

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: CS/HB 311a¹

49th Legislature, 1st Session, 2009

Short Title: Military Child Educational Opportunity

Sponsor(s): Representatives Nathan P. Cote, Dennis J. Roch, Edward C. Sandoval,
and Others

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL 311

AS AMENDED

The House Floor Amendment strikes the two statements that rules promulgated by the Interstate Commission shall have the force and effect of statutory law (see “Issues Raised by the Original Compact,” below).

Original Bill Summary:

CS/HB 311 enacts into law the Interstate Compact on Educational Opportunity for Military Children. The bill consists of only two sections:

- Section 1 contains the compact itself, adapted from the model compact drafted by the Council of State Governments, in collaboration with the Department of Defense (see “Background,” below). The compact comprises 18 articles that cover services and accommodations for students of military families, responsibilities of member states, and the roles and powers of an interstate commission to oversee implementation of the compact nationwide (see Attachment 1 for an index of the articles).
- Section 2 prescribes certain aspects of the compact specific to New Mexico.

Section 1 begins with a statement of purpose: “to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents.” To accomplish this purpose, the compact seeks to facilitate the timely and appropriate placement of children of military families, their eligibility for extracurricular activities, their timely graduation, the promulgation and enforcement of rules, the uniform collection and sharing of information, and the promotion of “flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student,” among other activities.

Among its major provisions, the compact:

- creates the Interstate Commission, a governing body with rule-making and enforcement authority, whose members include one representative from each member state;

¹ Version .178431.1

- provides that the compact will become effective and binding when at least 10 states adopt it;
- allows the Interstate Commission to assess membership fees and impose penalties on states in default of the compact;
- requires member states to develop a state council, with a prescribed basic membership, to coordinate services; and to appoint or designate a military family education liaison to facilitate the implementation of the compact;
- provides for a full-time staff for the commission;
- specifies that the compact applies only to the children of:
 - active duty members of the uniformed services;
 - severely injured or medically discharged or retired members, for one year after discharge or retirement; and
 - members of the uniformed services who die on active duty or as a result of injuries sustained on active duty, for one year after death; and
- includes specific provisions that address the range of issues that confront military students.

This summary cannot include all of the circumstances of military children covered by the compact; however, a few examples may suffice as illustrations of the scope and intent.

- Regarding educational records and enrollment, the compact requires the school in a receiving state to accept unofficial records from the school in the sending state in the event that official records cannot be provided in a timely fashion.
- Regarding attendance, the compact requires additional excused absences, at the discretion of the local superintendent, for the child to visit with parents or guardians who are being deployed or have recently returned from deployment.
- Regarding extracurricular activities, state and local education agencies must “facilitate the opportunity for transitioning military children’s inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.”
- Regarding graduation, local school districts must waive specific course requirements if similar coursework has been satisfactorily completed in another district or “provide reasonable justification for denial.”

In Section 2, CS/HB 311 creates the Military Children Education Compact State Council to coordinate the state’s participation in and compliance with the compact among state agencies, local education agencies, and military installations.

Two other officers are to be appointed:

- the Military Family Education Liaison, designated by the council to assist military families and the state in implementing the compact; and

- the Compact Commissioner, appointed by the Governor, to administer the compact in the state and to represent the state on the Interstate Commission.

Each of these officials must serve as an ex-officio nonvoting member of the council unless the person appointed to either position is already a voting member of the council.

Fiscal Impact:

CS/HB 311 makes no appropriation.

However, the bill is likely to have a fiscal impact in a variety of ways:

- The compact allows the Interstate Commission to levy and collect an annual assessment from each member state to finance the operations of the commission and its staff. The assessment amount is to be allocated based on a formula “to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.”
 - The Council of State Governments (CSG) and the Department of Defense (DoD) estimate the cost to states at \$1.00 per eligible military student. At this rate and with the current population of 6,070 eligible students, according to CSG and DoD, the initial assessment to New Mexico would be approximately \$6,070. This figure may not reflect the actual cost, however.
 - The Interstate Commission estimates its annual budget at \$315,480, assuming that, by October 2009, 25 states will have joined the compact, with an average of just over 10,000 eligible military children per each of the additional 14 states.
 - However, using figures provided earlier by the CSG – an estimated budget for the Interstate Commission of \$630,389 and total assessments of the states that have adopted the compact thus far, based on their eligible military student populations – an analysis of the North Carolina legislation concludes that the state’s first-year assessment could be as high as \$166,000, with just over 45,000 eligible children.
- In addition to the assessments by the Interstate Commission, the state is likely to incur other costs.
 - For one thing, additional costs will arise from state officials’ attendance at meetings of the Interstate Commission; and there are likely to be costs associated with meetings of the required state council, even though CS/HB 311 makes council members ineligible for per diem and mileage and any other compensation.
 - For another thing, as noted above, there is also the possibility that the commission may assess fines against states in default of the compact.
- Another potential fiscal impact relates to one of the duties of the Interstate Commission: to “collect standardized data concerning the educational transition of the children of military families under [the compact] as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.” Depending upon the data requirements, the Public Education Department

(PED), and school districts as well, may be required to fund modifications in their data systems.

