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FISCAL IMPACT REPORT

SPONSOR: Conference Committee DATE TYPED: 3/19/03 HB CC/CS/SJR 2, 5, 12
 SHORT TITLE: Cabinet Level Education Department SB &21/aHVEC/aHFL#1
 ANALYST: L. Baca

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 310a, School Related Constitutional Amendments
SB 579, School Related Constitutional Amendments

SOURCES OF INFORMATION

Responses Received From
 State Department of Education (SDE)

SUMMARY

Synopsis of Conference Report

As agreed upon by the Conference Committee, CS/SJR2, 5, 12, & 21/aHVEC/aHFL#1:

- Creates a Public Education Commission that shall have such powers as provided by law;
- Creates a cabinet level Public Education Department headed by a Secretary of Public Education appointed by the governor and confirmed by the Senate;
- Provides that the Secretary of Public Education shall have administrative and regulatory powers and duties as provided by law, including all function relating to the distribution of school funds and accounting for public schools to be performed as provided by law;
- Stipulates that the ten elected State Board of Education members shall constitute the Public Education Commission until their terms expire; and
- Specifies that the districts from which the ten State Board of Education members were elected shall constitute the Public Education Commission districts until changed by law.

This proposed amendment is to be submitted to the voters at the next general election or at any special election prior to that date which may be called for that purpose.

Synopsis of HFL#1

House Floor Amendment #1 strikes the HVEC amendment and replaces it with:

“The State Board of Education districts shall constitute the Public Education Commission districts until changed by law.”

Synopsis of HVEC Amendment

The amendment adopted by the House Voters and Elections Committee stipulates that the districts from which the State Board of Education were elected shall constitute the State Public Education Commission districts until changed by law.

Synopsis of HEC Amendments

The amendments adopted by the House Education Committee strike SFC amendment number 2 and restore the “policymaking” responsibility of the Public Education Commission (PEC). HEC amendments create a policymaking PEC, stipulate that the PEC and Department shall have control, management and direction of all public schools as provided by law, require that the ten elected State Board of Education members shall constitute the PEC until their terms expire, and strike the reference to commission members as “officers of the state.”

Synopsis of SFC Amendments

The Amendments adopted by the Senate Finance Committee make an editorial change on page 1, line 21, by striking “a”; and on page 2, strike “policymaking” and inserts in lieu there of “an advisory,” thereby making clear the Public Education Commission role will be advisory.

Synopsis of Original Bill

Senate Education Committee Substitute for Senate Joint Resolutions 2, 5, 12, and 21 proposes to amend Article 12, Section 6 of the Constitution of New Mexico to transfer the State Department of Public Education to a Cabinet Department headed by a Secretary of Public Education who shall serve in the Executive Cabinet. The bill also creates an elected Public Education Commission.

Significant Issues

The Committee Substitute requires that:

The Secretary be an experienced educator who shall be appointed by the Governor and confirmed by the Senate. He shall have control, management and direction, including financial direction, distribution of school funds and financial accounting for all public schools, pursuant to authority provided by law.

Ten members shall comprise the Public Education Commission and shall be elected for staggered terms of four years as provided by law.

Commission members shall be residents of the commission district from which they are elected.

Members of the 2003 State Board of Education shall constitute the Public Education Commission until their terms expire.

ADMINISTRATIVE IMPLICATIONS

Analysis from the SDE have consistently cited two major areas of concern which are quoted below:

- The amendment, if adopted by the voters, could result in reorganizations and restructuring of the public education department and the state's system of public education on a periodic basis in accordance with the political and administrative philosophies of an incumbent governor. Concomitantly, the administrator, as well as exempt division heads, would be subject to replacement at the pleasure of the governor or upon shifts in the Office of the Governor, thus compromising or eliminating continuity and stability within the state's system of public education.
- The amendment, if adopted, will require a comprehensive reassessment of the Public School Code and may further require re-adoption of the regulatory provisions currently in place. In addition, legislation will be required to delineate the parameters of the newly created executive department.

CONFLICT

In its analysis, the SDE cites three areas of potential conflict between the proposed amendment and existing provisions of the state Constitution as shown below:

Article V, Section 3 provides that “No person shall be eligible to the office of superintendent of public instruction unless he be a trained and experienced educator.”

Article V, Section 12 addresses the compensation of executive officers and includes the superintendent of public instruction.

Article XII, section 15 provides that the SBE shall by resolution establish the terms of the first board elected after the creation of a seven-member local school board.

TECHNICAL ISSUES

As written the bill does not address the Public Education Commission’s role. Is it a policy making board or is it an advisory board?

OTHER SUBSTANTIVE ISSUES

Political scientists would describe Office of Governor in New Mexico as a weak executive because so many state-level governmental functions are beyond his direct control, e.g., state treasury, state auditor, public school education. Under the current system, governors have virtually no authority and little direct impact on educational policy making. If adopted, and this amendment is adopted by the voters, the Governor would be able to impact the direction of public

school education and could have some responsibility for its successes and/or failures. Currently, the most direct, and, seemingly, his most significant exercise of authority in the public school sector, is the gubernatorial veto.

POSSIBLE QUESTIONS

1. How many states have a governance combination such as the one proposed in this constitutional amendment?
2. Are we creating a “built-in” conflict by having the Governor’s appointee work with an elected commission?
3. How will this arrangement improve the effectiveness of the public schools system?
4. Will this proposed governance system be more accountable at the policy-making level than the one we have now?
5. Does bill propose a policy-making commission or an advisory one?
6. SDE claims a reassessment of the entire public school system may be necessary. Isn’t that a good thing?
7. SDE claims all rules and regulations of the current State Board of Education may have to be rewritten. Is this a desirable activity that could weed out some unnecessary ones?
8. Can we anticipate a smooth transition of the SDE to the Executive Branch? Why or why not?

LRB/lb/njw:yr