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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/10

SPONSOR Maestas LAST UPDATED _____ HM 66

SHORT TITLE Develop Dropout Rate Legislation SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Memorial 46 and Senate Bill 198

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Memorial 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.

Specific citations in the memorial include:

- the economic future of the state of New Mexico will depend upon the educational attainment and knowledge base of its work force;

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- the secretary of public education said that forty thousand New Mexico students have dropped out of high school in the last four years;
- the governor said that a forty-six percent high school dropout rate is unacceptable;
- the house of representatives believes that aggressive work is needed to ensure that all children in New Mexico attend a school that will transform their lives by helping them to achieve their full potential;
- the employment prospects for students without a high school diploma are bleak;
- Hispanic students represent fifty-six percent of the total enrollment in New Mexico public schools, and there exists a persistent and substantial gap in academic achievement between Hispanic students and non-Hispanic Anglo students in the state;
- states like Florida have sharply reduced this achievement gap through innovative education programs, including a scholarship tax credit program;
- more than fifty percent of the students enrolled in public schools in New Mexico qualify for free or reduced-price lunches;
- the educational options available to low-income students are narrower given their families' modest incomes;
- a scholarship tax credit program would allow these families to send their children to the public or private school best suited to their educational needs; and
- savings from a well-designed scholarship tax credit could be used to provide grants to public and private education providers to help minority students finish their studies and obtain a high school diploma.

FISCAL IMPLICATIONS

House Memorial 66 makes no appropriation.

SIGNIFICANT ISSUES

The PED explains the following potential legal conflicts contained in the memorial.

This bill relates to Senate Bill 16 (“Expand LESC Authority to Higher Education”). The authority of the LESC is statutory. Its duties are set forth in Section 2-10-3, NMSA 1978, which provides for the LESC to study the policies and costs “of the New Mexico educational system”. Senate Bill 16 sought to expand that authority to Higher Education. It does not follow that the LESC’s duties relating to “the New Mexico educational system” extend to drafting legislation to facilitate children in attending private schools.

Because 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, the bill would only benefit parents who chose to send their children to a private school. Some private schools are faith-based, i.e., religious schools. Such a credit, therefore, implicates the Establishment Clause (1st Amendment) of the federal Constitution. For the state to support faith-based private schools through legislation providing for a tax credit, that legislation would have to satisfy all three prongs of the test for determining Establishment Clause violations, which were laid down by the Supreme Court in *Lemon v. Kurtz*, 403 U.S. 602 (1971). But see:

- On January 29, 1999, the New Mexico Attorney General Opinion 99-01 opined that “A school voucher program involving the use of public money to provide parents of private school children with tuition assistance raises serious and substantial state constitutional questions, most significantly under Article XII, Section 3, which proscribes the use of public money for the support of private schools, and the anti-donation clause of Article IX, Section 14.”

- In November 27, 2006, the U.S. Supreme Court refused to hear a challenge (by a writ of certiorari) to an April 2006 decision of the Maine Supreme Judicial Court that upheld a Maine law that prohibited the use of public funds to send students to private religious schools.

- *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (The Supreme Court upheld an Establishment Clause challenge against an Ohio pilot scholarship program that sought to give aid primarily to families below the poverty line with children at a failing school district so they could choose to either attend another public or private school, receive tutorial assistance, enroll in a magnet school or receive a scholarship.)

- *Walz v. Tax Commission of the City of New York*, 397 U.S. 664 (1970) (The Supreme Court upheld the city’s granting of property tax exemptions to religious organizations for properties used solely for religious worship, which was authorized by the state constitution and the implementing statute providing for tax exemptions for property used exclusively for religious, educational or charitable purposes.)

- *Mueller v. Allen*, 463 U.S. 388 (1983) (The Supreme Court upheld a Minnesota law that allowed state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending an elementary or secondary school and was challenged on the basis that it violated the Establishment Clause.)

- *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973) (“The system of providing income tax benefits to parents of children attending New York's *nonpublic* schools also violates the Establishment Clause because, like the tuition reimbursement program, it is not sufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools.”) (emphasis added)

- *Byrne v. Public Funds for Public Schools of New Jersey*, 442 U.S. 907 (1979) (The Supreme Court summarily affirmed a lower federal court holding that a state tax deduction for taxpayers with children attending nonpublic school violated the Establishment Clause.)

- *Franchise Tax Board of California v. United Americans for Public Schools*, 419 U.S. 890 (1974) (The Court summarily affirmed a lower federal court judgment that struck down a state statute providing income-tax reduction for taxpayers sending children to nonpublic schools.)

- *Hibbs v. Winn*, 542 U.S. 88 (2004) (Despite the federal Tax Injunction Act that prohibits federal courts from restraining the implementation of state tax laws, the Supreme Court here allowed Arizona taxpayers to proceed, on the basis of violation of the Establishment Clause, in a suit seeking to enjoin the operation of an Arizona tax law that authorizes an income tax credit for payments to nonprofit “state tuition organizations” that awards scholarships to students in private elementary/secondary schools including those attending religious-based schools.)

PERFORMANCE IMPLICATIONS

The PED notes that this memorial does not support any of the department’s performance measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 198 “Scholarship Donation Tax Credit” seeks to provide an income tax credit for taxpayers who donate to scholarship-granting organizations that provide equal opportunity scholarships to *eligible* students who attend certain *qualified* schools.

House Memorial 46 “Study Reading & Math Scores & Dropout Rates” also addresses dropout rates by requesting that the Public Education Department conduct a study to compare the fourth and eighth grade reading and math proficiency scores for graduating and non-graduating students for the past 10 years with breakdowns by county and school districts.

OTHER SUBSTANTIVE ISSUES

According to the PED, the title of the bill 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...” The title to HM 66 provides that it is “creating a scholarship tax credit program for **low-income** students.” However, the text of the memorial contradicts the title by resolving to “create a scholarship tax credit program...to help **minority** students finish their studies and obtain a high school diploma”. The memorial equates being a Hispanic student with being a minority and being a low-income student. It does not directly express a resolution to benefit “low-income” students.

CH/mew