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FISCAL IMPACT REPORT

SPONSOR Pope ORIGINAL DATE 02/11/21
LAST UPDATED _____ HB _____
SHORT TITLE Right to Quality Education, CA SJR 17
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$150.0- \$200.0		\$150.0 - \$200.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 233.

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General (NMAG)

No Response Received
Public Education Department (PED)

SUMMARY

Synopsis of Resolution

Senate Joint Resolution 12 proposes to ask voters to amend Article 12 of the New Mexico Constitution to create a right to a “high-quality public education.” The language would prohibit laws, rules, or practices that produce disparities in student outcomes among classes of students or subordinates one class of students to another without a compelling government interest.

The question would be presented to the voters at the next general election or at a special election called for the purpose of considering the proposed constitutional amendment.

FISCAL IMPLICATIONS

Proposed constitutional amendments do not contain appropriations. However, under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the SOS 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 SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

If adopted, it is unlikely the constitutional amendment would generate significant additional costs for the state; the New Mexico Constitution already contains a provision requiring “a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state” that was interpreted in the *Martinez-Yazzie* consolidated lawsuit to mean the state is obligated to provide a school system that produces successful students.

SIGNIFICANT ISSUES

Strict Scrutiny. The proposed constitutional amendment in substantial ways duplicates the education standard established through the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* lawsuit that held the education provided in New Mexico public schools failed to meet the sufficiency requirement as written in Article 12, Section 1, of the New Mexico Constitution. In that case, the 1st Judicial District Court ruled the state had violated the constitution by failing to adequately educate at-risk students, defined in the ruling as low-income students, English learners, Native American students, and students with disabilities.

The exception in SJR12 that allows for disparities in the treatment of classes of students if the state has a compelling reason reflects the U.S. Supreme Court doctrine of *strict scrutiny* around the use of race in state laws. To meet strict scrutiny, a state must demonstrate the use of race is narrowly tailored, and the state has a compelling interest to consider race.

The office of Attorney General raises concerns that inserting the doctrine of strict scrutiny into the constitution could create a conflict with the Equal Protection Clause in the New Mexico Constitution (Article 2, Section 18). Given that judicial review itself was created by the courts, and levels of scrutiny come from judge-made doctrine and legal precedent from case law, the definition of what level of scrutiny must be used when a conflict arises under this proposed amendment is unique. Currently, no provision in the New Mexico Constitution has with it a clause dictating what level of scrutiny is used.

The Attorney General, quoting the New Mexico Supreme Court, explains the steps required in equal protection analysis:

Petitioners must first prove that they are similarly situated to another group but are treated dissimilarly. In other words, Petitioners must prove that they should be treated equally with another group but they are not because of a legislative classification. If Petitioners are successful in proving this, then a court must determine what level of scrutiny should be applied to the legislation they are challenging. In equal protection challenges, a court will apply different levels of scrutiny depending on either the rights that the legislation affects or the status of the group of people it affects. Scrutiny means how closely the courts will analyze the rationales the proponent of the legislation offers in support of its constitutionality. Different levels of scrutiny also dictate which party has the burden of proof. Either the person challenging the legislation must prove that the statute is unconstitutional, or the party defending the legislation must prove that the statute

is constitutional or comports with equal protection.

By inserting strict scrutiny into a constitutional provision, NMAG argues SJR17 would “short-circuit” the court’s analysis of equal protection.

Uniform Achievement Standards. As proposed, the constitutional amendment would require that all students be measured against “uniform achievement standards,” which could be interpreted as requiring all student performance be measured through the same process, like standardized testing, even as educational policy moves toward giving greater weight to alternative ways of measuring performance. Current Public Education Department assessment policy provides for alternatives to statewide standards. The Legislative Education Study Committee’s 2021 annual report provides greater detail on current policy in student-based assessment policies.¹

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR17 is related to Senate Bill 23, Student Bill of Rights, which amends the Public School Code to require the state to provide students with a safe and supporting learning environment with access to certain resources and programs.

A key word search of legislation results in 15 House and Senate bills for which legislative staff have found a *Martinez-Yazzie* link. The number of bills related to the lawsuit is likely to be larger because not all bills have analyses.

ALTERNATIVES

NMAG proposes amending the proposed constitutional amendment to provide for a “fundamental right” to a high-quality education and to eliminate the requirement that the courts apply strict scrutiny:

Because strict scrutiny must necessarily be applied by New Mexico courts when any fundamental constitutional right is abrogated by government action, the tension [between the language on strict scrutiny and equal protection clause] described above could potentially be eliminated or attenuated by editing Section 1(A) (SJR 17 1:22) to read “Public school students have a fundamental right to a high-quality public education” Such an addition could eliminate the need for Section 1(B)’s directive that courts apply strict scrutiny.

HG/sb

¹https://www.nmlegis.gov/Entity/LESC/Documents/Reports_To_The_Legislature/LESCReportToLegislature_2021.pdf