

LFC Requester:

Connor Jorgensen

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/11/2025

Check all that apply:

Bill Number: HJR 12

Original Correction
Amendment Substitute

Sponsor: Speaker Javier Martinez; Rep. Nathan Small; Rep. Charlotte Little; Rep. Sarah Silva; Rep. Anita Gonzales

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This proposed constitutional amendment (CA) seeks to make four changes to Article 12, Section 13 of the New Mexico Constitution.

- **Section 1(E)** clarifies that boards of regents hold positions of trust, and that a member’s control and management of the higher education institution is subject to a number of fiduciary duties. Fiduciary duties owed to an institution by a board of regents include the duty of undivided loyalty, duty of due care and prudent administration of their responsibilities, and a duty to act in good faith in accordance with the laws of New Mexico and policies of the institution. The proposed CA clarifies that these fiduciary duties extend to any of the institution’s administrators to whom a board of regents delegates their authority. Under the amendment sought, the legislature is given express authority to provide in statute any additional duties, or define of scope of those duties, related to the board’s control and management of the institution.
- **Section 1(F)** currently provides for removal of a board member for incompetence, neglect of duty or malfeasance in office. The proposed CA seeks to add “breaches of fiduciary duties” and “breaches of other duties” as grounds for a board member’s removal. Added language to Section 1(F) clarifies that removal of a board member is not the sole recourse for a board members incompetence, malfeasance or breach of fiduciary of other duties – rather, additional remedies recognized through common-law or statutory causes of action may be pursued.
- **Section 1(F)** changes the forum through which removal actions are initiated and litigated. Currently, the New Mexico Supreme Court has exclusive original jurisdiction to hear board of regent removal proceedings. The proposed CA would vest this jurisdiction in the district courts.
- **Section 1(F)** clarifies the parties who have standing to bring a removal action. Currently, Article 12, Section 13 is silent as to who can bring an action to remove a board member. HJR12 states that a removal action may be brought by “the attorney general or by a majority of the other members of the board of regents of the institution...”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

The Attorney General is given standing to bring actions to remove a board of regent's member on any of the grounds listed in Section 1(F).

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- Relationship - HJR12 is related to SB266. While HJR12 explicitly lists the fiduciary duties for which boards of regents are subject, SB266 creates a cause of action against a board of regents (of any state education institution under Article 12, Section 11 of the NM Constitution), any community college board, or an administrator of either institution for breach of their fiduciary duties.
- Relationship – HJR12 is related to SB19, which would require training of boards of regents, including two (2) hours covering financial management, budgeting and fiduciary duties.
- Relationship – SJR7 seeks to limit the governor's appointment authority over board of regents members, requiring that those members be selected from a list of names provided by a nominating committee for each institution.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A