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## FISCAL IMPACT REPORT

**SPONSOR** Keller **ORIGINAL DATE** 02/04/14  
**LAST UPDATED** 02/09/14 **HB** \_\_\_\_\_

**SHORT TITLE** Public Education Commission, CA **SJR** 8/aSRC

**ANALYST** Gudgel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SJR 2 and HJR 4

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Joint Resolution 8 amends Paragraph 2 of Subsection E to clarify that the Public Education Commission will have the sole “administrative” authority to render “an agency” decision. Prior to the amendment it read that the PEC had the sole authority to render a decision. The change recognizes that an aggrieved party still has access to appeal the decision to a court of law.

#### Synopsis of Original Bill

Senate Joint Resolution 8 proposes a constitutional amendment to Section 6 of Article XII of the New Mexico Constitution to establish duties for the Public Education Commission, including:

- Advising the Public Education Department on policy matters relating to charter schools and other issues, and other duties as established by law;
- The sole authority to render a final decision approving or denying an application for the establishment or renewal of a charter for or revoking a charter of a state-chartered charter school; and

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- The sole authority to affirm or revoke the charter of a locally chartered charter school or applicant upon review of a local school board's decision to grant a new charter or renew an existing charter.

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.

Additionally, if adopted, the Joint Resolution would create additional duties for the Public Education Commission. These duties are currently 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 PED. Currently, PED receives 2 percent of every state-chartered charter school's state equalization guarantee distribution for administrative services. For FY13, the PED reverted approximately \$294 thousand in 2 percent set aside and spent another \$370 thousand on expenses not directly related to charter school oversight. These funds could be used to support the PEC in the newly created duties if needed (as the bill does not increase duties but rather shifts duties from the department to the PEC).

### **SIGNIFICANT ISSUES**

Currently, pursuant to the state Constitution, the Public Education Commission (PEC) is granted powers and duties as provided by law. Section 9-24-9 NMSA 1978 states "The commission shall advise the department on policy matters and shall perform other functions as provided by law." The only other power or duty granted to the Public Education Commission is the power to approve state-chartered charter schools. However, law grants the Secretary of the Public Education Department the authority to overturn the decision of the PEC. Current law also grants the Public Education Department the authority to overturn the chartering decisions of local school districts.

The constitutional amendment would vest the sole power to approve or deny new state-chartered charter schools and approve or revoke renewal applications for state chartered charter schools with the PEC. The amendment would also establish the PEC as the only body with final review over a local school board's decision to grant a new charter or renew an existing charter, removing the Secretary of PED from chartering decisions.

However, the constitutional amendment is not self-executing. The 2003 constitutional amendment establish PED as a cabinet level-agency was also not self-executing. 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 PED. 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 PED and all references to the Superintendent or Superintendent of Public Instruction to be references to the Secretary of Public Education.

Because the amendment is not self-executing, the Legislature may wish to consider a bill this session similar to SB 911 of the 2003 legislative session to ensure transition of the duties to the PEC until the Legislature could amend current statutes appropriately. An alternative would be to make the changes proposed in the constitutional amendment take effect at some date after the 2015 legislative session.

### **ADMINISTRATIVE IMPLICATIONS**

PEC would assume increased duties. Currently, PED receives 2 percent of every state-chartered charter school's state equalization guarantee distribution for administrative services. For FY13, the PED reverted approximately \$294 thousand in 2 percent set aside and spent another \$370 thousand on expenses not directly related to charter school oversight. These funds could potentially be used to support the PEC.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SJ2 2 and HJR 4 conflict with SJR 8, as they both propose an amendment to Article 12, Section 6 of the New Mexico Constitution to return the Public Education Department to a non-cabinet level department governed by a State Board of Education.

### **TECHNICAL ISSUES**

The PED analysis notes that the PEC does not have rule-making authority and is not able to promulgate rules setting forth procedures for application, renew, and revocation proceedings. See Significant issues.

### **OTHER SUBSTANTIVE ISSUES**

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 Charter Schools Division (CSD) of the PED. The CSD staff noted failure to meet educational standards as one of the reasons for denying revocation, including: the school's proficiency levels were "well below the proficiency levels of the district"; and the school was not keeping pace with the progress that district schools were making "in closing the gap between the students' performance and the annual measurable objectives articulated for the grade levels served." All three schools appealed to the Secretary of the PED, who reversed the PEC decision in each case. In all three cases, after reviewing evidence and hearing the arguments on both sides, the Secretary concluded the PEC's decision to deny the schools' renewal was "arbitrary or capricious, not supported by substantial

evidence, and made contrary to law...” The Secretary reversed the decision of the PEC and remanded to the PEC for approval of each charter as a state-chartered charter school.

Problematic in the overruling is the appearance of a conflict – the PEC does not have its own staff and must rely on the CSD staff. The CSD staff advises the PEC whether to accept or reject an application or renewal based on 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, who in some cases makes a determination to overrule the PEC and the Department’s staff recommendation.

Additional concerns have been raised with regard to locally chartered charter schools appealing to the Secretary, including concerns that the Secretary, when overruling a local district and forcing a district to charter a charter school, commits local capital resources without district consideration.

One potential fix to these conflicts is to disconnect the PEC from the PED and allow a locally chartered charter school to appeal to the PEC and to require state-chartered charter schools to appeal to district court. Other potential remedies include eliminating an appeal process altogether, granting rulemaking authority to the PEC, create a different state-level chartering authority or allow only local school board to authorize charter schools.

It is also possible that some of the issues raised with regard to the appeals process may be resolved when charter performance contracts are required for all charter schools, Laws 2011, Chapter 14 (SB 446). Charter contracts prescribe the criteria, processes and procedures that the chartering authority will use for its ongoing oversight of operation, 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 will not, however, address initial denial and appeal issues.

## **ALTERNATIVES**

There are multiple other solutions to eliminate the conflict that currently exists:

- Consider eliminating the Secretary’s ability to overrule decisions of a local chartering authority or the PEC.
- Eliminate the ability of a charter school to appeal a decision entirely in light of the increased oversight that will be provide pursuant to charter school performance contracts.

RSG/ds