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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HJR7</u>	Sponsor	<u>Block</u>
Tracking Number	<u>.223487.1</u>	Committee Referrals	<u>HEC/HJC</u>
Short Title	<u>Public School Admin Office, CA</u>		
Analyst	<u>Andrews</u>	Original Date	<u>1/31/2023</u>
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BILL SUMMARY

Synopsis of Bill

House Joint Resolution 7 (HJR7) proposes to amend Article XII, Section 6 of the Constitution of the State of New Mexico to repeal the Public Education Department (PED) and replace it with a structure where the Public Education Commission (PEC) administers public school law, including public school funding and distribution of school funds, and creates the Public School Administrative Office to staff the PEC. HJR7 repeals the secretary of PED, and requires the PEC to hire the state superintendent of education to serve as the director of and hire staff for the Public School Administrative Office. HJR7 specifies that the PEC and the Public School Administrative Office cannot infringe on the powers and duties of local school boards, school districts, and governing bodies of charter schools.

HJR7 provides for a transition period from the current structure of the PED and the PEC:

- The elected members of the PEC serving on January 1, 2025 would continue to serve until their terms expire;
- The secretary of PED would serve as the state superintendent of education until replaced by the PEC; and
- The PED would become the Public School Administrative Office.

As this is a constitutional amendment, its adoption is subject to voter approval at the next general election or special election prior to the date of the next general election. HJR7 stipulates that upon voter approval of HJR7, the Legislature must provide for a throughout review of public school laws to identify those provisions that infringe on the powers and duties of local school boards.

FISCAL IMPACT

HJR7 does not contain an appropriation.

Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in Spanish and English, in an amount equal to 10 percent of

the registered voters in the state. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. The cost will vary on the length of the ballot question. However, as a reference, in 2022, the SOS published three constitutional amendments and three bond questions for approximately \$404 thousand.

SUBSTANTIVE ISSUES

HJR7 appears to return the operation and management of public education in New Mexico to a structure similar to one in place prior to the 2003 constitutional amendment that created the state's current system of cabinet-level PED presided over by a secretary of public education, but legislative intent is unclear (see **Technical Issues**).

HJR7's replacement of the secretary of education with a state superintendent of education could potentially have stabilizing effects on state education leadership and provide a buffer from political motives. Since the creation of the secretary of public education in 2003, there have been seven secretaries of PED: Veronica Garcia (2003-2010), Hanna Skandera (2010-2017), Christopher Ruszkowski (2017- 2019), Karen Trujillo (2019), Ryan Stewart (2019-2021), Kurt Steinhaus (2021-2022), and Mariana Padilla (2022-present).

A constitutional amendment making such a fundamental change to a cabinet-level agency, if approved by the voters, would necessitate extensive statutory and regulatory revision, with regard to the agency's powers, duties, and organization.

Current PEC Structure. The PEC consists of 10 elected commissioners that serve for staggered terms of four years. Commission members are residents of the PEC district from which they are elected. The PEC is the authorizer for all state-chartered charter schools in New Mexico. The primary function of the PEC is the review, and approval or disapproval, of applications to authorize state chartered charter schools. This includes renewal, suspension, and revocation of state level charters. Acting as the state-level authorizer occupies the bulk of the PEC's time, work, public meetings, and hearings.

Education Governance Models. Education governance models vary throughout the country. According to the [Education Commission of the States](#), state education governance structure generally falls within one of four different models:

1. Voters elect the governor, and then the governor appoints the members of the state board of education and the state superintendent. Ten states fall within this category.
2. Voters elect the governor, who then appoints either all or most of the state board of education. The state board then appoints the state superintendent. Twelve states fall within this category.
3. Voters elect both the governor and the state superintendent. The governor then appoints the state board of education. Nine states fall within this category.
4. Voters elect both the governor and the state board of education. The state board of education then appoints the state superintendent. Six states fall within this category.

Fourteen states, including New Mexico, fall precisely into none of the above models, but rather utilize a modified version of one of these formats. There appears to be no cause-and-effect relationship between governance structures and student performance. For example, examination

of National Assessment of Educational Progress (NAEP) test scores shows no relationship between a state's governance structure and student performance on the NAEP.

ADMINISTRATIVE IMPLICATIONS

As mentioned in substantive issues, returning the operation of public education to a model similar to that which existed before the education reforms of 2003 may require substantial amendments to both statute and public education administrative rule. Given the number and volume of statutes and rules implicated by public education, this would be a significant task. Extensive reorganization of the department itself may be necessary with the installation of the state board and superintendent of public instruction.

TECHNICAL ISSUES

According to the New Mexico Attorney General (NMAG), HJR7 proposes a number of vague or unnecessary conditions that would create interpretation differences and legal uncertainty. First, the powers and duties of local school units are authorized by statute, and the condition proposed in Section 1(A) is ambiguous and unnecessary since questions of government authority is ultimately prescribed and defined by law and resolved by courts applying the state's current laws.

NMAG also notes the proposed creation of the "public school administrative office" does not address the juxtaposition of defining the public school administrative office as an "executive agency" with a state superintendent of education (which is also given a secondary and unnecessary title of "director" that creates confusion when referenced) while seeming to suggest the agency and executive are independent from the executive oversight of the governor.

Finally, NMAG notes that HJR7 also includes directions to the legislature to review laws, which would be more appropriately placed as a separate section in the resolution and not included as text in the Constitution.

OTHER SIGNIFICANT ISSUES

Powers and duties were transferred from the original state board of education to PED upon adoption of constitutional amendment, effective September 23, 2003, by a vote of 101,542 in favor and 83,155 against.

Prior to this time, the members of the state board of education were elected, with incumbents from the board becoming PEC members upon approval of the amendment, with duties limited to strategic planning and policy advisement for local school boards. The PEC's current responsibility for chartering schools was established in 2006. Statutory implementation of the constitutional amendment began in 2004 with the passage of the Public Education Department Act, which made several significant changes to law including:

- Provision for the organization of the new department, granting the newly appointed secretary "every power expressly enumerated in the law" unless expressly exempted by law;
- Provision for the secretary for "all of the duties, responsibilities and authority of that office" during the time before the secretary was confirmed by the senate;
- Explicit notice that the legal duties of the former superintendent of public instruction be deemed references to the new secretary of education, and that all references to the former state board be deemed references to the PED;

- Establishment of PED as the sole educational agency for purposes of distributing aid made available through federal statute; and
- Provision for delayed repeals of the authority of the state board of education.

RELATED BILLS

Relates to SJR1, State Board of Education, CA, which proposes to amend Article XII, Section 6 of the Constitution of the State of New Mexico to create an elected state board of education that must appoint a state superintendent of education, determine public school policy, vocational education policy, and have control and direction of school districts, including financial direction, distribution of school funds, and financial accounting.

SOURCES OF INFORMATION

- LESC Files
- New Mexico Attorney General

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