

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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: **Date** 02/08/18
Original **Amendment** **Bill No:** SB171
Correction **Substitute**

Sponsor: Senator Joseph Cervantes **Agency Code:** 924
Short Title: INCREASE K-6 INSTRUCTIONAL HOURS & DAYS **Person Writing:** Marian Rael
Phone: _____ **Email:** Marian.rael@state.nm.us

SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	Recurring or Nonrecurring	Fund Affected
Total			\$229,337.7	Recurring	General Fund, SEG

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 171 makes numerous changes to the minimum instructional hours and days in the school year, lengthening the school hours and days for some grades. SB 171 also removes provisions allowing the Secretary to waive the length of the school days in districts where the minimums would create undue hardships.

SB 171 increases the cost differential for early childhood education, currently defined in statute as kindergarten, and all base level grades 1 through 5.

SJR 11, a companion piece of legislation proposes to increase distributions from the Land Grant Permanent Fund by one percent of the average of the year-end market values of the permanent school fund for the immediately preceding five calendar years to increase the minimum

instructional hours and days in a school year as provided by law.

SB 171 is contingent on a Constitutional amendment being enacted that has a title identical to that proposed under SJR 11.

FISCAL IMPLICATIONS

This bill would not go onto effect unless the state constitution is changed to increase the distribution from the Land Grant Permanent Fund by 1% as provided for in SJR11. In the event that the additional distribution from the Land Grant Permanent Fund was insufficient to fund the provisions of SB171, the state may need to find additional sources of revenue to ensure the provisions of SB171 are maintained.

As shown in the chart below, based on the proposed cost differential factor changes and assuming the FY 18 final unit value, implementation of the bill will cost approximately \$229.3 million dollars due to the increase of 56,152 units generated.

SB 171 COST ESTIMATE	
Adj. Basic Program Units Current Law	426,477.114
Adj. Basic Program Units SB 171	482,628.711
Additional Units Generated	56,151.597
Times FY17 Unit Value	\$4,084.26
TOTAL ESTIMATED INCREASE	\$229,337,721.56

If SJR11 is passed by the Legislature and approved by voters, the State Investment Council (SIC) estimates an average 6 percent distribution from the LGPF would generate approximately \$955 million in revenue to the general fund in FY20 for all beneficiaries, a distribution of about \$159 million more than the current 5 percent distribution. Public school recipients would receive approximately 85 percent of the new money, or about \$135.3 million. This amount is approximately \$94 million lower than the estimated amount required to fund the provisions of this bill leaving a significant unfunded mandate on school districts and charter schools to make up. The state would have to find a way to make up this amount or allow the unit value to drop in future years as a result of the additional units generated.

Increases to the length of school day will have associated increases to costs to public education entities. Examples of increased costs include those for fixed costs with rising expenses for utilities and operations; transportation, when the ability to tier routes is diminished and more buses are required to run, and additional labor costs, among others. These costs would be offset by the increased dollars generated per the provisions of this bill.

PED notes that additional transportation costs associated with the proposed additional instructional hours and days, could reach into the millions of dollars.

SB171 would require 205 school days in all schools for grades K-5, which effectively makes the K-3 Plus program universal, eliminating the need for the current special appropriation.

SIGNIFICANT ISSUES

SB 171 makes numerous changes to the length of school day and the minimum instructional hours section of the Public School code as outlined in the chart below. Entities must meet either the hours per day or the hours per year requirement. The state’s half-day Kindergarten program would be removed under these proposed changes, leaving in place only full-day Kindergarten.

Mid-year implementation will likely create large issues for teacher contracts negotiated in the prior year as these are often drafted and finalized prior to the summer break, in almost every instance finalized prior to November, and generally are for approximately 180 days.

SB 171 COMPARISON OF MINIMUM INSTRUCTIONAL HOURS

	Current Law		SB171	
	Hours Per Day	Hours Per Year	Hours Per Day	Hours Per Year
Half Day K	2.5	450	N/A	N/A
Full Day K	5.5	900	5.5 (min. 205 days)	1127.5
Grades 1 - 6	5.5	900	N/A	N/A
Grades 7 - 12	6	1080	N/A	N/A
Grades 1 - 5	N/A	N/A	5.5 (min. 205 days)	1127.5
Grades 6 - 12	N/A	N/A	6 (min. 180 days)	1080

SB171 includes new language: Days or hours when no instruction is given due to lunchtime, recess, weather-related school delays or cancellations, in-service training, teacher planning and preparation or other events that are not educational programs or other programs shall not count toward the calculation of minimum instructional hours and days.

Additionally, SB 171 limits the Secretary’s ability to waive the length of the school days in districts where the minimums would create undue hardships. Though this may be in consideration of limiting exceptions to the increased minimum instructional time, there are many times in which waiving the hours of the day and allowing entities to adjust the hours per year, without changes to school calendars or renegotiating collective bargaining agreements, is the least disruptive option to the instructional program of students and is most often how this section of law is implemented.

