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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 01/30/14
LAST UPDATED 02/13/14 **HB** _____
SHORT TITLE Board & Superintendent of Education, CA **SJR** 2/aSEC
ANALYST Gudgel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>\$ 46.0		>\$ 46.0	Nonrecurring	Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Joint Resolution 8, Similar to House Joint Resolution 4

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Senate Education Committee Amendment

Senate Education Committee Amendment to Senate Joint Resolution 2 makes changes to the membership of the State Board of Education in the original bill and addresses concerns noted about the transfer of duties to the newly created State Board of Education. The board would be composed of 13 members, 10 elected officials and three nominated and appointed by the Governor with the advice and consent of the senate. The amendment stipulates that the 10 elected Public Education Commission (PEC) members will serve as the 10 elected board members for the remainder of their terms, and the initial three appointed members will serve, one until January 1, 2017, 2018, and 2019. Members will be entitled to per diem and mileage but no other perquisite, compensation, or allowance. The amendment strikes Sections D and F in their entirety and inserts two new sections establishing an effective date of December 15, 2014 for the board to have authority over public education. The amendment requires the board to appoint a “qualified, experienced and licensed educational administrator competent to manage the Public Education Department” by July 1, 2015. Until that time, the board or the board’s designee will be responsible for performing the duties of and have all authority that the Secretary of Public Education possessed on November 1, 2014.

Synopsis of Original Bill

Senate Joint Resolution 2 proposes an amendment to Article XII, Section 6 of the New Mexico Constitution to return the Public Education Department back to a non-cabinet level state agency governed by a nonpartisan State Board of Education, and includes the following:

- Policy making and control, management and direction, including financial direction, and distribution of school funds and financial accounting for all public schools would lie with the State Board of Education.
- The board of education shall appoint a qualified, experienced educational administrator as the “Superintendent of Public Instruction”.
- Stipulates that the 10 elected Public Education Commission members shall constitute the State Board of Education until their terms expire; and
- Specifies the districts from which the ten Public Education Commission members were elected shall constitute the State Board of Education districts until changed by law.

This proposed amendment is to be submitted to the voters at the next general election or at any special election prior to that date which may be called for that purpose.

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM 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 ten 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. In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

SIGNIFICANT ISSUES

During the 2003 legislative session, Senate Education Committee Substitute for Senate Joint Resolutions 2, 5, 12, and 21 was passed by the required two-thirds vote of the Legislature to be placed on the ballot. The resolution proposed creating a cabinet “public education department” headed by a secretary of public education rather than the then current elected “state board of education” that appointed a superintendent of public instruction. The resolution vested **“administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law”** with the secretary of public education.

PED’s analysis notes the 2003 constitutional amendment was not self-executing. The department also notes the 2003 constitutional provision contained the following transfer provision: “all” functions relating to the distribution of school funds and financial accounting for the public schools shall be transferred to the [state department of] public education department to be performed as provided by law,” and relies on this provision to make the conclusion that the current proposal does not have a comparable catch-all transfer provision. However, the 2003 constitutional provision did not include this language (see bolded language above). Provision

transferring authority from the State Board of Education and Superintendent of Public Instruction were found in Senate Bill 911 of the 2003 legislative session, signed by the Governor on April 5, 2003. SB 911, which was contingent on adoption of the constitutional amendment, transferred the authority of the State Board and the State Superintendent to the Secretary of Public Education until July 1, 2014. The bill temporarily vested all the authority in the Secretary of Education until the Legislature met in 2004 to establish the enabling act for the Public Education Department. When the Legislature reconvened in 2004, the Legislature enacted the Public Education Department Act (House Bill 96) and deemed all references in law to the State Board of Education, the State Department of Education, and the Department of Public Education to be references to the Public Education Department and all references to the Superintendent or Superintendent of Public Instruction to be references to the Secretary of Public Education.

The Senate Education Committee Amendment addresses the transfer issue. The amendment transfers all duties of the Secretary of Public Education that existed on November 1, 2014 to the State Board of Education on December 15, 2014, and requires the board appoint a Superintendent of Public Instruction by July 1, 2015. This time frame allows the Legislature to address needed statutory changes during the 2015 legislative session if the constitutional amendment is approved by the voters in November. PED's analysis of the original bill noted that if the Legislature passed bills later vetoed by the Governor the constitutional structure would be in place without enabling legislation. The SEC amendment addresses this by transferring all of the duties and authority of the Secretary of Public Education to the board on December 15, 2014.

