

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Date <u>1/30/17</u>
Correction <input type="checkbox"/>	Substitute <input type="checkbox"/>	Bill No: <u>HJR5</u>

Sponsor: <u>Rep. Dennis J. Roch</u>	Agency Code: <u>924</u>
Short Title: <u>Sen. Daniel A. Ivey-Soto</u>	Person Writing: <u>Aguilar/Mastalir</u>
Title: <u>NO NEW SCHOOL ACTIVITY WITHOUT FUNDING, CA</u>	Phone: <u>505-827-6519</u> Email: <u>Paulj.aguilar@state.nm.us</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	See fiscal implications		

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Joint Resolution (HJR5) is a joint resolution to submit a proposed amendment to the New Mexico Constitution, to voters, for approval or rejection, at the next general election or at any special election that may be called prior to the next general election.

Voters would be asked to approve or reject an amendment to Article 10, Section 8 of the New Mexico Constitution. Article 10, Section 8 of the New Mexico Constitution as written, prohibits “a state rule or regulation from mandating any county or city to engage in any new activity, to

provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law,” from having the force of law, “unless or until, the state provides sufficient new funding or a means of new funding to the county or city, to pay the cost of performing the mandated activity or service . . .”

The proposed amendment would expand the list of governmental entities to include both school districts and charter schools in the list of governmental entities affected by unfunded mandates.

FISCAL IMPLICATIONS

The fiscal implications of this proposed amendment could be substantial, but are incapable of specific calculation at this time.

Cost would be incurred to determine what rules or regulations fall into the categories that require new funding.

Costs would be incurred to determine what constituted sufficient new funding. Additionally, there is a potential loss of federal funding if required rules and regulations are not enacted and implemented.

SIGNIFICANT ISSUES

The language of the existing Article is vague, and particularly as applied to school districts and charter schools, this vagueness may be problematic. Any rule or regulation enacted by the New Mexico Public Education Department (PED) that “mandates a school district or charter school to “engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law” will not have the force of law until the “state provides sufficient new funding or a means of new funding” to the school district or charter school.

PED has been delegated broad authority over school districts and charter schools, in the State of New Mexico. Therefore, any rule or regulation enacted by the PED would need to be evaluated to determine if it falls within a category of requiring school districts or charter schools to “engage in any new activity, to provide any new service or to increase any current level of activity, or to provide any service beyond that required by existing law.” The proposed amendment does not establish a process for identifying or determining which new rules or regulations fall within these categories. Rules and regulations that could potentially fall into these categories would be quite broad and numerous, for instance, only as example, any rules or regulations relating to addressing student threats or bullying, rules or regulations requiring that certain health records follow a student who transfers to another school, rules or regulations requiring the implementation of changes to student codes of conduct, rules or regulations relating to training for administration of medicine in schools, rules or regulations requiring the teaching of certain historical or cultural subjects, and many more rules and regulations, may fall within the covered categories.

In addition to there being no mechanism to determine whether or not a rule or regulation falls into one of the above-mentioned categories, there is no established mechanism to determine whether or not there would be any additional cost to a school district or charter school even if a new rule or regulation could be deemed to fall into one of the listed categories, or to determine

what that cost would be. There is also no definition of what constitutes “new funding.” There is no specific written exception for those rules or regulations that may fall into the listed categories, but that, for a variety of reasons, including possibly the cessation of another requirement, would not lead to increased overall cost to a school district or charter school.

The amended provision does not provide an exception for rules and regulations that would be required to be enacted or implemented in order to be in compliance with federal law or regulations. This may lead to a situation in which PED, and therefore the State, could lose federal funding if PED was unable to enact rules and regulations, with the force of law, required by various federal laws or authorities, including, but not limited to, the United States Department of Education, IDEA, ESSA, USDA, FERPA.

While some of these issues may eventually be addressed by accompanying legislation, in the event that the joint resolution was passed and voters approved the amendment, the language of the provision itself would remain vague.

PED’s recent enactment and implementation of education reform measures, which are beginning to produce positive results for New Mexico students, may require the enactment and implementation of additional rules and regulations to refine any previously enacted rules and regulations. These may be at risk of not being able to be implemented, thereby reducing the effectiveness of the previously enacted measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There would be conflict with the State Rules Act, which establishes a different standard governing when rules and regulations have legal effect.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PED will continue to have sufficient delegated authority to ensure that rules and regulations necessary both to the continued implementation of education reforms and necessary to meet federal funding requirements will have the force of law.

AMENDMENTS

The proposed amendment should clarify that rules and regulations required or necessary to comply with a federal law or regulation, or are necessary to become eligible for the receipt of federal funds, are exempt from the provision.