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**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 02/23/23
Bill No: HB487

Sponsor: Montoya
Short Title: NO TEACHING OF CRITICAL RAZA THEORY

Agency Name and Code Number: Agency Name and Code Number: PED - 924
Person Writing: Gregory Frostad
Phone: (505) 470-5752 **Email:** gregory.frostad@ped.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	\$300.0	None	\$300.0	Nonrecurring	PED

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 487 (HB487) adds a new section to the [Public School Code](#) that prohibits the teaching of and use or purchase of instructional materials containing “critical raza theory or Hispanic cancel culture” in public schools.

The bill does not provide an effective date. Laws go into effect 90 days after the adjournment of the Legislature enacting them, unless a later date is specified. If enacted, this bill would become effective June 16, 2023.

FISCAL IMPLICATIONS

The bill does not contain an appropriation.

The PED and LEAs are likely to spend more on instructional materials due to the bill's potential prohibition of number of items currently on the New Mexico adopted multiple lists which were specifically chosen as culturally and linguistically appropriate materials by NM Level II and III teachers after extensive professional development. Local decision making may be usurped where Local Education Agencies (LEAs) have already reviewed, adopted, and purchased instructional materials that would be prohibited under the bill because instructional materials are chosen at the by LEAs with educator, school board, community, and parental input. Provisions of the bill may require districts to look for instructional materials elsewhere at greater cost without the benefit of current statewide contracts and may also violate contracts already in place. The PED Instructional Material Bureau would need funding to pay stipends for teachers to review all the core instructional materials already on the adopted multiple list to determine compliance with this bill.

SIGNIFICANT ISSUES

The bill refers to two concepts – critical raza theory and Hispanic cancel culture – which the bill does not define, therefore making potential enforcement of the required prohibitions difficult.

As an assumption based on translation of the Spanish term Raza, it appears the bill is referencing what is known in the literature as “Critical Race Theory” (CRT) which is a term that is most appropriately applied academically at the post-secondary level where the phrase was coined in relationship to legal studies. According to Delgado and Stefancic (2017), “critical race theory sprang up in the 1970s, as a number of lawyers, activists, and legal scholars across the country realized, more or less simultaneously, that the heady advances of the civil rights era of the 1960s had stalled and, in many respects were being rolled back.”

As [defined](#) by the researchers at Pew Charitable Trusts, CRT “studies racism at the systemic level, examining how policies, laws and court decisions can perpetuate racism even if they are ostensibly neutral or fair. Since its emergence in the late 1970s and 1980s, the discipline has expanded to include researchers in sociology, education and public health.”

CRT was implied in a September 2020 [Executive Order](#) (EO) issued by the Trump administration combatting gender- and race-conscious views of present-day social and economic power imbalances. The EO characterizes perspectives like CRT as “divisive concepts” that promote “racism, sexism and scapegoating.” It refers to ideologies that draw attention to persistent race and racial discrimination as “destructive” and “malign.” Since 2020, [efforts by public policy leaders like Christopher Rufo, Senior Fellow at the Manhattan Institute](#) have identified CRT an umbrella term for an “entire range of cultural constructions that are unpopular with Americans.”

PED aims to collaborate with and provide guidance to LEAs to [transform New Mexico's](#)

[education system in response court findings in the Martinez-Yazzie Consolidated Lawsuit.](#) Holding students' identity, culture, and language as a strength at the center of education is key in the design of New Mexico schools' educational systems, but this vision conflicts with HB487, the reasoning behind the 2020 EO, and similar efforts to create more culturally and linguistically responsive classrooms which are inclusive of multiple cultural backgrounds.

In alignment to the Martinez-Yazzie court order, PED supports school districts and charter schools to implement developmentally appropriate, culturally and linguistically responsive (CLR) frameworks, curriculum, and materials aligned to NM academic standards in order to prepare students for college, career, and life by supporting their language and cultural identity, rather than CRT which is appropriate for study in post-secondary institutions. Through the work of equity councils, districts and charter schools will engage in the development of CLR frameworks, which they will use to guide the allocation of district and charter school resources, professional learning, staffing, culturally and linguistically responsive curriculum development, and assessment of progress towards implementation to support improved student outcomes. In the Winter, 2020, issue of the New Mexico Coalition of Educational Leaders (NMCEL) newsletter, PED's Director of the Language and Culture Division [explained the purpose of CLR](#):

“We must focus on the validation and affirmation of students' identities. But this is not enough. This is simply multicultural education. The responsive piece in CLR is when we build and bridge and set up our schools and classrooms for students to learn how to toggle between contexts and expected behaviors and language use. The goal is global dexterity so that our students can be anywhere in NM, the US, and the world, and fit in and participate without giving up who they are—their identities.”

