

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SJR 14

49th Legislature, 1st Session, 2009

Short Title: Educational Employees as Legislators, CA

Sponsor(s): Senator Eric G. Griego and Others

Analyst: David Harrell

Date: March 2, 2009

Bill Summary:

SJR 14 proposes to amend two sections of Article 4 of the Constitution of New Mexico to allow employees of those state educational institutions enumerated in Article 12, Section 11 of the constitution to serve as state legislators. More specifically:

- Article 4, Section 3, in pertinent part, says:
 - “No person shall be eligible to serve in the legislature who, at the time of qualifying, holds any office of trust or profit with the state, county or national governments, except notaries public and officers of the militia who receive no salary.”
 - SJR 14 excludes employees of the state educational institutions noted above from that provision.
- Article 4, Section 28, in pertinent part, says:
 - “No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term.”
 - SJR 14 provides that, for the purposes of this provision, the term “civil office” does not include employees of the state educational institutions noted above.

Fiscal Impact:

As a joint resolution, SJR 14 makes no appropriation.

Issues:

At the risk of oversimplifying the legal and constitutional issues involved, the situation that SJR 14 addresses seems to be the result of a series of Attorney General (AG) opinions and at least one court case (see “Background,” below) related to sections 3 and 28 of Article 4 of the state constitution and to two corresponding sections of state law [Section 2-1-3 NMSA 1978 and Section 2-1-4 NMSA 1978]. Three conclusions resulted from these decisions and the court case:

1. that employees of state educational institutions enumerated in the constitution are state employees and, as such, may not serve in the Legislature;

2. that public school employees are not state employees and, as such, may serve in the Legislature; and
3. that the position of president of a technical vocational institute is neither a civil office nor a state office; therefore, a person may hold that position and serve in the Legislature.

The analysis by the Higher Education Department (HED) suggests that this last point would also apply to employees of the constitutional state educational institutions; however, absent an amendment to the constitution, such an interpretation could still be challenged. By excluding employees of the state educational institutions noted above from the prohibitions in Article 4 of the constitution, SJR 14 clears the way for an employee of one those institutions to serve in the Legislature.

However, the provisions in SJR 14 may not be the complete resolution of the issue.

- For one thing, as the AG's analysis of SJR 14 states, both the constitution and related sections of law must be amended in order to allow employees of those state educational institutions enumerated in the constitution to serve in the Legislature and to receive compensation from both entities. Such amendments are the purpose of Senate Bill 644, also introduced during the 2009 session.
- For another thing, the AG's analysis indicates that, even if both SJR 14 and SB 644 are enacted, there may be a conflict with another section of the state constitution: Article 3, Section 1 (commonly known as the "separation of powers" clause), which prevents someone charged with the exercise of power of one branch of government from performing, or encroaching on, the powers of another.

Finally, HED's analysis suggests that, even if these legal and constitutional issues are resolved, there is a potential for a conflict of interest in that a legislator who is also an employee of a state institution will be in the position of influencing legislation and appropriations that affect the institution where the legislator is employed. On the other hand, the 2006 AG opinion noted below found that "this type of potential conflict is not sufficient to preclude the president of a technical vocational institute from serving as a legislator in a state such as New Mexico with a citizen legislature" – adding, however, that, to avoid potential conflicts of interest, the legislator must comply with all statutory and legislative directives regarding voting on matters in which the legislator has a pecuniary or direct interest.

Background:

Listed below are the decisions that seem to have led to the issue that SJR 14 seeks to resolve (see the AG and HED analyses for more details):

- An AG opinion in 1957 found that state legislators are prohibited from employment at a state educational institution pursuant to the two sections of law amended in SB 644.
- An AG opinion in 1988 found that public school instructors and administrators are state employees within the constraints of the prohibition against serving in the Legislature while receiving compensation as a state employee.

- A court case in 1991 nullified the 1988 AG opinion by ruling that public school teachers and administrators are not state employees within the meaning of the sections of law in question.
- An AG opinion in 1991 found that the court ruling in the 1991 case does not alter the prohibition against a person simultaneously serving in the Legislature and serving as an employee of a state educational institution, such as the University of New Mexico. In the words of that opinion, “[a]bsent amendment by the legislature, Sections 2-1-3 and 2-1-4 as they are now drafted prohibit state legislators from receiving compensation for services rendered as professors and employees of state educational institutions.”
- Finally, an AG opinion in 2006 found that a legislator may serve as president of a vocational technical institute without violating the relevant constitutional and statutory prohibitions.

Listed below are the institutions referenced in SJR 14, from Article 12, Section 11 of the state constitution:

- the University of New Mexico;
- New Mexico State University;
- New Mexico Highlands University;
- Western New Mexico University;
- Eastern New Mexico University;
- the New Mexico Institute of Mining and Technology;
- the New Mexico Military Institute;
- the New Mexico School for the Blind and Visually Impaired;
- the New Mexico School for the Deaf; and
- the Northern New Mexico State School.

Related Bill:

SB 644 *Educational Employees as Legislators*