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HOUSE BILL 324

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

TERRY T. MARQUARDT

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR A SECRETARY OF
EDUCATION; SPECIFYING POWERS AND DUTIES; ABOLISHING THE STATE
BOARD OF EDUCATION; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SECRETARY OF EDUCATION--
APPOINTMENT.--

A. The chief executive and administrative officer
of the state department of public education is the "secretary
of education". The secretary shall be appointed by the
governor with the advice and consent of the senate. The
secretary shall hold office at the pleasure of the governor
and shall serve in the executive cabinet.

B. A person appointed as secretary shall serve and

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1 have all the duties, responsibilities and authority of that
2 office during the period of time prior to the final action by
3 the senate confirming or rejecting his appointment.

4 Section 2. [NEW MATERIAL] SECRETARY OF EDUCATION--
5 GENERAL POWERS AND DUTIES. --

6 A. The secretary of education is responsible to
7 the governor for the operation of the state department of
8 public education and to administer and enforce the laws with
9 which the department is charged.

10 B. The secretary shall exercise general
11 supervisory and appointive power over the state department of
12 public education employees, subject to applicable personnel
13 and other laws and rules.

14 Section 3. [NEW MATERIAL] STATE BOARD ABOLISHED. -- On the
15 effective date of this act, the state board of education is
16 abolished.

17 Section 4. A new section of the Public School Code is
18 enacted to read:

19 "[NEW MATERIAL] CREATION OF ADVISORY STATE BOARD OF
20 EDUCATION-- COMPOSITION. --

21 A. The "advisory state board of education" is
22 created.

23 B. The advisory state board of education shall be
24 composed of fifteen members. The members shall be
25 representatives of the different geographical areas of the

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1 state and reflective of the diverse population of the state.

2 C. The president pro tempore of the senate shall
3 appoint three members from the senate and the speaker of the
4 house shall appoint three members from the house of
5 representatives for terms of two years or less to coincide
6 with their terms of office.

7 D. Eleven members shall be appointed as follows:

8 (1) the secretary of education shall appoint
9 three members for two-year terms and one member for a four-
10 year term; and

11 (2) the governor shall appoint three members
12 for two-year terms and two members for four-year terms.

13 E. After the initial appointments, members who are
14 not legislators shall be appointed for four-year terms, and
15 members who are legislators shall be appointed for terms of
16 two years or less to coincide with their terms of office.

17 F. Each member of the advisory state board of
18 education shall be entitled to receive per diem and mileage as
19 provided in the Per Diem and Mileage Act and shall receive no
20 other compensation, perquisite or allowance.

21 G. Per diem and mileage shall be paid to members
22 of the advisory state board of education by the department out
23 of funds appropriated and budgeted for that purpose. "

24 Section 5. A new section of the Public School Code is
25 enacted to read:

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1 "[NEW MATERIAL] DUTIES. --The advisory state board of
2 education shall make biannual recommendations to the secretary
3 and the legislature on the issues and needs of public schools
4 throughout the state."

5 Section 6. Section 22-1-2 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 2, as amended) is amended to read:

7 "22-1-2. DEFINITIONS. --As used in the Public School
8 Code:

9 A. "state board" means the [~~state board of~~
10 ~~education~~] department;

11 B. "state superintendent" means the
12 [~~superintendent of public instruction~~] secretary;

13 C. "department [~~of education~~]" means the state
14 department of public education or department of education;

15 D. "certified school instructor" means any person
16 holding a valid certificate authorizing the person to teach,
17 supervise an instructional program, counsel or provide special
18 instructional services in the public schools of the state;

19 E. "certified school administrator" means any
20 person holding a valid certificate authorizing the person to
21 administer in the public schools of the state;

22 F. "certified school employee" or "certified
23 school personnel" means any employee who is either a certified
24 school instructor or a certified school administrator or both;

25 G. "non-certified school employee" means any

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1 employee who is not a certified school employee;

2 H. "certificate" means a certificate issued by the
3 [~~state board~~] department of education authorizing a person to
4 teach, supervise an instructional program, counsel, provide
5 special instructional services or administer in the public
6 schools of the state;

