

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 392a

51st Legislature, 1st Session, 2013

Tracking Number: .190766.3

Short Title: Public Education Commission as Independent

Sponsor(s): Representatives Mary Helen Garcia and Sheryl M. Williams Stapleton and Mimi Stewart, and Others

Analyst: Kevin Force

Date: March 8, 2013

AS AMENDED

The House Education Committee amendments:

- explicitly provide rulemaking authority to the Public Education Commission (PEC) in order to implement the provisions of HB 392; and
- transfers \$375,000 from the program cost allowance, withheld by the Public Education Department (PED) for administration of charter schools, from PED to PEC.

Amended Fiscal Impact:

HB 392a transfers, from PED to PEC, \$375,000 from the two percent set-aside allowed to be withheld by PED for administrative support of charter schools.

Original Bill Summary:

HB 392 proposes to amend sections of the *Public Education Department Act*, and the *Charter Schools Act* to establish the Public Education Commission (PEC) as a separate, independent entity from the Public Education Department (PED).

A section-by-section synopsis of HB 392 follows:

Section 1 amends that section of the *Public Education Department Act* to:

- remove the PEC's administrative attachment to PED;
- stipulate that the PEC shall meet at least quarterly, *or* at the request of a majority of the members; and
- adds new subsections to:
 - permit the PEC to employ staff, subject to the *Personnel Act*, as needed to assist the commission in the execution of its duties, subject to appropriation by the Legislature;
 - direct the PEC to prepare an annual budget; and
 - require the PEC to report annually to the Legislature and the governor:

- the commission’s policies and rules;
- any actions that the PEC took to grant, renew, or deny an application for a charter school; and
- any actions the PEC took to review, on appeal, a granted or denied application for a charter school.

Sections 2 through 4 all amend the *Charter Schools Act*.

Section 2:

- grants authority to the PEC to approve or deny applications for the establishment or renewal of state-chartered charter schools;
- stipulates that no fees may be charged for the consideration of an application, either by the PEC or any other chartering authority;
- requires any member of a chartering authority to be furnished with the transcript, and other documents submitted for consideration, of a public hearing regarding charter school applications, before a decision is made on the disposition of the application;
- requires the chartering authority to rule, in a public hearing, on an application by September 1 so long as it was submitted by the preceding July 1;
- stipulates that the absence of a ruling on a charter school application shall constitute a final denial of the charter, which an applicant may appeal; and
- stipulates that a denial of an application by:
 - a local school board, acting as chartering authority, may be appealed to the PEC by either the applicant or the charter school governing body; and
 - a final decision of the PEC may be appealed to the district court by either the applicant or the governing body.

Section 3:

- permits the PEC, on its own motion, to review a local school board’s decision to grant or renew a charter to determine:
 - if the decision was arbitrary and capricious; or
 - the establishment or operation of the charter would:
 - violate state or federal civil rights laws;
 - violate any court order; or
 - threaten the health and safety of students in the district;
- directs the commission to revoke the charter if it makes any of the above findings;
- notes that a decision by the commission under this section is final; and
- permits an applicant or governing body to appeal a final decision by the commission to the district court.

Section 4:

- requires the commission to review a local school board’s decision to deny, not renew, suspend, or revoke a charter when they receive a notice of appeal from an applicant or governing body;

- allows an applicant or governing body to appeal such decisions by local school boards by providing the PEC with a notice of appeal:
 - within 30 days of the local school board’s decision;
 - that limits the grounds for appeal to those grounds that were the basis of the school board’s decision; and
 - that includes a brief statement of why the board’s decision was wrong;
- requires the PEC to review the board’s decision within 60 days of receipt of the notice of appeal;
- stipulates that the PEC may grant a charter to the applicant, as a state-chartered charter school, if the commission finds that the board’s decision was:
 - arbitrary and capricious;
 - not supported by evidence; or
 - in violation of law; and
- stipulates that an applicant may appeal the decision of the PEC under this section to the district court.

Original Fiscal Impact:

HB 392 does not contain an appropriation.

Original Fiscal Issues:

According to the Fiscal Impact Report (FIR) by the Legislative Finance Committee (LFC):

- The PEC is administratively attached to PED.
- PED receives 2.0 percent of all state-chartered charter schools’ state equalization guarantee (SEG) distributions to provide administrative oversight of state-chartered charter schools.
- Because the PEC is administratively attached to PED, the department is responsible for funding PEC meetings and member travel and per diem.
- HB 392 does not change the distribution of SEG set-aside funding, so PED would continue to receive 2.0 percent of all state-chartered charter schools SEG distributions.
- Thus, the PEC would remain unfunded until a pertinent statutory change is effected or the Legislature appropriates funds for the operation of the PEC.

