

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SJR 20

52nd Legislature, 2nd Session, 2016

Tracking Number: .203556.2

Short Title: Elected & Appointed Board of Education, CA

Sponsor(s): Senator William P. Soules

Analyst: Kevin Force

Date: February 12, 2016

Bill Summary:

SJR 20 proposes to amend Article XII, Section 6 of the Constitution of the State of New Mexico to create a State Board of Education, half of whose members shall be elected, and have shall be appointed by the Governor, with the advice and consent of the Senate.

Fiscal Impact:

SJR 20 makes no appropriation.

Under Section 1-16-13 NMSA 1978 and the New Mexico constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. 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 additional ballot printing systems would be required to avoid having lines at voting convenience centers. SOS estimates the cost per constitutional amendment to be \$104,000 based on 2010 actual expenditures.

At a Glance:

- SJR 20 would create a 10-member State Board of Education from the current Public Education Commission, who would appoint a Superintendent of Public Education to oversee the Public Education Department (PED) as directed by the board.
- The joint resolution removes PED as a cabinet-level department, and strikes all references to the Secretary of Public Education as appointed by the Governor and confirmed by the Senate.

Detailed Bill Provisions:

SJR 20 proposes to:

- create a 10-member State Board of Education:
 - to determine public school policy, distribute public school funds, and manage PED and the operation of public schools;
 - to appoint a Superintendent of Public Education, who shall be a qualified, experienced, and licensed educational administrator, to manage PED as directed by the State Board of Education;
 - five of whom shall be elected for staggered four-year terms from the district in which they reside, with any change of residence to somewhere outside that district from which they were elected automatically terminating that board member's term, as provided by law;
 - five of whom shall be appointed by the Governor for staggered terms of four years, one from each of the five districts of the newly created State Board of Education, with the advice and consent of the Senate, as provided by law; and
 - the initial members of which shall be the members of the Public Education Commission (PEC) who were elected on or before the 2016 election;
- remove the creation of, and references to, the PEC, except insofar as the commissioners shall be the initial members of the State Board of Education, as noted above;
- remove the designation of PED as a cabinet-level department, as well as all references to a Secretary of Public Education to be appointed by the Governor and confirmed by the Senate;
- stipulate that the districts from which the public education commissioners were elected shall be the districts of the state board until changed by law after each federal decennial census; and
- submit this amendment to the people of New Mexico for approval at the next General Election or a special election called for that purpose.

Substantive Issues:

A change to the Constitution of the State of New Mexico of this magnitude, if passed and approved by the voters, would necessitate extensive amendment to the *Public School Code* to reflect these alterations to the governance structure of the New Mexico public school system. Most notably, these changes include:

- the removal of references to PEC as an independent entity;
- the removal of PED as a cabinet agency and its transformation into the staff of the State Board of Education, which would be an independent body, with five members elected and five appointed, to assume supervision of the functions currently overseen by both PED and PEC; and
- the removal of the Secretary of Public Education and his or her replacement by a Superintendent of Public Education, who:
 - shall not be a cabinet secretary; and
 - shall be an experienced, qualified, and licensed educational administrator.

The changes proposed by SJR 20 will, in effect, return operation and management of public education in New Mexico to that structure in place prior to the 2003 constitutional amendment that created PED as a cabinet agency and established the PEC as an independently elected body (see “Background,” below).

Education governance models vary throughout the country. According to the Education Commission of the States, state education governance structure generally falls within one of four different models:

1. The governor appoints the majority or all of the members of the state board of education, which in turn appoints the chief state school officer. The exact number of board members, and whether those members’ appointments must be confirmed by either or both of the houses of the state legislature, varies among jurisdictions. Fourteen states fall within this category.
2. Most or all of the state board members are elected by the voters, either on a partisan or non-partisan ballot, with the board then appointing the chief officer. Seven states use this model.
3. The governor appoints most or all of the members of the state board of education; again, with legislative confirmation requirements varying among the states, while the chief state school officer is elected, either on a partisan or non-partisan ballot. Nine states fall within this model.
4. The governor appoints the chief officer, as well as most or all of the board members, with confirmation requirements varying among jurisdictions. Eleven states use this method.

Nine states, including New Mexico, fall precisely into none of the above models, but rather utilize a modified version of one of these formats.

There appears to be no causal relationship between governance structures and student performance. For example, examination of National Assessment of Educational Progress (NAEP) test scores shows no relationship between a state’s governance structure and student performance on the NAEP.

Technical Issues:

Section 1, Paragraph B of the joint resolution indicates that five members are to be elected for staggered terms from the district in which they reside. Paragraph C, however, indicates that the remaining five members are to be appointed by the Governor “one from each of the five state board of education districts.” Finally, Paragraph D notes that the 10 respective PEC districts from which the commissioners were elected shall be the districts of the State Board, until the districts are changed, according to the next decennial census.

This language may be problematic, as there will necessarily be 10 members and 10 districts in the initial State Board of Education, yet Paragraph C refers to “*the* five state board of education districts.” The joint resolution is unclear as to the exact mechanism to determine how the five elected and five appointed members are to be allocated to which districts; statutory amendment would be necessary to clarify these processes, as the joint resolution notes that they are to be determined by law.

SJR 20 also makes no provision for the filling of unexpected vacancies on the board; current constitutional language directs the Governor to fill vacancies by appointment of a resident from the district in which the vacancy arises until the next regular election.

Background:

In 2003, concurrent with enacting the education reforms originally proposed by HB 212, powers and duties were transferred from the State Board of Education (the body that administered public education in New Mexico at the time) to PED upon adoption of a constitutional amendment originally proposed by SJR 2 (2003), which was adopted by the voters in September of 2003.¹ That constitutional amendment created PED as a cabinet-level department, and established the former state board as the new PEC.²

Related Bills:

HB 143a *Change Dates for Certain Elections*

HJR 7 *School Elections with Other Elections, CA*

¹ SJR 2 (2003) was adopted during the special election of September 23, 2003 by a vote of 101,542 in favor and 83,155 against.

² Constitution of the State of New Mexico, Article XII, Section 6(E)