

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 2-16-04 HB 96/aHEC

SHORT TITLE Public Education Department Act SB \_\_\_\_\_

ANALYST Segura

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Public Education Department (PED)

### SUMMARY

#### Synopsis of Amendment

According to PED, the House Education Committee amendments provide that PEC members are entitled to receive per diem and mileage. The amendments further reinstate certain provisions of the current Section 22-2-4 ( which is included in repeals contained in subsection B of Section 30 of HB 96) regarding the authority of the secretary of the PEC to administer oaths to persons appearing as witnesses before the PEC, requiring that the PEC keep a record of all proceedings, providing that meetings of the PEC be held in Santa Fe and at other sites within the state at the direction of the PEC and providing that no member of the PEC shall be appointed secretary or employed by the PED on either a full-or part-time basis.

The Senate Education Committee amendments remove the duty of the PEC, “to hear appeals from decisions of the department as provided by law.” The Senate Education Committee amendments to add a new subsection C to Section 30 to provide for the repeal of Section 22-2-15 NMSA 1978.

Synopsis of Bill

House Bill 96 creates the Public Education Department (PED), creates the Public Education Commission (PEC), enacts the Public Education Department Act, removes librarians from the definition of instructional support provider and amends, repeals, enacts and recompiles certain sections of the NMSA 1978.

Significant Issues

The PED indicates that House Bill 96 effectuates the permanent implementation of the amendment to Article XII, Section 6 of the Constitution of New Mexico adopted by the voters.

The bill establishes the PED as a cabinet department in the Executive Branch. The Secretary of Public Education is given the authority to organize the PED and is directed to make recommendations to the first session of the 47<sup>th</sup> legislature on the PED's statutory organization.

Section 8 establishes the duties and general powers of the Secretary in accordance with the Executive Reorganization Act.

Section 9 reiterates the structure of the PEC and establishes the organization of the PEC. Section 13 amends the general definition section of the Public School Code. The amendments include the removal of librarians from the definition of "instructional support provider"; this amendment is also reflected in Section 25 with regard to Instructional Support Provider Licenses.

Section 14 sets forth the general powers of the Secretary and PED.

Section 15 repeals the former section establishing the duties of the New Mexico State Board of Education (SBE) and, in lieu thereof, establishes the general duties of the PED. Section 17 establishes the duties of PEC, which include (i) working with the PED to develop the five-year strategic plan for public elementary and secondary education in the state; (ii) soliciting input on policy and governance and reporting its findings and recommendations to the Secretary and the Legislature; (iii) recommending to the Secretary conduct and process guidelines and training curricula for local school boards; and (iv) hearing appeals from decisions of the PED as provided by law.

Section 18 provides that decisions of the PED to suspend from authority a local school board, local superintendent or school principal may be appealed to the PEC; the Secretary may also appeal the decision to the PEC.

Section 19 provides for an appeal of the suspension to the PEC and further provides that a local school board, local superintendent of school principal or the Secretary aggrieved by the decision of the PEC may appeal to the district court.

Section 20 consolidates the statutory language with respect to assessment and accountability system reporting.

Section 21 amends the powers and duties of local school boards to include the requirement that the local school board give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a pri-

vate organization or agency. This requirement is currently included within the statutory language relating to the duties of the SBE.

Section 12, 23, and 24 establishes the PED as the sole educational agency of the state for purposes of aid made available through federal statute.

Section 26 consolidates the statutory language with respect to professional development.

Section 27 amends the definitions in the Educational Retirement Act. Section 28 is a temporary provision to provide for the transfer from the State Department of Public Education (SDE) to the PED and to provide for continuity of references in law.

Section 29 provides for the recompilation of provisions relating to adult basic education from the Public School Code to Chapter 21 to reflect Laws 2003, Chapter 394 (transferring the function relating to adult basic education to the Commission on Higher Education).

Section 30 repeals Laws 2003, Chapter 143 ( Senate Bill 911, which provided for the transfer of authority to PED and Secretary upon adoption of the amendment to Article XII, Section 6. The Act also contained delayed repeals of Articles 1 (General Provision), 2 ( State Board of Education ), 13 ( Courses of Instruction and School Programs, 13A ( previously repealed) and 15 ( Instructional Material) of Chapter 22 NMSA 1978. Section 30 also repeals Section 22-1-6.1 ( high school graduation rates; reporting in accountability report- incorporated in Section 20 of SB 151) and Section 22-2-3 through 22-2-6 ( relating to compensation, officers and delegation of authority by the SBE and duties of the SDE).

## **FISCAL IMPLICATIONS**

House Bill 96 does not contain an appropriation. The funding for Public School Support and PED is addressed through the appropriation process.

## **ADMINISTRATIVE IMPLICATIONS**

According to PED, the department will experience an initial administrative impact during the implementation of the constitutional structure adopted by the voters. This will, however, provide the foundation for the long-term implementation of the amendment to Article XII, Section 6 of the Constitution of New Mexico.

## **DUPLICATION and RELATIONSHIP**

The PED indicates that Senate Bill 151 duplicates the provisions of House Bill 96 . House Bill 161, if adopted, will repeal Laws 2003, Chapter 143 “ which repealed certain articles of the Public School Code and provided for the transition to the Public Education Department upon adoption of Constitutional Amendment 1 of 2003.” This bill contains an emergency clause. Section 30 of SB151 also proposes the repeal of Laws 2003, Chapter 143; SB151 does not, however, contain an emergency clause.

## TECHNICAL ISSUES

The PED notes that Section 4 omits the State Transportation Division from the listing of the current statutory divisions and bureaus of the PED.

Section 18 provides that the Secretary may appeal a decision of the PED to suspend from authority a local school board, local superintendent or school principal to the PEC. Given the constitutional and proposed statutory construct, the Secretary would in effect be appealing her own decision. The language is also inconsistent with the appeal provision in Section 19, which does not afford the right to appeal to the PEC to the Secretary.

## OTHER SUBSTANTIVE ISSUES

According to PED, HB 96 supports the implementation of the amendment to Article XII, Section 6 of the Constitution of New Mexico by establishing the PED as a cabinet department within the executive branch.

RS/njw:lg:yr