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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**SPONSOR** Trujillo, CH **LAST UPDATED** 1/31/15 **HB** 74

**SHORT TITLE** Public Education Commission As Independent **SB** \_\_\_\_\_

**ANALYST** Chavez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$1,100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	> \$2,200.0		Recurring	PEC Operating Budget
	(>\$2,200.0)		Recurring	PED Operating Budget

(Parenthesis ( ) Indicate Revenue Decreases)

For the Legislative Education Study Committee  
 Relates to Senate Bill 148

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 74, endorsed by the Legislative Education Study Committee (LESC), appropriates \$1.1 million from the general fund to the Public Education Commission (PEC) for the purpose of employing staff and carrying out other provisions of the bill. The bill also eliminates the PEC administrative attachment to the Public Education Department (PED).

## FISCAL IMPLICATIONS

The appropriation of \$1.1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY16 shall revert to the general fund.

The bill appropriates \$1.1 million to the PEC and transfers the 2 percent set-aside funding from state-chartered charter schools from PED to PEC to allow the PEC to hire staff and carry out its duties as defined in the Charter School Act.

For FY15 PED will receive approximately \$2.2 million in the 2 percent set-aside funding from state-chartered charter schools' formula funding. Because PEC is administratively attached to PED, PED is responsible for funding PEC meetings and member travel and per diem. The department notes they use this allocation for a number of different purposes in addition to supporting PEC efforts at PED. These other uses include support staff and other expenses of the charter school division, support from the general counsel's office, administrative oversight of charter school audits, support for the departments' reimbursement process, and budget oversight.

PED adds that many of these responsibilities met through the use of the 2 percent set-aside funding are core responsibilities of the PED secretary as designated by the New Mexico Constitution and that many of the resources available at PED to support the statutory responsibilities of the PEC reside at PED. PED argues these resources are a subset of the overall support provided to all public school districts and charter schools and removing the allocation of the two percent set-aside funding entirely from PED will significantly hamper the department's ability to meet its statutory responsibilities.

In analysis for a similar bill during the 2013 legislative session (HB392), LESC estimated PEC would need \$375 thousand to be a stand-alone agency no longer attached to PED. LESC estimated costs included:

- \$261,340 to support four staff positions:
  - >an executive secretary/admin assistant (midpoint salary of \$35,131+30 percent benefits = \$45,670);
  - >education administrator-A (midpoint salary of \$53,040 + 30 percent benefits = \$68,592));
  - >financial coordinator-A (midpoint salary of \$53,040 + 30 percent benefits = \$68,952);
  - and
  - >lawyer-A (midpoint salary of 59,820 + 30 percent benefits = \$77,766)
- \$25,000 for travel;
- \$15,000 for professional transcription services (court reporters);
- \$12,000 for membership fees/dues (National Association of Charter School Authorizers and National School Boards Assn);
- \$26,660 for office supplies; and
- \$35,000 other costs (primarily costs associated with court appeals)

While the cost may be slightly higher in FY16 due to inflation, if the LESC estimates are correct, the approximate \$3.3 million this bill allocates to the PEC significantly overfunds the estimated costs needed by the PEC to support it as a stand-alone agency.

PED estimates for the same bill indicate PEC would need approximately \$1.2 million annually to meet the requirements of administratively detaching from PED. However, even if this higher estimate is correct, the PEC would still be over-funded by the appropriations in this bill by more than \$2 million.

Additionally, the creation of PEC as a stand-alone agency may lead to recurring general fund appropriations if the 2 percent set-aside funding is not designated as the only source of revenue for the agency, as is the case with this bill.

## **SIGNIFICANT ISSUES**

This bill removes language from The Public Education Department Act (Section 9-24-9 NMSA 1978) that administratively attaches PEC to PED. The bill requires PEC to promulgate rules, with approval of the PED secretary, necessary to carry out its functions. The bill provides an appropriation to employ staff and requires PEC to prepare an annual budget and report to the Legislature and governor.

Section 3 of the bill makes changes to Section 22-8B-6 NMSA 1978 of the Charter School Act related to the approval of charter schools and other procedures in the charter school approval process, including changing the date a charter application must be submitted to the chartering authority from July 1<sup>st</sup> to June 1<sup>st</sup>.

Section 5 refers to the section of the Charter Schools Act (Section 22-8B-13 NMSA 1978) relating to charter school financing. The bill, by changing “school district or division” to “chartering authority”, gives PEC, rather than the charter school division of PED, the authority to withhold 2 percent set-aside of the school-generated program cost for its administrative support of a charter school.

This section also changes “school district” to “local school board” pursuant to the change to the definition of “chartering authority”.