Fiscal Issues:

Noting the undetermined amount of the fee assessment, the analysis of the original HB 311 by the Office of the Attorney General (AG) suggests a constitutional issue. According to an AG opinion in 2004, “contracts that subject the government to liability, the amount of which is uncertain at the time of the agreement, can create unconstitutional ‘debt.’”

Noting that one of the powers of the Interstate Commission is to “purchase and maintain insurance and bonds,” the PED analysis of the original HB 311 says that the type of bonds is unclear, as is “the extent [to which] the state would be exposed to investment risks.”

Although the Georgia legislature adopted the compact, the Governor vetoed the bill, primarily on fiscal grounds: “Should the General Assembly fail to appropriate the undetermined amount [of the fees], the proposed compact would subject the State of Georgia to a lawsuit to recover funds. I cannot support a self-perpetuating financial obligation imposed on Georgia taxpayers.”

Issues:

Needs Addressed by the Compact

According to the Military Child Education Coalition (MCEC), military children move from six to nine times during their K-12 school years, often with multiple moves during high school years overall and the senior year in particular. The website of USA4Military Families adds: “Deployable military units plan for leaving at a moment’s notice, and try to prepare families to deal with the sudden absence of a key member of the family. Even with these plans, there are always unforeseen difficulties that may arise with houses, cars, pets, finances, schools, illnesses, etc.” The MCEC further notes that, although many states and communities “have responded on an ad hoc basis to ease the shift of military children, no comprehensive policy approach exists to improve the long-term educational transitions and outcomes” for military children.

While this need has always existed, it may be even more acute now. Citing the Pentagon and military historians, a recent article in the *Washington Post* says that today’s military, serving in Iraq and Afghanistan, has a greater percentage of parents than in any other conflict, partly because of increased reliance on the National Guard and reserves and partly because of the growing number of women in uniform. In addition, according to this story, of the more than 800,000 parents deployed since September 11, 2001, more than 200,000 have been deployed twice, and over 100,000 have been deployed three or more times.

As one of the states with a significant military presence, New Mexico faces the issues addressed in the compact; and, in some ways, the state is already addressing them. For example:

- rules promulgated by PED provide for the transfer and acceptance of credit earned elsewhere, as well as the timely forwarding of transcripts and copies of pertinent student records, in compliance with state and federal law;
- the bylaws of the New Mexico Activities Association accommodate students who transfer from another school, district, or state; and

- legislation enacted in 2007 permits a military dependent whose parent is a member of the New Mexico National Guard or a branch of the US armed forces and is transferred out of state to receive a New Mexico high school diploma under certain conditions, thus making the student eligible for the Lottery Success Scholarship.

These provisions notwithstanding, however, some of the issues facing military students in New Mexico may remain unresolved. One factor is the anticipated growth in the number of military students in certain school districts. According to a recent report to Congress by the Secretary of Defense, school districts in the vicinity of military installations in New Mexico – Cannon Air Force Base, Holloman Air Force Base, Kirtland Air Force Base, and White Sands Missile Range – are projected to see an influx of more than 7,000 new students of military families through school year 2010-2011.

Issues Raised by the Original Compact

While the compact would help ensure smooth transfers of military children from one school system to another, it may also require certain concessions from the state with regard to educational policy and it may impose significant responsibilities and potential liabilities on the state. One of these issues is the relinquishing of state sovereignty.

- Although CS/HB 311 has deleted a provision in the original bill that all member states' laws conflicting with the compact are superseded to the extent of the conflict, the committee substitute retains two statements to the effect that the rules promulgated by the Interstate Commission "shall have the force and effect of statutory law" (see Attachment 2 for a list of the substantive differences between the original bill and the committee substitute).
- Therefore, a point raised in the AG analysis of the original bill still seems to apply: "The compact, if enacted, will be law."
- Furthermore, the PED analysis of the original bill questions the legality of this relationship: "can the Legislature delegate its legislative function to a commission the result of which is a rule that has the force and effect of statutory law?"
- Offering another perspective, the DoD State Liaison Office suggests that, by adopting the compact, a state does not relinquish its sovereignty, only "the right to act 'unilaterally' with regard to an interstate problem which cannot be resolved without a uniform solution agreed to by all the states involved." Nor, this office continues, does the compact "seek to abrogate state control over education policy or procedure, but only to impose a duty of reasonable accommodation of the unique needs of children of military members" in the four areas of enrollment, placement, eligibility, and graduation.

Enforcement provisions are another aspect worth noting.

- One of the powers of the Interstate Commission is to "enforce compliance with the compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process."

- If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities, the commission may take a number of actions, from specifying conditions to remedy the default to suspending the state's membership in the compact to initiating legal action in the US District Court for the District of Columbia, possibly seeking both injunctive relief and damages.

Finally, the specific provisions aside, CS/HB 311 raises questions related to the compact approach itself.

