

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 2nd Session, 2024

Bill Number	<u>SJR9/aSEC</u>	Sponsor	<u>Neville/Soules/Stewart</u>
Tracking Number	<u>.227399.1</u>	Committee Referrals	<u>SRC/SEC;HEC</u>
Short Title	<u>State School Board, CA</u>		
Analyst	<u>Hathaway</u>	Original Date	<u>1/24/2024</u>
		Last Updated	<u>2/3/2024</u>

BILL SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee (SEC) Amendment to SJR9 (SJR9/aSEC) corrects a sentence structure issue flagged in the analysis of the original bill and makes two additional edits to substitute the word “general” rather than “regular” to refer to elections that would be used to elect the proposed members of the state school board.

The original bill, in Subsection C, contained a sentence that read as “Five members of the state school board, who shall be state officers, shall be nominated and by and with the consent of the senate appointed by the governor for staggered terms of six years as provided by law.” The SEC amendment to SJR9/aSEC edits this sentence to read as “Five members of the state board, who shall be state officers, shall be nominated and, with the consent of the senate, appointed by the governor for staggered terms of six years as provided by law.” This amendment appears to correct a technical issue related to sentence structure and grammar contained in the original bill.

Synopsis of Original Bill

Senate Joint Resolution 9, as amended by the SEC (SJR9/aSEC) proposes to repeal and replace Article XII, Section 6 of the Constitution of the State of New Mexico to create a state school board and the Public Education Department (PED). The state school board would determine public school and career technical education (CTE) policy, and have control and direction of all public schools, including financial direction, distribution of school funds, financial accounting, and must appoint a superintendent of public instruction to direct the operations of PED.

The state school board would be composed of 15 members, 10 elected and five state officers appointed by the governor (with the consent of the Senate), for staggered terms of six years, as provided by law. Elected board members must be residents of the state school board district from which they are elected and must remain a resident of that district, or have their term automatically terminated. Appointed members, who would be state officers, must be nominated by the governor with the consent of the Senate. Appointed members must be qualified electors, and no more than three can be members of the same political party. One of the five appointed members must be a

tribal representative. No more than two members can be appointed from the same county. SJR9/aSEC provides for a transition period from the current structure of the PED and the Public Education Commission (PEC): the PEC districts would be the state school board districts until redistricting occurs after the 2030 federal decennial census, and the PEC would continue until replaced by the elected members of the state school board on January 1, 2027.

As this is a constitutional amendment, its adoption is subject to voter approval at the next general election or special election prior to the date of the next general election. After the adoption of this amendment, SJR9/aSEC9 specifies elected members of the state school board would be elected at the 2026 general election for staggered terms beginning January 1, 2027, and appointed members may be appointed before January 1, 2027, for staggered terms beginning January 1, 2027, and may exercise their powers and duties while awaiting Senate confirmation.

FISCAL IMPACT

SJR9/aSEC9 does not contain an appropriation.

Section 1-16-4 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. The cost will vary on the length of the ballot question. However, as a reference, in 2022, the SOS published three constitutional amendments and three bond questions for approximately \$404 thousand.

SUBSTANTIVE ISSUES

State School Board of Education. The proposed joint resolution returns the operation and management of public education in New Mexico to a structure similar to one in place prior to the 2003 constitutional amendment that created the state's current system of a cabinet-level PED presided over by a secretary of public education. The state school board would be composed of 15 members: 10 elected and five state officers appointed by the governor (with the consent of the Senate), for staggered terms of six years, as provided by law.

- **Elected Members.** As proposed in SJR9/aSEC, the 10 elected board members must be residents of the state school board district from which they are elected and must remain a resident of that district, or have their term automatically terminated.
- **Appointed Members.** As proposed in SJR9/aSEC, the five appointed members, who would be state officers, must be nominated by the governor with the consent of the Senate. Appointed members must be qualified electors, and no more than three can be members of the same political party. One of the five appointed members must be a tribal representative. No more than two members can be appointed from the same county.

SJR9/aSEC's proposed replacement of the secretary of education with a state superintendent of public instruction could potentially have stabilizing effects on state education leadership and provide a buffer from political motives. Since the creation of the position of secretary of public education in 2003, there have been eight secretaries of PED: Veronica Garcia (2003-2010), Hanna Skandera (2010-2017), Christopher Ruszkowski (2017-2019), Karen Trujillo (2019), Ryan

Stewart (2019-2021), Kurt Steinhaus (2021-2022), interim secretary Marianna Padilla (2022-2023), and Arsenio Romero (2023-Present).

