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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>SB401</u>	Sponsor	<u>Padilla</u>
Tracking Number	<u>.219783.3SA</u>	Committee Referrals	<u>SEC/SHPAC</u>
Short Title	<u>Career Technical Education Under PED</u>		
Analyst	<u>Hathaway</u>	Original Date	<u>2/28/2021</u>
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BILL SUMMARY

Synopsis of Bill

Senate Bill 401 (SB401) amends several sections of existing statute to clarify the scope and duties of the Public Education Commission (PEC), primarily focusing on its primary function of authorizing state chartered charter schools. The bill would amend statute to reflect the PEC's involvement in several areas of public education including suspension of local school boards, career and technical education (CTE), the Indian Education Act, the Hispanic Education Act, and the School Library Material Act.

There is no effective date of SB401. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPACT

SB401 does not contain an appropriation.

SB401 would require the PEC, as a state commission, to be legally represented by the New Mexico office of the Attorney General (NMAG). Currently, the Public Education Division (PED) pays for the PEC's contract for representation by private attorneys. PED reports the cost of the contract is approximately \$452 thousand over the past three years.

SUBSTANTIVE ISSUES

SB401 proposes amending several existing sections of law in the Public School Code, each aimed at clarifying the duties and role of the PEC. In its analysis, PED notes its view that the provisions of SB401 more accurately reflect the current practice of PEC's involvement in public education. The provisions of SB401 focus the PEC on a primary duty of authorizing state chartered charter schools in New Mexico. This analysis provides an overview of the authorization of charter schools in New Mexico, describes the PEC, and finally, given the numerous proposed changes, analyzes the proposed changes of SB401 by section.

Public Education Commission. The [Public Education Commission](#) consists of 10 elected commissioners that serve for staggered terms of four years. Commission members are residents of the PEC district from which they are elected. 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 renewal, suspension, and revocation of state level charters. PED reports acting as the state-level authorizer occupies the bulk of the PEC's time, work, public meetings, and hearings. PED also notes that SB401 proposes to amend statute to more accurately clarify this responsibility. In doing so, SB401 amends several existing sections of law that affect the function and responsibility of the PEC.

Charter School Authorization. Charter schools in New Mexico are public schools operated independently of public school districts. Charter schools must follow the same laws for finances and operations as traditional public schools although their educational models may vary. There are currently 96 charter schools serving just over 27 thousand students in New Mexico. In accordance with the Charter Schools Act, charter schools in New Mexico can be authorized by two entities:

1. PEC, a state commission with 10 elected commissioners who are administratively supported by the Options for Parents and Families Division at PED; or
2. A local school district, under which charter schools operate under the jurisdiction of that local school district.

Of the 96 charter schools in New Mexico, 54 charter schools are authorized by the PEC (state chartered) and 44 charter schools are authorized by local school boards (locally chartered).

Section 1. This section amends statute to strike language that limits the PEC's scope to act as the chartering authority for state chartered charter schools. This section also adds language that the PEC must be represented by NMAG and not contract for legal services.

PED reports contracted legal services have cost the department approximately \$452 thousand over three years, citing an example that PED incurred costs of \$10.5 thousand for representation by private attorneys for the commission at its December 2020 meeting. NMAG has previously represented PEC at their public meetings for purposes of advising with regard to compliance with the Open Meetings Act.

Section 2. This section addresses possible suspension of local school boards. Current statute requires the secretary of PED consult with the PEC before suspending from authority a local school board or school official who has failed to execute their duties to such an extent that suspension is the only viable path to correcting course for that district or official.

PED noted its view that the PEC is not in a position to be aware of these issues relative to local school boards or officials, and current law provides only that it *may* offer alternative actions for the PED secretary's consideration. Current statute does not require PED or the secretary of the PED to undertake any recommendations. PED reports suspension of a local school board is a rare and exceptional remedy provided for the resolution of exceptional circumstances only after all other possible remedies have been considered and attempted, or rejected. PED reports the requirement that the secretary of PED consult with a body not even tangentially involved with the governance of local school boards to solicit advice that need not even be considered, simply adds an unnecessary impediment to an already involved and fraught bureaucratic process.

