

LFC Requester:	Liu
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**AGENCY BILL ANALYSIS
2023 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:
Original **Amendment**
Correction **Substitute**

Date 10/20/23
Bill No: SJR1

Sponsor: Neville
Short Title: State Board of Education, CA

Agency Name and Code 924
Number: _____
Person Writing Gregory Frostad
Phone: (505) 470-5752 **Email** Gregory.Frostad@ped.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
N/A	N/A	N/A		

(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	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Joint Resolution 7 (HJR7)
Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Joint Resolution 1 (SJR1) proposes an amendment to create the current Public Education Commission (PEC) as a new State Board of Education (SBE), which shall determine public school policy and control distribution of public school funds and financial accounting, including the direction of the Public Education Department (PED). Essentially, SJR1 proposes to reverse the constitutional amendments and other education reforms of 2003-2004, which established the PED as a cabinet-level agency.

FISCAL IMPLICATIONS

The joint resolution does not indicate whether the members of the proposed SBE will be paid.

According to the Secretary of State (SoS), under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the SoS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The SoS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

If SJR1 passes the legislature, and the proposed constitutional amendment is ratified by the people at the next appropriate election, substantial amendment of the Public School Code will be required at uncertain, but likely substantial, cost to the legislature and the Compilation Commission.

SIGNIFICANT ISSUES

The currently serving ten members of the PEC would serve as the initial members of the SBE until their terms expire, after which members of the SBE will be elected in a general election, but on a nonpartisan ballot. The current Secretary of Public Education will serve as the State Superintendent of Education until the SBE appoints another qualified person to serve as such – without regard for political affiliation – who holds a New Mexico teaching license and has teaching and administrative experience. Notably, the joint resolution transfers fiscal functions and oversight from the proposed Superintendent of Public Instruction to the SBE, directly, and

the Superintendent would merely be permitted to perform administrative and regulatory powers and duties, with all direct authority over such matters stricken.

In 2003, the people of New Mexico ratified and affirmed constitutional amendments that converted the State Board of Education to the current PEC and created, instead, the PED as a Cabinet-level agency, with comprehensive authority over the administration of public primary and secondary education in the state. PEC, by contrast, was assigned nominal duties, such as acting as a pass-through agency for citizen input into public education policy for the Secretary of Public Education and the legislature (see, for example, Section 22-2-2.2 NMSA 1978).

Under the proposed governance structure, all members of the SBE would be elected, eliminating the Executive's direct authority over public education in favor of the ten-member commission, making consensus on education policy less likely, and hampering the execution of a unified vision for public education with the diffuse and possibly fractious authority of a committee; this consideration may be of particular concern, given the transfer of fiscal authority from a single administrator to the commission. Also of concern, the current PEC members would be automatically seated as the State Board of Education until the expiration of their current terms, enshrining them in positions of authority for which they were not elected, and for which they are arguably and potentially not qualified.

The current duties of the PEC are focused on authorization and oversight of state-chartered charter schools, a much more limited purview than the broad, plenary oversight of the PED and public education throughout the state with which they would be awarded under the scheme proposed by SJR1. The PED, on the other hand, addresses many complex issues of federal, state, and tribal law daily that the passage of SJR1 may imperil with the relative inexperience of the currently seated PEC, potentially placing the core mission of the agency at risk.

These comprehensive, statewide oversight responsibilities and authority were most recently emphasized in the District Court's decision in the *Martinez* and *Yazzie* consolidated lawsuit. The Court has retained jurisdiction over this matter to ensure long-term, comprehensive reforms are implemented by the State. The plan to address this judgement is a living document and action item for the department, which is still open to adjudication and further court action. It seems imprudent to undertake the fundamental change in the administration of public education proposed by SJR1 while this historic case remains in the Court's jurisdiction, and the effects of such a change may be difficult to predict.

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 of aware of any impact to current policies, practices, or charter contracts.

Regardless of the details of specific changes made to particular PED programs and bureaus, the department would likely need to undergo significant reorganization under the new system.

ADMINISTRATIVE IMPLICATIONS

If SJR1 passes and the constitutional amendment is ratified by 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.

As noted, the new State Board would likely become the sole state-level chartering authority for charter schools. Therefore, the PED's Charter Schools Division would likely be most immediately affected by the proposed changes. 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. Presumably, these questions would be addressed in the substantial work to review and amend the entirety of the Public School Code to reflect this change.

Additionally, a fundamental change of this nature would require substantial amendment to the vast body of PED's current rules, to reflect this change in leadership and administration.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HJR7, which would also place the PEC in administrative authority over public education in the state, and would rename the PED, the "Public School Administrative Office" (PSAO), to be overseen by a State Superintendent of Instruction, rather than a Cabinet Secretary. HJR7, however, would also enjoin all state-level education authorities, including the PSAO, the PEC, and the State Superintendent from "interfering with the powers and duties of local school boards, school districts, and the governing bodies of charter schools.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Currently, the PEC is an agency administratively attached to PED. If PEC becomes the administrative body in charge of both public education and the PED, itself, these changes in the respective natures, functions, and relationships of the PED and PEC would require substantial amendment to, or likely even repeal of, the Public Education Department Act. The PED Act was enacted in 2004, in the wake of the constitutional amendments, and organized the new department, made all prior references to the State Board references to PED and references to the Superintendent of Public Instruction references to the Secretary, and established PED as the sole authority for the distribution of federal education aid.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A