

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

REPRESENTATIVES

Rick Miera, Vice Chair
Roberto "Bobby" J. Gonzales
Jimmie C. Hall
Dennis J. Roch
Mimi Stewart
Jack E. Thomas

State Capitol North, 325 Don Gaspar, Suite 200
Santa Fe, New Mexico 87501
Phone: (505) 986-4591 Fax: (505) 986-4338
<http://lesc.nmlegis.gov>

SENATORS

Cynthia Nava, Chair
Mary Jane M. García
Gay G. Kernan
Lynda M. Lovejoy

ADVISORY

Andrew J. Barreras
Ray Begaye
Eleanor Chávez
Nathan P. Cote
Nora Espinoza
Mary Helen Garcia
Karen E. Giannini
John A. Heaton
Sheryl M. Williams Stapleton
Shirley A. Tyler



ADVISORY

Vernon D. Asbill
Stephen H. Fischmann
Howie C. Morales
John Pinto
Sander Rue
William E. Sharer

Frances Ramirez-Maestas, Director
David Harrell, PhD, Deputy Director

June 27, 2011

MEMORANDUM

TO: Legislative Education Study Committee

FR: Ms. Eilani Gerstner

RE: STAFF REPORT: STATUS OF OFFICE OF EDUCATION ACCOUNTABILITY

Introduction

In 2003, legislation endorsed by the Legislative Education Study Committee (LESC) was enacted to establish comprehensive educational reforms, including a new section of the *Department of Finance and Administration Act* establishing the Office of Education Accountability (OEA) within the Department of Finance and Administration (DFA).

Among its provisions, the act requires that the OEA provide an independent evaluation of the *Assessment and Accountability Act* and the *School Personnel Act* by:

- (1) monitoring the implementation of those acts;
- (2) periodically reviewing school district and school-based decision-making policies relating to the recruitment and retention of school employees;
- (3) verifying the accuracy of reports of public school, school district, and state performance; and
- (4) conducting studies of other states' efforts at assessment and accountability and other educational reforms and reporting its findings to the LESC and the Legislative Finance Committee.

The act also requires that the Public Education Department (PED), school districts, and other agencies of the state cooperate with OEA and provide information as requested by the office. As explained below, however, recent developments have raised questions about the status of the OEA itself and the performance of that office's statutory duties.

This staff report summarizes:

- the FY 12 budget for OEA;
- past work conducted by OEA;
- proposed 2011 legislative initiatives to change the statutory charge of the OEA; and
- constitutional questions that these recent developments have raised.

It should be noted that LESC requests DFA to provide a report to the committee regarding the status of OEA have not been answered to date.

The FY 12 Budget for OEA

In FY 11, the OEA was budgeted \$436,300 to support the operations of the office, including 5.0 full-time equivalent staff positions (FTEs). However, a review of the FY 12 budget documents by LESC staff indicates that OEA operations and FTE have been subsumed within with the State Budget Division:

- Attachment 1, *FY 12 OEA Financial Summary*, reflects zero dollars and zero FTEs. According to Legislative Finance Committee (LFC) budget recommendations, the OEA deputy director position was eliminated for FY 12, which would have left 4.0 FTEs for OEA;
- Attachment 2, *FY 12 Organization Chart*, as compared to Attachment 3, *FY 11 Organization Chart*, reflects that OEA operations have been combined with the State Budget Division; and
- Attachment 4, *FY 12 State Budget Division Financial Summary*, shows an increase in the State Budget Division operations of 4.0 FTEs, along with an increase of \$266,300 in the division's budget. Presumably these increases reflect the transfer of the 4.0 OEA FTEs.

On a related issue, at the May 2011 LESC meeting, the Secretary-designate of Public Education reported to the committee that PED was provided with \$50,000 from OEA's budget to hire a contractor to conduct audits of school districts. At the time of publication of this staff report, PED had not provided LESC staff with a response to a request for further details on the transfer of those funds.

Past Work Conducted by the OEA

Statutory Assignments

In addition to the statutory requirements to provide an independent evaluation of the *Assessment and Accountability Act* and the *School Personnel Act*:

- another section in the *Public School Code* assigns the director of the OEA to the Data System Council, which is charged with managing and directing the creation of the pre-kindergarten through post-graduate (P-20) educational data system; and
- for school year 2011-2012, the *General Appropriation Act of 2011* requires PED to collaborate with the OEA to ensure that:
 - all teachers have been evaluated under the tiered licensure evaluation system and have the professional competencies of the appropriate level; and
 - all principals and assistant principals have been evaluated under the highly objective uniform statewide standards of evaluation and have the professional competencies to serve as a principal or assistant principal.

Additional Assignments

In past years, the OEA has performed additional assignments in the form of annual reports, responses to legislative memorials, and other requests. For example:

- since 2006, the OEA has collaborated with PED and the Higher Education Department to publish the *Ready for College?* report, which tracks remediation rates of New Mexico high school graduates who attend New Mexico higher education institutions;
- in 2008, the OEA provided a report to the LESC in response to SJM 3, *School Principal Recruitment & Mentoring* (2008); since that report, OEA continued to lead the implementation of the recommendations from that study, including the creation in law of the School Leadership Institute through legislation endorsed by the LESC;
- in 2010, the OEA presented a report to the LESC in response to SJM 12, *Study Various School Calendars* (2010), which led to LESC-endorsed legislation that was enacted in 2011;
- also in 2010, OEA staff served on the LESC School Finance Work Group, which the LESC convened to evaluate the adequacy and effectiveness of New Mexico's laws and regulations relating to public school finance, including the financial capacity and controls of school districts and charter schools statewide; and
- since 2005 and 2008, respectively, the OEA has coordinated evaluations of New Mexico PreK and the K-3 Plus pilot program.

Proposed 2011 Legislative Initiatives to Change the Statutory Charge of the OEA

During the 2011 legislative session, two pieces of legislation were introduced that would have repealed the current section of law for OEA, neither of which passed:

- HB 66, *Transfer Depts. and Services to DFA*, would have created a new Educational Finance and Accountability Division in DFA, which would have replaced and expanded OEA's duties and shifted the focus to accounting and auditing; and

- SB 83, *Create State Inspector General Office*, would have created the *State Inspector General Act* and the Office of Government Accountability, which would have included the duties currently assigned to the OEA.

Constitutional Questions

LESC staff has consulted with Legislative Council Service (LCS) staff on the apparent “zeroing out” of the OEA operating budget and FTEs by DFA, and the effect of such action with regard to the requirements of OEA in current law. The fundamental constitutional issue seems to be whether these developments related to OEA have compromised the principle of the separation of powers between the executive and legislative branches of government.

- The response from the LCS cites points made in three court cases and an opinion of the Attorney General that suggest that this principle has been compromised. To illustrate:
 - the Legislature has been delegated the “sole power of enacting law”;
 - because the Legislature created the office, the Legislature, not the Governor, has the authority to abolish the office; and
 - by zeroing out the budget of a legislatively created executive office, the executive branch may have disregarded its constitutional charge to “[take] care that the laws be faithfully executed.”
- On the other hand, the LCS response also notes possible arguments to the contrary:
 - there are many statutorily created offices that no longer function;
 - if some other division or office within DFA can perform the statutory duties of OEA, then the executive branch may not have disregarded its constitutional charge for the faithful execution of law; and
 - because OEA was not separately funded, DFA may have some discretion in the use of the agency’s appropriation.

Office of Education Accountability

BU PCode Department ReportCatg
 34100 P541 1850000000 000000 D Carl Orte

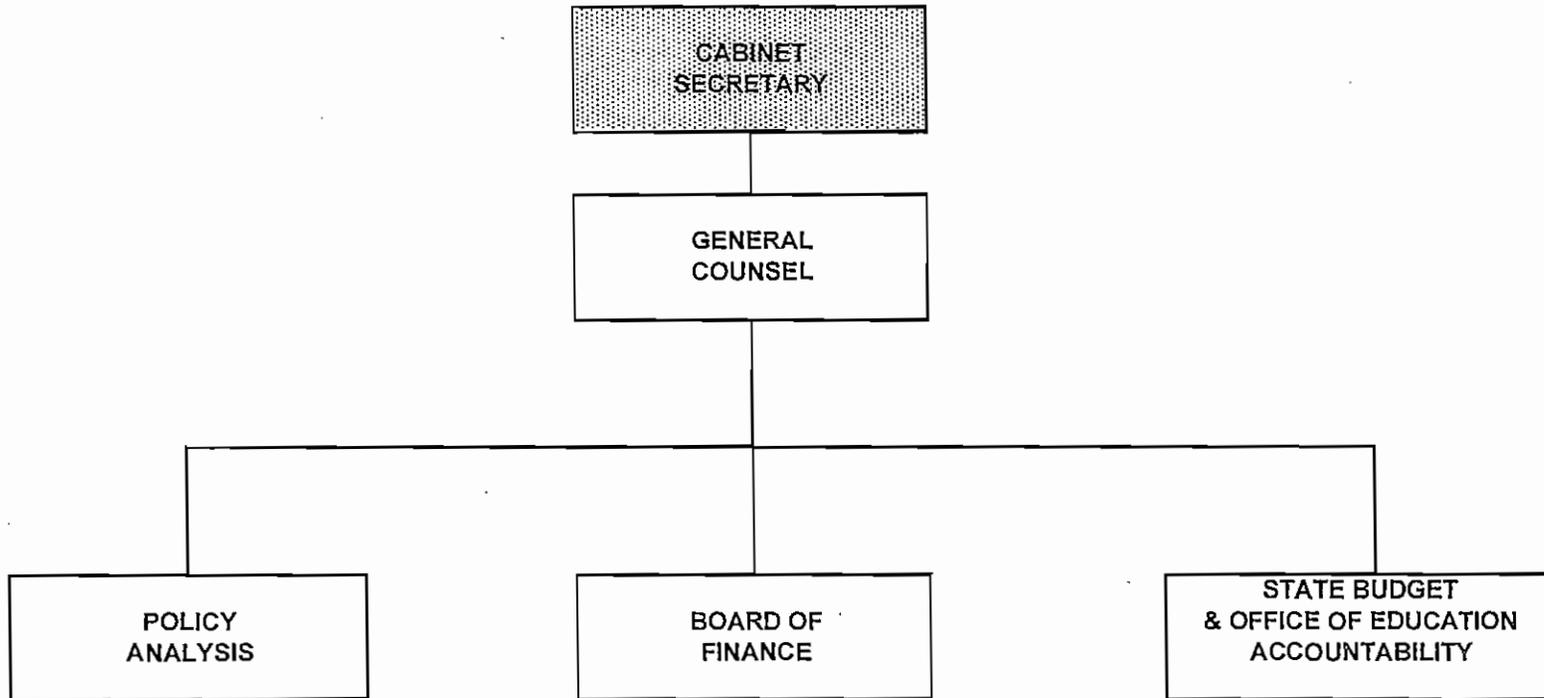
Budget Review System
 S-8 Financial Summary
 (Dollars in Thousands)

	FY10	FY11	FY12 Agency Request			FY12 Recommendation			FY12
	Actuals	Opbud	Base	Expansion	Total	Base	Expansion	Total	Opbud
SOURCES									
111 General Fund Transfers	342.2	436.3	422.3	0.0	422.3	422.3	0.0	422.3	0.0
112 Other Transfers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
120 Federal Revenues	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
130 Other Revenues	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
150 Fund Balance	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE, TRANSFERS	342.2	436.3	422.3	0.0	422.3	422.3	0.0	422.3	0.0
SOURCES	342.2	436.3	422.3	0.0	422.3	422.3	0.0	422.3	0.0
USES									
200 Personal Services and Employee Benefits	304.7	409.3	403.6	0.0	403.6	403.6	0.0	403.6	0.0
300 Contractual Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
400 Other	10.6	27.0	18.7	0.0	18.7	18.7	0.0	18.7	0.0
EXPENDITURES	315.3	436.3	422.3	0.0	422.3	422.3	0.0	422.3	0.0
500 Other Financing Uses	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OTHER FINANCING USES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
USES	315.3	436.3	422.3	0.0	422.3	422.3	0.0	422.3	0.0
FTE POSITIONS									
810 Permanent	3.0	5.0	5.0	0.0	5.0	5.0	0.0	5.0	0.0
820 Term	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
830 Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
FTEs	3.0	5.0	5.0	0.0	5.0	5.0	0.0	5.0	0.0
FTE POSITIONS	3.0	5.0	5.0	0.0	5.0	5.0	0.0	5.0	0.0