Section 3. This section addresses an ongoing internal conflict in the Charter Schools Act regarding the withholding and administration of the two percent of a charter school’s state equalization guarantee (SEG) distribution for technical support. Section 22-8B-13 NMSA 1978 specifically authorizes either a school district, in the case of locally chartered charter schools, or the Charter Schools Division (CSD), for state chartered charter schools, to withhold and use that two percent for support of a charter school. CSD currently provides support and guidance to charter schools as a matter of course although the PEC is the chartering authority for state chartered charter schools. PED reports the PEC neither withholds nor uses these funds and this element of the charter contract is not addressed in contracts for state chartered charter schools.

PED notes striking this language as SB401 proposes would resolve this contradiction in the Charter Schools Act, and accurately reflect the reality of state chartered charter school operation and support.

Sections 4-6. Sections 4 through 6 of SB401 amend statute to make PED the governing authority for the establishment and implementation of state plans addressing career technical education (CTE). These sections also include clean up language to replace “vocational education” with “career and technical education,” a term more commonly utilized in education today. These provisions of SB401 include additional clean up language to change the “Instructional Support and Vocational Educational Division” to its successor, the “Career and College Readiness Bureau” of PED.

PED notes it is already the agency that acts as the governing authority of all CTE policy and administration. PED also notes PEC lacks the necessary expertise and program familiarity to be effective in this role.

Section 7. This section amends statute to strike the requirement that PED’s Instructional Materials Bureau report to the PEC concerning implementation of the School Library Material Act upon request of the PEC. PED notes that the PEC is neither mentioned nor involved in either law or rule in the administration of the act. PED also adds that there have been no appropriations to the school library material fund in at least the past eight years and no reports have been made to the PEC in that same timeframe.

Section 8. Section 8 amends sections of the Indian Education Act to strike a requirement that members of the PEC meet with the Indian Education Advisory Council and other state and tribal officials to assist in coordinating activities related to the education of tribal students. In its analysis of SB401, PED notes that the PEC already assigns a commissioner as a liaison to the Indian Education Advisory Council. Existing statute does not list the PEC in formal membership requirements of the Indian Education Advisory Council.

Section 9. Section 9 amends sections of the Hispanic Education Act to strike a requirement that PED’s Hispanic education liaison advise the PEC on the development and implementation of New Mexico’s five-year strategic plan for public elementary and secondary education, relative to Hispanic students. PED notes the proposed change is consistent with other proposed changes in SB401 that the agency reports are reflective of the PEC’s actual and minimal involvement in the development and implementation of New Mexico state plans for public education.

Section 10. Section 10 repeals Section 22-2-2.2 NMSA 1978 in its entirety. This section of law currently requires the PEC to work with PED to 1) develop New Mexico’s five-year strategic plan

for public elementary and secondary education; 2) solicit input from local school boards, school districts, and the public on policy and governance issues to report these to the secretary of PED and the Legislature; and 3) make recommendations to the secretary of PED about conduct, process guidelines, and training for local school boards.

ADMINISTRATIVE IMPLICATIONS

SB401 would require PED to reassess and amend some sections of relevant administrative rule.

SB401 would require NMAG to provide legal representation to the PEC.

OTHER SIGNIFICANT ISSUES

PED notes the department already undertakes most of the responsibilities that current law assigns to the PEC and that SB401 would officially transfer these to PED.

RELATED BILLS

Relates to SB237, which among other changes to address nepotism in charter schools, would amend existing statute to direct charter school authorizers to use the 2 percent of funds withheld by authorizers specifically “to monitor and oversee the charter school and the governing body.”

Relates to SB318, Charter School Changes, which addresses facilities and capital outlay at charter schools.

Relates to SB51, Charter School Enrollment Preference, which would establish an enrollment preference for the children of employees at charter schools.

SOURCES OF INFORMATION

- LESC Files
- Public Education Department (PED)
- New Mexico Attorney General (NMAG)

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