

# What Does SB 137 Really Require?

A primer on new and revised requirements for School Board Members

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# *Introduction*

- ❑ Effective July 1, 2024
- ❑ More Board Training
- ❑ Limits Superintendent Contract Actions
- ❑ Establishes record-keeping requirements for meeting webcasts and mandates a web interface for online comments
- ❑ Changes Campaign Contribution Reporting Requirements

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# Limitations on Superintendent Contract Extensions and Terminations

# New Lanugage

- ❑ 22-5-4.15:
- ❑ A local school board shall not, during any time between the date of a regular local election in which school board positions are on the ballot and sixty days after the convening of a newly elected board or until sixty days after a majority of the board has been appointed:
  - A. Extend the local superintendent's contract; or
  - B. Terminate the local superintendent without cause.

# Prohibited Actions and Timeframe

- ❑ A local school board shall not:
  - ❑ Extend the local superintendent's contract; or
  - ❑ Terminate the local superintendent without cause.
- ❑ When:
  - ❑ Any time between the date of a regular local election in which school board positions are on the ballot and sixty days after the convening of the newly elected board.
  - ❑ Or until sixty days after a majority of a local school board has been appointed.

# Policy Considerations

- ❑ Evaluation Cycle
  - ❑ Consider a Mid-Year and End-of-Year Evaluation
  - ❑ Align to Fiscal Year Rather than Calendar Year
  - ❑ In an Election Year
    - ❑ Outgoing Board would do Mid-Year Evaluation (December)
    - ❑ New Board would do End-of-Year Evaluation (June)

# Policy Considerations

- ❑ Contract Extension and Other Terms
  - ❑ Board does not have to bind itself to a particular schedule
  - ❑ If the Board takes no action on the Superintendent's contract, it will eventually expire on its own terms
  - ❑ Superintendents generally start looking for another job when their contract drops below one year
  - ❑ If Board is happy with Superintendent performance, it will likely want to add a year in June after completing the Superintendent's end-of-year evaluation
  - ❑ Other contract terms, including salary, can be renegotiated at the same time

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# Webcasting



# Mandatory Features

## □ 22-5-4.16:

“Except as otherwise provided in this section, live audio and video webcasts of local school board meetings shall be accessible through the school district's website and shall include a user interface that allows members of the public to submit written or verbal comments.”

“A webcast shall begin as soon as practicable after the chair has called the meeting to order and shall terminate as soon as practicable after the local school board has adjourned.”

# Mandatory Posting and Archiving

□ 22-5-4.16:

“Recordings of the webcasts ... shall be posted on the school district’s website within one week of the meeting's conclusion ....”

“Recordings of the webcasts ... shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise.”

# Unanswered Questions

- Does SB 137 actually mandate webcasting or does it simply impose conditions on school districts who webcast?
- Does SB 137 create a right to public comment?
- Do the written or verbal comments have to be read out loud or otherwise publicly acknowledged in the Board Meeting?
- Do the written or verbal comments have to be accessible to the public in real time?

# Policy Considerations

- ❑ Public Comment v. SB 137
  - ❑ For example, NMSBA policy language that says, “Any individual desiring to address the Board shall complete a form and give the form to the Superintendent prior to the start of the Board Meeting.”
  - ❑ NMSBA updated language: “Beginning July 1, 2024, live audio and video webcasts of local school board meetings shall be accessible through the District’s website and shall include a user interface that allows members of the public to submit written or verbal comments. The Superintendent may develop regulations or procedures related to the public’s submission of written or verbal comments through the webcast medium.

# SB 137 and the Open Meetings Act

- ❑ Written and verbal comments under SB 137 are not the same as public comment in a School Board Meeting under Open Meetings Act
- ❑ The Open Meetings Act (“OMA”) provides that “all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” NMSA 1978 § 10-15-1(A).

# SB 137 and the U.S. Constitution

- ❑ Except for those portions of a meeting that are closed under OMA, a Board meeting is a limited public forum for the receipt of information. *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999).
- ❑ If a Board by policy or practice permits public comment during a Board meeting, that portion of the meeting is considered a “limited public forum” for speech by members of the public. *MacQuigg v. APS*, Civ. No. 12-1137 (D.N.M. 2015).

# SB 137 and the U.S. Constitution

- ❑ In a limited public forum, a Board may restrict speech if the restrictions are:
  - ❑ Viewpoint neutral, and
  - ❑ Reasonable in light of the purpose served by meetings of the Board.
- ❑ Content-Neutral Time, Place, Manner Restrictions are constitutionally permissible as long as they:
  - ❑ Serve a significant government interest,
  - ❑ Are narrowly tailored to advance that interest, and
  - ❑ Leave open ample alternative channels of communication.
- ❑ See *Shero v. City of Grove, Oka.*, 510 F.3d 1196 (10th Cir. 2007).

