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FISCAL IMPACT REPORT

SPONSOR Foley DATE TYPED 02/24/05 HB HJR 15

SHORT TITLE Public Money for Private School Vouchers, CA SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Attorney General Opinion 99-01

Responses Received From
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Joint Resolution 15 proposes to amend Article 12, Section 3 of the New Mexico constitution to establish that the state may provide educational vouchers for elementary and secondary students. Income from the land grant permanent funds or from the land grants shall not be used for vouchers.

The proposed amendment would be subject to approval by the state’s voters.

Significant Issues

In 1999, the Attorney General issued Opinion 99-01 on the question of whether a school voucher program involving the use of public money to provide parents of children attending private school with tuition assistance would be permissible under the state constitution. That opinion concluded:

“A school voucher program involving the use of state money for tuition assistance to parents of private school children raises significant questions under the New Mexico Constitution.

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The most serious constitutional questions arise under Article XII, Section 3, which prohibits the use of public money for private schools, and Article IX, Section 14, which prohibits donations of public money or property to private persons and institutions. In addition, the following provisions are implicated by the proposed school voucher program: Article II, Section 11, which prohibits the state from giving any special preferences to religion; Article IV, Section 31, which prohibits appropriations for educational purposes to persons and educational institutions not controlled by the state; and Article XII, Section 1, which provides for a uniform system of free public schools.”

The resolution proposes to amend Article 12, Section 3 relating to the use of public money for private schools but it does not specifically address the other related sections of the constitution. Thus, even if the voters were to approve the constitutional amendment, it is possible that subsequent legislation to establish a voucher program could be subject to a lawsuit and overturned by the courts as unconstitutional.

FISCAL IMPLICATIONS

The resolution would not establish a voucher program and thus would not have significant fiscal impacts. If the amendment were approved and a subsequent voucher program were established, there would likely be significant impacts as public money would be diverted from public schools to private institutions.

There will be minor costs to the state (under \$50 thousand) to place the question on a statewide ballot.

POSSIBLE QUESTIONS

Is the proposed constitutional amendment adequate to ensure that any subsequently enacted voucher program could withstand court challenge?

EF/lg