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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/18
SPONSOR Steinborn **LAST UPDATED** _____ **HB** _____

SHORT TITLE Higher Ed Boards of Regents Changes, CA **SJR** 8

ANALYST Amacher _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate Minimal Fiscal Impact			Nonrecurring	Election Fund
			See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJR1/aSRC

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Higher Education Department (HED)
- New Mexico School for the Blind & Visually Impaired (NMSBVI)
- New Mexico State University (NMSU)
- Secretary of State (SOS)

SUMMARY

Synopsis of Senate Joint Resolution

Senate Joint Resolution 8 proposes an amendment to Article 12, Section 13 of the state constitution to increase and make uniform the number of members of boards of regents of all higher education institutions, except for the New Mexico School for the Deaf, the New Mexico Military Institute and the New Mexico School for the Blind and Visually Impaired; and to decrease their terms of office. The resolution is to be submitted for approval by the people of the state in the next general election (November 2018) or any special election called for that purpose.

FISCAL IMPLICATIONS

The Secretary of the State's (SOS) Office supports and understands the legislature's prerogative to place constitutional amendments before the voters of the state. For the purposes of

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determining the cost involved, the SOS notes that, under Section 1-16-13 NMSA 1978, the SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. In order to comply with this requirement for the 2016 general election, the SOS printed approximately 129,000 copies of the “Voter Guide” at a total cost of \$19,041. Printing costs differ depending upon the number and length of proposed constitutional amendments.

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. In 2016, the SOS spent \$245,918 for the required newspaper publications which included printing one 1.5 page (332 words) constitutional amendment at a total cost of \$15,803 (the rest of the publication cost was for printing the full general obligation bond, as required in that bill each year). This publication cost is dependent upon the number and length of the constitutional amendments that are proposed to the voters.

Furthermore, the number of constitutional amendments proposed may also impact the page size of the ballot, or if the ballot size is caused to become greater than one page, front and back, which may increase the cost of producing the ballots for the general election. In addition to the cost of the ballot, there may be time added to the voting process, which would require additional ballot printing systems in order to ensure a smooth and efficient voting process within the bounds of national best practices.

The Higher Education Department notes board of regent members are allowed reimbursement of certain per diem expenses. Higher education institutions may realize minor increases in per-diem and mileage costs association with additional board members.

SIGNIFICANT ISSUES

SJR 8 proposes an increase and to make uniform the number of members of boards of regents of higher education institutions from five to seven, except for the New Mexico School for the Deaf, the New Mexico Military Institute and the New Mexico School for the Blind and Visually Impaired, one of whom shall be a faculty member of the institution, and four of whom may be of the same political party at time of appointment. As outlined the following terms are amended for nonstudent members:

- For those who are currently serving, members shall finish their term and their successors shall be appointed for four-year term (instead of six) or less in such a way continue staggered terms;
- Upon the first vacancy, except for the UNM, the governor shall nominate and by and with consent of the senate shall appoint a faculty member of the institution to serve a four-year term, and that position shall remain a faculty position. Upon the second vacancy, the governor shall appoint a public member to serve a four-year term; and
- Upon the first vacancy on the UNM board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a faculty member of the UNM to serve a four-year term, and that position shall remain a faculty position.

The resolution is to be submitted for approval by the people of the state in the next general election (November 2018) or any special election called for that purpose.

PERFORMANCE IMPLICATIONS

The HED highlights the amendment increases the number of regents that may be of the same political party at the time of appointment from three to four members. However, the amendment does not set a different political party threshold for the NM School for the Deaf, the NM Military Institute and the NM School for the Blind and Visually Impaired, which each include a five member board of regents.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR 8 relates to SJR1/aSRC. The Senate Rules Committee amendment makes clear that at least three names shall be on the list provided by the nominating committee from which the Governor may then nominate members of the Board of Regents. The Legislature is tasked in determining the appointment, terms, powers, and duties of the nominating committees. The effective date of this legislation is July 1, 2019. The resolution is to be submitted for approval by the people of the state in the next general election (November 2018) or any special election called for that purpose.

TECHNICAL ISSUES

As suggested by the NM School for the Blind and Visually Impaired: on page 2, line 19, after the word “education”, add “that has a board of regents with seven members”.

OTHER SUBSTANTIVE ISSUES

The HED notes that currently, Article 12, Section 13 of the New Mexico Constitution sets out the number of regents for each of the constitutionally created higher education institutions. The UNM currently has a seven member board of regents, including six members of the qualified electorate and one student regent. The NM School for the Deaf, the NM Military Institute and the NM School for the Blind and Visually Impaired each have a board of regents comprised of five members of the qualified electorate. All other constitutionally created higher education institutions have a five member board of regents made up of four members of the qualified electorate and one student regent.

The HED provides the following highlighting the potential unintended effects of amending the board of regents to include faculty members and student members:

According to the Association of Governing Boards of Universities and Colleges, Universities are managed by a system of shared governance that involves an institution’s board of regents, administration, and faculty. In most higher education models of shared governance, governing boards hold the fiduciary responsibility, administration is responsible for the day-to-day operations and the faculty control the curriculum. When curriculum matters come before the board, unintended effects on the shared governance structure may occur, if the boards of regents were to include a voting faculty member. Some university systems include non-voting faculty members on the board of regents. For example, the University of California system includes a 26 member board of regents and includes two non-voting faculty members. <http://regents.universityofcalifornia.edu>.

Other systems allow all board members, including faculty and student members, to participate in voting. For example, the State University System of Florida Board of

Governors is comprised of seventeen members, fourteen of whom are appointed by the Florida Governor and confirmed by the Florida Senate for a term of seven years. The remaining members include the Chair of the Advisory Council of Faculty Senates, the Commissioner of Education, and the Chair of the Florida Student Association. <http://www.flbog.edu/>

The Association of Governing Boards of Universities and Colleges 2016 Survey, Policies, Practices, and Composition of Governing and Foundation Boards, reports information on whether faculty are represented as either voting or non-voting members on the governing boards of public and independent institutions: **Faculty Voting Faculty Non-Voting Public Boards 10.9% 9.6% Independent Boards 15.4% 15.1%**

According to the Association of Governing Boards of Universities and Colleges, the use of faculty board members is outside the mainstream in board composition, where 79.5 percent of public board respondents indicated that they do not have any kind of faculty board membership.

According to the Association of Governing Boards of Universities and Colleges (ABG) 2010 Statement on Board Responsibility for Institutional Governance: “It is ABG's view that that faculty, staff, and students ordinarily should not serve as voting members of their own institution’s governing board because such involvement runs counter to the principle of independence of judgment required of board members. Particularly in the case of faculty or staff members, board membership can place them in conflict with their employment status. Even when constituent groups are represented on the board, the board should be mindful that the presence of one or more students, faculty, or staff as members of the board or its committees or institutional task forces neither constitutes nor substitutes for communication and consultation with these constituent groups.”