[Substantial public-school resources](#), including funding and staff time at LEA/Charter level and department level, have been allocated statewide to make up for systemic racial and cultural disparities identified in judicial decisions from the Martinez-Yazzie Lawsuit. HB487 is appears counter to many of these efforts and could present a barrier to meeting the spirit of the court order. HB487 could present confusion in the field in terms of the ongoing development of pedagogical approaches which meet the needs of all students, including the use of relevant, culturally and linguistically focused instructional materials. This would be counter to meeting the instructional needs of all students in the state and especially NM's most at risk students (identified in the Martinez-Yazzie consolidated case order as native American students, students with disabilities, English language learners, and students experiencing poverty).

PERFORMANCE IMPLICATIONS

Removing culturally and linguistically responsive and relevant instructional material (which the sponsors may equate to CRT-related materials) would negatively impact students' critical thinking performance. In addition, removing materials that reflect the lives, culture, and communities of all of NM students would reduce academic relevance for students who may only be represented in the materials that would be eliminated by the passage of this bill.

ADMINISTRATIVE IMPLICATIONS

Provisions of HB487 would require PED to review current Rule in NMAC 6.75.2 Relating to the Public Education Department Instructional Material Bureau to determine alignment to a statute

that results from the passage of HB487. Additional FTE would be needed to do the research including assuring alignment with all laws related to censorship of books in schools.

As statutorily required in 22-15-8 NMSA 1978, PED Instructional Materials Bureau annually engages stakeholders to evaluate instructional materials suitable for public schools and makes selected materials available on the adopted [multiple list](#). The materials on the list meet high standards for quality based on criteria that include cultural and linguistic relevance and alignment with New Mexico content standards. These criteria may focus on collective identity more than is allowable with provisions of HB487. HB487 requires PED review all materials on the list and remove each one that is determined to involve CRT or Hispanic cancel culture. This would not be in alignment with the court order from the Martinez-Yazzie consolidated case and could be detrimental the academic development and community belonging of NM's most at risk students. The cost of this is estimated to be at \$258,000 **per** content area in order to convene Level II and Level III educators to conduct an instructional materials review as required in statute. In order to review all core instructional materials adopted on the multiple list for the six-year cycle it would cost approximately \$1,548,000. Statute 22-15-8 NMSA 1978, excludes the review of supplementary instructional materials by the PED, so the department would not be able to determine compliance with this bill for supplementary instructional materials included on the state adopted multiple lists. Furthermore, with 10,000 additional supplemental titles (beyond core materials) on the list the cost of a complete review is not calculable but would be significantly more than to review the core materials.

In addition, it is estimated that any change in Rule related to current academic standards due to passage of HB487 could cost up to \$400,000 **per** content area for revision of the standards and up to \$400,000 for revision to the NM Instructional Scope **per** content area. The cost would be in order to engage educators from across the state in the process.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 111 ([HB111](#)) Holocaust and Genocide Studies Act, requiring school districts and charter schools to provide age- and grade-appropriate instruction to students in seventh through 12th grade about the Holocaust, genocide, and human rights.

Conflicts with House Bill 506 ([HB506](#)) Ethnic Studies Standards, requiring grade-appropriate instruction on ethnic studies, defined as “the interdisciplinary study of multiple perspectives through the examination of social, ethnic, cultural, gender and historical experiences to build critical thinking skills.”

Conflicts with [Sections 22-23A-1 to 22-23A-11 NMSA 1978 Indian Education Act](#) establishing the Indian Education Division and fund to ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public school.

Conflicts with [Sections 22-23B-1 to 22-23B-6 Hispanic Education Act](#) providing for the study, development and implementation of educational systems that affect the educational success of Hispanic students to close the achievement gap and increase graduation rates.

Conflicts with [Sections 22-23C-1 to 22-23C-7 NMSA 197, The Black Education Act \(BEA\)](#) intended to improve Black Education within the state of New Mexico, establishing the Black

Education Advisory Council, and Black Education Liaison position in PED.

TECHNICAL ISSUES

The concept, “Hispanic cancel culture,” is undefined and is ambiguous in relationship to standards, curriculum, and materials which would be developmentally grade appropriate in the K-12 setting and therefore problematic in enforcing its prohibition by HB487.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

The sponsor may wish to include relevant definitions within the bill to avoid ambiguity and enforcement of the provisions of the bill.