

<b>LFC Requester:</b>	<b>Liu</b>
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**AGENCY BILL ANALYSIS  
2022 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** January 28, 2022

**Bill No:** HJR11

**Sponsor:** Reps. Townsend, Lane, Scott,  
Montoya, and Lord

**Agency Name and  
Code Number:** PED - 924

**Short Title:** School Funding for Home  
Schooling, CA

**Person Writing** John Sena  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Joint Resolution 11 (HJR11) proposes to amend several sections of the New Mexico Constitution, including the anti-donation clause, to permit public school funds to be allocated to private elementary and secondary schools, as well as to the parents or legal guardians of children who attend home school, a private school, or a private virtual school.

HJR11 proposes to strike the word “uniform” from Article 12, Section 1 of the state constitution. New Mexico’s system of public schools would still be required to be free and sufficient to the education of all school age children, but would no longer be required to be uniform.

As a proposed amendment to the state constitution, HJR11 must pass each chamber of the legislature with a simple majority in order to be referred to the voters for ratification at the next regular election, or special election held for the purpose of considering the amendment. The amendments proposed under HJR11 would also require consent of the United States Congress.

**FISCAL IMPLICATIONS**

House joint resolutions do not contain appropriations.

The actual effect of HJR11’s proposed constitutional amendments depends largely upon legislation enacted following the joint resolution’s ratification by the United States Congress. While HJR11 would allow state funds to be allocated to private school and home school students, no state law has been passed authorizing the Public Education Department (PED) to make such allocations.

**SIGNIFICANT ISSUES**

**Anti-Donation Clause.** Article 9, Section 14 of the constitution – the “anti-donation clause” – generally prohibits states, counties, school districts, and municipalities from making any donation or financial provision for any person or private enterprise, but provides for certain exceptions. HJR11 proposes to add an exemption to the anti-donation clause for parents of school children who attend home school, a private school, or a private virtual school. PED data indicates 10,780 students are participating in home school in 2022. The PED does not maintain data on New Mexico private school students.

**Current Prohibition on Certain Schools.** Article 12, Section 3 of the constitution currently

prohibits funds appropriated or collected for educational purposes from being used for the support of any sectarian, denominational, or private elementary, secondary, or postsecondary school. HJR11 would amend this section to permit those funds to support private elementary or secondary schools, but maintains the constitution's prohibition on funding denominational and sectarian schools. The distribution method for private and home school funds would be codified at a later date by the Legislature.

**Uniformity of Education.** In addition to the proposed amendments that would permit public funds to be directed to private and home schools and parents of private and home school students, HJR11 would strike the word “uniform” from Article 12, Section 1 of the Constitution of the State of New Mexico. That section currently mandates a “*uniform* system of free public schools sufficient for the education of, and open to, all of the children of school age in the state shall be established and maintained.”

Removing the requirement of uniformity in public education may have profound implications for equity and equality in education, which in turn have the potential to affect any number of aspects of quality of life for New Mexico's citizens, going forward. It is axiomatic that education is necessary for children to grow into happy, successful, productive citizens. To simply strike the constitution's requirement of uniformity in its provision is potentially to open the door to inequalities and inequities in the lives of the state's children, particularly those deemed most at-risk.

In New Mexico, this issue was most recently addressed in the *Martinez* and *Yazzie* consolidated lawsuit, where the 1<sup>st</sup> Judicial District Court ruled the state had failed its obligation to provide its most at-risk children a uniform and sufficient education the constitution requires the state to ensure, a decision the Governor declined to appeal. In its Decision and Order, the Court noted that New Mexico's constitutional requirement for uniformity in education had become another avenue, aside from state equal protection clauses, by which the state's marginalized at-risk student groups, including economically disadvantaged students, English learners, Hispanic students and Native American students, and special education students, might beg relief from the courts for inequalities in the provision of education. Deleting this constitutional requirement of uniformity may in-turn have the effect of removing those vital protections from our at-risk students, leaving them at even greater risk of falling behind not only in the achievement of a sufficient public education, but of a secure and successful life beyond public schools.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

PED staff expect no administrative impact at this time, pending new legislation enacted following the ratification to the proposed constitutional amendments by the United States Congress. However, if the ratification of Article 12, Section 3 of the state constitution was ratified by the people, permitted by the United States Congress, and assuming there were not anti-donation concerns, PED staff duties in the future could include managing the homeschool database, responding to parent inquiries, and completing requests for verification.

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

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

**Consent of Congress.** Section 6 of the joint resolution requires the consent of the United States Congress in order for the provisions of HJR7 to take effect. Congressional consent is required for the effectuation of these proposed amendments because it would amend Article 12, Section 3 of the New Mexico Constitution, which mirrors the language of Section 8 of the Enabling Act of 1910, prohibiting the state from using any moneys from the sale or disposition of lands granted for educational purposes for the benefit of any sectarian or denominational schools; Article 12, Section 3 also explicitly includes private schools in this prohibition.

As noted by Attorney General Opinion No. 12-03, February 1, 2012, the Enabling Act set the terms by which New Mexico was admitted to the Union...terms to which New Mexico agreed, by the ratification of Article 21, Section 9 of the New Mexico Constitution (“This state and its people consent to all . . . the provisions of the said act of Congress. . .”) Article 21, Section 10 of the state constitution goes on to state, “[t]his ordinance is irrevocable without the consent of the United States and the people of this state, and no change or abrogation of this ordinance, in whole or in part, shall be made by any constitutional amendment without the consent of congress.” Further, the New Mexico Supreme Court has stated that Section 10 of the Enabling Act became a part of the state’s “fundamental law to the same extent as if it had been incorporated directly into the Constitution.” (See *State ex rel. Interstate Stream Commission v. Reynolds*, 71 N.M. 389, 396, 378 P.2d 622, 627 (1963).)

Further, according to Attorney General Opinion No. 12-03, if the Enabling Act and state constitution were amended to permit the state to finance a private entity under Article 12, Section 3, the anti-donation clause’s prohibition against grants of public money to private entities would not apply in these particular instances, as constitutional provisions should be read together and harmonized if possible, rather than as groupings of isolated and discordant rules. (See *Denish v. Johnson*, 1996 NMSC 5, ¶ 32, 910 P.2d 914, 922.)

Should the amendment to Article 12, Section 3 of the state constitution be ratified by the people and permitted by United States Congress, constitutional impediments in the anti-donation clause of Article 9, Section 14 to allocating public funds to parents of children who attend home or private schools would be rendered obsolete. In effect, any previously impermissible donations or allocations to those particular classes of individuals would be permitted, in perpetuity, via the regular legislative process.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

N/A

## **AMENDMENTS**

N/A