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FISCAL IMPACT REPORT

SPONSOR:	Foley	DATE TYPED:	HB	138
SHORT TITLE:	Elementary & Secondary School Voucher Act		SB	
			ANALYST:	Fernandez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
			\$ 5,094.5	Recurring	G/F

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

State Department of Public Education (SDE)

Office of Attorney General

LFC Files

SUMMARY

Synopsis of Bill

This bill enacts a new section of the Public School Code cited as the "Elementary and Secondary School Voucher Act". The purpose of the act is to establish a voucher program that provides New Mexico's students the opportunity to attend their choice of public or private schools in order to best suit their individual needs and interests. This bill proposes a three-year phase-in approach for the voucher program.

Significant Issues

Eligible Students:

2000-2001 - The student's family income in 1999 cannot exceed 100 percent of the 1999 federal poverty guidelines.

2001-2002 - The student's family income in 2000 cannot exceed 185 percent of the 2000 federal poverty guidelines.

2002-2003 - The student's family income in 2001 cannot exceed 235 percent of the 2001 federal poverty guidelines.

2004-2005 - All students are eligible.

Students participating in the Elementary and Secondary School Voucher Act are subject to student assessments required by Section 22-1-6 NMSA 1978. The assessments are to be administered by the school district which provides the student with the voucher.

To be eligible for participation in the program, the bill requires private schools to register with the superintendent of the local school district as an eligible private school, to maintain or develop anti-discrimination policies to prevent discrimination on the basis of race, color, national origin or ancestry and to develop policies that do not discriminate against students who are recipients of vouchers.

Private schools that accept students that are participants in the program are not required to comply with local or state rules and regulations that would otherwise apply to public schools.

The bill proposes to issue the voucher note to the student in care of the student's parent or legal guardian.

FISCAL IMPLICATIONS

This bill does not contain an appropriation.

The value of the voucher note will be equal to the amount of money generated by the student through the public school funding formula if the student had attended public school in his school attendance zone, excluding any size or training and experience adjustment. The value of the voucher shall also include a proportionate allocation for the local school district's at risk funding and transportation funding. The value of the voucher shall be calculated using the public school funding formula. The voucher note redemption value shall not exceed the tuition and fees charged by a private school for students not participating in the program unless the cost of educating the student presenting the voucher is greater than the tuition and fees charged.

2000-2001 Private School Students:

- Eligibility based on 100 percent of poverty level determined by free lunch application, approximately

1,500 students would be eligible;

- Assumes 75 percent of eligible students currently enrolled in private schools would participate;
- Average number of units per mem = 1.660 times current unit value of \$2,460.00 = \$4,083.36. The average student would generate a total of \$4,083.36 in program costs. SDE points out that this amount would vary from district to district depending upon the district's at-risk factor and would vary from student to student based upon the units generated.
- An estimated total of \$5,094.5 in general fund would be necessary in order to maintain unit value at \$2,460.00.

ADMINISTRATIVE IMPLICATIONS

The State Department of Public Education will establish and bear the cost of administering the voucher program and in cooperation with school districts, the department must initiate a public awareness campaign about the program.

SDE shall calculate the value of the voucher, private or public schools located outside of the student's attendance zone shall redeem the value of the voucher from the school district in four equal installments beginning in September and ending in May.

The State Board of Education shall establish guidelines for implementation and operation of the program.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

This bill duplicates SB82 and relates to HB258.

TECHNICAL ISSUES

This bill does not require private schools to develop policies to prevent discrimination on the basis of

age, religion, sex, physical or mental handicap or serious medical condition.

This bill does not address accreditation issues for private schools participating in the program. An assumption must be made that private schools are not required to be accredited by the SBE or any another educational accrediting body.

OTHER SUBSTANTIVE ISSUES

Attorney General Patricia A. Madrid issued an opinion regarding the use of public money to fund a school voucher program and its permissibility under the New Mexico Constitution. The following is a summary of the information contained in the opinion issued January 29, 1999:

Conclusion:

"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.

Article XII, Section 3 provides that "no part of the proceeds arising from the sale or disposal of lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university." The Attorney General concluded "that a New Mexico court addressing the issue would likely conclude that tuition assistance under a voucher program constitutes the unconstitutional use of public money for the support of sectarian, denomination or private schools, whether the money is paid directly to the schools, the students or the parents".

The anti-donation clause of **Article IX, Section 14** provides that "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 institution....". According to the Attorney General, "the anti-donation clause appears to prohibit the state from providing tuition assistance in the form of vouchers to private school students. Whether the beneficiary of the assistance is the parents or

the schools, the use of public money to subsidize the education of private school students, without more, is a donation to private persons or entities in violation of the state constitution. The educational purpose of private schools, an undeniably public purpose, is not sufficient to immunize the voucher program from constitutional challenge".

Article XII, Section 1 requires the state to maintain a uniform system of free public education. If a substantial proportion of the resources currently directed toward the support of the public schools is utilized in support of the voucher notes, the state's ability to maintain the mandated system of free public schools may be compromised.

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