

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 740

49th Legislature, 1st Session, 2009

Short Title: Dual Credit Program for Additional Students

Sponsor(s): Representatives Nora Espinoza, Ray Begaye, and Others

Analyst: David Harrell

Date: March 6, 2009 (revised)

Bill Summary:

HB 740 amends the dual credit statute to allow students enrolled in home schools, private schools, and Bureau of Indian Education (BIE) schools to participate in the Dual Credit Program. In doing so, the bill also:

- requires the school district in which the student’s parent or legal guardian resides to pay the cost of the home school, private school, or BIE school student’s dual credit textbooks and course supplies “through an allocation from the instructional material bureau of the public education department pursuant to the Instructional Material Law”;
- requires the student to return the textbooks and any unused course supplies to the district when the student completes the course or withdraws from the course;
- includes home school students, private schools, and BIE schools in the data that the Higher Education Department (HED) and the Public Education Department (PED) collect on the Dual Credit Program;
- includes those students in the evaluation of the Dual Credit Program that HED and PED conduct; and
- requires that textbook costs for home school, private school, and BIE school students be paid “from the allocation to the fund from which dual credit textbooks are paid” (see “Technical Issues,” below).

Fiscal Impact:

HB 740 makes no appropriation.

However, the bill is likely to have a fiscal impact through the cost of the students’ textbooks and course supplies, the extent of which will depend upon the number of students who participate in the program. Although overall enrollment and dual credit participation data are incomplete, the information that is available can produce some idea of the fiscal impact.

- Another bill introduced during the 2009 session, HB 49, would include BIE students – one of the three groups of students included in HB 740 – in the Dual Credit Program. In its analysis of that bill, HED projects that approximately 570 BIE students, or 10 percent of the students in grades 9 through 12, would participate.

- As explained under “Background,” below, a work group formed by the Legislative Education Study Committee (LESC) during the 2008 interim estimated an average cost per course for textbooks and supplies of \$82.00 and further estimated that 6,000 students may take three dual credit courses each in school year 2009-2010.
- If the 570 BIE students from HED’s estimate take three courses for dual credit, the annual fiscal impact of that group alone would be approximately \$140,220:

$$570 \text{ BIE students} \times 3 \text{ courses each} \times \$82.00 \text{ per course} = \$140,200.$$

- According to the PED analysis of HB 740, there are no definitive data on the number of home school or private school students in grades 9 through 12. The Charter Schools Division of PED, which oversees alternative forms of education like home schools, reports that approximately 7,300 students are being home-schooled in school year 2008-2009. Not all of them, of course, are at the high school level. Whatever the actual numbers, however, adding home school and private school students to the BIE students and public school students for whom textbooks and course supplies would be paid from state funds further increases the fiscal impact.
- The recommended appropriation for the Dual Credit Textbook Fund, in HB 139 and in HB 2, et al., is \$1.5 million. This appropriation is based on the assumption of 6,000 students participating in the Dual Credit Program during school year 2009-2010. Adding three more groups of students to the eligibility pool would require either an increased appropriation or a decreased allocation per student.

Finally, providing textbooks and course supplies for home school students under any circumstances would create a new fiscal impact itself. According to PED, students in BIE schools and private schools currently receive books through the Instructional Material Fund (see “Technical Issues,” below); however, home school students do not.

Issues:

Statute currently permits home school and private school students who meet the eligibility criteria in rules promulgated by PED and HED to apply for dual credit courses, as long as the students pay “the full cost of dual credit courses.” However, as HB 740 illustrates, that provision is compiled in a different section of statute than the section that delineates the details and requirements of the Dual Credit Program itself. By amending both sections of statute, HB 740 creates the impression that home school, private school, and BIE students are being included in the complete program on essentially the same terms as students from public schools, specifically in terms of student eligibility and data requirements (see “Technical Issues,” below). This approach raises a number of substantive issues.

According to the PED analysis, granting home school and private school students benefits through the Dual Credit Program implicates three sections of the state constitution:

- Article 9, Section 14 (commonly known as the “anti-donation clause”), which prohibits the state, as well any county, school district, or municipality from directly or indirectly lending or pledging credit or making any donation to or in aid of any person, association, or public or private corporation;

- Article 12, Section 3, which prohibits any “proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, [from being used] for the support of any sectarian, denominational or private school, college or university”; and
- Article 4, Section 31, which prohibits any appropriation “for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.”

There are administrative issues, as well. One such issue is the unique student identification number.

- The *Assessment and Accountability Act* requires PED to “issue a state identification number for each public school student for use in the accountability data system.”
- Pursuant to the identical dual credit rules promulgated by PED and HED, this student identification number is one of the required data points in the Dual Credit Request Form that students must complete to participate in the program.
- In addition, as the analyses by PED, HED, and the Office of Education Accountability indicate, in order for home school and private school student data to be included in the required evaluation of the Dual Credit Program, as HB 740 requires, those students must be assigned a unique student identification number.
- Doing so, however, may require an amendment to the *Assessment and Accountability Act* to allow PED to assign numbers to students other than public school students.

Assuming that the student identification issue can be resolved, additional administrative issues arise.

