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## FISCAL IMPACT REPORT

SPONSOR	Garcia, M.H.	ORIGINAL DATE	02/06/13	LAST UPDATED	03/07/13	HB	392/aHEC
SHORT TITLE	Public Education Commission as Independent	SB					
		ANALYST	Gudgel				

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	(\$375.0)		Recurring	Public Education Department 2 Percent State Equalization Guarantee Set Aside
	\$375.0		Recurring	Public Education Commission – Operating Budget

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

## **SUMMARY**

### Synopsis of HEC Amendment

House Education Committee Amendment for House Bill 392 grants the Public Education Commission the ability to adopt policies and promulgate rules to implement the provisions of the act, and includes the transfer of \$375 thousand of the 2 percent state equalization guarantee set aside received by the Public Education Department to the Public Education Commission for FY14.

### Synopsis of Original Bill

House Bill 392 amends the Public Education Department Act and the Charter Schools Act Public School Code, creating the Public Education Commission (PEC) as an independent commission no longer administratively attached to or staffed by the Public Education Department (PED). The bill also eliminates the authority of the Secretary of the PED to review charter school appeals and places this duty with the PEC.

## **FISCAL IMPLICATIONS**

Currently, the PEC is administratively attached to the PED. The PED receives 2 percent of all state-chartered charter schools' state equalization guarantee (SEG) distributions to provide administrative oversight of state-chartered charter schools – about \$1.6 million in FY13. See Sections 22-8-25 and 22-8B-13 NMSA 1976. Because the PEC is administratively attached to the PED, the PED is responsible for funding the PEC meetings and member travel and per diem. The 2 percent SEG withholding is used by the PED to support the efforts of the PEC, to support staff and other expenses of the Charter School Bureau, to pay costs of support from the PED's office of General Counsel, to provide administrative oversight of charter school audits, to support the reimbursement process at the PED and to provide budget oversight.

LESC estimates the PEC will need \$375 thousand to support the changes in the bill, including:

- \$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)

The original bill does not change the distribution of SEG set-aside funding; however the House Education Committee Amendment transfers \$375 thousand of the 2 percent SEG set aside to the

PEC in F14. The amendment does not establish the permanent transfer of any portion of the SEG set aside to support the PEC, therefore the issue will likely have to be addressed annually.

The PED estimates the PEC would need approximately \$1.2 million annually to meet the requirements of the changes proposed in this bill.

**The bill does not have a finance referral. A referral to one of the finance committees should be considered.**

## **SIGNIFICANT ISSUES**

The bill establishes the PEC as a free standing commission that will be able to seek funding from the Legislature. The bill eliminates the authority of the Secretary of the PED to review charter applications not ruled on by a chartering authority and the authority to review appeals. The bill establishes the PEC as the body authorized to review an appeal from a decision made by a local school board to grant or deny a charter. The grounds of appeal are limited to the grounds upon which the school board based its decision to deny, non-renew, suspend or revoke the charter school. A charter school applicant or governing body may appeal a final decision of the commission to district court. The bill also requires the transcript and any supporting documents submitted for a public hearing to grant or deny a charter school application to be provided to any chartering authority member who was not present at the public hearing prior to making a decision to accept or deny the application. Charter schools seeking authorization or renewal from the PEC will only be able to appeal to district court.

## **ADMINISTRATIVE IMPLICATIONS**

This establishes the PEC as an independent commission. As such, the PEC would be required to prepare an annual budget and report to the governor annually on the commission's policies and rules and any actions the commission takes to grant, renew or deny an application for a charter or any actions taken on appeal.

## **DUPLICATION**

SB 476 is a duplicate.

## **TECHNICAL ISSUES**

The bill does not establish the SEG set aside funding PED receives as a permanent funding source for the PEC. The Legislature may want to consider directing a portion of the SEG set aside funding the PED receives to the PEC in statute to establish an annual funding source for the PEC.

## **OTHER SUBSTANTIVE ISSUES**

In December 2010, the PEC denied the request of three locally chartered charter schools to be authorized as state-chartered charter schools on the recommendation of the Charter Schools Division (CSD) of the PED. The CSD staff noted failure to meet educational standards as one of the reasons for denying revocation, including: the school's proficiency levels were "well below the proficiency levels of the district"; and the school was not keeping pace with the progress that

district schools were making “in closing the gap between the students’ performance and the annual measurable objectives articulated for the grade levels served.” All three schools appealed to the Secretary of the PED, who reversed the PEC decision in each case. In all three cases, after reviewing evidence and hearing the arguments on both sides, the Secretary concluded the PEC’s decision to deny the schools’ renewal was “arbitrary or capricious, not supported by substantial evidence, and made contrary to law...” The Secretary reversed the decision of the PEC and remanded to the PEC for approval of each charter as a state-chartered charter school.

Problematic in the overruling is the appearance of a conflict – the PEC does not have its own staff and must rely on the CSD staff. The CSD staff advises the PEC whether to accept or reject an application or renewal based on the CSD’s interpretation of statutory provisions and examination of relevant data. If the PEC rules against a charter applicant, that applicant may appeal to the Secretary, who in some cases makes a determination to overrule the PEC and the Department’s staff recommendation.

Additional concerns have been raised with regard to locally chartered charter schools appealing to the Secretary, including concerns that the Secretary, when overruling a local district and forcing a district to charter a charter school, commits local capital resources without district consideration.

One potential fix to these conflicts is to disconnect the PEC from the PED and allow a locally chartered charter school to appeal to the PEC and to require state-chartered charter schools to appeal to district court. Other potential remedies include eliminating an appeal process altogether, granting rulemaking authority to the PEC, create a different state-level chartering authority or allow only local school board to authorize charter schools.

It is also possible that some of the issues raised with regard to the appeals process may be resolved when charter performance contracts are required for all charter schools (SB 446 enacted in the 2011 legislative session). Charter contracts prescribe the criteria, processes and procedures that the chartering authority will use for its ongoing oversight of operation, financial, and academic performance of the charter school. The contract will also clarify the criteria, procedures, and timelines that the parties have agreed upon to address charter revocation and deficiencies found in the required annual status report. Charter school contracts will not, however, address initial denial and appeal issues.

## **ALTERNATIVES**

There are multiple other solutions to eliminate the conflict that currently exists:

- Consider leaving the PEC administratively attached to the PED but eliminating the Secretary’s ability to overrule decisions of a local chartering authority or the PEC.
- Consider leaving the PEC administratively attached to the PED, but allow charter applicants seeking local authorization and locally chartered charter schools to appeal to the PEC, while allowing state-chartered charter schools to appeal to district court.
- Eliminate the ability of a charter school to appeal a decision entirely in light of the increased oversight that will be provided pursuant to charter school performance contracts.