



This language would avoid the previous conflict in priorities and would clarify the purpose as simply to allow a student to continue his or her education without the disruption of moving to a new school for a temporary period.

Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 21 clarifies that the second enrollment priority is “students who have a parent who is an active duty member of the armed forces of the United States *stationed* in New Mexico, whether serving in New Mexico or deployed elsewhere;” (emphasis added)

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 21 makes the following change.

The first two priorities for enrollment and re-enrollment of students of public schools excluding charter schools are (1) students residing within the school district and within the attendance area of a public school, and (2) students who have a parent who is an active duty member of the armed forces of the United States, whether serving in New Mexico or deployed elsewhere.

Synopsis of Original Bill

House Bill 21 would amend Section 22-1-4 NMSA 1978 to give top priority status for enrollment in a public school in New Mexico to students whose parents are active duty military personnel. The bill would modify other language within the statute to conform to this priority change.

**FISCAL IMPLICATIONS**

The PED states that this bill would have no fiscal implications to the department.

**SIGNIFICANT ISSUES**

According to the PED, this bill represents a major policy shift that specifically benefits a child of active duty military parents by giving that child first priority in enrolling in a public school. While the effects of this bill would likely be widely received in communities located near military bases in the state, it should be noted that the law would apply to all school districts in the state regardless of their proximity to military bases. This may detrimentally affect some school districts by requiring them to give preferential school enrollment status to children of military families—even if they do not reside in the attendance areas of that district—ahead of students residing within the school district and within the attendance area of that district.

Also, currently under the federal No Child Left Behind Act, children enrolled in schools that administer Title I programs where their schools have been identified for school improvement, corrective action or restructuring must be given the opportunity to transfer to other public schools in their district, including public charter schools. This school choice option also applies to students enrolled in “unsafe” schools. School districts are required to tell parents about these

options as well as pay for transportation to the other schools. It is unclear whether HB 21 is intended to trump students attending these Title I schools in need of improvement or unsafe schools who have a federal right to enroll in other public schools that are not so designated.

### **ADMINISTRATIVE IMPLICATIONS**

The PED reports no administrative implications for the department although school districts would have to amend their enrollment policies to ascertain the status of students seeking enrollment in their schools.

The DFA adds:

Because 22-1-4 NMSA 1978 most directly affects school district administrative practices, the districts will be most affected if House Bill 21 is enacted. The decision to give children of active duty military families first priority in enrollment decisions above students already enrolled in a district or a “walk zone” or attendance areas of a school, or for children who seek a transfer out of a low-performing school as identified within the federal Elementary and Secondary School Act would have the most effect on a few number of districts in the state primarily Albuquerque Public Schools, Clovis Municipal Schools, and Alamogordo Public Schools, the respective districts that serve Kirtland Air Force Base, Cannon Air Force Base, Holloman Air Force Base and White Sands Missile Range.

According to the Council of State Governments, there were 5,121 children of active duty military personnel attending school in New Mexico in school year 2008-2009. As noted above, it is likely that the vast majority of these children would be served by the districts named above and perhaps to a lesser degree by districts in the immediate surrounding areas to these others where the families have residences.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 21 is related to House Bill 24. House Bill 24 would amend and enact the “Interstate Compact on Educational Opportunity for Military Children.” A compact is an agreement between multiple states for cooperative regulations and enforcement of matters that cross state boundaries. The compact, already approved by 27 states, would give New Mexico representation on an interstate commission that is attempting to systematically facilitate timely enrollment, student record sharing, the student placement process, eligibility for participation in academic and extracurricular activities and on-time graduation. The compact also provides for a governance structure, a method of financing the created governing entity, and enforcement and compliance mechanisms.

### **TECHNICAL ISSUES**

The PED has identified certain technical issues with the bill as follows.

Unless this was the intention, the bill as drafted is technically inaccurate. The language “whose *parents* are active duty members” would essentially require *both parents* to be in the military for their child to enjoy preferential enrollment. Perhaps it should read, first, “students with a parent who is an active duty member of the armed forces of the United States serving in New Mexico”;

By use of the terms “active duty members of the Armed Forces” the bill would not affect members of the Army National Guard or members of the Air National Guard, regardless of whether they had been called to service by the President. This is because under federal law, “The term *armed forces* means the Army, Navy, Air Force, Marine Corps and Coast Guard.” See, 10 US Code Section 101(a).

Note also under federal law, “The term *active duty* means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. *Such term does not include full-time National Guard duty.*” See, 10 US Code Section 101(d)(1).

Under 32 US Code Section 502(f), the President, through the Secretary of the Army or the Secretary of the Air Force may non-consensually call to service members of the Army/Air National Guards.

The bill as drafted would not apply to members of the Army/Air National Guards regardless of whether they had been called to service.

If there is intention to include members of the National Guards called to service (e.g., deployed overseas to assist the military), the following bolded language added at the end of Line 9, Page 3 might capture that intent:

first, students whose parents are active duty members of the Armed Forces of the United States, **including National Guard members on active duty for a period of more than 30 days**, serving in New Mexico;

CH/svb:mew