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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

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|------------------------|--|----------------------------|----------------------------------|
| Bill Number | <u>HJR7</u> | Sponsor | <u>Strickler/Dow/Montoya, R.</u> |
| Tracking Number | <u>.218298.2</u> | Committee Referrals | <u>HCPAC/HEC/HSEIC</u> |
| Short Title | <u>School Funding for Home or Private School, CA</u> | | |
| Analyst | <u>Hathaway</u> | Original Date | <u>2/16/2021</u> |
| | | Last Updated | <u></u> |

BILL SUMMARY

Synopsis of Bill

House Joint Resolution 7 (HJR7) proposes to amend Articles 4, 9, and 12 of the New Mexico Constitution to allow the state to divert public school funds to the parents or legal guardians of certain school-age children.

- **Article 4.** HJR7 proposes amending Article 4, Section 31, of the state constitution – which currently prohibits the Legislature from making appropriations for charitable or other benevolent purposes, to any person, corporation, association, or institution not under the absolute control of the state – by adding language that exempts entities provided for in Articles 9 and 12 of the state constitution.
- **Article 9.** HJR7 proposes adding an exception to Article 9, Section 14, of the constitution, – widely known as the anti-donation clause – to allow the state to provide public school funding to parents or guardians of school-age children who are home-schooled, attend private school, or are required to attend public school remotely during a pandemic.
- **Article 12.** HJR7 proposes amending Article 12, Section 1, of the state constitution – which currently mandates a uniform system of free public school-age children in the state – by removing the requirement that the system be “uniform.” HJR7 also proposes amending Article 12, Section 3 – which currently prohibits any funds appropriated or collected for educational purposes from being used for the support of any sectarian, denominational, or private elementary, secondary, or postsecondary school – by adding language that would permit those funds to be used for the support of private elementary or secondary schools.

As a proposed amendment to the state constitution, HJR7 must pass each chamber of the Legislature with a simple majority to be referred to voters for consideration at the next regular election or special election for the purpose of considering the amendment.

The amendments proposed under HJR7 would also require the consent of the U.S. Congress.

FISCAL IMPACT

House joint resolutions do not carry appropriations.

The analysis of HJR7 by the Public Education Department (PED) notes the actual effect of HJR7's proposed amendments would depend on legislation that might be enacted if HJR7 were passed by the Legislature and ratified by voters. The proposed amendments would set the stage for potential statutory changes that might redirect educational funding to entities and individuals listed in HJR7, but the fiscal impact of potential legislative changes is unknown at this time.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

SUBSTANTIVE ISSUES

Uniform and Sufficient Education. HJR7 would strike the word “uniform” from Article 12, Section 1, of the New Mexico Constitution. Article 12, Section 1, currently mandates that a “*uniform* system of free public schools sufficient for the education of, and open to, all of the children of school age in the state shall be established and maintained.”

This issue of a uniform and sufficient education is a core focus of the *Martinez* and *Yazzie* education sufficiency lawsuit. In this lawsuit, the 1st Judicial District Court ruled New Mexico failed to provide quality programs targeted to meet the specific needs of at-risk students. At-risk students in the lawsuit were defined as economically disadvantaged students, English language learners, Native American students, and students with disabilities. These groups account for a majority of the student population in New Mexico. PED, in its analysis of HJR7, writes:

“The Court in *Martinez* and *Yazzie* indicated that, while most lawsuits addressing state-level equal education protections protested inequities in school funding among school districts, that avenue was inappropriate in New Mexico, where most of the funding for public schools is provided directly by the state. Instead, the Court noted the *Martinez* and *Yazzie* plaintiffs framed their case not around a comparison of school districts, but rather around a comparison of economically disadvantaged students and English learners with those who are neither. The Court agreed with this interpretation, and explicitly extended the protection of Article 12, Section 1 to those students, as well as to Native American and Hispanic students and students with disabilities. Deleting this constitutional requirement of uniformity may likewise have the effect of deleting those vital protections from our at-risk students, leaving them at even greater risk of falling behind not only in the achievement of a sufficient education, but of a secure and successful life after their educational career is completed.”

In addition to the *Martinez* and *Yazzie* education sufficiency lawsuit, the *Zuni* lawsuit over the fairness of the distribution of capital outlay is ongoing. As the New Mexico Attorney General, (NMAG) notes in its analysis of HJR7, the requirement the state provide a *uniform* system of free public schools sufficient for the education of, and open to, all the children of school age in the state

shall be established and maintained” is presently the focus of ongoing litigation regarding capital outlay funding in district court.

Deleting the constitutional requirement of uniformity raises questions about potential impacts to equity and equality in education. PED notes striking the constitutions’ requirement of uniformity in its provisions could potentially open the door to inequalities and inequities for New Mexico students, particularly those considered to be most at-risk.

ADMINISTRATIVE IMPLICATIONS

PED and NMAG did not note administrative implications in agency analyses of HJR7.

OTHER SIGNIFICANT ISSUES

Anti-Donation Clause. Article 9, Section 14 of the state constitution, known as the anti-donation clause, generally prohibits states, counties, school districts, and municipalities from making any donation or financial provision for a person or private enterprise but provides for certain exceptions. HJR7 proposes to add exemptions for parents of school children who attend home or private schools or are required to attend public school via distance learning during an epidemic.

In its analysis of HJR7, NMAG states the intent of language in Section 2, which would amend the anti-donation clause, is vague. The NMAG adds the proposed language states that funding may be provided to parents of children who “are required to attend public elementary or secondary school through distance education during an epidemic,” but that it is not clear what parental expenses the public funding is intended to cover.

RELATED BILLS

Relates to HJR1, which proposes to amend Article 12, Section 7, of the New Mexico Constitution to provide for annual distributions from the land grant permanent fund for the benefit of early childhood educational services.

Relates to SJR1, which proposes to amend Article 12, Section 7, of the New Mexico Constitution to provide for a new annual distribution from the land grant permanent fund for instruction and teacher salaries.

Relates to SJR9, which proposes to amend Article 9 of the New Mexico Constitution by repealing Section 14 in its entirety. Article 9, Section 14, is known as the anti-donation clause.

Relates to SJR17, which proposes to amend Article 12 of the New Mexico Constitution to create a right for public school students to a high-quality public education.

Relates to SJR19, which proposes to amend Article 12, Section 3 of the New Mexico Constitution to eliminate the prohibition of state educational funds being used for the support of private schools, colleges, and universities.

NMAG, in its analysis of HJR7, notes HJR7 conflicts with HB117, Section 4(K)(1) HB117 [General Appropriation Act] to the extent that HB117 contemplates “the purpose of public school support is to carry out the mandate to establish and maintain a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state.”

SOURCES OF INFORMATION

- LESC Files

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