

LFC Requester:	Liu
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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 2/22/2021
Bill No: SJR17

Sponsor: Sen. Harold Pope, Jr.
Short Title: RIGHT TO QUALITY
EDUCATION, 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		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(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	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HJR7, School Funding for Home or Private School, CA.

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Joint Resolution 17 (SJR17) proposes a new section to Article 12 of the New Mexico Constitution – the Article addressing education. The proposed amendment would grant public school students the right to a “high-quality public education,” and declares any law, rule, or practice of the state or public school district that would abrogate that right invalid. SJR17, as a proposed constitutional amendment, must pass each chamber of the legislature by a simple majority in order to be submitted to the voters for ratification at the next general election, or a special election held for the purpose of considering the amendment.

FISCAL IMPLICATIONS

SJR17 does not contain an appropriation.

SIGNIFICANT ISSUES

SJR17 would amend Article 12 of the New Mexico Constitution to establish a right to a “high-quality education” for all public school students in the state, by declaring invalid any law, rule, or practice that produces disparities in student academic outcomes between classes of students, compared with uniform achievement standards set by the state, that the state or school district does not take responsible and effective steps to eliminate. Also invalidated would be a law, rule, or practice that subordinates the educational interests of all students or of a class of students to other interests. The joint resolution, in Subsection B of Section 1, provides for an exception to this right for laws, rules, or practices that are narrowly tailored to a compelling government interest, which appropriately restates the constitutional test for laws that purport to negatively impact a fundamental right or a suspect class.

The state constitution, at Article 12, Section 1, already provides the students of the state with a fundamental right to a “uniform and sufficient education.” New Mexico’s provision of a fundamental right to a sufficient and uniform education addresses the lack of such a right at the federal level (See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), rejecting the claim that a fundamental right to education was protected under the United States Constitution). That right was recently upheld in the *Martinez* and *Yazzie* consolidated lawsuit, which considered both the ideas of “sufficiency” and “uniformity” of education in the state among certain classes of students considered at-risk, compared with those not considered at-risk,

finding that the state had failed in its duty to provide sufficient education to at-risk classes of students. SJR17 would expand that right from “sufficient” to “high-quality.”

New Mexico, historically and currently, hovers at the low end of educational achievement among the several states. The state’s students, for example, tend to have lower than average graduation rates, and higher than average need for remediation for those students who continue on to postsecondary education. These issues, and other similar issues, result, for example, in more money being required to educate our students at the postsecondary level, and can have the effect of leading to lower lifetime earnings for our graduates. Any effort to improve the quality of our public primary and secondary education and resulting outcomes is laudable. However, the proposed constitutional amendment includes a number of ambiguities that may result in further litigation for the state and local school districts.

First, there is the determination of what actually may constitute “high-quality” education. Second, in combination with the Article 12, Section 1 requirement of uniformity in education, SJR17 may result in lawsuits against the state and school districts to establish not only what “high-quality” itself might mean, but also whether all classes of students are receiving equally high-quality education. Third, the establishment of a sufficiently causal relationship between a law, rule, or practice, and differences in achievement among different classes of students may likewise be quite difficult. Fourth, may be the determination of whether the state had taken “responsible and effective” steps to eliminate any law, rule, or practice that potentially may produce disparities in educational outcomes between classes of students. Finally, there is consideration of whether a challenged law, rule, or practice abrogates that right, and whether it does so in sufficiently narrow fashion, and in furtherance of a sufficiently compelling governmental interest.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

SJR17, if ratified, may require extensive review of Chapter 20 of the New Mexico Statutes Annotated 1978, as well as review of Title 6 of the New Mexico Administrative Code.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR17 conflicts with HJR7, which proposes to strike the requirement of “uniformity” in public school students’ fundamental right to a “sufficient” education currently that is currently protected by the state constitution, in Article 12, Section 1.

TECHNICAL ISSUES

The amendments proposed by SJR17 are closely related to the right to a sufficient and uniform education established in Article 12, Section 1 of the state constitution. The sponsor may wish to consider an amendment to that section, rather than the creation of a new section of the constitution.

In addition to considerations of law, rule, or practice of the state or local school districts, consideration of “policy” may be appropriate for inclusion in the joint resolution.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A