

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 214

50th Legislature, 1st Session, 2011

Tracking Number: .184109.1

Short Title: Dual Credit Program Eligibility

Sponsor(s): Representative Nora Espinoza and Others

Analyst: Ally Hudson

Date: February 21, 2011 (revised)

Bill Summary:

HB 214 amends higher education provisions in current law to allow students enrolled in home schools and private schools to participate in the Dual Credit Program. In doing so, the bill also:

- requires the school district in which the student’s parent or legal guardian resides to pay the cost of the home school or private school student’s dual credit textbooks and course supplies “through an allocation from the instructional material bureau of the public education department pursuant to the Instructional Material Law”;
- requires the student to return the textbooks and any unused course supplies to the district when the student completes the course or withdraws from the course;
- includes home school students and private schools in the data that the Higher Education Department (HED) and the Public Education Department (PED) collect on the Dual Credit Program;
- includes those students in the evaluation of the Dual Credit Program that HED and PED conduct; and
- requires that textbook costs for home school and private school students be paid “from the allocation to the fund from which dual credit textbooks are paid” (see “Technical Issues,” below).

Fiscal Impact:

HB 214 does not contain an appropriation.

Fiscal Issues:

Although HB 214 does not contain an appropriation, an analysis by PED reports:

- According to HED data from 2007-2009, approximately 1,000 high school students who attended either private school or an “unknown” high school took at least one course at a public postsecondary institution each year. The PED analysis suggests that, because public high school students tend to report their high school affiliation, the “unknown” designation may represent home school students.
- While students in accredited private schools are eligible to receive funding for textbooks through the *Instructional Material Fund* (see “Technical Issues,” below), home school

students do not. Currently, according to the PED analysis, there are 6,069 high school students attending New Mexico accredited private schools that receive these funds.

- The PED analysis reports that there are approximately 7,000 K-12 grade students in the state. Because PED does not regulate the numbers of credits for home schools, it is not possible to tell how many of these students are in high school.
- Finally, because the appropriations for dual credit textbooks have decreased in recent years, and because statute continues to require districts to provide textbooks to their dual credit students, there are concerns among districts about their ability to meet this expense.

Substantive Issues:

The HED analysis says that “the intent of HB 214 is aligned with [the department’s] strategic goal of expanding access to postsecondary education.” In fact, statute currently permits home school and private school students who meet the eligibility criteria in rules promulgated by PED and HED to apply for dual credit courses, as long as the students pay “the full cost of dual credit courses.” However, including home school and private school students in the Dual Credit Program on essentially the same terms as students from public schools, as HB 214 does, raises a number of substantive issues.

An analysis by HED states that “granting home school and private school students benefits through the Dual Credit Program may implicate three sections of the New Mexico Constitution:”

- Article 9, Section 14 (the anti-donation clause) prohibits the state, as well as any county, school district, or municipality from directly or indirectly lending or pledging credit or making any donation to or in aid of any person, association, or public or private corporation;
- Article 12, Section 3 prohibits any 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 education purposes, from being used for the support of any sectarian, denominational or private school, college or university; and
- Article 4, Section 31 prohibits any appropriation for charitable, educational or other benevolent purposes to any person, corporation, association, institution, or community not under the absolute control of the state.

Furthermore, the HED analysis states, should the home school or private school exist for religious purposes, providing benefits to these students through the Dual Credit Program could raise issues with regards to the First Amendment of the United States Constitution, which prohibits religious preference at both the federal and state government level.

There are administrative issues, as well. One such issue is the unique student identification number.

- The *Assessment and Accountability Act* requires PED to “issue a state identification number for each public school student for use in the accountability data system.”
- Pursuant to the dual credit rule promulgated by PED and HED, this student identification number is one of the required data points in the Dual Credit Request Form that students must complete to participate in the program.

- As the analysis by HED indicates, in order for home school and private school student data to be included in the evaluation of the Dual Credit Program, as HB 214 requires, those students must be assigned a unique student identification number.
- Doing so, however, may require an amendment to the *Assessment and Accountability Act* to allow PED to assign numbers to students other than public school students.
- This provision also raises the question how much involvement with the public education system home school and private school students and their parents may be willing to accept.

Assuming that the student identification issue can be resolved, additional administrative issues arise.

- The data systems at PED and HED must be adjusted to accommodate these new student data; and the departments, PED in particular, must explain the data submission requirements to the home schools and private schools and monitor the submission of those data. Currently, neither home schools nor private schools report their 40th, 80th, or 120th day data to PED.
- The HED analysis notes that HB 214 does not specify a mechanism by which the school districts will be responsible for the collection of the textbooks and unused course supplies when a home school or private school student completes or withdraws from a dual credit course. Under current regulation, the textbook is state property and remains with the local school district.
- According to HED, HB 214 would necessitate rulemaking to address these issues.

Another issue is that providing textbooks and course supplies for public school and Bureau of Indian Education school students has proved problematic as repeated efforts to create a fund and develop a mechanism for this purpose have failed (see “Background,” below).

Background:

During the 2007 interim, a large, broadly representative dual credit committee was formed by PED and HED, to begin drafting agency rules and performing other tasks to implement the 2007 legislation creating the Dual Credit Program. At that time, school officials expressed their concern about the high cost of textbooks used in dual credit courses. To address this concern, the LESC Chair asked the Director to convene a work group during the 2008 interim to determine the amount of money needed and a methodology for distributing the funds. In addition to LESC staff, the LESC Work Group on the Dual Credit Program comprised representatives of the Legislative Finance Committee, the Executive, PED, HED, school districts, charter schools, state-supported schools, secondary education associations, postsecondary education associations, and college bookstores.

During the 2009 and 2010 sessions the LESC endorsed legislation based on the recommendations of this work group; however, the bills were not passed. In the current session, the LESC has endorsed another measure, SB 215, *Create Dual Credit Textbook Fund*.

Current law imposes minimal requirements on home schools. Within 30 days of establishing a home school, the parent must notify the Secretary of Public Education, with re-notification by April 1 of each subsequent year of operating the home school. In addition, the home school must:

- maintain student immunization records or a waiver of that requirement;
- provide instruction by someone with at least a high school diploma; and
- according to the definition of the term “home school,” provide a “basic academic educational program, including reading, language arts, mathematics, social studies and science.”

In addition, while parents’ reasons for choosing to home-school their children may vary – concerns about safety, religious views, or medical conditions, for example – the people who do home school generally prefer less involvement with the government rather than more. This preference is reflected in the changes to the home school statutes in New Mexico. Since the law was enacted in 1985, the following requirements have been deleted:

- that the home-school parents possess a baccalaureate degree, subject to waiver;
- that they notify the district superintendent of the establishment of a home school;
- that they keep attendance;
- that they report attendance and immunization records to the district; and
- that they test students annually according to the statewide and local district testing program.

Finally, legislation similar to HB 214 was introduced in 2009, but it did not pass.

Related Bills:

HB 201 *Adjusting Home School Program Units*
HB 202 *Private School Student Activity Program Unit*
SB 157 *Dual Credit Reimbursement for Completion*
SB 215 *Create Dual Credit Textbook Fund*