

LFC Requester:	Jorgensen
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**AGENCY BILL ANALYSIS
2021 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 **Amendment**
Correction **Substitute**

Date 1/26/2021
Bill No: SJR5

Sponsor: Gregg Schmedes
Short Title: PROHIBIT OF FORCE OF LAW, CA

Agency Name and Code PED-924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Joint Resolution 5 (SJR5) proposes an amendment to Article 10, Section 8 of the New Mexico Constitution that would render any state rule or regulation unenforceable if the rule or regulation mandates any county, municipality, school district, or charter school to engage in any new activity, to provide any new service, increase any current level of activity, or to provide any service not required by existing law and if the rule or regulation is not accompanied by sufficient state funding or a means of new funding to pay the cost of performing the mandated activity or service. If passed, the amendment would require voter approval.

FISCAL IMPLICATIONS

It is unclear what specific fiscal implications exist, as there is no way to predict the cost of implementing future rules or regulations or whether any funding would accompany them.

SIGNIFICANT ISSUES

Currently, the PED promulgates rules for two major reasons; to create or amend rule in accordance with statutory requirements or to implement department priorities, both of which fall within the rulemaking authority of the Secretary. The PED and other state agencies do not hold appropriating power, as that lies with the legislature, and would be unable to guarantee sufficient funding to implementation of rules or regulations.

In recent years, the PED has repealed and replaced rules to adjust language that, previously, may have created or increased burden at the school district and charter school level. Additionally, the PED continues to seek input from stakeholders across the state to identify problematic issues related to rulemaking implementation. In 2020, the PED promulgated approximately 17 rules. These rules were required by statutory changes or alignment to the current mission, vision, and strategic plan of the PED. Further, while oftentimes it is clear that a new or amended rule might add to the financial burden of the entities it proposes to affect, sometimes that characterization may be debatable. Finally, as noted above, PED, like other executive agencies, is not an appropriating entity, yet legislation may be passed that requires PED to undertake particular rulemaking in order to properly execute legislative requirements, whether an appropriation is attached to authorizing legislation or not. In such a circumstance, PED would have no choice but to undertake promulgation of the rule as directed.

The PED continues to draft rules with consideration and participation of school districts and charter schools. Through continued stakeholder engagement, the PED identifies and drafts administrative language in ways that align to current programming and funding to prevent

burdensome policies for school districts and charter schools.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None as of 1/25/2021.