- One of the questions that other states have raised is why the provisions of this compact apply only to children of military families. Granted that military families move more frequently, usually with less notice and choice than civilian families, the needs of a transferring student, whether military or civilian, are essentially the same.
- In addition to the compact in CS/HB 311, a number of other organizations and services are available to help military families with school-age children. One organization active in New Mexico is the Military Child Education Coalition, which describes itself as a “non-profit, world-wide organization that identifies the challenges facing the highly mobile military child, increases awareness of these challenges in military and educational communities, and initiates and implements programs to meet the challenges.”
- During the 2008 interim, the Legislative Education Study Committee (LESC) heard a presentation on the military compact, which included some of the points raised in this analysis. After discussing the issue, the LESC recommended introducing a memorial during the 2009 legislative session requesting that PED convene a task force to study the compact and to make recommendations to PED and the LESC by October 2009. This recommendation was in line with advice provided by the National Conference of State Legislatures: “It would be prudent to convene a study group that would think through the reverberations of this decision [whether to adopt the compact] on state and local policy and, more importantly, its effect on military families and dependents themselves.”

Technical Issues:

From a drafting standpoint, the compact in CS/HB 311 raises some technical issues. One of them concerns the definition of terms, or lack thereof.

- The compact defines the term “member states” but uses the term “compacting states,” which is not defined.
- Other undefined terms include “legal guardian,” “on-time graduation,” and “stakeholder groups.” Because it is used in the membership of the State Council, the term “stakeholder groups” could be particularly problematic in that it could apply to constituencies similar to those already represented (the Governor’s office or military recruiters, for example).

The compact allows the Interstate Commission to acquire property, whether “real, personal or mixed,” but it does not provide for the disposition of that property should the compact be dissolved.

Finally, the provision allowing both the Military Liaison and the Compact Commissioner to be voting members of the State Council in New Mexico could be problematic in that they could have inordinate influence on the proceedings and decisions of the council.

Background:

Nature, Drafting, and Status of the Compact

According to the CSG, interstate compacts are contracts between two or more states – somewhat like treaties between nations – that establish agreements at either the regional or national level. As such, the CSG adds, “Compacts have the force and effect of statutory law and take precedence over conflicting state laws, regardless of when those laws are enacted.”

The compact in CS/HB 311 was the result of collaboration between the National Center for Interstate Compacts of the CSG and the DoD Office of Personnel and Readiness. These agencies, together with other parties, drafted a model interstate compact and submitted it for public comment in July 2007. In December 2007, CSG held a briefing on the compact for legislators and staff members from some 30 states, New Mexico not among them. There were, however, two meetings of school and military officials in New Mexico – one in Portales in June 2008 and the other at White Sands Missile Range in August – that discussed the educational issues facing military students in the state.

In July 2008, Delaware became the tenth state to adopt the compact, thus activating the compact in the 10 states that had signed it and in any other states that subsequently join. North Carolina became the eleventh state, adopting the compact in August 2008. The other states that are now part of the compact are Arizona, Colorado, Connecticut, Florida, Kansas, Kentucky, Michigan, Missouri, and Oklahoma. According to an official with the DoD, Washington is giving favorable attention to the compact this year; and the CSG reports that compact legislation has been introduced in some 23 other states, New Mexico among them. In addition, at least three of the states considering the compact – Illinois, Maryland, and Washington – have enacted legislation creating a task force to study the compact.

In October 2008, the Interstate Commission held its inaugural meeting. According to the Interstate Commission’s website, the commission elected officers, formed several committees (including the Rules Committee and the Compliance Committee), and adopted bylaws.

Compact Modifications in Other States

Several states that have adopted the compact have done so with modifications that address some of the issues noted above:

- The Florida law contains a repeal clause, effective two years after the effective date of the legislation. According to an analysis of the Florida legislation, “The repeal will allow the Legislature to review the compact after the adoption of rules by the Interstate Commission.”
- The North Carolina law amends the compact to read that a rule promulgated by the Interstate Commission “has the force and effect of rules promulgated under the [state] *Administrative Procedures Act*”

- Another amendment in the North Carolina legislation clarifies that any cause of action could be initiated only against the state, not a local school district.

Related Bills:

HJM 62 *Military Child Educational Compact Review*

**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 311A, SECTION 1 (2009)
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**SUBSTANTIVE CHANGES IN
THE HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL 311A**

Section 1

The HJC Substitute for HB 311, as amended on the House Floor, has deleted the following provisions in the original bill:

- a representative of the Legislature as a member of the Military Children Education Compact State Council;
- certain exemptions from liability for personnel of the Interstate Commission;
- the requirement that the state's executive, legislative, and judicial branches enforce the compact;
- the statement that the provisions of the compact have the standing of statutory law;
- the three statements that the rules promulgated pursuant to the compact have the force or standing of statutory law; and
- the statement that, "All member states' laws conflicting with the [compact] are superseded to the extent of the conflict."

Section 2

The HJC Substitute for HB 311, as amended on the House Floor, has deleted the New Mexico-specific membership list for the Military Children Education Compact State Council.