FORM S - 2
ORGANIZATION CHART

Q:\BUDGET\12 OPER\S2-FORM2.Depts.xlsx\Policy Dev

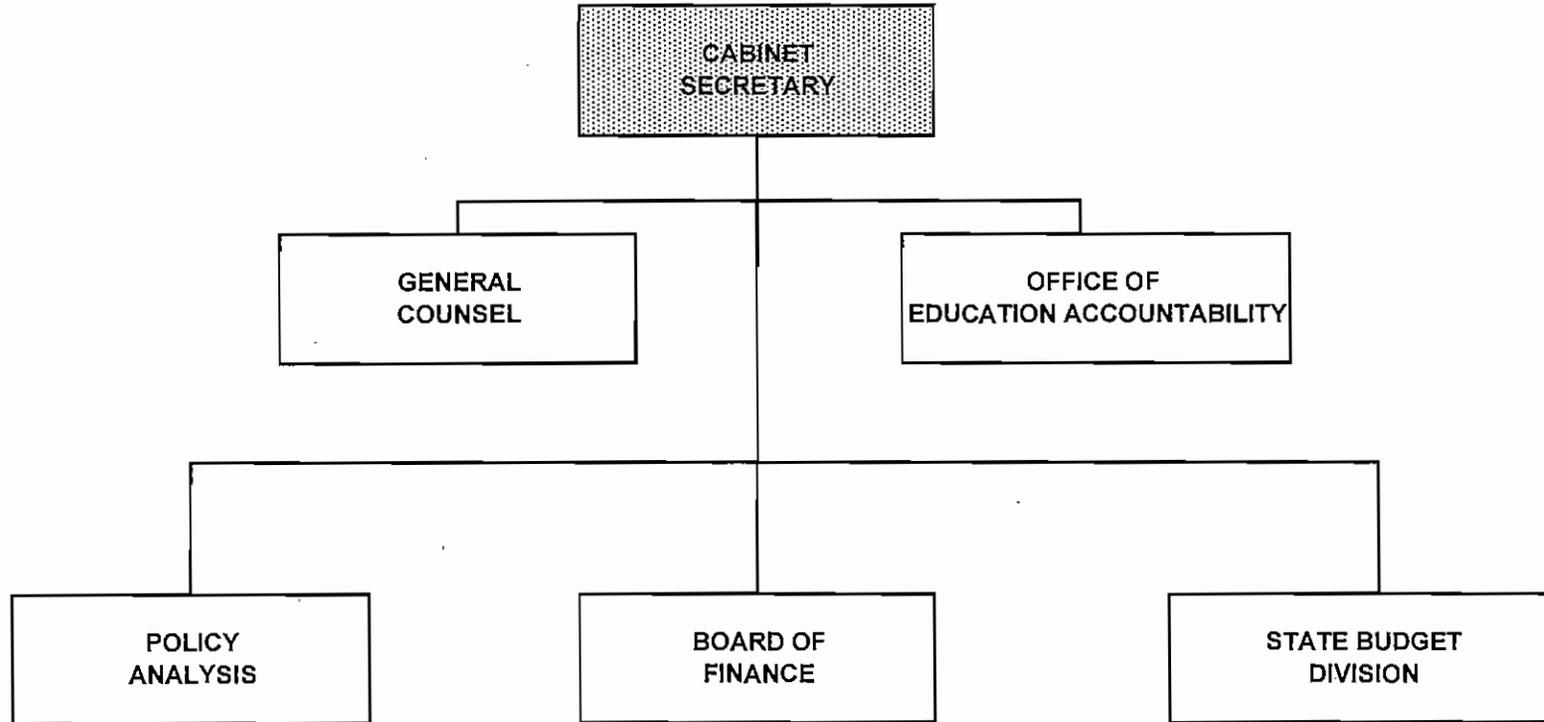
POLICY DEVELOPMENT, FISCAL AND BUDGETARY ANALYSIS AND OVERSIGHT



FORM S - 2
ORGANIZATION CHART

Q:\BUDGET\11 OPER\12-FORM2.Depts.REVISED.xlsx\Policy Dev

POLICY DEVELOPMENT, FISCAL AND BUDGETARY ANALYSIS AND OVERSIGHT



FY 11 ORGANIZATION CHART

ATTACHMENT 3

Source: FY 12 DFA Operating Budget

LESC - 6/27/11

Budget Review System
S-8 Financial Summary
(Dollars in Thousands)

State Budget Division
BU PCode Department ReportCatg
34100 P541 6000000000 000000 D Carl Orte

		FY10	FY11	FY12 Agency Request		FY12 Recommendation			FY12	
		Actuals	Opbud	Base	Expansion	Total	Base	Expansion	Total	Opbud
SOURCES										
111	General Fund Transfers	1,640.3	1,657.9	1,614.4	0.0	1,614.4	1,614.4	0.0	1,614.4	1,880.7
112	Other Transfers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
120	Federal Revenues	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
130	Other Revenues	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
150	Fund Balance	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE, TRANSFERS		1,640.3	1,657.9	1,614.4	0.0	1,614.4	1,614.4	0.0	1,614.4	1,880.7
SOURCES		1,640.3	1,657.9	1,614.4	0.0	1,614.4	1,614.4	0.0	1,614.4	1,880.7
USES										
200	Personal Services and Employee Benefits	1,472.4	1,561.5	1,525.5	0.0	1,525.5	1,525.5	0.0	1,525.5	1,773.1
300	Contractual Services	14.0	25.0	20.0	0.0	20.0	20.0	0.0	20.0	20.0
400	Other	59.0	71.4	68.9	0.0	68.9	68.9	0.0	68.9	87.6
EXPENDITURES		1,545.4	1,657.9	1,614.4	0.0	1,614.4	1,614.4	0.0	1,614.4	1,880.7
500	Other Financing Uses	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OTHER FINANCING USES		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
USES		1,545.4	1,657.9	1,614.4	0.0	1,614.4	1,614.4	0.0	1,614.4	1,880.7
FTE POSITIONS										
810	Permanent	18.0	18.0	18.0	0.0	18.0	18.0	0.0	18.0	22.0
820	Term	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
830	Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
FTEs		18.0	18.0	18.0	0.0	18.0	18.0	0.0	18.0	22.0
FTE POSITIONS		18.0	18.0	18.0	0.0	18.0	18.0	0.0	18.0	22.0