7 I. "chief" or "director" means the [~~state~~
8 ~~superintendent~~] secretary or his designee unless the context
9 clearly indicates otherwise;

10 J. "private school" means a school offering on-
11 site programs of instruction not under the control,
12 supervision or management of a local school board, exclusive
13 of home instruction offered by the parent, guardian or one
14 having custody of the student;

15 K. "school district" means an area of land
16 established as a political subdivision of the state for the
17 administration of public schools and segregated geographically
18 for taxation and bonding purposes;

19 L. "local school board" means the governing body
20 of a school district;

21 M "public school" means that part of a school
22 district that is a single attendance center where instruction
23 is offered by a certified school instructor or a group of
24 certified school instructors and is discernible as a building
25 or group of buildings generally recognized as either an

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1 elementary, secondary, junior high or high school or any
2 combination thereof;

3 N. "school year" means the total number of
4 teaching days offered by public schools in a school district
5 during a period of twelve consecutive months;

6 O. "consolidation" means the combination of part
7 or all of the geographical area of an existing school district
8 with part or all of the geographical area of one or more
9 contiguous existing school districts;

10 P. "consolidated school district" means a school
11 district created by order of the [~~state board~~] department by
12 combining part or all of the geographical area of an existing
13 school district with part or all of the geographical area of
14 one or more contiguous existing school districts;

15 Q. "state institution" means the New Mexico
16 military institute, the New Mexico school for the visually
17 handicapped, the New Mexico school for the deaf, the New
18 Mexico boys' school, the New Mexico youth diagnostic and
19 development center, the Los Lunas medical center, the Fort
20 Stanton hospital, the Las Vegas medical center or the Carrie
21 Tingley crippled children's hospital;

22 R. "state educational institution" means an
23 institution enumerated in Article 12, Section 11 of the
24 constitution of New Mexico;

25 S. "forty-day report" means the report of

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1 qualified student membership of each school district and of
2 those eligible to be qualified students but enrolled in a
3 private school or a home school for the first forty days of
4 school;

5 T. "school" means any supervised program of
6 instruction designed to educate a person in a particular
7 place, manner and subject area;

8 U. "school-age person" means any person who is at
9 least five years of age prior to 12:01 a.m. on September 1 of
10 the school year and who has not received a high school diploma
11 or its equivalent. A maximum age of twenty-one shall be used
12 for persons who are classified as special education membership
13 as defined in Section 22-8-2 NMSA 1978 or as residents of
14 state institutions;

15 V. "home school" means the operation by a parent,
16 guardian or other person having custody of a school-age person
17 who instructs a home study program that provides a basic
18 academic educational program, including [but not limited to]
19 reading, language arts, mathematics, social studies and
20 science;

21 W. "school building" means a public school, an
22 administration building and related school structure or
23 facilities, including teacher housing, as may be owned,
24 acquired or constructed by the local school board and as
25 necessary to carry out the powers and duties of the local

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1 school board;

2 X. "commercial advertiser" means a person who
3 advertises a product or service for profit or not for profit
4 and has a permitted advertisement; [and]

5 Y. "school bus private owner" means a person who
6 owns a school bus, other than a [~~local~~] school district, the
7 department of education, the state or any other political
8 subdivision of the state; and

9 Z. "secretary" means the secretary of education."

10 Section 7. Section 22-2-1 NMSA 1978 (being Laws 1990
11 (1st S.S.), Chapter 9, Section 10, as amended) is amended to
12 read:

13 "22-2-1. [~~STATE BOARD~~] DEPARTMENT-- POWERS. --

14 A. The [~~state board~~] department is the governing
15 authority and shall have control, management and direction of
16 all public schools, except as otherwise provided by law.

17 B. The [~~state board~~] department may promulgate,
18 publish and enforce [~~regulations~~] rules to exercise its
19 authority granted pursuant to the Public School Code.

20 C. The [~~state board~~] department may apply to the
21 district court for an injunction, writ of mandamus or other
22 appropriate relief to enforce the provisions of the Public
23 School Code or any of its [~~regulations~~] rules promulgated
24 pursuant to the Public School Code.