SB 171 makes numerous changes to the cost differentials for basic program in the public school funding formula. When using current membership data for FY17, the following chart shows the changes to how basic program units are generated. All basic program units generated in school districts and charter schools are multiplied by the training and experience (T&E) index to generate total adjusted program units before add-on units are included and the grand total is multiplied times the unit value. As such, in order to determine the best estimate of additional units generated by SB 171, the proposed cost differentials and their outputs were multiplied times the statewide weighted average T&E index of 1.08 to determine total adjusted program units. To ease comparisons, half-day Kindergarten was included in the student membership of ECE, even though this likely includes students that may no longer have a program.

**COMPARISON OF BASIC PROGRAM COST
DIFFERENTIALS**

	Current Law	SB 171
ECE (K)	1.440	1.656
Grade 1	1.200	1.380
Grades 2 - 3	1.180	1.357
Grades 4 -6	1.045	
Grades 7-12	1.250	
Grades 4 - 5		1.202
Grades 6 - 12		1.250

The passage of SB 171 would move the state further away from a base cost differential weighting of 1.0 for basic program units. The reallocation of cost differentials appears to be based upon projected revenues that may be generated from the Land Grant Permanent Fund under SJR11 instead of based upon the expenditure data and a cost study methodology that informed cost differential changes in the past (see “Other Substantive Issues”). The provisions of SB 171 therefore may provide more money statewide for some grades than is necessary and underfund others. This is important because any reweighting of grade level differences could have a disequalizing effect under the guiding principle of “unequal treatment of unequals”, and put at risk millions of Impact Aid dollars for which the state takes credit in its formula as an equalized state.

The following programs may count toward the calculation of the minimum instructional hours in a school year:

- Up to thirty-three hours of the kindergarten program for home visits by the teacher or for parent-teacher conferences;
- Up to twenty-two hours of first through sixth grade programs for home visits by the teacher or for parent-teacher conferences; and
- Up to twelve hours of seventh through twelfth grade programs to consult with parents to develop next step plans for students and for parent-teacher conferences.

Nothing precludes a local school board from providing a greater number of instructional hours or days than required.

The exclusion of recess in instructional time is contrary to the latest research on its benefits. A 2015 study by Stanford University states that, “A high-quality recess program can help students feel more engaged, safer and positive about the school day”. The study also showed decreased bullying in schools with quality recess programs.

Milbrey McLaughlin, the David Jacks Professor of Education and Public Policy, Emeritus, founding director of Stanford’s John W. Gardner Center, and a co-author of the study notes that recess can yield numerous benefits to an elementary school’s overall climate and that

“Positive school climate has been linked to a host of favorable student outcomes, from attendance to achievement,” the study noted.” Because recess offers opportunities for both positive play and experience in learning how to resolve conflicts, it can have powerful implications for a child’s education.

In their January, 2013 policy statement (which was reaffirmed in 2016), “The Crucial Role of Recess”, the American Academy for Pediatrics states,

“Children develop intellectual constructs and cognitive understanding through interactive, manipulative experiences. This type of exploratory experience is a feature of play in an unstructured social environment. Optimal cognitive processing in a child necessitates a period of interruption after a period of concentrated instruction. The benefits of these interruptions are best served by unstructured breaks rather than by merely shifting from 1 cognitive task to another to diminish stresses and distractions that interfere with cognitive processing. Several studies demonstrated that recess, whether performed indoors or outdoors, made children more attentive and more productive in the classroom. This finding was true even though, in many cases, the students spent much of their recess time socializing. In fact, a student’s ability to refocus cognitively was shown to be stimulated more by the break from the classroom than by the mode of activity that occurred during that break; any type of activity at recess benefited cognitive performance afterward. Although specified time afforded for recess diminishes with age, the benefits of periodic breaks in the academic day to optimize cognitive processing apply equally to adolescents and to younger children.”

SB171 also removes the discretion of the Secretary of Education to waive the minimum length of school day in hardship situations. It also appears that the bill also does not allow for districts to have four-day weeks with longer school days.

School breaks shall be evenly distributed to the extent practicable. This sentence appears to allow local flexibility, which would enable districts to schedule around events of cultural or local significance.

SB171 would require 205 school days in all schools for grades K-5, which effectively makes the K-3 Plus program universal and “above the line”.

The state’s half-day kindergarten program would be removed under these proposed changes, leaving in place only full-day kindergarten. The phase-in for implementation for full-day kindergarten has already occurred, and all schools currently offer a full-day program. However, the existing kindergarten legislation includes the word “voluntary” in the title. SB171 appears to remove the option for parents to choose to have kindergarten students attend school half-day.

As the bill would be implemented whenever the Secretary of State certifies that the New Mexico constitution has been amended, it is important to note that a mid-year implementation would likely create large issues for teacher contracts negotiated in the prior year as these are often drafted and finalized prior to the summer break.

Some studies show that decreased classroom time can be a cause of poor student performance. The National Conference of State Legislatures indicates the majority of states currently require 180 instructional days, though some states require more or fewer and others, like New Mexico, measure instructional time by hours rather than days. Education Commission of the States’ data shows that New Mexico is one of nine states that currently do not require a number of minimum school days. Two states, Kansas and North Carolina, require more than the average 180 instructional days – 186 and 185 respectively.