Substantive Issues:

According to the FIR, HB 392:

- HB 392 establishes the PEC as a free standing commission able to seek funding from the Legislature.
- The bill eliminates the authority of the Secretary of Public Education to:
 - review charter applications not ruled on by a chartering authority; and
 - review appeals.

- The bill establishes the PEC as the body authorized to review an appeal from a decision made by a local school board to grant or deny a charter, but the grounds of appeal are limited to the grounds upon which the school board based its decision to deny, non-renew, suspend, or revoke the charter school.
- A charter school applicant or governing body may appeal a final decision of the commission only to district court.
- The PEC would be required to prepare an annual budget and report to the governor annually on the commission's policies and rules and any actions the commission takes to grant, renew, or deny an application for a charter, or any actions taken on appeal.
- A reversal by the Secretary may be problematic as there may be the appearance of a conflict:
 - The PEC does not have its own staff and must rely on the staff of the Charter Schools Division (CSD) of PED.
 - CSD staff advise the PEC whether to accept or reject an application or renewal based on their interpretation of the relevant statutory provisions and examination of pertinent data.
 - If the PEC rules against a charter applicant, under current law, that applicant may appeal to the Secretary, who in some cases overrules the PEC and the recommendations of the Secretary's own staff.
- Concerns have been raised with regard to locally chartered charter schools appealing to the Secretary that, when overruling a local district and forcing a district to charter a charter school, the Secretary commits local capital resources without district consideration.
- Potential remedies to these issues include:
 - disconnecting the PEC from PED, and allowing locally chartered charter schools to appeal to the PEC and state-chartered charter schools to appeal to district court, as HB 392 does;
 - eliminating an appeal process altogether;
 - granting rulemaking authority to the PEC;
 - creating a different state-level chartering authority; and
 - allowing only local school board to authorize charter schools.
- Some of the issues raised with regard to the appeals process may be resolved when charter performance contracts are required for all charter schools, as SB 446, enacted in the 2011 legislative session, does.¹
- Charter contracts prescribe the criteria, processes, and procedures that the chartering authority will use for its ongoing oversight of operations and financial and academic performance of the charter school.
- The contract will also clarify the criteria, procedures, and timelines that the parties have agreed upon to address charter revocation and deficiencies found in the required annual status report.
- Charter school contracts do not, however, address issues relating to the initial denial and subsequent appeals process.

¹ Laws 2011, Chapter 14

LFC staff offer the following alternatives to the HB 392:

- leaving the PEC administratively attached to PED, but eliminating the Secretary's ability to overrule decisions of a local chartering authority or the PEC;
- leaving the PEC administratively attached to PED, but allowing charter applicants seeking local authorization and locally chartered charter schools to appeal to the PEC, while allowing state-chartered charter schools to appeal to district court; and
- eliminating the ability of a charter school to appeal a decision entirely in light of the increased oversight that will be provided under charter school performance contracts.

Background:

- In December 2010, the PEC denied the request of three locally chartered charter schools to be authorized as state-chartered charter schools on the recommendation of the CSD.
- CSD staff noted failure to meet educational standards as one of the reasons for denying the application, including:
 - proficiency levels at the school that were “well below the proficiency levels of the district”; and
 - the school's failure to keep pace with progress made in other district schools to close “the gap between the students' performance and the annual measurable objectives articulated for the grade levels served.”
- Upon appeal, the Secretary of PED reversed the PEC decision in each case, concluding that the PEC's decision to deny the schools' renewal was “arbitrary or capricious, not supported by substantial evidence, and made contrary to law.”
- In such circumstances, reversal by the Secretary remands the cases to the PEC for approval, after which the PEC has 30 days to act on the reversal.
- Most recently, the Secretary reversed a decision by the PEC to deny the application of the New Mexico Connections Charter Academy, to operate as a state-chartered virtual charter school.
- During the November 2012 meeting of the Legislative Education Study Committee (LESC), the committee considered several policy options as potential legislation, including creating the PEC as an independent body, with authority to:
 - carry out all statutory duties and responsibilities;
 - conduct rulemaking in the matter of charter schools;
 - have operational control of dedicated staff sufficient to support the work of the PEC responsibilities; and
 - have a line-item budget sufficient to accommodate the PEC's duties and responsibilities.
- LESG staff were directed to draft legislation for this, among others, proposed policy option. HB 392 is the result of this directive.

Committee Referrals:

HVEC/HEC

Related Bills:

CS/CS/HB 460 *School Management Contracts & Charter Bonds*

SB 333aa *School Leases & Interest Conflicts*

*CS/SB 338 *Define Virtual Charter School & Moratorium*

SB 476a *Public Education Commission as Independent* (Identical)