

LFC Requester:

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**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment

Date Prepared: 01/23/24

Correction Substitute

Bill No: [SJR9](#)

Agency Name
and Code

Sponsor: Neville/Soules

Number: PED - 924

Short STATE SCHOOL BOARD,

Person Writing Denise Terrazas

Title: CA

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY23 | FY24 | | |
| None | None | N/A | NFA |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|------------------------------|------------------|
| FY23 | FY24 | FY25 | | |
| None | None | None | N/A | NFA |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | None | None | None | None | N/A | NFA |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Joint Resolution 9 (SJR9) repeals and replaces Section 6 of Article 12 of the New Mexico Constitution with a new Section 6 that creates the current Public Education Commission (PEC) as the State Board of Education (SBE). The Public Education Department (PED) would no longer be a cabinet-level agency within the executive branch, but rather the SBE would determine public school policy and would have management and direction of the distribution of school funds and financial accounting for all public schools, and would hire a director of the PED, to be called, the “superintendent of public instruction”. The SBE would consist of five elected members, and five members who are appointed by the governor and approved by the senate.

If SJR9 passes the senate, the provisions of the resolution would be voted on in the 2024 general election or in any special election called for that purpose prior to that date. If the resolution is ratified by popular vote in the next appropriate election, the current commissioners would act as the SBE until regular board members are elected in the 2026 election, with terms to begin on January 1, 2027.

FISCAL IMPLICATIONS

The joint resolution does not indicate whether the members of the proposed SBE will be paid.

According to the Secretary of State (SoS), under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the SoS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The SoS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

If SJR9 passes the legislature, and the proposed constitutional amendment is ratified by the people at the next appropriate election, substantial amendment of the Public School Code will be required at uncertain cost to the legislature and the Compilation Commission.

SIGNIFICANT ISSUES

If SJR9 is enacted, the currently serving ten members of the PEC would continue their terms until replaced by members of the SBE on January 1, 2027. Five members of the SBE will be elected by popular vote in a general election on a nonpartisan ballot. The five remaining members of the SBE will be appointed by the governor with approval of the senate. All members of the SBE will serve for staggered terms of six years. Of the governor’s appointees, no more than three can be members of the same political party, and one must be a tribal representative. The governor will appoint members when vacancies occur.

In 2003, the people of New Mexico ratified and affirmed constitutional amendments that converted the State Board of Education to the current PEC and created, instead, the PED as a Cabinet-level agency, with comprehensive authority over the administration of public primary and secondary education in the state. PEC, by contrast, was assigned duties such as acting as a pass-through agency for citizen input into public education policy for the Secretary of Public Education and the

legislature (see, for example, Section 22-2-2.2 NMSA 1978). It is worth noting that the creation of the initial SBE, composed of sitting PEC members, would elevate those commissioners to an office to which they were never elected, and with which they arguably have little practical experience.

Under the proposed governance structure, five members of the SBE would be elected, eliminating the Executive's direct authority over public education in favor of the ten-member commission, making consensus on education policy less likely, and hampering the execution of a unified vision for public education with the diffuse and possibly fractious authority of a committee; this consideration may be of particular concern, given the transfer of fiscal authority from a single administrator to the commission.

As a cabinet level agency in the executive, the PED coordinates with other state agencies on cross-cutting initiatives such as the longitudinal data system. Such efforts are likely to be significantly less efficient, or impossible, if the PED is managed by a commission.

Furthermore, the comprehensive, statewide oversight responsibilities and authority of the PED were most recently emphasized in the District Court's decision in the Martinez and Yazzie consolidated lawsuit. The Court has retained jurisdiction over this matter to ensure long-term, comprehensive reforms are implemented by the State. While this historic case remains in the Court's jurisdiction the effects of SJR9's changes may be difficult to predict.

PERFORMANCE IMPLICATIONS

According to the Charter Schools Act, 22-8B-16 NMSA 1978, the PEC's powers and duties are delineated as follows:

The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.

The proposed SBE would presumably be the sole chartering authority of state-authorized charter schools. Should the resolution be enacted and passed by voters, there would be a need to ensure that charter schools across the state are made aware of any impact to current policies, practices, or charter contracts.

Regardless of the details of specific changes made to particular PED programs and bureaus, the department would likely need to undergo significant reorganization under the new system.

ADMINISTRATIVE IMPLICATIONS

If SJR9 passes and the constitutional amendment is ratified by election from New Mexico voters,

the Executive would need to consider how to ensure a seamless transition of authority, ensuring both the Board and the Department understand their respective roles and responsibilities. Additionally, there may be numerous unintended consequences to requirements made of PED as a state educational agency as imposed by federal or other outside entities due to such a fundamental and comprehensive change.

Importantly, these questions would also need to be addressed in the substantial work to review and amend the entirety of the Public School Code to reflect this change.

Additionally, a fundamental change of this nature would require substantial amendment to the vast body of PED's current rules, to reflect this change in leadership and administration.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Joint Resolution 1, which proposes a similar constitutional amendment to create the SBE from the members of the PEC.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.