proposed constitutional amendment is ratified by the electorate. HJR directs the legislature to undertake review of public school laws to “identify those provisions that infringe upon the powers and duties” of local school authorities, this will be an enormous undertaking. Because public education in the state has been consolidated under a statewide cabinet agency for 20 years,

nearly all of the Public School Code can be read in some way to “infringe” upon local authority. Comprehensive review and intelligible and actionable replacement of large amount of the Public School Code might require more than one legislative session to accomplish. While HJR neglects to address this, other areas of law would also require review, such as the Public Education Department Act.

Additionally, it is likely that nearly the entirety of Title 6 of the New Mexico Administrative Code would need to be reviewed and repealed or substantially amended, as much of Title 6 is necessarily predicated upon PED’s and the Secretary of Public Education’s near-plenary authority over public education in the state. Every potential rulemaking requires a bare minimum of several months from internal work to initial proposal to final adoption and promulgation. It is likely that the majority of the proposed Public School Administrative Office’s staff would be involved in remedial rulemaking for many months in order to sufficiently rewrite Title 6 to reflect this fundamental change in the state’s administration of public education.

With this comprehensive review and rewrite of current public education rule would include an associated review and alteration or rescission of numerous programs that the PED currently administers from its position of statewide authority. The proposed Public School Administrative Office would lack this authority. Again, this is an enormous undertaking that will likely consume enormous amounts of staff time and resources.

The PED has executed many contracts, memoranda of understanding and agreement, and intergovernmental agreements with vendors, other educational and governmental authorities, and other governments that will all require review and revision or termination, with unknown effect and consequences, as all these legal instruments were predicated upon PED’s statewide authority.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with and relates to [SJR1, State Board of Education, CA](#), which proposes to return the governance of public education in the state to the State Board of Education, with current PEC members serving in as members of the board until the next appropriate election, but unlike HJR7, maintains state-level authority over public education.

TECHNICAL ISSUES

The joint resolution notes several times that the powers and duties of local school boards shall not be infringed. The Constitution, of course, includes no reference to these powers and duties, which would be likely contained in the Public School Code. The sponsor may wish to include a reference to the powers and duties of local school boards, “as provided by law”

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Constitutional guarantees of uniformity in education will be better served by the existence of a single unified authority over public education in the state.

AMENDMENTS

The sponsor may wish to consider requiring review and amendment of other areas of law than public education, considering the comprehensive and fundamental nature of the reform proposed by the joint resolution. For example, review of the Public Education Department Act to address

changing nature and name of PED and its administrative relationship with PEC may be necessary. Review of the Local Election Act may also be appropriate, to bring election of charter school governing bodies under its purview, so that students and families may have at least some electoral oversight of charter schools and recourse in the face of poor performance.

The sponsor may wish to consider referring to the powers and duties of local school boards in the joint resolution, “as provided by law.”