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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/09
 SPONSOR HJC LAST UPDATED 03/12/09 HB 311/HJCS/aHFI#1
 SHORT TITLE Military Child Educational Opportunity SB _____
 ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$6.0 - \$166.0 or greater*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

See Fiscal Impact below

SOURCES OF INFORMATION

LFC Files

Responses Received for Original Bill From

Attorney General (AGO)
 Public Education Department (PED)
 Department of Military Affairs (DMA)
 New Mexico Military Institute (NMMI)

Responses Received for HJC Substitute From

Public Education Department (PED)

SUMMARY

Synopsis of House Floor Amendment #1

House Floor Amendment #1 deletes the remaining two instances in the substitute bill of the Compact having the force and effect of statutory law.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 311 enacts the “Interstate Compact on Educational Opportunity for Military Children.” A compact, like this one, is an agreement between multiple states for cooperative regulations and enforcement of matters that cross state boundaries. The compact, already approved by ten states, addresses educational problems, such as eligibility, enrollment, placement and graduation, that children of military families confront

when transferring to new schools. The compact would give New Mexico representation on an Interstate Commission that is attempting to systematically facilitate timely enrollment, the student placement process, eligibility for participation in academic and extracurricular activities and on-time graduation. The compact also provides for a governance structure, a method of financing the created governing entity, and enforcement and compliance mechanisms.

The substitute deletes from the original bill requirements that:

- a member of the Legislature serve on the State Council;
- provided certain exemptions from liability for personnel of the Interstate Commission;
- all branches of state government enforce the Compact if enacted;
- in one of three instances in the original bill, rules promulgated under the Compact have standing in the State of New Mexico as statutory law;
- provisions of the Compact that are inconsistent with state law supersede state law;
- persons suing the State of New Mexico in the U.S. District Court for the District of Columbia to enforce the Compact be awarded costs of litigation and attorney's fees if they are successful; and
- the specification of mandatory minimum membership of the Military Children Education Compact State Council.

FISCAL IMPLICATIONS

The DFA commented with respect to the original bill that while House Bill 311 carries no appropriation, the compact specifies that the Interstate Commission will levy a fee on signatory states to cover costs associated with administrative operations of the Compact and Commission. In a brief prepared by staff of the Legislative Education Study Committee (LESC) for a hearing on the Compact held in October 2008, the DoD and CSG estimate that the cost incurred by states is \$1.00/student. The LESC brief indicates that at the time of the hearing there were approximately 6,070 currently enrolled students of military families in New Mexico. Hence, the cost to New Mexico for the 2008-2009 school year would be \$6,070. The brief goes on to suggest that the figure may not reflect actual costs and that an analysis by the North Carolina Legislature determined that their state's likely first year assessment could be as high as \$166K.

Additional cost, beyond the assessment for operations of the Interstate Commission, would be associated with meetings of the state council required in the compact and for possible data systems changes on the part of PED to "collect standardized data concerning the educational transition" of students covered by the compact and to be specified by rule of the Commission.

See also the AGO comment on Method of Financing below.

SIGNIFICANT ISSUES

The AGO stated with respect to the original bill:

Method of Financing. Article 14 provides for the financing of the interstate commission under the compact. The commission may levy and collect annual assessments from each member state to cover the cost of operation and activities of the commission. The assessment amount is based on a formula determined by the commission. Interstate compacts are "contracts," Texas v. New Mexico, 482 U.S. 124, 128 (1987), and we have

opined that contracts that subject the government to liability, the amount of which is uncertain at the time of the agreement, can create unconstitutional “debt.” See N.M. Att’y Gen. Op. 00-04 (indemnification agreements create unconstitutional debt).

This is an issue because in State ex rel. Dyer v. Sims, 341 U.S. 22 (1951), involving an interstate compact to control river pollution, the United States Supreme Court refused to allow West Virginia to withdraw from its compact despite West Virginia’s argument that its compact was invalid as creating unconstitutional debt, because it required West Virginia to make a continuing appropriation for its share of salaries and administrative expenses of that commission. Thus, the legislature should be aware that it may likely be required under this compact, for the duration of the state’s membership, to make annual appropriations to finance its share of the administrative cost based on the commission’s formula. The legislature needs to budget for this matter or set up a “special fund” to address this issue. See N.M. Att’y Gen. Op. dated February 28, 2006, 2006 WL 634421; N.M. Advisory Letter dated February 10, 2003, 2003 WL 1957573. However, the State is not irrevocably bound to continue participating in this compact. It may withdraw by repealing the compact statute pursuant to Article 16, although any repeal is not effective until a year later, and the State remains responsible for all assessments and liabilities through the effective date of withdrawal, including those obligations that extend beyond the effective date of withdrawal.

Public School Code. To the extent that any of the compact’s provisions conflict with the Public School Code, that Code expressly provides that the Public Education Department is authorized “to waive provisions of the Public School Code as authorized by law.” NMSA 1978, § 22-2-1 (B)(4) (2004). The compact, if enacted, will be law. In addition, Article 18 provides that while a state constitutional provision will trump a compact provision, Article 18 provides that a compact provision will trump a state law. This may touch on issues like enrollment, grade age, graduation requirements and acceptance of exit exams. See Article 4 (D) and Article 7.

Immunizations. A potential conflict respecting deadlines for student immunizations might arise were the commission to adopt rules regarding immunizations that would conflict with state law or rules. The compact currently itself does not present a conflict in this regard. Under Article 4 (C) of the compact, compacting states “shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission for students to obtain any immunizations required by the receiving state.” The Article further provides that “[f]or a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.” Compare NMSA 1978, Section 24-5-2 (it is unlawful for any student to enroll in public school unless he has been immunized, as required under the rules of the health services division of the health and environment department; provided, however, that if a child has begun the process of immunization he may enroll and attend school as long as the process is being accomplished in the prescribed manner); Public Education Department Rule 6.12.2.8 (B) NMAC (no student shall be enrolled in the public schools unless the student can present evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division); Public Education Department Rule 6.12.2.8 (A) (6) (persons enrolling in schools who have begun the process of immunization shall have one month

following the date of enrollment to complete the required immunizations or having continued the process of the required series).

ADMINISTRATIVE IMPLICATIONS

The PED notes that the PED and Department of Health would have to amend rules as to immunizations of military students.

TECHNICAL ISSUES

It is unknown if the changes made in the substitute from the original bill, which closely followed the model bill for the compact, may in part be unacceptable to the Interstate Commission.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PED notes that the purposes of the Compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents would not be codified as a single state law.

GH/mt:svb