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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>HJR5</u>	Sponsor	<u>Roch & Ivey-Soto</u>
Tracking Number	<u>.205944.1</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>No New School Activity without Funding, CA</u>		
Analyst	<u>Force</u>	Original Date	<u>2/6/17</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Joint Resolution 5 (HJR5) proposes to amend Article X, Section 8 of the Constitution of New Mexico, which prohibits a state rule or regulation from mandating any county or city provide any new service or increase any current level of activity until the state either provides sufficient new funding or a means of providing new funding to cover the cost of the newly mandated activity. The proposed amendment would add school districts and charter schools to those entities on which new regulatory, unfunded mandates could not be imposed without provision for necessary funding.

FISCAL IMPACT

HJR5 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 both 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. The Legislative Finance Committee staff estimate each constitutional amendment may cost up to fifty thousand dollars (\$50,000) in printing and advertising costs based on 2016 actual expenditures.

SUBSTANTIVE ISSUES

HJR5 attempts to address the issue of unfunded mandates directed at school districts and schools by preventing any new regulatory requirement from carrying the force of law until adequate funding is provided, or at least identified, to meet program needs. While HJR5 is aimed at protecting local school districts and charter schools from the burden of unfunded regulatory mandates, the Public Education Department (PED) indicates that the provisions of the amendment may prove problematic to the department, by hampering it in the development and implementation of rule. The department notes that the language in current section is vague, but

would be even more so for schools, as many rules may fall under the provisions of the resolution, such as bullying, health records, or administration of medications.

PED also notes that the proposed amendment makes no provision for rules required in order to maintain compliance with federal law, regulation, or grant requirements. This may lead to a situation where the state loses some federal funding, if a required regulation is unenforceable under the terms of the resolution. The sponsors may wish to consider amending the resolution to provide exemptions for situations where rules or other requirements are promulgated in order to remain in compliance with federal law.

TECHNICAL ISSUES

PED notes that the joint resolution lacks specificity regarding how new regulatory requirements will be identified as impacting schools; nor does the bill establish a mechanism by which rules or regulations would create additional costs, or evaluate what that cost might be. However, as PED also concedes, these matters are more appropriate for statutory law than they are for the state constitution. If the joint resolution passes the Legislature, and is later ratified by the voters, the necessary statutory changes may be made at that time to reflect what would then be the effective provisions of the constitution.

PED also suggests that the proposed constitutional amendment may be in conflict with the State Rules Act, which sets criteria other than the availability of funds to determine when a rule becomes effective. The constitution, however, would control in any conflict with statute, and statute can be amended to reflect new constitutional requirements. In this case, however, it appears the proposed constitutional amendment and the requirements of the State Rules Act may be harmonized. HJR5 would prevent any of the covered regulations from having the force of law without adequate funding being available or identified. The State Rules Act notes that no rule may be “valid or enforceable” until filed with the State Records Center, and published in the *New Mexico Register*. They can be read together as both being necessary for rules covered under the resolution to be considered final, enforceable and having the weight of law. If these two requirements do conflict, the State Rules Act can be amended to reflect the constitutional amendment, as noted.

RELATED BILLS

Relates to HB58, Rulemaking Requirements

SOURCES OF INFORMATION

- LESC Files
- Public Education Department

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