

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 24a

49th Legislature, 2nd Session, 2010

Tracking Number: .180222.1

Short Title: Educational Opportunity for Military Children

Sponsor(s): Representative Nathan P. Cote and Others

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FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

AS AMENDED

The Senate Floor amendment:

- **strikes the second House Judiciary Committee (HJC) amendment noted below;**
- **strikes the same subsection that the HJC amendment had deleted; and**
- **adds a new subsection to allow the Interstate Commission, by majority vote of the members, to initiate legal action against a state in default of either the compact or the rules and bylaws of the commission, further providing that, "The venue for the action shall be consistent with the determination in other interstate compacts to which the state of New Mexico is a member under the laws of the state of New Mexico."**

The House Judiciary Committee amendments:

- **limit the rule-making authority of the Interstate Commission to rules for dispute resolution, rather than binding dispute resolution;**
- **remove the authority of the Interstate Commission to initiate legal action against the state in US District Court for the District of Columbia;**
- **delete the one-year delay before legislation repealing the compact becomes effective; and**
- **delete the requirement that the state provide written notification of New Mexico's withdrawal from the compact to the governors of the other compact states.**

Original Bill Summary:

House Bill 24 enacts into law the Interstate Compact on Educational Opportunity for Military Children. The bill consists of only two sections:

- Section 1 contains the compact itself, adapted from the model compact drafted by the Council of State Governments, in collaboration with the Department of Defense (see “Background,” below). The compact comprises 18 articles that cover services and accommodations for students of military families, responsibilities of member states, and the roles and powers of an interstate commission to oversee implementation of the compact nationwide (see Attachment for an index of the articles).
- Section 2 prescribes certain aspects of the compact specific to New Mexico.

Section 1 begins with a statement of purpose: “to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents.” To accomplish this purpose, the compact seeks to facilitate the timely and appropriate placement of children of military families, their eligibility for extracurricular activities, their timely graduation, the promulgation and enforcement of rules, the uniform collection and sharing of information, and the promotion of “flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student,” among other activities.

Among its major provisions, the compact:

- creates the Interstate Commission, a governing body with rule-making and enforcement authority, whose members include one representative from each member state;
- provides that the compact will become effective and binding when at least 10 states adopt it;¹
- allows the Interstate Commission to assess membership fees and impose penalties on states in default of the compact;
- requires member states to develop a state council, with a prescribed basic membership, to coordinate services; and to appoint or designate a military family education liaison to facilitate the implementation of the compact;
- provides for a full-time staff for the commission;
- specifies that the compact applies only to the children of:
 - active duty members of the uniformed services;
 - severely injured or medically discharged or retired members, for one year after discharge or retirement; and
 - members of the uniformed services who die on active duty or as a result of injuries sustained on active duty, for one year after death; and
- includes specific provisions that address the range of issues that confront military students.

This summary cannot include all of the circumstances of military children covered by the compact; however, a few examples may suffice as illustrations of the scope and intent.

¹ As of January 2010, 27 states had signed the compact; therefore, the compact is in effect in those states.

- Regarding educational records and enrollment, the compact requires the school in a receiving state to accept unofficial records from the school in the sending state in the event that official records cannot be provided in a timely fashion.
- Regarding immunizations, compacting states are required to allow 30 days from the date of enrollment “or within such time as is reasonably determined under the rules promulgated by the interstate commission” to obtain immunizations required by the receiving state.
- Regarding attendance, the compact requires additional excused absences, at the discretion of the local superintendent, for the child to visit with parents or guardians who are being deployed or have recently returned from deployment.
- Regarding extracurricular activities, state and local education agencies must “facilitate the opportunity for transitioning military children’s inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.”
- Regarding graduation, local school districts must waive specific course requirements if similar coursework has been satisfactorily completed in another district or “provide reasonable justification for denial.”

In Section 2, HB 24 creates the Military Children Education Compact State Council to coordinate the state’s participation in and compliance with the compact among state agencies, local education agencies, and military installations.

Two officials are to be appointed:

- the Military Family Education Liaison, designated by the council to assist military families and the state in implementing the compact; and
- the Compact Commissioner, appointed by the Governor, to administer the compact in the state and to represent the state on the Interstate Commission.

Each of these officials must serve as an ex-officio nonvoting member of the council unless the person appointed to either position is already a voting member of the council; and council members will receive no per diem, mileage, or other compensation.

