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FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/22

SPONSOR Brandt LAST UPDATED _____ HB _____

SHORT TITLE Use of School Funds, CA SJR 14

ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Student Spending					Recurring	General Fund
State Land Trust			See Fiscal Implications	See Fiscal Implications	Recurring	Land Maintenance Fund
Secretary of State	NFI	Up to \$375.0	NFI	Up to \$375.0	Nonrecurring	General Fund
Total		Up to \$375.0	\$60,000.0-\$125,000.0	\$60,375.0-\$125,375.0		

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Joint Resolutions 1 and 11, Senate Joint Resolution 7, and Senate Bill 210.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
State Land Office (SLO)

No Response Received

Public Education Department (PED)
Albuquerque Public Schools (APS)

SUMMARY

Synopsis of Joint Resolution

Senate Joint Resolution 14 would ask voters to amend the state constitution to allow for the use of public monies to support private nonsectarian elementary and secondary schools.

If adopted, the constitutional amendment would amend Article 12, Section 3, to allow for state revenue, except that arising from the “sale or disposition” of state trust land, to be used for private nonsectarian elementary and secondary schools.

If approved by the Legislature, voters would consider the amendment during the next general election in November 2022 or during a special election called for the purpose of considering the question.

FISCAL IMPLICATIONS

State Funding for Private School Students. If the constitution is amended as provided under SJR14, the fiscal impact could be, depending on the legislation enacted as a result, significant. The cost would depend on how much the state is expected to provide for private school students and whether that money would be part of or, more likely, in addition to existing funding to public schools.

If the state provided each private school student funding equal to the current unit value of \$4,864¹, the cost to the state would be an estimated \$60 million a year. While most sources do not differentiate private school enrollment by sectarian or nonsectarian, the website Private School Review lists half of the 10 largest private schools in New Mexico and 47 percent of the total enrollment in those schools as nonsectarian. The website lists 213 private elementary and high schools with a total enrollment of about 26 thousand. If 47 percent of those students are enrolled in nonsectarian schools, a \$4,864 payment for each student would cost more than \$59.4 million.

If the state were to provide an amount equal to the \$10.2 thousand average provided to each public school student through the funding formula, the cost would be substantially higher, about \$125 million.

If the per-child funding were lower, the cost to the state, obviously, would be lower. However, should the availability of public money for private school encourage more parents and guardians to choose private school or prompt the conversion of existing religious schools into nonsectarian schools to capture public funds, the cost to the state could be higher.

State Trust Beneficiaries. The State Land Office raises concerns beneficiaries of state trust land could lose money under the proposal. While the amendment would accept revenues arising from the sale or disposition of trust lands, some trust land revenue arises from renewable energy, agriculture leases, commercial development, bonuses paid on the leases of oil and gas tracts, and other activities that do not involve the sale of the land or the depletion of its resources.

Constitutional Amendment. Under Section 1-16-4 NMSA 1978, the Secretary of State (SOS) is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in a voters’ guide. The cost of producing the guide will change depending on the number and length of the constitutional amendments passed and the number of registered voters but can be estimated at \$25 thousand.

¹ The unit value is not the per-student appropriation. Each student generates a different number of units based on the student’s specific needs and certain conditions in the school district or charter school.

The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2020, the SOS spent \$351,015 for the required newspaper publications; however, the cost is dependent on the number and length of the constitutional amendments passed. For planning purposes, an estimate of \$20.72 per word may be used to represent the costs realized in the 2020 general election to estimate the cost of publishing each constitutional amendment.

The number of constitutional amendments that pass may also impact the page size of the ballot, or if the ballot size becomes greater than one page, front and back, which may increase the cost of producing the ballots for the general election. In addition to the cost of the ballot, there may be time added to the voting process, which would require additional ballot printing systems to ensure a smooth and efficient voting process within the bounds of national best practices. The additional requirement the SOS publish a certificate for every law that is repealed by the counties will be an added cost to the SOS, although it is difficult to estimate the cost at this time.

Potential Litigation. The Attorney General, in analysis of House Joint Resolution 11, which would also amend the state constitution to allow for the use of public monies for private schools, reports it anticipates it would be required to devote resources to defend likely litigation challenging the amendment. The office did not note the same concern in its analysis for SJR14; however, it is reasonable to assume any effort to divert public monies to private schools will draw a legal challenge. Further, SJR14 does not propose amending the “anti-donation” clause in Article 9, Section 14, of the state constitution, a provision that specifically bars the appropriation of public money to any but government agencies except under certain, explicit conditions. That conflict could also prompt litigation.

SIGNIFICANT ISSUES

Restricted Use of Public Funds. Article 9, Section 14, of the state constitution, commonly called the “anti-donation” clause, specifically prohibits the use of public monies for private schools. It reads, in part:

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.

The Attorney General reports the amendments proposed by SJR14 would not vacate the prohibitions imposed by the anti-donation clause, and the State Land Office indicates any transfer to parents for the costs of private school would violate the constitution because the prohibitions of the anti-donation clause would remain in place.

State Trust Revenue. The State Land Office, which manages the state trust lands designated to specific public beneficiaries under the federal laws that allowed New Mexico to become a state, suggests SJR14 would create uncertainty over whether all or only specific revenues raised from state trust land would be prohibited from being used for private schooling. The office raises revenue through activities that both deplete the resource (oil and gas extraction and mining, for example) and activities that do not (rights-of-way across trust land and leases for agriculture and renewable energy, for example). Revenue from nonrenewable activity is deposited into the land grant permanent fund, most of which is invested to generate income for the beneficiaries. However, revenue from renewable activity, which could be argued does not qualify as the “sale or disposition” of trust land, is deposited in the land maintenance fund and distributed directly to

beneficiaries. Because congressional approval is needed for any change in the use of trust land revenue, the amendment proposed by SJR14 might need congressional approval.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department would need to create a process and assign staff to manage a program for distributing funds to private schools. If the benefit is intended to be distributed to the parents or guardians instead, perhaps as a tax refund or credit, that burden would fall to the Taxation and Revenue Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR14 is a companion to Senate Bill 210, which would create “education freedom accounts” to be administered by the Public Education Department for the use of parents of private school students and would mandate the department deposit into each account an amount equal to the average spent on public school students in the same grade as the private school student, up to the private school student’s total educational costs, including payments to tutors and tuition for summer and after-school programs.

SJR14 relates to House Joint Resolution 11, which would ask voters to amend articles 4, 9, and 12 of the state constitution to, with congressional approval, allow the state to divert public school funding to parents and guardians of children whose children attend home school or private nonsectarian school, including virtual private nonsectarian schools.

SJR14 also relates to HJR1 and SJR7 would add a different exception, one for public assistance for essential household services, to the anti-donation clause in Article 9, Section 14.

TECHNICAL ISSUES

Because SJR14 does not also change the anti-donation clause, the proposed amendment could create a conflict within the state constitution.

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