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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 2nd Session, 2020

Bill Number	<u>HJR2</u>	Sponsor	<u>Schmedes</u>
Tracking Number	<u>.216461.2</u>	Committee Referrals	<u>HCPAC/HJC</u>
Short Title	<u>Parental Rights on Child Upbringing, CA</u>		
Analyst	<u>Porter</u>	Original Date	<u>01/27/2020</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Joint Resolution

House Joint Resolution (HJR2) amends Article II of the New Mexico Constitution to add a new section granting parents the right to direct the upbringing, education and care of their children by granting the authority for parents to choose private, religious, or home schools, and make reasonable choices within public schools, with the limitation that it is not to be construed to apply to parental action that would end life.

To become effective, HJR2 must be submitted to the people for approval or rejection at the next general election or a special election called for that purpose.

FISCAL IMPACT

House joint resolutions do not carry appropriations.

HJR2's passage has no direct additional fiscal impacts, as one-time costs for constitutional amendments will be incurred as part of the general election process.

SUBSTANTIVE ISSUES

HJR2 is based on a proposed parental rights amendment to the United States Constitution, which contains provisions identical or very similar to HJR2. The Parental Rights Amendment has been proposed to every Congress since the 110th Congress (2007-2008), with some variation. HJR2 includes language stating that the parental rights shall not be abridged on account of disability, which aligns with language found in U.S. House Joint Resolution 36 (116th Congress, 2019). Since 2010, several states have adopted resolutions calling on the U.S. Congress to propose the amendment to several states for ratification, including Florida, Idaho, Louisiana, Montana, South Dakota, and Wyoming.

HJR2 would grant parents the authority to choose any school for their children's education, including private, religious, and home schools. One purpose of a parental rights amendment is to

explicitly grant parents the right to opt their child out of certain classes in the public school curriculum, especially if parents do not agree with the content. The federal government generally respects parents' authority and autonomy to direct the upbringing of their children, but education is an issue delegated to individual states by the U.S. Constitution.

In its analysis for HJR7 in 2019, the New Mexico Attorney General's office (NMAG) noted New Mexico courts have held that all schools, public or private, are affected with a public interest, and are therefore subject to reasonable regulation under the state's police power. Further, NMAG indicates case law generally supports the idea that the state may impose minimum scholastic and training standards, including teacher qualifications, for both private and public nurseries, kindergartens, and schools.

Article XII, Section 3 of the Constitution of New Mexico prohibits any "proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other fund appropriated, levied or collected for educational purposes" to be used for the "support of any sectarian, denominational or private school, college or university." If approved by the voters, it is unclear whether HJR2 would conflict with an existing constitutional provision. New Mexico and other states have encountered litigation regarding the use of state funds in religious and secular schools.

POTENTIAL QUESTIONS

- Why is a constitutional amendment needed? Are the implied rights of parents being infringed upon by the government?
- What are the intended results of such an amendment?
- What are the consequences to the child missing curriculum required by the state for purposes of graduation?

SOURCES OF INFORMATION

- LESC Files
- New Mexico Attorney General (NMAG)
- Children, Youth and Families Department (CYFD)

LAP/tb/mc/sgs