Section 7 of the bill adds language that provides that the charter school division (CSD) of PED will provide “employees directed to perform duties as delegated to them by the commission in order to render technical assistance to charter schools and to assist the commission in the performance of its statutory duties.”

The bill makes other changes to the Charter Schools Act (Section 22-8B-6 NMSA 1978), including prohibiting a chartering authority from collecting fees for the authorization process (current law prohibits application fees), and requiring the transcripts of a public hearing on a charter school application to any member who wasn’t present at the public hearing before the chartering authority makes a decision to accept or deny an application or renewal.

This bill removes administrative attachment of PEC from PED; however, it is not clear what the resulting structure of the agency will be – will the PEC be formed as a separate agency, to be included in the GAA? What would the role of the charter school division be in relation to the PEC under the provisions of the bill? Legislators may wish to clarify the duties and responsibilities of each of the organizations associated with the authorization and oversight of charters as provided for in this bill. A related model to consider could be the New Mexico Lottery Authority (NMLA), which does not receive general fund revenues but provides a budget

to the legislature. However, the Lottery Authority Act articulates the powers granted to the NMLA necessary to carry out the provisions of the New Mexico Lottery Act. This bill does not clarify the powers of the PEC as administratively detached from the PED; furthermore, any such rules would need to consider the New Mexico Constitution to ensure the powers of the PEC do not conflict with the constitutionally-provided powers of the PED secretary.

PED notes:

Article XII, Section 6(D) of the New Mexico Constitution provides that the secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law. This constitutional requirement, particularly with regard to financial oversight, requires that the department continue to oversee the financial and audit requirements of law with regard to all charter schools including budget approval, audit oversight for state chartered charter schools, and the distribution of funds.

PED further adds if PEC is given authority to to implement the provisions of the Charter Schools Act that remain the responsibility of the department, it could be viewed as conflicting with the Constitution. Financial decisions made and implemented by the department that are clearly the purview of the secretary could overrule decisions made by the commission.

PED also points out that the current arrangement of PEC’s administrative attachment to PED as the statewide authorizer is consistent with best practices stated by the National Association of Charter School Authorizers (NACSA). However, LFC staff could find no reference to administrative attachment of a chartering authority to be considered best practices by NACSA in the document provided by PED. NACSA’s “Policy Recommendation: Statewide Alternative Authorizers”, also provided by PED, states: “Each state should have a set of authorizers that ensure applicants and charter schools in all jurisdictions have access to a high-quality authorizer that operates in addition to the local districts. Ideally, these will be Independent Charter Boards (ICB).” Some of the states’ ICBs provided as examples are administratively attached to a public education department (Hawaii), while others, such as Washington, appear to be independent entities.

## **PERFORMANCE IMPLICATIONS**

If PEC is no longer administratively attached to PED and receives direct general fund appropriations, a performance framework and performance measures should be developed to ensure accountability and sound practices of the PEC.

PED notes new staff hired by the PEC would need significant training prior to being able to provide support and oversight.

## **ADMINISTRATIVE IMPLICATIONS**

PED notes the charter schools division leverages all divisions and bureaus at PED to provide oversight of state-authorized charters. PED staff has access to data from the school budget bureau, special education bureau and more, while PEC staff may not be able to exchange data freely with PED, and would not have the same access to the broader PED oversight services schools are provided with, which PED argues would affect the oversight of charter schools.

## RELATIONSHIP

Senate Bill 148 makes changes to Section 22-8-6.1 NMSA 1978, including requiring charter schools to submit annual budgets to the PEC rather than the charter schools division of PED.

## TECHNICAL ISSUES

Page 15, lines 22-23 of Section 5 of the bill changes “school district or division” to “chartering authority”. However, the PED, and not the PEC, is the authorized agency to withhold SEG funds for program support. Section 2, Subsection A of the bill states that the SEG distribution “is the difference between the state-chartered charter school’s program cost and the 2 percent withheld *by the department for the commission* for administrative services.” (Emphasis added.) This language should be matched in Section 5 to ensure continuity and to preserve the department’s authority to withhold SEG funds.

Page 17, lines 19-24 of Section 7 requires the charter school division of PED to provide staff support to the PEC. However, page 3, lines 10-13 of Section 1 of the bill requires PEC to employ staff as well. These two provisions appear to be in conflict.

Section 7 also provides that the charter school division shall review, approve and report to the commission on state-chartered charter school budget matters. However, given other changes to PEC’s approval authority in other sections of the bill, what is meant by the charter school division’s authority to “approve” should be clarified.

## POSSIBLE QUESTIONS

What will be the administrative structure of the PEC once administrative attachment to PED is removed?

KC/bb