25 D. The [~~state board~~] department may waive

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1 provisions of the Public School Code as authorized by law. "

2 Section 8. Section 22-2-2 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 5, as amended) is amended to read:

4 "22-2-2. [~~STATE BOARD~~] DEPARTMENT- - DUTIES. - - Without
5 limiting those powers granted to the [~~state board~~] department
6 pursuant to Section 22-2-1 NMSA 1978, the [~~state board~~]
7 department under the supervision and direction of the
8 secretary shall perform the following duties:

9 A. properly and uniformly enforce the provisions
10 of the Public School Code;

11 B. [~~determine~~] administer policy for the operation
12 of all public schools and vocational education programs in the
13 state;

14 [~~C. appoint a state superintendent;~~

15 ~~D.~~] C. purchase and loan instructional material to
16 students pursuant to the Instructional Material Law and adopt
17 regulations relating to the use and operation of instructional
18 material depositories in the instructional material
19 distribution process;

20 [~~E.~~] D. designate courses of instruction to be
21 taught in all public schools in the state;

22 [~~F.~~] E. assess and evaluate all state institutions
23 and those private schools that desire state accreditation;

24 [~~G.~~] F. determine the qualifications for and issue
25 a certificate to any person teaching, assisting teachers,

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1 supervising an instructional program, counseling, providing
2 special instructional services or administering in public
3 schools, according to law and according to a system of
4 classification adopted and published by the [~~state board~~]
5 department;

6 [~~H.~~] G. suspend or revoke a certificate held by a
7 certified school instructor or certified school administrator,
8 according to law, for incompetency, immorality or for any
9 other good and just cause;

10 [~~I.~~] H. make full and complete reports on
11 consolidation of school districts to the legislature;

12 [~~J.~~] I. prescribe courses of instruction,
13 requirements for graduation and standards for all public
14 schools, for private schools seeking state accreditation and
15 for the educational programs conducted in state institutions
16 other than the New Mexico military institute;

17 [~~K.~~] J. adopt regulations for the administration
18 of all public schools and bylaws for its own administration;

19 [~~L.~~] K. require periodic reports on forms
20 prescribed by it from all public schools and attendance
21 reports from private schools;

22 [~~M.~~] L. authorize adult educational programs to be
23 conducted in schools under its jurisdiction and adopt and
24 promulgate regulations governing all such adult educational
25 programs;

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1 ~~[N.]~~ M. require any school under its jurisdiction
2 that sponsors athletic programs involving sports to mandate
3 that the participating student obtain catastrophic health and
4 accident insurance coverage, such coverage to be offered
5 through the school and issued by an insurance company duly
6 licensed pursuant to the laws of New Mexico;

7 ~~[O.]~~ N. require all accrediting agencies for
8 public schools in the state to act with its approval;

9 ~~[P.]~~ O. accept and receive all grants of money
10 from the federal government or any other agency for public
11 school purposes and disburse the money in the manner and for
12 the purpose specified in the grant;

13 ~~[Q.]~~ P. require prior approval for any educational
14 program in a public school that is to be conducted, sponsored,
15 carried on or caused to be carried on by a private
16 organization or agency;

17 ~~[R.]~~ Q. approve or disapprove all rules [~~or~~
18 ~~regulations~~] promulgated by any association or organization
19 attempting to regulate any public school activity and
20 invalidate any rule [~~or regulation~~] in conflict with any
21 [~~regulation~~] rule promulgated by the [~~state board~~] department.
22 The [~~state board~~] department shall require any association or
23 organization attempting to regulate any public school activity
24 to comply with the provisions of the Open Meetings Act and be
25 subject to the inspection of the Public Records Act. The

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1 ~~[state board]~~ department may require performance and financial
2 audits of any association or organization attempting to
3 regulate any public school activity. The ~~[state board]~~
4 department shall have no power or control over the rules ~~[or~~
5 ~~regulations]~~ or the bylaws governing the administration of the
6 internal organization of the association or organization;

