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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>SJR5</u>	<b>Sponsor</b>	<u>Schmedes</u>
<b>Tracking Number</b>	<u>.218836.1</u>	<b>Committee Referrals</b>	<u>SRC/SEC</u>
<b>Short Title</b>	<u>Prohibit Unfunded Mandates on Schools, CA</u>		
<b>Analyst</b>	<u>Bedeaux</u>	<b>Original Date</b>	<u>3/4/21</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Joint Resolution

Senate Joint Resolution 5 (SJR5) proposes to amend Article 10, Section 8, of the New Mexico Constitution to prohibit regulations that create new mandates for public school districts unaccompanied by sufficient funding or a means of creating sufficient funding. The constitution currently contains this prohibition for counties and cities, though SJR5 proposes changing instances of “city” to “municipality.”

The constitutional amendment requires a simple majority vote in both chambers and ratification by a majority of voters at an upcoming general or special election.

**FISCAL IMPACT**

Joint resolutions do not contain appropriations.

The Secretary of State and the Legislative Finance Committee estimate the administrative costs of proposing a constitutional amendment to be between \$150 thousand and \$200 thousand. Under Section 1-16-13 NMSA 1978 and the New Mexico Constitution, the Secretary of State is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The Secretary of State is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

The proposed constitutional amendment could increase the dollars needed to fully fund educational programs in the future, though as noted in an analysis by the Public Education Department (PED), it is impossible to know exactly which laws and regulations will be considered unfunded or underfunded.

## **SUBSTANTIVE ISSUES**

The New Mexico School Superintendents Association and the New Mexico School Boards Association often note in their legislative platforms and in public testimony the Legislature should not pass programmatic bills that would have fiscal implications but do not provide funding to offset their costs. Typically, funding for public schools is appropriated in the General Appropriation Act, and standalone bills are generally not enacted with appropriations. As a result, SJR5 may prevent a significant number of bills found to be “unfunded mandates” from becoming law if they fail to receive funding in the state budget or through some other means.

As the appropriating body, the Legislature would primarily be responsible for providing funding for any new mandates it creates. Because PED cannot make appropriations, SJR5 may prevent PED from promulgating administrative rules, whether to comport with state law or federal law, if those rules create additional unfunded costs. Analysis by PED indicates the department promulgated 17 rules in 2020 to comport with statutory changes during the 2020 legislative session, each of which may have created unknown fiscal impacts on school districts. As such, SJR5 may place PED in a difficult situation where the department must choose whether to violate the constitution and create unfunded mandates or to violate state or federal law and decline to promulgate rules.

Analysis by PED on an identical resolution in 2017 notes the language could be interpreted in any number of ways, and there does not appear to be a standard to evaluate whether a mandate is unfunded. During the 2021 session, each of the following bills were purported by at least one stakeholder group to contain an unfunded mandate:

- HB130, School Gifted Education Requirements, which requires school districts to adopt policies and procedures for universal screening, allow students to receive academic acceleration and enrichment, and evaluate annually the equity and effectiveness of gifted identification and services.
- HB257, School Bus Route Improvements, which requires the Department of Transportation to designate a “school bus route improvement coordinator” to work with counties and public schools to ensure school bus routes are paved and safe for transporting students.
- SB31, Full Time School Nurse, which requires each public school district to employ at least one full-time school nurse. Following concerns about the unfunded mandate, the bill was amended in the Senate Education Committee to add a \$200 thousand appropriation.
- SB248, Anonymous Reporting in Schools, which requires PED to develop and implement in every public school a statewide, school-specific “anonymous reporting program” to report harmful activity that has occurred, is occurring, or may occur at school or that involves a school employee or student.
- SB307, Daily School Bus Driver Salaries, which establishes a minimum salary of \$150 per day for school bus drivers statewide.

## **SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)
- Office of the Attorney General