

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

SPONSOR Schmedes ORIGINAL DATE 1/28/2020 HJR 2  
LAST UPDATED \_\_\_\_\_ SB \_\_\_\_\_  
SHORT TITLE Parental Rights on Child Upbringing, CA ANALYST Bachechi

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

### SUMMARY

House Joint Resolution 2 proposes an amendment to Article 2 of the New Mexico Constitution to expand parental rights to direct the upbringing, education, and care of their children. The proposed constitutional amendment affords parents the right to choose private, religious, or home schooling as an alternative to public schooling and the right to make reasonable choices within public schools for the parent's child.

HJR2 seeks to place the proposed amendment on the ballot for vote by the citizens of New Mexico.

### FISCAL IMPLICATIONS

HJR2 does not contain an appropriation. 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 ten 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 \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

If more parents choose private, religious, or home schooling as a result of this constitutional amendment, public schools (particularly smaller school districts or charter schools) may face

budgetary impacts due to declining enrollment. Moreover, while the extent of the rights provided by this constitutional amendment is unclear, it could seriously impact the State's and local district's ability to comply with a plethora of federal and related state laws including the Elementary and Secondary Education Act of 1965 ("ESEA") as amended by the Every Student Succeeds Act of 2016 ("ESSA") as well as the Individuals with Disabilities Education Act ("IDEA"). These federal laws require states and local education agencies to comply with specific requirements in order to receive federal funding. Those requirements are related to educator requirements, minimum standards, assessments, reporting, financing, students with disabilities, and due process in education matters. Were the Constitution to provide parents with the ability to make decisions related to these matters, it could jeopardize the State's and local district's federal funding arising from these Acts.

### **SIGNIFICANT ISSUES**

The resolution expands parental rights to direct the education of their children while reducing the state's current governmental interest in the education of its citizens. The resolution may limit the state's ability to safeguard the welfare of children by imposing a higher standard to infringe on parental rights than currently exists.

The interest of the state in the welfare of children is well established. New Mexico courts have held that all schools, public or private, are affected with a public interest, and hence subject to reasonable regulation under the police power of the state. The State's duty and right, as legal protector of citizens, to legislate for their safety, health, morals and general welfare is a proposition not open to dispute. The state may impose minimum scholastic and training standards, including qualifications for teachers, for both public and private nurseries, kindergartens, and elementary schools.

According to the Children, Youth, and Families Department (CYFD), both federal and state case law indicate parents have a constitutionally protected liberty interest in the care and control of their children. Therefore, the due process clause of the New Mexico constitution already mandates that a parent's liberty interest in a relationship with their children that cannot be infringed upon without due process. It is also clearly establishes the state's significant interest in the welfare of its children. In CYFD abuse and neglect cases, due process is provided by the state to parents through provisions of the New Mexico Children's Code, NMSA Chapter 32A 2016, court rules and case law interpreting the Children's Code. In Section 32A-4-35 NMSA 1978, the Children's Code specifically provides all children in an abuse or neglect proceeding an appointed education decision-maker. The statute specifically mandates that a parent is appointed the child's educational decision maker unless the children's court determines that this appointment is contrary to the best interests of the child.

By and large, parents are afforded significant decision making authority with regard to many of these provisions, but to extend absolute authority could create significant unintended and unforeseen consequences. A typical example of this is a parent's decision to opt-out of statewide assessments. The state and local schools are required to test 95 percent of their students in accordance with the ESSA accountability requirements. Should this right be utilized in significant numbers, the state or district would fall below standards set by ESSA for accountability measures and could be penalized through removal of some or all forms of federal funding.

## **OTHER SUBSTANTIVE ISSUES**

HJR2 is closely aligned with a proposed Parental Rights Amendment to the United States Constitution that contains very similar or identical provisions. The Parental Rights Amendment has been proposed to every Congress, with some variation, since the 110th Congress (2007-2008). Several states have adopted resolutions calling on the U.S. Congress to propose the amendment to several states for ratification, including Florida, Idaho, Louisiana, Montana, South Dakota, and Wyoming.

CLB/sb