Prior to 2003, New Mexico had an elected policymaking state board of education. When the constitutional amendment establishing PED was passed in 2003, changes included shifting responsibilities from a superintendent of public instruction selected by the board to a secretary selected by the governor and established PED as the party responsible for disbursing funds. From 1963 to 2003, there were three state superintendents over PED: Leonard DeLayo (1963-1985), Alan Morgan (1985-1997), and Michael Davis (1997-2002).

A constitutional amendment making such a fundamental change to a cabinet-level agency, if approved by the voters, would necessitate extensive statutory and regulatory revision regarding the agency's powers, duties, and organization. SJR9/aSEC also removes the constitutional provision creating the PEC, the authorizer of state-chartered charter schools. Statutory provision reassigning the PEC's powers and duties will also be required, most extensively affecting the Charter Schools Act. Another body, presumably the state board of education, would be required to assume the PEC's duties. The existing administrative relationship between PED and PEC, in which PED's Charter Schools Division staff supports the PEC in its work to authorize state-chartered charter schools, could mitigate some of the issues associated with this transfer of authority and responsibility.

Current PEC Structure. The PEC consists of 10 elected commissioners who serve for staggered terms of four years. Commission members are residents of the PEC district from which they are elected and therefore, PEC commissioners are from communities located across the entirety of New Mexico. The PEC is the authorizer for all state-chartered charter schools in New Mexico. The primary function of the PEC is the review, and approval or disapproval, of applications to authorize state chartered charter schools. This includes approval, renewal, suspension, and revocation of state level charters. Acting as the state-level charter school authorizer occupies the bulk of the PEC's time, work, public meetings, and hearings.

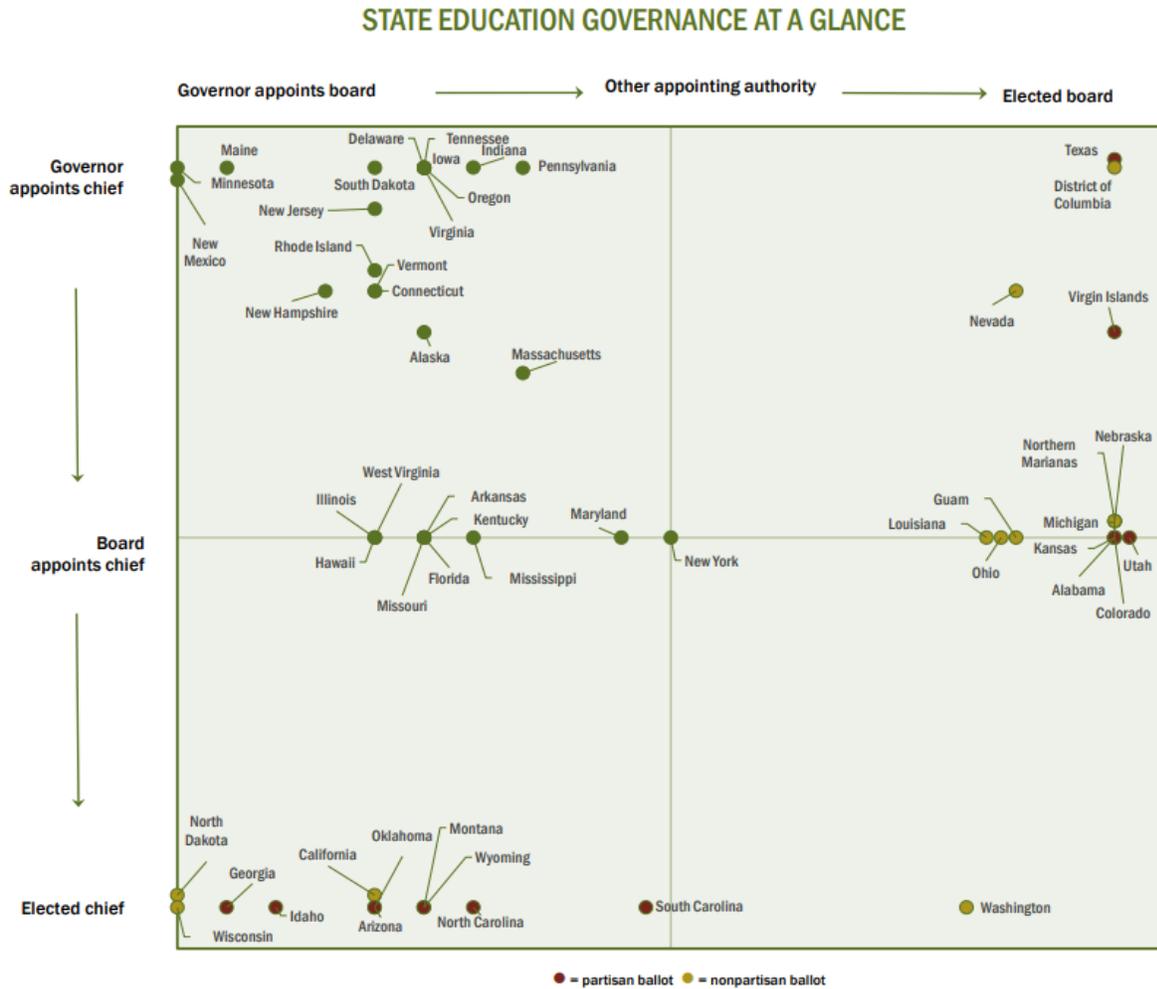
As proposed by SJR9/aSEC, the districts of current PEC members would remain the same and become the districts from which state board of education members would be elected.

