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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09

SPONSOR Griego, E. LAST UPDATED _____ HB _____

SHORT TITLE Educational Employees As Legislators, CA SJR 14

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Companion to SB 644

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 14 would amend Article IV Section 3 of the New Mexico Constitution to exempt employees of state educational institutions “pursuant to” Article XII Section 11 of the Constitution from the prohibition against a person serving in the State Legislature if at the time of qualifying, that person holds any office of trust or profit with the state, county or national governments.

Senate Joint Resolution 14 would also amend Article IV Section 28 of the Constitution which prohibits a legislator from being appointed to any civil office during their term, and which prohibits a legislator from being appointed to any civil office created, or the emoluments of which were increased during their term, for one year after their term, to provide that “civil office” does not include employees of state educational institutions pursuant to Article 12, Section 11 of the constitution of New Mexico.

FISCAL IMPLICATIONS

Senate Joint Resolution 14 has no fiscal impact.

SIGNIFICANT ISSUES

The AGO states:

This joint resolution, if approved by the voters, would be an attempt to allow employees of the state educational institutions listed in Article XII Section 11 of the New Mexico Constitution to serve in the legislature. Those institutions include the state universities and other educational institutions.

Currently Article III Section 1, Article IV Section 3, and Article IV Section 28 may be interpreted to prevent employees of the state institutions listed in Article XII Section 11 of the Constitution, as employees of the executive branch of government, from also serving in the State Legislature. They may also be interpreted to prevent state legislators from being employed by those state institutions during their terms. They could also prevent a state legislator from becoming employed at one of those state institutions for one year after their term, if the state position was created or its “emoluments” increased during their term. Those provisions limit a state legislator’s ability to also serve in the executive branch of government during the term for which they were elected, and limit the ability of an employee of the executive branch of government from serving in the State Legislature. See Opinion of the Attorney General AGO IAL 041408. The intent of those provisions is to avoid any conflicts between the powers and duties of a state legislator within the legislative branch of government, and those of a state employee within the executive branch.

However, the joint resolution does not amend Article III Section 1 of the New Mexico Constitution, commonly known as the “separation of powers clause”, and which generally prevents a member of one branch of government from performing the powers and duties of another, and which also serves to prevent encroachment by one branch of government on the powers and functions of another. See *State ex rel. Stratton v. Roswell Independent Schools*, 111 N.M. 495, 806 P.2d 1085 (Ct.App. 1991). If this joint resolution is enacted, the issues raised by that section will not be clearly resolved, and could create an internal conflict between constitutional provisions.

The HED notes:

An Attorney General's Opinion (No. 06-01) reviewed the question of whether a legislator may serve as president of Luna Community College (formerly Luna Vocational-Technical Institute) without resigning office. The conclusion of the Attorney General was that a legislator may serve as President of Luna Community College without violating the relevant constitutional and statutory provisions of New Mexico law.

The same analyses would apply to employees of the constitutional state educational institutions, thus avoiding any constitutional problem. It is worth noting that the A.G.’s Opinion is not binding on the courts and thus without amending the Constitution as well, as proposed in SJR 14, these individuals holding these positions could still be challenged.

The A.G. opinion noted above does not address potential conflicts of interest as prohibited by the Governmental Conduct Act. However, employees of educational institutions would be in a position to affect statutes, funding and other decisions

directly impacting their primary employment at their respective educational institutions. Funding requests, for example, Research & Public Service Projects (RPSP), are reviewed through the New Mexico Higher Education Department for annual recommendations. These are put forth to the Legislature for review and approval. As a result of SB644, a legislator could be in a position to vote in favor or against his or her institution's funding recommendations. This could allow for potential conflicts of interest.

COMPANIONSHIP

Senate Joint Resolution 14 is a companion to Senate Bill 644. Senate Joint Resolution 14 would remove the constitutional impediments, except for separation of powers issues, to employees of state educational institutions serving in the legislature. Senate Bill 644 would remove the statutory impediment regarding compensation to employees of state educational institutions serving in the legislature.

According to the AGO, both Senate Bill 644 and Senate Joint Resolution 14 must be enacted in order to allow employees of those state educational institutions to serve in the legislature; and to receive compensation from both entities; and to allow state legislators to hold paid positions in those state educational institutions. However, "separation of powers" issues would still remain.

GH/svb