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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>HB417</u>	Sponsor	<u>Youngblood</u>
Tracking Number	<u>.206144.1</u>	Committee Referrals	<u>HEC/HSIVC/HJC</u>
Short Title	<u>Charter Schools Chartered by Education Dept.</u>		
Analyst	<u>Terrazas</u>	Original Date	<u>2/27/17</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 417 (HB417) proposes to assign certain Public Education Commission (PEC) duties to the Public Education Department (PED). All functions, records, tangible personal property, contractual obligations, and statutory or rule references of PEC pertaining to its duties as chartering authority or vocational education administrator are transferred to PED. The Charter Schools Division (CSD) would become the chartering authority for state-chartered charter schools and PED would be responsible for vocational education.

FISCAL IMPACT

HB417 does not contain an appropriation.

SUBSTANTIVE ISSUES

PEC was created by constitutional amendment in 2003. Its duties are assigned throughout various statutes (see Attachment A). Its primary responsibility in practice is to authorize state-chartered charter schools. In determining whether to accept or deny an initial charter application, PEC commissioners evaluate each application, read and consider the recommendations and evaluations provided by CSD, and hold public hearings throughout the state to gather input from the founders, supporters, and opponents of each proposed charter school. Finally, the commissioners vote in an open meeting to approve or deny the application. The process to accept or deny a renewal charter school application focuses on any proposed changes to the charter and the charter school's past performance. However, any decisions made by PEC can be overturned by the secretary of education.

Section 12 of HB417 indicates that all functions, records or other tangible personal property of PEC pertaining to its duties as chartering authority or vocational education administrator are transferred to PED. Although HB417 addresses some of the related sections in statute, other sections are left out, including 22-14-5 NMSA 1978, Vocational Education or Rehabilitation, which states that the instructional support and vocational education division of PED must carry

out several duties “subject to the policies of” PEC. HB417 also does not address Article 15F, New Mexico School for the Arts, for which PEC is the authorizer.

Section 22-8B-7 NMSA 1978 states that the secretary of education can reverse the decision of a chartering authority if the secretary determines the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law. This appeal route places the secretary between the charter applicant and PEC, which considers in its deliberations the recommendations of CSD which is overseen by the secretary.

A 2016 National Association of Charter School Authorizers (NACSA) review of state-chartered charter school authorizing practices in New Mexico revealed two main concerns. First, the application of PEC authorizing and renewal standards was found to be inconsistent and less effective than it could be, echoing conclusions found in a 2010 Legislative Finance Committee (LFC) report. NACSA recommended revision and better application of the authorization rubric. Second, the report noted the dysfunctional relationship between PEC and PED, which further exacerbates problems with the appropriate authorization and oversight of state-chartered charter schools. NACSA recommended third-party arbitration to help resolve existing conflicts, but representatives of both PED and PEC declared such intervention unnecessary.

Conflicting statutory language has raised questions regarding whether PED or PEC is entitled to the 2 percent withheld from state-chartered charter school’s state equalization guarantee (SEG) distribution. While the Public School Finance Act and the Charter Schools Act direct the 2 percent to PED, statutory provisions related to charter school performance contracts requires the contract to include a detailed description of how the chartering authority – the local school district or PEC – will use the withheld 2 percent. PED currently withholds the 2 percent funding and uses it throughout the department. Expenses for PEC and CSD are covered, as well as a variety of operational functions, including the general counsel’s office, the School Budget and Finance Analysis Bureau, and the Human Resources Bureau. However, these offices provide support to all school districts and charter schools, and because PED has yet to provide the Legislature with a detailed accounting of how it spends the 2 percent, it is unclear that all of these dollars are being used to support state-chartered charter schools. Additionally, PEC continues to voice concerns that a lack of financial resources has hampered its ability to fulfill its statutory duties. According to PEC commissioners, PEC would like a source of funding to pay for legal services, as well as the services of a facilitator, to help negotiate performance contracts with prospective state-chartered charter schools.

ADMINISTRATIVE IMPLICATIONS

CSD would assume all duties associated with authorizing state-chartered charter schools and PED would become the vocational education administrator. PED would need to review the administrative code to make appropriate changes.

TECHNICAL ISSUES

The temporary provision in HB417 does not appear to follow the same language found in other temporary provisions. The sponsor may consider changing the language to something like, “all references to the public education commission shall be deemed references to the public education department.”

PEC is the assigned authorizer for the New Mexico School for the Arts under Article 15F NMSA 1978. The sponsor of the bill may wish to address this in HB417.

The sponsor of the bill may wish to include Section 22-14-5 NMSA 1978 in HB417 to replace PEC with CSD.

There seems to be a substantial difference between PEC's statutory and code requirements and actual practice. The sponsor may wish to consider adding a section explicitly directing PED to undertake extensive rulemakings.