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# Minutes



# Existing Open Meetings Act Requirements

- ❑ The Open Meetings Act (“OMA”) (NMSA 1978, § 10-15-1 (G)) provides:
  - ❑ The board, commission or other policymaking body shall keep written minutes of all its meetings.
  - ❑ The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted.
  - ❑ All minutes are open to public inspection.
  - ❑ Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present.
  - ❑ Minutes shall not become official until approved by the policymaking body.

# SB 137: Posting on Website

- ❑ "... an electronic copy of any minutes approved at the meeting shall be posted on the school district's website within one week of the meeting's conclusion ...."

# SB 137: Archiving

- ❑ "... an electronic copy of any minutes approved at the meeting ... shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise."

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# Election Reporting

# Campaign Contribution Reporting

- ❑ School Board Elections occur in November odd-numbered years
- ❑ In 2023, 61 school board members filed campaign finance reports statement wide.
- ❑ LESC Senate Bill 137 Analysis: Secretary of State anticipates the increased filings by Board Members in the upcoming election.

# Campaign Contribution Reporting

1-22A-2 (B)

“Candidate means a person who seeks or considers an office in an election covered by the School District Campaign Reporting Act and who either has filed a declaration of candidacy or has received contributions or made expenditures of [~~five hundred dollars (\$500)~~] *of thousand dollars (\$1,000)* or more or authorized another person or campaign committee to receive contributions or make expenditures of [~~five hundred dollars (\$500)~~] *one thousand dollars (\$1,000)* or more for the purpose of seeking election to a covered office;

Also changed 1-22A-3 to reflect increased contribution amount.

KEY: Expenditure increase level to \$1,000

# Campaign Contribution Reporting

## □ 1-22A-2 (D)

“Covered office” means the position of board education member of a school district [~~that has an enrollment of twelve thousand students or more~~] of the position of board member of a community college organized or operating pursuant to the provisions of Chapter 21, Article 13 or Article 16 NMSA 1978;

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# Dashboard



# School Support and Accountability - Dashboard

- ❑ New Section of Law: 22-2F-3
- ❑ Dashboard to be created by NM Public Education Department
- ❑ 22-2F-3(D): Requires a dashboard for each school to provide policymakers (Board Members) the following information:
  1. Results of indicators (academic achievement, student proficiency, ELL proficiency, graduation rates, school quality/access information)
  2. School quality indicators
  3. Designations (excellence, quality, student success and demographics)
  4. Designations (support, opportunities to learn)

# Board Contribution to Dashboard

- ❑ 22-2F-3(D)(9): The Dashboard will include: the number of hours of training attended by each school's local school board members and whether each member met statutory training requirements.
- ❑ 22-2F-3(E): "The dashboard shall include each school's mission, vision and goals and provide for optional comments from the local school board about the strengths, opportunities for improvement and programmatic offerings corresponding to any of the reported indicators in the dashboard."
- ❑ 22-2F-3(E): "For local school boards that do not provide this information, the department shall populate this section of the dashboard with information from the public school's educational plan for student success."

# Board's Obligation Regarding Dashboard

- ❑ 22-2F-3(F): "The department shall ensure that a local school board **prioritizes the resources of a public school** that has received a designation of targeted support, comprehensive support or more rigorous intervention toward improving student performance using evidence-based programs and a continuous improvement plan based on the indicators in Paragraphs (2) and (3) of Subsection B of this section identified through a school-level needs assessment until the public school no longer holds that designation."

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# Enhanced Mandatory Training

# Board Member Training (**New Board Members**)

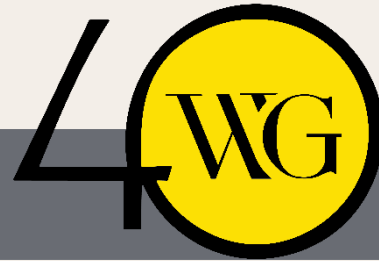
- ❑ 10 hours of mandatory training
  - ❑ 2 hours on law and PED policies
  - ❑ 2 hours of public school finance, budgeting and fiduciary responsibility
  - ❑ 2 hours of legal concepts (OMA, IPRA)
  - ❑ 2 hours of effective governance
  - ❑ 2 hours of student achievement and student support services

# Board Member Training (**Existing Board Members**)

- ❑ 5 hours per year covering:
  - ❑ Law and PED policies
  - ❑ Public school finance, budgeting and fiduciary responsibility
  - ❑ Local School Board's role and responsibility in evaluating and improving student academic achievement and using data to set individual school goals for student achievement
  - ❑ Local School Board's role in providing a safe learning environment conducive to improving student outcomes
  - ❑ Legal concepts (OMA, IPRA)
  - ❑ Effective governance

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