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FISCAL IMPACT REPORT

SPONSOR Foley ORIGINAL DATE 2/18/07
LAST UPDATED _____ HB 498
SHORT TITLE Use of Bible for History and Literature SB _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$3.6	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 498 will enact a new section of the Public School Code requiring the Public Education Department to enact a rule by November 30, 2007 "expressly permitting the bible to be used as a text in a high school literature or history course so long as the course is taught objectively, with no attempt to indoctrinate, persuade or teach a student the merits of one religion over another, give a religious interpretation of the text or disparage or encourage a commitment to a set of religious beliefs."

FISCAL IMPLICATIONS

The PED will have to develop the rule required by the bill, get it posted in the New Mexico Administrative Code and then explain its implications to teachers, administrators and the general public. Time required for writing, approving, and explaining the rule at public hearings will total 100 hours for one Ed Admin A equivalent @ \$25.50 plus benefits (\$3,315); and 10 hours for one Lawyer A @ \$28.76 plus benefits (\$374). Total cost: \$3,689.

SIGNIFICANT ISSUES

The AGO provided the following:

The question as to how much, if any, religious instruction may be given in a public school under the doctrine of the absolute wall of separation of church and state has been considered many times by the courts. The New Mexico Supreme Court discussed various constitutional provisions relating to the separation of church and state, the right to be free from religious indoctrination, and the right to attend free public schools. The Court affirmed the lower court's holdings

1) That the adopting of sectarian indoctrinated textbooks and furnishing the same to the tax supported schools of the State of New Mexico by the State of New Mexico or the members of the New Mexico State Board of Education violated Section 4, Article 21 of the Constitution of the State of New Mexico and the First Amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment to the Constitution of the United States

2) That the teaching of sectarian doctrine in the tax supported schools of this State violates Section 4, Article 21 of the Constitution of the State of New Mexico and Section 9, Article 12 of the Constitution of the State of New Mexico and the First Amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment to the Constitution of the United States.

Many United States Supreme Court and lower federal court decisions have considered the issue of state mandated use of the Bible in public schools. In 1963 the Court held that a Pennsylvania law requiring public school children to hear and sometimes read portions of the Bible as part of their public school education was unconstitutional. The Court established the so-called "Lemon Test" which details the requirements for legislation concerning religion. It consists of three prongs:

- The government's action must have a legitimate secular purpose;
- The government's action must not have the primary effect of either advancing or inhibiting religion;
- The government's action must not result in an "excessive entanglement" with religion.

Article II Section 11 of the New Mexico Constitution provides: Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. **No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.** (emphasis added). This bill may be vulnerable to legal challenge under this section, given this state's compulsory education laws requiring children to attend school.

ADMINISTRATIVE IMPLICATIONS

The PED would have to develop the rule required by the bill, get it posted in the New Mexico Administrative Code and then explain its implications to teachers, administrators and the general public.

TECHNICAL ISSUES

PED provided the following:

- The November 30, 2007 rule promulgation date is problematic for the PED if the legislative intent is to have Bible in classrooms as of that date or even in 2007. This is because of the instructional material adoption cycle that involves the PED’s approval of instructional materials by August 1 of each cycle and school districts to submit their requisitions for those instructional materials by March 31 of the year prior to adoption. See, 6.75.2 New Mexico Administrative Rules (2006) “Relating to the Public Education Department Instructional material Bureau”.
- On Line 22 after “objectively” add “and as part of a secular program of education,”
- The bill does not specify which Bible is intended for use in school classrooms. There are any number of revered writings that answer to the description of Bible.

DW/csd