

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HM 66

**49th Legislature, 2nd Session, 2010**

**Tracking Number:** .181859.1

**Short Title:** Develop Dropout Rate Legislation

**Sponsor(s):** Representatives Antonio “Moe” Maestas and Ben Luján

**Analyst:** Ally Hudson

**Date:** February 15, 2010

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**Bill Summary:**

HM 66 requests that the Legislative Education Study Committee (LESC) develop legislation by November 2010 for consideration in the 2011 legislative session to create a scholarship tax credit program and establish a competitive grant program to help minority students finish their studies and obtain a high school diploma.

**Fiscal Impact:**

Legislative memorials do not contain an appropriation.

**Substantive Issues:**

According to the Public Education Department (PED) analysis, “the tax credit desired by this memorial is not for parents sending their children to public schools since they are and must be free according to the State Constitution.” Consequently, HM 66 would benefit only those individuals who choose to attend a private school. The PED analysis further notes that, because some private schools are faith-based, such a credit could implicate the 1<sup>st</sup> Amendment of the Federal Constitution.

Also implicated are at least two sections of the Constitution of the State of New Mexico:

- As provided in Article 9, Section 14 (commonly known as the “anti-donation clause”), “Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation . . . .”
- As provided in Article 12, Section 3, “The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and 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.”

On this point, in 1999, in response to a legislative request, the Attorney General issued an opinion (Opinion 99-01) that a school voucher program using public money to provide tuition

assistance to parents of children in private schools “raises serious and substantial state constitutional questions,” especially in terms of the two sections cited above.

**Technical Issues:**

The PED analysis notes that “the title of HM 66 implicates Article IV, Section 16 of the New Mexico Constitution which provides in part that, ‘The subject of every bill shall be clearly expressed in its title...’” As the PED analysis explains, the title of HM 66 indicates the creation of a scholarship tax credit program for “low-income” students. Yet, the text of the memorial references the creation of a scholarship tax credit program to help “minority” students.

**Related Bill(s):**

HM 46 *Study Reading & Math Scores & Dropout Rates*  
SB 198 *Scholarship Donation Tax Credit*