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FISCAL IMPACT REPORT

SPONSOR Strickler/Dow/
Montoya, R ORIGINAL DATE 02/17/21 LAST UPDATED _____ HJR 7

SHORT TITLE School Funding for Home or Private School, CA SB _____

ANALYST Eckberg

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJR 1, SJR 1

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Joint Resolution 7 (HJR7) proposes an amendment to the New Mexico Constitution to allow public school funding for home school, private school, or public school distance education. It amends various articles including Article 4 currently prohibiting the Legislature from making appropriations for charitable or other benevolent purposes, Article 12, Section 1 mandating a uniform system of education, Article 12, Section 3 prohibiting the state from using proceeds from land grants for private schools, and Article 9, Section 14 the anti-donation clause. The amendments would be submitted to a vote at the next general election or at a special election. Amendments would only take effect with the consent of the United States congress.

FISCAL IMPLICATIONS

HJR7 does not contain an appropriation. Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 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 \$150 thousand-\$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

Public Education Department (PED) notes the actual effect on public school funding from the proposed constitutional amendments would depend upon what legislation might be enacted under newly ratified constitutional provisions if HJR7 were passed by the legislature and ratified by the people. The proposed amendments would only set the stage for potential statutory changes that might redirect educational funding to the entities and individuals listed in the joint resolution.

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.

SIGNIFICANT ISSUES

PED indicates striking the word “uniform” from Article 12, Section 1 of the Constitution of the State of New Mexico could potentially open the door to inequalities and inequities in the lives of the state’s children, particularly those deemed most at-risk.

PED notes the issue of uniformity was most recently addressed in the *Martinez* and *Yazzie* consolidated lawsuit:

In its Decision and Order, the Court noted that state constitutional provisions requiring uniformity in education had become another avenue, aside from state equal protection clauses, by which aggrieved parties might beg relief from the courts for inequalities in the provision of education, after the U.S. Supreme Court rejected claims that there was a *federally* protected fundamental right to education. The Court in *Martinez* and *Yazzie* indicated that, while most lawsuits addressing state-level equal education protections protested inequities in school funding among school districts, that avenue was inappropriate in New Mexico, where most of the funding for public schools is provided directly by the state. Instead, the Court noted the *Martinez* and *Yazzie* plaintiffs framed their case not around a comparison of school districts, but rather around a comparison of economically disadvantaged students and English learners with those who are neither. The Court agreed with this interpretation, and explicitly extended the protection of Article 12, Section 1 to those students, as well as to Native American and Hispanic students and students with disabilities. Deleting this constitutional requirement of uniformity may likewise have the effect of deleting those vital protections from our at-risk students, leaving them at even greater risk of falling behind not only in the achievement of a sufficient education, but of a secure and successful life after their educational career is completed.

Office of Attorney General (NMAG) also notes the requirement that the state provide a *uniform* system of free public schools “sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained” is presently the focus of ongoing litigation regarding capital outlay funding in district court and any decision in the district court will likely be appealed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HJR1, proposing to amend Article 12, Section 7 of the state constitution to provide for additional annual distributions from the land grant permanent fund for the benefit of early childhood educational services.

Relates to SJR1, proposing to amend Article 12, Section 7 of the state constitution to provide for a new annual distribution from the land grant permanent fund for instruction and teacher salaries.

NMAG notes HJR 7 conflicts with HB117, Section 4(K)(1) HB117 [General Appropriation Act] to the extent that HB117 contemplates “the purpose of public school support is to carry out the mandate to establish and maintain a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state.”

OTHER SUBSTANTIVE ISSUES

NMAG indicates the intent of certain language in Section 2, amending the anti-donation clause, is vague. Proposed language states that funding may be provided to parents of children who “are required to attend public elementary or secondary school through distance education during an epidemic.” It is not clear what parental expenses the public funding is intended to cover.

NE/rl/al