The 2016 Legislative Finance Committee program evaluation, *Assessing “Time-on-Task” and Efforts to Extend Learning Time*, found students in New Mexico’s public schools lose over a

third of available instructional time per year on non-instructional activities and that lost instructional time directly impacts student achievement. The evaluation found that public schools have used flexibility in state statute to implement a wide variety of school calendars and school days and almost all schools have implemented extended school days resulting in shorter school years of about 167 days while still exceeding yearly requirements for instructional hours. At least 26 school districts already exceed 1,127.5 total elementary hours per school year, the number of hours that would be required by this bill.

Much of this instructional time made available for learning, however is lost to other non-instructional activities or impacted by absences. Elementary students, for example, lose well over a third a third of instructional time, even after accounting for the extra time schools have built in above state minimums. The more lost time per school corresponds directly with lower student achievement. When controlling for factors including poverty, there is a statistically significant relationship between reading standards-based assessment (SBA) scores and lost instructional time for both elementary and secondary students. As lost instructional time increases, SBA scores decrease. The evaluation concluded time for learning is important, but more time alone will not increase academic achievement. Additional time must be used efficiently and effectively. Schedules should be optimized to allow for the maximum amount of academic learning time. In schools where allocated time is not used properly, adding time to the day is ineffective, costly, and a poor use of scarce resources.

The evaluation recommends increasing minimum instructional time, though not by as much as provisions set forth in this bill, by equalizing elementary and secondary school hourly requirements and ensuring school districts use best practices and effective strategies to maximize time-on-task. Additionally, the evaluation recommends repealing parent-teacher conferences and home visits from counting towards instructional hours to increase the time students are engaged in learning, which is not addressed by this bill.

In FY09, the Legislature appropriated \$14 million to the state equalization guarantee distribution (public education funding formula) to fund an additional instructional day. At the time, the Legislature enacted House Bill 691 (Chapter 276 of Laws 2009), which measured instructional time by days – establishing a 180 days of instructional time for school districts using a regular school calendar and 150 days of instructional time for school districts using a variable calendar. However, in 2011 the Legislature returned to measuring instructional time by hours rather than instructional days, and the additional day the state paid for was never implemented.

The bill repeals Section 22-2-8.1.D. NMSA 1978, which authorizes the PED secretary to “waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state.” Additionally, the bill provides that “days or hours when no instruction is given due to lunchtime, recess, weather-related school delays or cancellations, in-service training, teacher planning and preparation or other events that are not educational programs or other programs set forth...shall not count toward the calculation of minimum instructional hours and days.”

Removing these flexibilities may result in school districts reducing time allocated for lunchtime, recess, in-service training, and teacher planning and preparation or adding time due to school delays or cancellations.

ADMINISTRATIVE IMPLICATIONS

At PED, school calendar review processes would need to be changed, all guidance on the funding formula would need to be altered and many steps regarding program approval would be impacted among many other considerations. The PED School Budget and Finance Analysis Bureau alone would see a large surge in school calendar alterations, re-submittals, review and approvals without a corresponding increase in resources. There would be wide scale and significant administrative implications to PED to implement such a large policy change. There would likely be significant costs to PED to administer the provisions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 171 should be viewed as a close companion to SJR 11 as without passage and adoption of SJR11 it does not carry the weight of law

OTHER SUBSTANTIVE ISSUES

Paul Vallas, a superintendent with a long history of leading school reform efforts nationally, refers to the need to “shake the trees” in education. Educators should adopt those practices that have the greatest impact on student learning. Time on task is a critical component of improved student achievement. Time on task refers to the time a student spends in the class room actively engaged in learning. Simply increasing the amount of time available for instruction is not enough to achieve learning gains. Time allocated for instruction must be appropriate, effective and meaningful, and teacher understanding of time on task must be enhanced. Instructional time must be reexamined to ensure that it is being used as effective learning time by addressing students’ needs and interests.

The funding formula, as originally enacted in the 1970s, used a base multiplier of 1.0 for grades four through six and scaled cost differentials in other grades based on comparison to students in these grades. Grades four through six were determined to be the lowest cost students using data driven decision making until 1993.

The measurement of basic program costs (as measured by expenditures by grade level) was the work of the yearly Resource Input Methodology (RIM) studies conducted by LESC and submitted annually to the then Office of School Budget in the Department of Finance and Administration, later the School Budget Planning Unit of the State Board of Education and now located in PED as the School Budget and Finance Analysis Bureau. These RIM studies provided expenditure data by grade level to inform any re-weighting of basic program unit cost differentials as well as other public school funding formula changes. Funding formula changes were, and remain, largely under the purview of the School Budget and Finance Analysis Bureau, primarily to ensure objective finance analysis of impacts and available revenues, which is the reason for the language occurring in Section 22-8-12.1 (C) NMSA 1978 that indicates the PED makes recommendations for any changes to the funding formula to DFA prior to November 30 of a given year. PED did not make any recommendations related to those contained in SB 171.