

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HJR7 proposes to amend Article 2 of the State Constitution to “create a parental right to direct the upbringing, education and care of a parent’s children and to choose the type of school the children attend.” If enacted, this resolution would be submitted to the people for their approval at an election.

FISCAL IMPLICATIONS

There would be a cost to hold an election on this resolution.

SIGNIFICANT ISSUES

Section 1, part B of this resolution states that parents’ right to direct their children’s education including choosing private, religious, or home school (p. 1, lines 21-23). This subpart also allows for parents “make reasonable choices within public schools” (lines 24-25). Subsection part C provides that the state may only infringe on these rights by demonstrating that the highest governmental interest is applied by doing so.

Nevertheless, the bill does not provide that parental rights supersede the Public Education Department responsibility to enforce statutes or its ability to promulgate and enforce Department rules governing all aspects of public education according to it granted authority, duties and powers, including proper oversight and compliance monitoring related to the accreditation of non-public schools and home schools pursuant to 22-1-2.1 NMSA 1978.

Section D precludes any “parental action or decision that would end life”, but does not address neglect or abuse.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The Department’s Options for Parents Division may need to amend rules to ensure there is no conflict between the proposed constitutional right and current regulation and policy, including 6.81.2 NMAC, Requirements for Non-public schools and for Public Education Department

Accreditation, which it currently oversees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR7 relates to the current Public School Code, 22-1-2.1 NMSA 1978, which states the following:

22-1-2.1. Home school; requirements.

Any person operating or intending to operate a home school shall:

- A. submit a home school registration form made available by the department and posted on the department's web site to notify the department within thirty days of the establishment of the home school and to notify the department on or before August 1 of each subsequent year of operation of the home school;
- B. maintain records of student disease immunization or a waiver of that requirement; and
- C. provide instruction by a person possessing at least a high school diploma or its equivalent.

Per the above statute, the Department has the authority to determine what forms is made available and will it deems acceptable to satisfy 22-1-2.1(A), including requiring parents to acknowledge their responsibilities in choosing to home school their children within the form.¹

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

There may implications affecting children whose parents elect alternatives to public schooling related to the recent litigation, *Moses v. Ruszkowski*, which allows for the PED to distribute state funds for instructional materials to students not in public schools.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting this bill will not remove parents' rights to choose an education option that best meets their students' need, including traditional or charter public, private, religious, or home schools.

AMENDMENTS

¹ The PED's online home school registration link is: <http://apps.ped.state.nm.us/HomeSchools/HmSchapp.asp>. The downloadable form can be accessed at: <https://webnew.ped.state.nm.us/wp-content/uploads/2018/04/Home-School-Registration-Form-Updated.pdf>