Finally, HB 24 is the subject of House Executive Message 48.

Fiscal Impact:

HB 24 makes no appropriation.

However, the bill is likely to have a fiscal impact in a variety of ways:

- The compact allows the Interstate Commission to levy and collect an annual assessment from each member state to finance the operations of the commission and its staff. The assessment amount is to be allocated based on a formula “to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.”

- As provided in draft rules of the Interstate Commission, the dues assessment will be \$1.00 per eligible military student.
- According to the Department of Defense State Liaison Office for the South-Central Region, which includes New Mexico, there were 5,248 eligible students in New Mexico as of June 2009; therefore, the dues for New Mexico would be \$5,248. That figure is subject to change, of course, as the eligible population changes.
- A dues assessment and collection update for FY 09 issued by the Interstate Commission shows a wide range in dues assessments to member states: from a low of \$182 in Iowa to a high of \$76,351 in Virginia. The following amounts were assessed to states contiguous to New Mexico: Arizona, \$10,109; Colorado, \$18,411; Oklahoma, \$12,508; and Texas, \$70,209.
- In addition to the dues assessment, the state is likely to incur other costs.
 - According to the State Liaison Office, the dues will pay for one representative from New Mexico to attend meetings of the Interstate Commission, but any other attendees would be at state expense. There may be additional costs for representatives from New Mexico to attend meetings of committees established by the commission although the State Liaison Office says that the intention is to hold these meetings electronically.
 - There may also be costs associated with meetings of the required state council, even though HB 24 makes council members ineligible for per diem and mileage and any other compensation.
 - Finally, as noted above, there is also the possibility that the commission may assess fines against states in default of the compact.
- Another potential fiscal impact relates to one of the duties of the Interstate Commission: to “collect standardized data concerning the educational transition of the children of military families under [the compact] as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.” Depending upon the data requirements, the Public Education Department (PED) and school districts may be required to fund modifications in their data systems.

Fiscal Issues:

Noting that one of the powers of the Interstate Commission is to “purchase and maintain insurance and bonds,” the PED analysis of HB 24 says that the type of bonds is unclear, as is “the extent [to which] the state would be exposed to investment risks.”

Substantive Issues:

Needs Addressed by the Compact

According to the Military Child Education Coalition (MCEC), military children move from six to nine times during their K-12 school years, often with multiple moves during high school years overall and the senior year in particular. The website of USA4MilitaryFamilies adds: “Deployable military units plan for leaving at a moment’s notice, and try to prepare families to

deal with the sudden absence of a key member of the family. Even with these plans, there are always unforeseen difficulties that may arise with houses, cars, pets, finances, schools, illnesses, etc.” The MCEC further notes that, although many states and communities “have responded on an ad hoc basis to ease the shift of military children, no comprehensive policy approach exists to improve the long-term educational transitions and outcomes” for military children. Such an approach is underway now that 26 states have signed a compact similar to the one presented in HB 24.

While this need has always existed, it may be even more acute now. Citing the Pentagon and military historians, a recent article in the *Washington Post* says that today’s military, serving in Iraq and Afghanistan, has a greater percentage of parents than in any other conflict, partly because of increased reliance on the National Guard and reserves and partly because of the growing number of women in uniform. In addition, according to this story, of the more than 800,000 parents deployed since September 11, 2001, more than 200,000 have been deployed twice, and over 100,000 have been deployed three or more times.

As one of the states with a significant military presence, New Mexico faces the circumstances noted in the compact; and, in some ways, the state is already addressing them. For example:

- rules promulgated by PED provide for the transfer and acceptance of credit earned elsewhere, as well as the timely forwarding of transcripts and copies of pertinent student records, in compliance with state and federal law;
- the bylaws of the New Mexico Activities Association accommodate students who transfer from another school, district, or state; and
- legislation enacted in 2007 permits a military dependent whose parent is a member of the New Mexico National Guard or a branch of the US armed forces and is transferred out of state to receive a New Mexico high school diploma under certain conditions, thus making the student eligible for the Legislative Lottery Scholarship.

These provisions notwithstanding, however, some of the issues facing military students in New Mexico may remain unresolved. One factor is the anticipated growth in the number of military students in certain school districts. According to a recent report to Congress by the Secretary of Defense, school districts in the vicinity of military installations in New Mexico – Cannon Air Force Base, Holloman Air Force Base, Kirtland Air Force Base, and White Sands Missile Range – are projected to see an influx of more than 7,000 new students of military families through school year 2010-2011.

