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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 2nd Session, 2018**

<b>Bill Number</b>	<u>SJR10</u>	<b>Sponsor</b>	<u>Soules</u>
<b>Tracking Number</b>	<u>.208976.5</u>	<b>Committee Referrals</b>	<u>SRC/SEC</u>
<b>Short Title</b>	<u>State Board of Education, CA</u>		
<b>Analyst</b>	<u>Force</u>	<b>Original Date</b>	<u>1/31/18</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

Senate Joint Resolution 10 (SJR10) proposes to amend Article XII, Section 6 of the Constitution of the State of New Mexico, to create an elected and appointed State Board of Education (SBE) that must appoint a Superintendent of Public Instruction, determine public school policy, distribute public school funds, and manage the Public Education Department (PED) and the administration, operation, and finances of public schools. Through 2020, the SBE will have 10 members who were elected or appointed for terms beginning either January 1, 2017 or January 1, 2019. Beginning January 1, 2020, the newly created board will comprise nine members, five of whom are to be elected from the districts of the Public Regulation Commission for staggered terms, and four to be appointed by the governor, with the advice and consent of the Senate, to serve for staggered terms. Initially elected members must determine by lot which two members will serve for two years, and which will serve for four years. Upon appointment, the governor must determine which of the two appointed members will serve for an initial two-year term, and which for four years. The Superintendent of Public Instruction appointed by SBE must be a qualified, experienced, and licensed educational administrator.

Members of SBE can only be removed from office for reasons of incompetence, neglect of duty, or malfeasance in office. The New Mexico Supreme Court has exclusive and original jurisdiction of all proceedings for removal of SBE members, under rules it may promulgate for that purpose, and its decision in these matters shall be final.

The joint resolution strikes all references to the Public Education Commission and the Secretary of Public Education.

**FISCAL IMPACT**

SJR10 does not contain an appropriation.

Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in Spanish and English, in an amount equal to 10 percent of

the registered voters in the state. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. SOS staff estimate each constitutional amendment may cost up to \$19 thousand in printing and advertising costs based on 2016 actual expenditures.

## **SUBSTANTIVE ISSUES**

**State Board of Education.** The proposed joint resolution would return the operation and management of public education in New Mexico to a structure similar to that which was in place prior to the 2003 constitutional amendment that created the state's current system of a cabinet-level department of public education presided over by a secretary of public education. A constitutional amendment making such a fundamental change to a cabinet-level agency, if approved by the voters, would necessitate extensive statutory and regulatory revision, with regard to the agency's powers, duties, and organization.

SJR10 also removes the constitutional provision creating the Public Education Commission (PEC), the authorizer of state-chartered charter schools. Statutory provision reassigning the PEC's powers and duties will also be required, most extensively affecting the Charter Schools Act. Another body, presumably SBE, would be required to assume the PEC's duties. The existing administrative relationship between PED and PEC, where the Charter Schools Division staffs the PEC to assist in its work to authorize state-chartered charter schools, could mitigate some of the issues associated with this transfer of authority and responsibility.

**Education Governance Models.** 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 nonpartisan 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 nonpartisan 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 cause-and-effect 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.

**New Mexico Supreme Court Exclusive Original Jurisdiction.** SJR10 also proposes to grant the New Mexico Supreme Court “exclusive original jurisdiction” to adjudicate matters involving the removal of a member of the proposed SBE. “Exclusive jurisdiction” restricts certain judicial matters to only be heard by a particular court. “Original jurisdiction” refers to a court’s ability to be the court that hears a matter for the first time. Lower courts are generally courts of original jurisdiction for most matters, with higher courts having “appellate jurisdiction.” “Exclusive original jurisdiction,” therefore, renders a particular court the only court to hear an initial action under the particular matter. When a court of last resort, such as the New Mexico Supreme Court, is designated as having exclusive original jurisdiction, it effectively means that court only may hear any action with regard to a particular matter; under SJR10, only the state Supreme Court may hear any action regarding the removal of members of the proposed SBE.

