

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SJR 8a

51st Legislature, 2nd Session, 2014

Tracking Number: .195343.4

Short Title: Public Education Commission, CA

Sponsor(s): Senator Timothy M. Keller and Representative Mary Helen Garcia

Analyst: Kevin Force

Date: February 15, 2014

AS AMENDED

The Senate Rules Committee amendments make the Public Education Commission the sole “administrative” authority to render “an agency” (rather than “a final”) decision on policy matters relating to charter schools.

Original Bill Summary:

SJR 8 proposes to amend Article XII, Section 6 of the Constitution of New Mexico to prescribe specific duties of the Public Education Commission (PEC):

- advising the Public Education Department (PED) on policy concerning charter schools and other matters provided by law;
- performing other duties prescribed by law; and
- having sole authority to render a final decision regarding:
 - approving or denying an application for the establishment or renewal of a charter, or revoking a charter, of a state-chartered charter school; and
 - affirming or revoking the charter of a locally chartered school or applicant upon review of a local school board’s decision to grant a new charter or renew an existing charter.

SJR 8 also assigns to the Secretary of Public Education “such other duties” to be performed as provided by law, in addition to the Secretary’s administrative and regulatory powers and duties relating to the distribution of school funds and financial accounting for all public schools.

As a proposed amendment to the constitution, SJR 8, if passed, will be submitted to the people at the next General Election, or any prior special election called for that purpose.

Fiscal Impact:

SJR 8 does not contain an appropriation.

Fiscal Issues:

Under Section 1-16-13 NMSA 1978 and the Constitution of New Mexico, the Secretary of State (SOS) is required to:

- print samples of the text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state; and
- publish the samples once a week for the four weeks preceding the election in which the proposed amendment will be presented to the voters in newspapers in every county in the state.

In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size increases to where it becomes longer than one page, front and back, the cost of conducting the General Election would be increased by such costs as those associated with a longer ballot, the additional time required to process individuals as they vote, and additional ballot printing systems, to avoid long lines at voting locations.

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

- SJR 8 would create additional duties for the PEC, which currently are being performed by PED staff and it is likely that the duties could easily be assumed by the PEC, as the PEC is staffed by the Charter Schools Division (CSD) of PED;
- currently, PED receives 2.0 percent of every state-chartered charter school's State Equalization Guarantee distribution for administrative services;
- for FY 13, PED reverted approximately \$294,000 of the 2.0 percent set-aside and spent another \$370,000 on expenses not directly related to charter school oversight; and
- these funds could be used to support the PEC in the newly created duties if needed, as the bill does not create new duties but rather shifts existing duties from PED to the PEC.

Technical Issues:

PED staff note that the PEC lacks authority to promulgate rules for charter application, renewal, or revocation procedures, and for appeals.

Substantive Issues:

As noted by the FIR:

- under the current constitutional provision, the PEC has those powers and duties as provided by law, which include:
 - advising PED on matters of policy; and
 - approving or denying applications for state-chartered charter schools, subject to action of the Secretary of Public Education, who, on appeal, may affirm or overturn a decision of the PEC (a power also available to the Secretary over chartering decisions made by local school boards);
- the proposed amendment would:
 - vest in the PEC the sole power to approve or deny new state-chartered charter schools, and to approve or revoke renewal applications from state-chartered charter schools;
 - grant the PEC the final, and only, review over a local school board's decision to grant a new charter or renew an existing one; and
 - thus, remove the Secretary of Public Education from the chartering process.

LFC staff also indicate that, because SJR 8 is not self-executing, the Legislature may wish to consider a bill, contingent upon adoption of the proposed amendment, which would ensure transition of the pertinent duties to the PEC, until the necessary statutes could be amended appropriately.

The analysis by PED suggests that conflicts of interest may arise from the PEC acting as both the primary authorizer of charters, as well as the final authority, upon appeal, of a decision to deny or revoke a charter, which effectively renders the PEC as appellate authority of its own decisions.

On this point, the process under current law involves conflicting roles and responsibilities.

- Although the chartering authority is the PEC, the commission does not have a staff of its own. Rather, as the FIR notes, it must rely on the staff of the CSD in the PED.
- Despite its authority over charter schools, the PEC does not have rulemaking authority, as the PED analysis notes.
- In determining whether to accept or reject a charter application or request for renewal, the PEC considers the recommendation of the CSD, which is based upon the CSD's interpretation of statutory provisions and examination of relevant data.
- If the PEC rules against a charter applicant, that applicant may appeal to the Secretary of Public Education, the cabinet secretary in charge of PED.
- This appeal route places the Secretary between two opposing parties: on one side, the charter applicant; and on the other, an elected statewide body that, among other duties, advises the Secretary on education policy and that considers in its deliberations the recommendations of a division within the department that the Secretary oversees.
 - In three cases in 2010, the PEC acted in accordance with the recommendations of the CSD and denied the renewal of three charter schools, partly because of failure to meet educational standards; then in 2011, all three schools appealed to the Secretary-designate of Public Education, who overturned the decisions of the PEC that had corresponded with recommendations of the CSD.
 - In a case in 2007, the Secretary of Public Education reversed a decision that the PEC had made against the advice of the CSD; and during the appeal the staff of the CSD found themselves in the position of representing the PEC for an action taken against the staff recommendation.

Background:

In 2003, the Legislature passed a constitutional amendment, which was subsequently approved by the voters, establishing PED as a cabinet level-agency. Because the amendment, much like the current one, was not self-executing, its adoption necessitated additional action by the Legislature:

- provision temporarily transferring authority from PED's and the Secretary's predecessors in interest, the State Board of Education and Superintendent of Public Instruction, to PED, was accomplished with the passage of SB 911 (2003), which had been contingent on adoption of the constitutional amendment;
- this bill temporarily vested all authority over public education in the Secretary of Public Education until the Legislature met in 2004 to establish the enabling act for PED; and
- when the Legislature reconvened in 2004, it enacted the *Public Education Department Act*, which deemed all references in law to the State Board of Education to be references to PED, and all references to the Superintendent of Public Instruction to be references to the Secretary of Public Education.

Related Bills:

HJR 4 *Create Elected Board of Education, CA*

SJR 2a *Board & Superintendent of Education, CA*