Issues Raised by the Compact

While the compact would help ensure smooth transfers of military children from one school system to another, it may also require certain concessions from the state with regard to educational policy and it may impose significant responsibilities and potential liabilities on the state.

In addition to those noted above, the PED analysis identifies other issues with the bill, among them:

- The provision for immunization of transferring students conflicts with state law and with agency rules requiring proof of immunization within one month of enrollment, raising the question whether the compact’s provisions would supersede state law (see “Background,” below).
- The provision for additional excused absences related to a parent’s being deployed or returning from deployment conflict with the *Compulsory School Attendance Law* and related PED rules, which school districts are required to enforce. On this point, however, the compact provides that such excused absences may be granted at the discretion of the superintendent.

Provisions for enforcing the compact are another aspect worth noting.

- One of the powers of the Interstate Commission is to “enforce compliance with the compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.”
- If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities, the commission may take a number of actions, from specifying conditions to remedy the default to suspending the state’s membership in the compact to initiating legal action in the US District Court for the District of Columbia, possibly seeking both injunctive relief and damages.

Finally, the specific provisions aside, HB 24 raises questions related to the compact approach itself.

- One of the questions that other states have raised is why the provisions of this compact apply only to children of military families. Granted that military families move more frequently, usually with less notice and choice than civilian families, the needs of a transferring student, whether military or civilian, are essentially the same.
- In addition to the compact in HB 24, a number of other organizations and services are available to help military families with school-age children. One organization active in New Mexico is the Military Child Education Coalition, which describes itself as a “non-profit, world-wide organization that identifies the challenges facing the highly mobile military child, increases awareness of these challenges in military and educational communities, and initiates and implements programs to meet the challenges.”

Background:

Drafting and Implementing the Compact

According to the Council of State Governments (CSG), interstate compacts are contracts between two or more states – somewhat like treaties between nations – that establish agreements at either the regional or national level. As such, the CSG adds, “Compacts have the force and effect of statutory law and take precedence over conflicting state laws, regardless of when those laws are enacted.”

The Interstate Compact on Educational Opportunity for Military Children was the result of collaboration between the National Center for Interstate Compacts of the CSG and the Department of Defense Office of Personnel and Readiness. These agencies, together with other parties, drafted a model interstate compact and submitted it for public comment in July 2007. In December 2007, CSG held a briefing on the compact for legislators and staff members from some 30 states, New Mexico not among them. There were, however, two meetings of school and military officials in New Mexico – one in Portales in June 2008 and the other at White Sands Missile Range in August – that discussed the educational issues facing military students in the state.

In October 2008, the Interstate Commission held its inaugural meeting. At that meeting, the commission elected officers, formed several committees, and adopted bylaws. The second annual meeting was held in November 2009 to develop rules and other procedures.

Considering the Compact in New Mexico

Legislation similar to HB 24 was introduced in 2009, but it did not pass. At that time, the original bill (HB 311) contained a number of provisions that raised concerns about state sovereignty and other matters. To illustrate, the original bill:

- equated the provisions of the compact with statutory law;
- provided that, in the event of conflict, the compact supersedes state law;
- provided that rules promulgated by the Interstate Commission created in the bill have the force and effect of statutory law; and
- required the state’s executive, legislative, and judicial branches to enforce the compact, raising questions about state-level separation of powers.

A committee substitute passed by the House Judiciary Committee and amended on the House Floor deleted these provisions; and HB 24 is virtually identical to the final version of the 2009 legislation.

Finally, during the 2008 interim, the Legislative Education Study Committee (LESC) heard a presentation on the Interstate Compact on Educational Opportunity for Military Children, which included some of the points raised in this analysis. After discussing the issue, the LESC recommended introducing a memorial during the 2009 legislative session requesting that PED convene a task force to study the compact and to make recommendations to PED and the LESC. This recommendation was in line with advice provided by the National Conference of State Legislatures: “It would be prudent to convene a study group that would think through the reverberations of this decision [whether to adopt the compact] on state and local policy and, more importantly, its effect on military families and dependents themselves.”

Related Bill(s):

HB 21 *School Priority for Certain Students*

HJM 1 *Study Uniform Military Credit at NM Colleges*