The joint resolution also notes that the Supreme Court may adjudicate these cases under “such rules as it may promulgate.” The Supreme Court has established procedures in their rules for the adoption of additional rules, found in the Supreme Court’s General Rules, Section 23-106 NMRA, “Supreme Court rules committee,” and Section 23-106.1 NMRA, “Supreme Court rule-making procedures.” According to these rules, normal rulemaking for the court follows an annual cycle. A request for a rule change is to be filed with the Supreme Court clerk, who shall forward it to the appropriate committee appointed by the court for review and recommendation. If the committee recommends a rulemaking, any recommendations submitted to the court after January 1 shall not be considered for publication for comment until January 1 of the following year, unless the court declares an emergency according to several potential criteria. All proposed rules published for comment shall be published in March with a 30-day comment period. Any proposed rule that is recommended for adoption must be acted on by the court by October 1 of the same year. All rules approved by November 1 shall carry an effective date of December 31 for cases pending or filed on or after that date. It appears, then, that a rulemaking by the Supreme Court under normal circumstances can take as little as one or as much as two years to complete.

Supreme Court rules, however, allow for the possibility of an emergency rulemaking if any of several criteria are met, including amendments to rules made necessary by statutory changes. Further, a rulemaking committee may recommend an out-of-cycle rulemaking procedure, and the court may call for one on its own initiative. However, while SJR10 proposes a statutory change affecting the Supreme Court, the language of the bill, “[t]he New Mexico Supreme Court is hereby given jurisdiction . . . to remove members of the [SBE] under such rules as it *may* promulgate,” appears permissive, not explicitly requiring a rule change. Under these circumstances, it is uncertain how the court may proceed in adopting rules for the potential judicial removal of members of the proposed SBE.

## **ADMINISTRATIVE IMPLICATIONS**

As mentioned in the discussion of substantive issues, returning to operation of public education to a model similar to that which existed before the education reforms of 2003 may require substantial amendment to both statute and public education administrative rule. Given the number and volume of statutes and rules implicated by public education, this would be a significant task. Extensive reorganization of the department itself may be necessary with the installation of the state board and superintendent of public instruction.

The reassignment of PEC’s powers and duties, most likely to SBE, would also require statutory and regulatory change. It is unclear if current staffing levels at PED will be sufficient to cover all of the commission’s former duties.

Finally, as noted above, the New Mexico Supreme Court may undertake a rulemaking to address procedures for the removal of SBE members. Given the mechanisms already in existence for the initiation and development of their rules, any rulemaking undertaken by the court should be manageable with existing resources and personnel.

## **OTHER SIGNIFICANT ISSUES**

Powers and duties were transferred from the original State Board of Education to PED upon adoption of constitutional amendment, effective September 23, 2003, by a vote of 101,542 in favor and 83,155 against.

Prior to this time, the members of the State Board of Education were elected, with incumbents from the board becoming public education commissioners upon approval of the amendment, with duties limited to strategic planning and policy advisement for local school boards. The PEC's current responsibility for chartering schools was established in 2006. Statutory implementation of the constitutional amendment began in 2004 with the passage of the *Public Education Department Act*, which made several significant changes to law including:

- Provision for the organization of the new department, granting the newly appointed secretary “every power expressly enumerated in the law” unless expressly exempted by law;
- Provision for the secretary for “all of the duties, responsibilities and authority of that office” during the time before the secretary was confirmed by the senate;
- Explicit notice that the legal duties 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;
- Establishment of PED as the sole educational agency for purposes of distributing aid made available through federal statute; and
- Provision for delayed repeals of the authority of the state board of education.

## **RELATED BILLS**

SB33, Charter School Admin Support Funding, which would transfer one quarter of the 2 percent of state-chartered charter school-generated program costs withheld by PED for their administrative support to PEC.

## **SOURCES OF INFORMATION**

- LESC Files

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