Education Governance Models. Data from the National Association of State Boards of Education (NASBE), [indicates](#) New Mexico, Minnesota, and Wisconsin are the only states that do not have a state board of education.

Education governance models vary throughout the country, however. According to the Education Commission of the States (ECS), [state education governance](#) structure generally falls within one of four different models:

1. Voters elect the governor, and then the governor appoints the members of the state board of education and the state superintendent. Ten states fall within this category.
2. Voters elect the governor, who then appoints either all or most of the state board of education. The state board then appoints the state superintendent. Twelve states fall within this category.
3. Voters elect both the governor and the state superintendent. The governor then appoints the state board of education. Nine states fall within this category.
4. Voters elect both the governor and the state board of education. The state board of education then appoints the state superintendent. Six states fall within this category.

Fourteen states, including New Mexico, fall precisely into none of the above models, but rather utilize a modified version of one of these formats. NASBE has also provided a visual of governance structures, as shown below:



Note: There are 15 states and territories to which some or all of the members are elected, and 10 of those have only elected members. There are 16 states in which the governor appoints the board and the chief. There are 35 states in which members are appointed.

Source: National Association of State Boards of Education

Governance Structures and Student Outcomes. There appears to be no cause-and-effect relationship between governance structures and student performance or outcomes. For example, LESC staff examination of National Assessment of Educational Progress (NAEP) test scores in a variety of states with different governance structures shows no clear pattern between a state’s governance structure and student performance on the NAEP.

ADMINISTRATIVE IMPLICATIONS

As mentioned in the discussion of substantive issues, returning the operation of public education to a model similar to that which existed before the education reforms of 2003 may require substantial amendments to both statute and public education administrative rule. Given the number and volume of statutes and rules implicated by public education, this would be a significant task.

Extensive reorganization of the department itself may be necessary with the installation of the state board and superintendent of public instruction.

The reassignment of PEC's powers and duties, most likely to the state board of education, would also require statutory and regulatory change. It is unclear if current staffing levels at PED will be sufficient to cover all of the commission's former duties.

In its analysis of SJR9/aSEC, PED notes the following regarding the proposed provisions of SJR9/aSEC:

- The creation of the initial proposed state board of education would be "composed of sitting PEC members, which 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 proposed state board of education "would be elected, eliminating the executive's direct authority over public education in favor of the 10-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, 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."
- "The comprehensive, statewide oversight responsibilities and authority of PED were most recently emphasized in the district court's decision in the *Martinez-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."

OTHER SIGNIFICANT ISSUES

Powers and duties were transferred from the original state board of education to PED upon adoption of constitutional amendment, effective September 23, 2003, by a vote of 101,542 in favor and 83,155 against. Prior to this time, the members of the state board of education were elected, with incumbents from the board becoming PEC members upon approval of the amendment, with duties limited to strategic planning and policy advisement for local school boards. The PEC's current responsibility for chartering schools was established in 2006. Statutory implementation of the constitutional amendment began in 2004 with the passage of the Public Education Department Act, which made several significant changes to law including:

- Provision for the organization of the new department, granting the newly appointed secretary "every power expressly enumerated in the law" unless expressly exempted by law;
- Provision for the secretary for "all of the duties, responsibilities and authority of that office" during the time before the secretary was confirmed by the senate;
- Explicit notice that the legal duties of the former superintendent of public instruction be deemed references to the new secretary of education, and that all references to the former state board be deemed references to the PED;
- Establishment of PED as the sole educational agency for purposes of distributing aid made available through federal statute; and

- Provision for delayed repeals of the authority of the state board of education.

RELATED BILLS

Conflicts with House Joint Resolution 6 (HRJ6), State Board of Education, which similarly establishes a state board of education, but requires the superintendent of instruction to be a qualified, experienced educator instead of an educational administrator. HJR6 also establishes four-year staggered terms for state board of education members and places the amendment on the ballot during the 2025 regular local election.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)
- New Mexico Regional Education Cooperatives Association (NMRECA)

JKH/mca/js