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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/19

SPONSOR Schmedes/Brown LAST UPDATED _____ HJR 7

SHORT TITLE Parental Rights, CA SB _____

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Legislative Education Study Committee (LESC) Files

Responses Received From
 Attorney General (AGO)
 Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Joint Resolution 7 amends the New Mexico Constitution to create a right for parents to direct the upbringing, education, and care of their children. The proposed constitutional amendment affords parents the right to choose private, religious, or home schooling as an alternative to public schooling.

FISCAL IMPLICATIONS

The resolution has no direct additional fiscal impacts, as costs for constitutional amendments will be incurred as part of the general election process. If more parents choose private, religious, or home schooling as a result of this constitutional amendment, public schools (particularly smaller school districts or charter schools) may face budgetary impacts due to declining enrollment. Additionally, CYFD notes the agency may incur additional legal costs to define “highest order” in children’s court proceedings.

SIGNIFICANT ISSUES

NMAG notes New Mexico courts have held that all schools, public or private, are affected with a public interest, and hence subject to reasonable regulation under the police power of the state. The state, as legal protector of citizens, may legislate for their safety, health, morals and general welfare, and is a proposition not open to dispute. The state may impose minimum scholastic and training standards, including qualifications for teachers, for both public and private nurseries, kindergartens, and elementary schools. A statute should provide for the health, safety, and general welfare of children.

NMAG also notes the resolution expands parental rights to direct the education of their children while reducing the state’s current governmental interest in the education of its citizens to only allowing infringement of parental rights when the government can demonstrate an interest applied to the person on the highest order and not otherwise served. The resolution does not apply to any parental action that would end life.

According to CYFD, both federal and state case law indicate parents have a constitutionally protected liberty interest in the care and control of their children. Therefore, the due process clause of the New Mexico constitution already mandates that parents’ liberty interest in a relationship with their children cannot be infringed upon without due process. It is also clearly established that the state has a significant interest in the welfare of its children. In CYFD abuse and neglect cases, due process is provided by the state to parents through Children’s Code provisions, court rules and case law interpreting the Children’s Code. The proposed constitutional amendment may limit the state’s ability to safeguard the welfare of children by imposing a higher standard to infringe on parental rights than currently exists. In addition, the “highest standard,” as set forth in the resolution, is not a constitutional-law standard and is not defined.

OTHER SUBSTANTIVE ISSUES

Regarding parents’ rights to direct their children’s education, CYFD notes Section 32A-4-35 NMSA 1978 provides all children in an abuse or neglect proceeding an appointed education decision-maker. The statute specifically mandates that a parent is appointed the child’s educational decision maker unless the children’s court determines that this appointment is contrary to the best interests of the child.

LESC notes appears to be based on a proposed Parental Rights Amendment to the United States Constitution, which contains provisions identical or very similar to HJR7. The Parental Rights Amendment has been proposed to every Congress, with some variation, since the 110th Congress (2007-2008). Several states have adopted resolutions calling on the U.S. Congress to propose the amendment to several states for ratification, including Florida, Idaho, Louisiana, Montana, South Dakota, and Wyoming.

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