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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Feb. 14, 2025 *Check all that apply:*
Bill Number: House Joint Original Correction
 Amendment Substitute

Sponsor: Reps. Montoya, Dow, Terrazas, & Duncan **Agency Name and Code** State Ethics Commission (410)
Short Title: Funding for Home or Private School, CA **Person Writing** Caroline "KC" Chato
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Section 1 of House Joint Resolution 16 would amend Article IV, Section 31 of the New Mexico Constitution by providing an exception, consistent with Section 2 of House Joint Resolution 16, to the Section's prohibition on appropriations made for charitable, educational or other benevolent purposes to any person or entity not under the absolute control of the state.

Section 2 of House Joint Resolution 16 creates an exception to Article IX, Section 14 of the Constitution (commonly known as the "Anti-Donation Clause") which would allow the state to provide a program to provide state funding to parents or legal guardians for the education of school-age children. The Section prohibits this funding to come from proceeds or income earned from lands granted to the state for public school purposes. The Section further provides that grants may be used for school-age children who are home schooled at the elementary or secondary school level by the child's parent or legal guardian, or attend a private nonsectarian, nondenominational elementary or secondary school.

FISCAL IMPLICATIONS

These amendments might marginally increase the Commission's workload relating to applicability of Article IX, Section 14, but are not anticipated to create significant fiscal implications for the Commission.

SIGNIFICANT ISSUES

House Joint Resolution 16 would undermine Article IV, Section 31 which requires legislative appropriations to go to entities "under the absolute control of the state" and is a significant departure from constitutional tradition. Article IV, Section 31 enables the executive branch an ability to oversee the transfer of public funds appropriated for "charitable, educational or other benevolent purposes." By creating an exception to Article IV, Section 31, House Joint Resolution 16 marks a departure from the traditional separation of powers by authorizing the Legislature to directly appropriate funds to "parents or legal guardians" of school age children who are home schooled or attend private school. The idea of the Legislature appropriating funds directly to entities not under the absolute control of the state (much less directly to individuals) is inconsistent with New Mexico's constitutional tradition. A legislative power to make direct appropriations to non-state entities or individuals invites obvious concerns about quid pro quo corruption and the appearance thereof, as those non-state entities or individuals are incentivized to benefit Members who are collectively empowered to benefit them. Accordingly, the separation of powers and Article IV, Section 31 has traditionally interposed executive branch agencies between legislative appropriations and transfers to recipients of public funds.

House Joint Resolution 16 also could face a First Amendment challenge under the Free Exercise clause. The language provides for grants for school-age children who "attend a private nonsectarian, nondenominational elementary or secondary school." In *Trinity Lutheran Church*

of *Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017), the U.S. Supreme Court held that Missouri violated the Free Exercise Clause where a state program offered to install playground surfaces for nonprofit organizations but which excluded a church from applying for the benefit because it was a church. *See id.* (“[The U.S. Supreme] Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest ‘of the highest order.’”). The court there discussed a separate case, *Locke v. Davey*, 540 U. S. 712 (2004), which held that Washington did not violate the Free Exercise clause by creating a scholarship program which allowed participants to use the scholarship at religious and non-religious schools but which prohibited a scholarship recipient from using the funds towards a devotional degree. In *Trinity Lutheran*, the court distinguished *Locke*, explaining the *Locke* plaintiff “was as not denied a scholarship because of who he was; he was denied a scholarship because of what he proposed to do—use the funds to prepare for the ministry. Here there is no question that Trinity Lutheran was denied a grant simply because of what it is—a church.” A court could conclude that House Joint Resolution 16 concerns the use of funds and not the religious nature of the individual receiving the grant and therefore the distinction is permissible under the Free Exercise Clause, particularly in light of the restrictions under the Establishment clause of the First Amendment; but a court might also determine the program is more similar to the otherwise neutral and secular aid program presented in *Trinity Lutheran* and conclude, therefore, that the contemplated grants violate the Free Exercise Clause.

It is also possible that grants permitted under House Joint Resolution 16 are inconsistent with Article XII, Section 3 of the Constitution. That Section provides in relevant part that “. . . no part of the 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, shall be used for the support of any sectarian, denominational or private school, college or university.” House Joint Resolution 16 would provide grants for school-age children in “*private* nonsectarian, nondenominational elementary or secondary school[s].” (emphasis added). While the second part, “nonsectarian, nondenominational” is not inconsistent with Article XII, Section 3, it is the “private” school language that creates a potential constitutional conflict between the provisions. House Joint Resolution 16 provides for appropriated funds to go directly to private schools, in contravention of Article XII, Section 3. *Cf. Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 46 (upholding as consistent with Article XII, Section 3 a “purely incidental” benefit of a program providing textbooks to private school students).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The State Ethics Commission has authority to investigate and adjudicate administrative complaints alleging violations of the Anti-Donation Clause, to enforce the Anti-Donation Clause through civil actions, and to issue advisory opinions regarding the Anti-Donation Clause. These amendments might marginally increase the Commission’s workload relating to these tasks.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Joint Resolution 11 also proposes to amend Article IX, Section 14.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS