



## **SUBSTANTIVE ISSUES**

The New Mexico School Superintendents Association and the New Mexico School Boards Association often note in their legislative platforms and in public testimony the Legislature should not pass programmatic bills that would have fiscal implications but do not provide funding to offset their costs. Typically, funding for public schools is appropriated in the General Appropriation Act, and standalone bills are generally not enacted with appropriations. As a result, SJR5 may prevent a significant number of bills found to be “unfunded mandates” from becoming law if they fail to receive funding in the state budget or through some other means.

As the appropriating body, the Legislature would primarily be responsible for providing funding for any new mandates it creates. Because PED cannot make appropriations, SJR5 may prevent PED from promulgating administrative rules, whether to comport with state law or federal law, if those rules create additional unfunded costs. Analysis by PED indicates the department promulgated 17 rules in 2020 to comport with statutory changes during the 2020 legislative session, each of which may have created unknown fiscal impacts on school districts. As such, SJR5 may place PED in a difficult situation where the department must choose whether to violate the constitution and create unfunded mandates or to violate state or federal law and decline to promulgate rules.

Analysis by PED on an identical resolution in 2017 notes the language could be interpreted in any number of ways, and there does not appear to be a standard to evaluate whether a mandate is unfunded. During the 2021 session, each of the following bills were purported by at least one stakeholder group to contain an unfunded mandate:

- HB130, School Gifted Education Requirements, which requires school districts to adopt policies and procedures for universal screening, allow students to receive academic acceleration and enrichment, and evaluate annually the equity and effectiveness of gifted identification and services.
- HB257, School Bus Route Improvements, which requires the Department of Transportation to designate a “school bus route improvement coordinator” to work with counties and public schools to ensure school bus routes are paved and safe for transporting students.
- SB31, Full Time School Nurse, which requires each public school district to employ at least one full-time school nurse. Following concerns about the unfunded mandate, the bill was amended in the Senate Education Committee to add a \$200 thousand appropriation.
- SB248, Anonymous Reporting in Schools, which requires PED to develop and implement in every public school a statewide, school-specific “anonymous reporting program” to report harmful activity that has occurred, is occurring, or may occur at school or that involves a school employee or student.
- SB307, Daily School Bus Driver Salaries, which establishes a minimum salary of \$150 per day for school bus drivers statewide.

## **SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)
- Office of the Attorney General