OTHER SIGNIFICANT ISSUES

In 2011, the Legislative Education Study Committee (LESC) convened a work group of 12 representatives of constituencies affected by charter school appeals to serve on a work group to review the appeals process under the Charter Schools Act and to make recommendations for amendments. One of the work group's recommendations was to encourage CSD and the secretary of PED to collaborate with PEC regarding the criteria for accepting or rejecting initial charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters.

There have been a number of cases in which the complex relationship between CSD and PEC was revealed. For example, in 2007 CSD recommended that PEC approve the application of Cottonwood Classical Preparatory School. However, PEC denied the application. The charter school appealed to the secretary who reversed PEC's decision. In the appeal hearing, CSD staff found themselves representing PEC for an action taken against the staff recommendation. In at least four other cases, the secretary ruled against PEC and, arguably in some cases, against CSD.

ALTERNATIVES

The CSD and the secretary could collaborate with PEC to determine what criteria PEC should use when accepting or rejecting initial charter applications, for accepting or rejecting applications for renewal, and for revoking existing charters.

POSSIBLE QUESTIONS

Would the responsibility for vocational education fall under the College and Career Readiness Bureau at PED?

What would the appeal process for charter school applications and charter renewals look like?

What role would PEC take in public education in New Mexico?

RELATED BILLS

Relates to *HB461, Education Commission Strategic Plan, which specifies and expands the duties of PEC in terms of the requirement to develop an education strategic plan.

SOURCES OF INFORMATION

- LESC Files

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Public Education Commission (PEC) Roles and Duties Not Impacted by HB417

Location	PEC Roles and Duties in the Constitution of the State of New Mexico
Article XII Section 6	<ul style="list-style-type: none"> • Ten PEC members shall be elected for staggered terms of four years as provided by law. PEC members shall be residents of the PEC district from which they are elected. Change of residence of a commission member to a place outside the district from which he was elected shall automatically terminate the term of that member. • The governor shall fill vacancies on the PEC by appointment of a resident from the district in which the vacancy occurs until the next regular election for membership on PEC.
Location	PEC Roles and Duties in Chapter 22 of New Mexico Statutes Annotated 1978
22-2-2.2	<ul style="list-style-type: none"> • PEC shall work with the Public Education Department (PED) to develop the five-year strategic plan for public elementary and secondary education in the state that must be updated at least biennially. PEC shall solicit the input of persons who have an interest in public school policy, including local school boards, school districts and school employees; home schooling associations; parent-teacher associations; educational organizations; the commission on higher education; colleges, universities and vocational schools; state agencies responsible for educating resident children; juvenile justice agencies; work force development providers; and business organizations. • PEC shall solicit input from local school boards, school districts and the public on policy and governance issues and report its findings and recommendations to the secretary and the Legislature; and recommend to the secretary conduct and process guidelines and training curricula for local school boards.
22-2-14	<ul style="list-style-type: none"> • The secretary must consult with PEC before suspending from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. • The provisions of this section shall be invoked at any time the secretary, after consultation with PEC, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules. • PEC shall consult with the secretary and may recommend alternative actions for the secretary's consideration.
22-14-5	<ul style="list-style-type: none"> • Subject to the policies of PEC, the instructional support and vocational education division of PED shall provide vocational education to qualified persons; act as the representative of PEC in administering any state plan or federal aid funds relating to vocational education; cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program; enter into reciprocal agreements with other states to provide vocational education; accept gifts or grants to be used for vocational education; enforce rules for the administration of laws relating to vocational education; and conduct research and compile statistics relating to vocational education.
22-15C-10	<ul style="list-style-type: none"> • Upon request, PED shall make reports to PEC concerning the administration and execution of the School Library Material Act.
22-15F-4	<ul style="list-style-type: none"> • PEC may charter a "New Mexico school for the arts" as a statewide residential state-chartered charter school for grades 9 through 12 to offer intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence. • The school and the board are subject to all the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978], except Subsection K of Section 22-8B-4 NMSA 1978 and Section 22-8B-4.1 NMSA 1978. The school shall not charge tuition, except as otherwise provided in the Public School Code [Chapter 22 NMSA 1978]. The school shall be supported by state