- The data systems at PED and HED must be adjusted to accommodate these new student data; and the departments, PED in particular, must explain the data submission requirements to the home schools and private schools and monitor the submission of those data. As the PED analysis explains, neither home schools nor private schools currently report their 40th, 80th, or 120th day data to PED (nor do BIE schools).
- As explained under “Background,” below, accurate and timely enrollment data are critical to the allocation and distribution of funds for dual credit textbooks and course supplies.
- The HED analysis notes that school districts must develop mechanisms for paying for, distributing, and assuring the return of textbooks used by home school, private school, and BIE school students.

Including home school students raises yet other issues.

- For one thing, current law imposes minimal requirements on home schools. Within 30 days of establishing a home school, the parent must notify the Secretary of Public Education, with re-notification by April 1 of each subsequent year of operating the home school. In addition, the home school must:

- maintain student immunization records or a waiver of that requirement;
 - provide instruction by someone with at least a high school diploma; and
 - according to the definition of the term “home school,” provide a “basic academic educational program, including reading, language arts, mathematics, social studies and science.”
- For another thing, while parents’ reasons for choosing to home-school their children may vary – concerns about safety, religious views, or medical conditions, for example – the people who do home school generally prefer less involvement with the government rather than more. As the PED analysis suggests, “there could be some resistance from some home school providers to reporting . . . information to PED.”
 - This preference is reflected in the changes to the home school statutes in New Mexico. Since the law was enacted in 1985, the following requirements have been deleted:
 - that the home-school parents possess a baccalaureate degree, subject to waiver;
 - that they notify the district superintendent of the establishment of a home school;
 - that they keep attendance;
 - that they report attendance and immunization records to the district; and
 - that they test students annually according to the statewide and local district testing program.
 - Also on this point, the Home School Legal Defense Association (HSLDA) states that the board of directors “has remained steadfast in focusing our resources on maintaining and advancing the freedom of homeschoolers from public school oversight. Therefore, the board will not allow HSLDA to use our resources to force public school districts to allow homeschool children access. Recently, several states have enacted legislation requiring public school access for homeschoolers. HSLDA takes a neutral position when legislation of this kind is introduced, unless the legislation would impose additional regulations on all homeschool students not participating in the public schools.

Finally, HED’s analysis says that the department supports HB 740.

Technical Issues:

In addition to the substantive issues noted above, HB 740 has two internal conflicts.

- In Section 1, the bill requires school districts to pay for the students’ textbooks and course supplies from the districts’ allocation from the Instructional Material Fund; however, in Section 2, the bill requires that the textbooks be paid, though no entity is designated, from the allocation to the fund “from which dual credit textbooks are paid.” These are separate funds for separate purposes, and the latter fund does not yet exist (see “Background,” below).
- In Section 1, the bill imposes upon home school, private school, and BIE school students the same eligibility criteria applied to public school students; however, in Section 2, the bill leaves essentially unchanged (only adding BIE students) the requirement of meeting

“the eligibility criteria in rules promulgated by the public education department and higher education department.”

Background:

Enacted in 2007, LESC-endorsed legislation provided, for the first time, a statewide dual credit program authorized in statute and supported by the state. This legislation was amended in 2008, also as endorsed by the LESC, to expand the program to include state-supported schools, in addition to school districts and charter schools, and to allow dual credit courses to be taken during the summer term. In school year 2008-2009, the program is being fully implemented.

To help offset the impact of providing students’ textbooks and course supplies for school year 2008-2009, the Legislature increased the FY 09 appropriation to the Instructional Material Fund by \$1.3 million. However, this additional appropriation is subject to the same distribution as the rest of the money in that fund. That is, it will be distributed to certain entities – private schools and Adult Basic Education centers – that are eligible for instructional material funds but not for the Dual Credit Program.

To produce a long-term solution, the LESC Chair asked the Director to convene a work group to determine the amount of money needed and a methodology for distributing the funds. In addition to LESC staff, the LESC Work Group on the Dual Credit Program comprised representatives of the Legislative Finance Committee, the Executive, PED, HED, school districts, charter schools, state-supported schools, secondary education associations, postsecondary education associations, and college bookstores.

To address the first charge to the work group – estimating the cost of textbooks and course supplies for dual credit courses – members gathered enrollment data and textbook cost data. Included were expenses and experiences of school districts and charter schools, actual costs of textbooks used in dual credit courses at a number of postsecondary educational institutions in New Mexico, textbook costs nationwide, and the most recent dual credit enrollment data compiled by HED and PED. Based on these data, the work group reached consensus on the following points:

- an average per-course cost of textbooks and course supplies of \$82.00;
- a projected enrollment in dual credit courses of 6,000 students;
- an average of three dual credit courses per student; and
- an appropriation of approximately \$1.5 million for FY 10 (school year 2009-2010):

$$\$82.00 \text{ per course} \times 6,000 \text{ students} \times 3 \text{ courses per student} = \$1,476,000$$

Regarding the second charge – a method for distributing the funds – the members of the work group agreed that a separate fund should be created strictly for dual credit textbooks and course supplies. They also agreed on a distribution method somewhat like the process used in the *Instructional Material Law*, except that, as HB 139 provides, the allocations would be based on a school’s or district’s actual enrollment in dual credit courses during the preceding calendar year (to allow use of the most recent data) and that PED would distribute 100 percent of those allocations, to the extent that funds are available.

Related Bills:

HB 49 *Tribal Colleges in Dual Credit Program*

HB 139a *Create Dual Credit Textbook Fund*