PED notes implementation of the Public Education Department Act made the following significant changes:

- (1) provided for the organization of the new department, granting the newly appointed secretary "every power expressly enumerated in the law" unless expressly exempted by law;
- (2) provided the secretary "all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment";
- (3) specified that the duties in law 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 public education department. See NMSA 1978 Section 9-24-4 and 9-24-15;
- (4) established PED as the sole educational agency for purposes of aid made available through federal statute; and
- (5) contained delayed repeals of the authority of the state board of education.

The PED also notes that the PEC's duties are largely directed to charter school governance. "Since the proposed amendment does away with the commission but does not specifically transfer its charter schools duties to the board of education, it is not clear what organization or person is responsible for charter schools oversight and correction. The proposed amendment specifies that the board will assign duties and that the new administrator will "direct" the public education department; however, it is not clear how charter schools authority fits into the picture." LFC staff notes that these are issues the Legislature would need to address.

The Senate amendment also addresses concerns that the changes proposed in the original joint resolution removed decisions regarding public education from the control of the Governor. The amendment adds three members to be appointed by the Governor, giving the Governor representation in determining policy, distributing public education funds, and control, management and direction of the Public Education Department and the operation and finances of public schools.

ADMINISTRATIVE IMPLICATIONS

The PED will be required to transition back to a non-cabinet level state agency overseen by an elected board, possibly resulting in change in administrative duties, and the need to ensure the Public School Code and administrative rules are aligned to the new structure. PED notes that the transition from a non-cabinet level state agency to a cabinet level agency resulted in many personnel and administrative challenges. The department notes that another administrative change could be as demanding as the previous change.

The new Board of Education would appoint the Superintendent of Instruction and be required to establish educational policy for the Superintendent to follow.

CONFLICT, RELATIONSHIP

Senate Joint Resolution 8 conflicts with SJR 2, proposing an amendment to Article 12, Section 6 of the New Mexico Constitution to establish duties of the Public Education Commission.

House Joint Resolution 4 is similar with the following two exceptions: HJR 4 transfers duties to the newly created State Board of Education on July 1, 2015 (SJR 2 does not explicitly establish a date that duties transfer), and requires the “Superintendent of Public Instruction to be a “qualified, experienced and **licensed** educational administrator” rather than a “qualified, experienced educational administrator.”

TECHNICAL ISSUES

Article V, Section 3 of New Mexico Constitution, requires that the office of superintendent of public instruction be a “trained and experienced educator.” The requirements currently contained in the constitution are slightly different than those contained in SJR2 requiring the superintendent of public instruction to be a “qualified, experienced educational administrator”.

The amended joint resolution does not address the duties of the current Public Education Commission, as noted in Significant Issues. While the amended resolution addresses transfer of the duties of the Secretary of Public Education, the duties of the PEC, namely authorizing state-chartered charter schools, are not transferred. The Legislature may wish to address these duties in the constitutional amendment; otherwise the Legislature will need to address this during the 2015 legislative session. It is likely that, given the timing of charter school renewals and consideration of new charter schools, if the Legislature did not act until the 2015 legislative session there would not be significant interruption in these activities.

OTHER SUBSTANTIVE ISSUES

In 2003, when the Legislature was considering SJRs 2, 5, 12, and 21 (making the Public Education Department a cabinet level department, the State Department of Education provided the following areas of major concern:

“The amendment, if adopted by the voters, could result in reorganizations and restructuring of the public education department and the state's system of public education on a periodic basis in accordance with the political and administrative philosophies of an incumbent governor. Concomitantly, the administrator, as well as exempt division heads, would be subject to replacement at the pleasure of the governor or upon shifts in the Office of the Governor, thus compromising or eliminating continuity and stability within the state's system of public education.”

“The amendment, if adopted, will require a comprehensive reassessment of the Public School Code and may further require re-adoption of the regulatory provisions currently in place. In addition, legislation will be required to delineate the parameters of the newly created executive department.”

POSSIBLE QUESTIONS

- How many states have a public education governance structure similar to the one proposed in this constitutional amendment?
- Is there evidence of improved student performance that is directly attributable to one governance structure versus another?
- Does the current governance structure result in reorganizations and restructuring of the public education department and the state's system of public education on a periodic basis in accordance with the political and administrative philosophies of an incumbent governor?
- How will returning to a Public Education Department governed by an elected State Board of Education improve the effectiveness of the public school system?
- Will the proposed governance structure be more accountable at the policy-making level than the one we have now?

RSG/jl:ds