7 ~~[S.]~~ R. review decisions made by the governing
8 board or officials of any organization or association
9 regulating any public school activity, and any decision of the
10 ~~[state board]~~ department shall be final in respect thereto;

11 ~~[T.]~~ S. accept or reject any charitable gift,
12 grant, devise or bequest. The particular gift, grant, devise
13 or bequest accepted shall be considered an asset of the state;

14 ~~[U.]~~ T. establish and maintain regional centers,
15 at its discretion, for conducting cooperative services between
16 public schools and school districts within and among those
17 regions and to facilitate regulation and evaluation of school
18 programs;

19 ~~[V.]~~ U. assess and evaluate for accreditation
20 purposes at least one-third of all public schools each year
21 through visits by department of education personnel to
22 investigate the adequacy of pupil gain in standard required
23 subject matter, adequacy of pupil activities, functional
24 feasibility of public school and school district organization,
25 adequacy of staff preparation and other matters bearing upon

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1 the education of the students;

2 [W-] V. provide for management and other necessary
3 personnel to operate any public school or school district that
4 has failed to meet requirements of law, [~~state board~~]
5 department standards or [~~state board regulations~~] department
6 rules; provided that the operation of the public school or
7 school district shall not include any consolidation or
8 reorganization without the approval of the local board of that
9 school district. Until such time as requirements of law,
10 standards or [~~regulations~~] rules have been met and compliance
11 is assured, the powers and duties of the local school board
12 shall be suspended;

13 [~~X-~~] W. establish and implement a plan that
14 provides for technical assistance to local school boards
15 through workshops and other in-service training methods;
16 provided, however, that no plan shall require mandatory
17 attendance by any member of a local school board;

18 [~~Y-~~] X. submit a plan applying for funds available
19 under Public Law 94-142 and disburse these funds in the manner
20 and for the purposes specified in the plan; and

21 [~~Z-~~] Y. enforce requirements for home schools.
22 Upon finding that a home school is not in compliance with law,
23 the [~~state board shall have~~] department has authority to order
24 that a student attend a public school or a private school."

25 Section 9. Section 22-2-6 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 9, as amended) is amended to read:

2 "22-2-6. DEPARTMENT OF EDUCATION--DUTIES.-- Subject to
3 the policies, [~~of the state board and the~~] supervision and
4 direction of the [~~state superintendent~~] secretary, the
5 department [~~of education~~] shall have the following duties:

6 A. supervise all schools and school officials
7 coming under the jurisdiction of the [~~state board~~] department;

8 B. advise boards of regents of state educational
9 institutions on matters concerning the Public School Code;

10 C. prescribe, print and distribute forms to carry
11 out the duties of the [~~state board~~] department pursuant to the
12 Public School Code;

13 D. annually, prior to December 1, prepare and
14 publish a report on public and private education in the state
15 and distribute the report to the governor and the legislature;

16 E. keep accurate records of all money received by
17 the [~~state superintendent~~] secretary or the department [~~of~~
18 ~~education~~];

19 F. publish and distribute copies of the Public
20 School Code and [~~regulations~~] rules promulgated by the [~~state~~
21 ~~board~~] department to local school boards in the state;

22 G. confer with local school boards and certified
23 school personnel on matters concerning education in the state;

24 H. prepare and distribute patriotic material to
25 schools in the state; and

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I. evaluate all educational programs in state institutions [~~under the authority of the secretary of the health and environment department~~]. "

Section 10. REPEAL. -- Sections 22-2-3 through 22-2-5 and 22-3-37 through 22-3-54 NMSA 1978 (being Laws 1967, Chapter 16, Sections 6 through 8 and Laws 1991 (1st S. S.), Chapter 4, Sections 1 through 18, as amended) are repealed.

Section 11. EFFECTIVE DATE. -- The provisions of this act shall become effective upon certification by the secretary of state that the constitution of New Mexico has been amended as proposed by a joint resolution of the forty-third legislature, second session entitled "A JOINT RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO ABOLISH THE STATE BOARD OF EDUCATION AND CREATE A SECRETARY OF EDUCATION. "