	funds in the same manner as other charter high schools authorized by PEC.
22-15F-6	<ul style="list-style-type: none"> The board shall submit an annual report to the Charter Schools Division (CSD) and PEC that includes demographic information about both applicants and students admitted to the school, including the counties and the congressional districts represented by the students enrolled and the makeup of the student body in terms of socioeconomic status, gender and ethnicity.
22-15F-7	<ul style="list-style-type: none"> The school shall charge residential students a fee to cover the costs of room and board. The board shall establish a sliding-fee scale based on the student's ability to pay. PEC shall approve room and board charges and the sliding-fee scale during the planning year of the school and may approve changes to the charges and scale as requested by the board. The school shall report each year to CSD and PEC on the number of students requiring financial assistance for room and board; the amount of financial assistance provided; and the amount and source of gifts, grants and donations received by the school to provide that financial assistance.
22-21-1	<ul style="list-style-type: none"> A member of PEC ... shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which such person is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which the person is associated or employed. No member of PEC ... shall solicit or sell or be a party to a transaction to solicit or sell insurance or investment securities to any employee of the department or any employee of the school district whom such person supervises.
22-23A-6	<ul style="list-style-type: none"> On a semiannual basis, representatives from all New Mexico tribes, members of PEC, the office of the governor, the Indian affairs department, the legislature, the secretary, the assistant secretary and the Indian education advisory council shall meet to assist in evaluating, consolidating, and coordinating all activities relating to the education of tribal students.
22-23B-4	<ul style="list-style-type: none"> The Hispanic education liaison shall advise PED and PEC on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Hispanic student education.
22-24-5	<ul style="list-style-type: none"> The Public School Capital Outlay Council must submit a report to PEC detailing all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund project, and all other council actions.

Location	PEC Roles and Duties in Title 6 of the New Mexico Administrative Code
6.22.3.7	<ul style="list-style-type: none"> “Authorizer” means either a local school board or PEC that permits the operation of a charter school. “Chartering authority” means either a local school board or PEC.
6.29.1.7	<ul style="list-style-type: none"> “State-chartered charter school” means a charter school authorized by PEC.
6.30.6.8	<ul style="list-style-type: none"> The secretary, after consultation with PEC, may suspend from authority and responsibility a local school board, local superintendent, school principal, or their counterparts in charter schools that has had notice of disapproval and fails to comply with the requirements or procedures of Subsection B of 6.30.6.9 NMAC.
6.30.6.9	<ul style="list-style-type: none"> At any time prior to the entry of a permanent order of suspension, the secretary shall consult with PEC at a public meeting to discuss the reasons for and purpose of the proposed suspension. PEC may recommend other alternatives to suspension, which the secretary may consider in rendering a final decision in the process. With respect to a permanent order of suspension, the secretary shall make permanent, modify, or withdraw the alternative order within five (5) business days after the hearing date. The secretary’s decision shall be in writing and delivered to the school authority or official subject to the alternative order, PEC, and applicable department staff.

	<ul style="list-style-type: none"> • The secretary shall advise PEC of all suspensions in effect at each PEC meeting. Additionally, the secretary shall advise PEC when a suspension is terminated at the next meeting after which the suspension was terminated.
6.31.2.11	<ul style="list-style-type: none"> • Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR Sec. 300.28, that receives funding under 34 CFR Sec. 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under PEC must satisfy child find requirements for children enrolled in the charter school.
6.80.4.8	<ul style="list-style-type: none"> • The organizers of a proposed charter school shall provide a signed written notification to the PEC and the school district in which the charter school is to be located of the organizers' intent to establish a charter school.
6.80.4.11	<ul style="list-style-type: none"> • Prior to the end of its planning year, a state-chartered charter school shall demonstrate that it has qualified as a board of finance and that it has satisfied any conditions imposed by PEC before commencing full operation for the remainder of its charter term. • Prior to the end of its planning year, the state-chartered charter schools shall apply to PEC for authorization to commence full operations. If PEC refuses to issue the authorization to commence full operation, it shall provide its reasons in writing which shall be limited to the reasons set forth in Subsection D of 6.80.4.11 NMAC.
6.80.4.12	<ul style="list-style-type: none"> • Local school boards may approve the establishment of charter schools to be located in their respective districts. PEC may approve the establishment of a charter school to be located anywhere in the state. • Applications to PEC for establishment of a state chartered charter school shall be made to the division at its Albuquerque office. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that district. • A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The assistant secretary for the division shall designate a review coordinator in the division for PEC.
6.80.4.13	<ul style="list-style-type: none"> • The governing body may submit its charter renewal application to either PEC or to the local school board of the district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.
6.80.4.16	<ul style="list-style-type: none"> • Within 90 days of approval of its charter application, the governing body of a state-chartered charter school shall file a separate application with PEC seeking approval as a board of finance. This deadline may be extended by PEC for good cause shown. • Within 30 days of filing of the application to qualify as a board of finance, PEC shall issue a decision approving or denying the application. A copy of the decision will be provided to the governing body and PEC.
6.80.4.17	<ul style="list-style-type: none"> • Upon approval by PEC, a state chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades 9 through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence. • An application to PEC for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, being Laws 2008, Chapter 15, Sections 1 to 9. • By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and PEC containing: • A charter school shall submit its sliding-fee scale to PEC for initial approval during the planning year and may request changes at subsequent PEC meetings for good cause shown.