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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Fischmann LAST UPDATED _____ HB _____

SHORT TITLE Parental Participation Contracts, CA SJR 2

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$104.0	NFI	\$104.0	Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Children, Youth and Families Department (CYFD)
 Department of Finance and Administration (DFA)
 Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 2 proposes an amendment to the State Constitution that: "The legislature may provide by law for parental participation contracts between public schools and parents or guardians of children who receive free public education."

FISCAL IMPLICATIONS

The Secretary of State (SOS) has stated with respect to other constitutional amendment proposals that although the county clerk includes the proposed amendments in his/her proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-11 NMSA 1978. The approximate cost per constitutional amendment is \$104,000. That estimate is used in the table above.

SIGNIFICANT ISSUES

The AGO states:

The term "parental participation contract" is used in multiple formats (i.e. academic achievement, health care decisions) and thus may be vulnerable to legal challenge as being ambiguous to the voters.

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The requirement of parental participation contracts as a requirement to attend free public education may be vulnerable to legal challenge; although there is legal argument that “health measures prescribed as a condition of school attendance” may be permissible. N.M. Att’y Gen. Op. 75-70 (1975).

The PED comments that the proposed the constitutional amendment raises several issues:

This constitutional measure relates to Title I, Part A of the Elementary and Secondary Education Act (“ESEA”), popularly known as the No Child Left Behind Act of 2001. That law is found at Public Law 107-110, Section 1118, and has been codified as Title 20 US Code Section 6318 (b) and (d). The referenced sections require that any school receiving funds under Title I must jointly develop a written school-parent compact with parents of a child participating in any Title I, Part A program. These compacts must describe how parents, school staff and students will share the responsibility for improved student academic achievement. The compacts, which must be in writing, further detail how a school and parents must build and develop a partnership to help children achieve the state’s high standards.

Any laws requiring a parent to enter into a written contract with a school district would almost certainly result in litigation if one side accused the other side of breaching that contract. It calls into question whether a child could be disenrolled from a public school if their parent breached such a contract.

Any laws requiring a parent to enter into a written contract with a school district would almost certainly result in litigation on the basis of its constitutionality given that current Article 12, Section 1 is thought to guarantee a free public education to all school-age children and any contractual agreement parents entered into could be challenged as infringing upon that right.

Imposing conditions upon a free public education by means of a written contract that parents must sign will invariably raise issues of language and capacity to understand, and may be deemed as culturally insensitive depending on its terms.

Imposing conditions upon a free public education by means of a written contract that parents must sign may be perceived as contrary to one of the purposes of the Interstate Compact on Educational Opportunity for Military Children (“Military Compact”), which became effective on May 19, 2010, and which describes its purpose in part as, “facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements.”

Depending on what laws ensued should this measure pass, it may run into conflict with the requirements of No Child Left Behind Act of 2001 in that “NCLB” already contains many provisions addressing parental involvement that are not achieved by contract but are imposed upon school districts.