

LFC Requester:

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**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION*Check all that apply:*

Original Amendment
 Correction Substitute

Date Prepared: 02/22/23

Bill No: [HJR15](#)Agency Name
and CodeSponsor: MontoyaNumber: PED - 924Short Title: SCHOOL FUNDING FOR
HOME SCHOOLING, CAPerson Writing: Gregory FrostadPhone: (505) 470-5752 Email: gregory.frostad@ped.nm.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

Synopsis: House Joint Resolution 15 (HJR15) amends the New Mexico Constitution to allow the distribution of public school funding to parents of school-age children for home school or private school.

As a proposed amendment to the state constitution, HJR15 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 provisions proposed under HJR15 would also require consent of the United States Congress.

FISCAL IMPLICATIONS

HJR 15 does not contain an appropriation. The actual effect of HJR15's proposed constitutional amendments depends largely upon legislation enacted following the joint resolution's ratification by the United States Congress. While HJR15 would allow state funds to be allocated to private school and home school students, no state law or budget item has been passed authorizing the Public Education Department (PED) to make such allocations.

SIGNIFICANT ISSUES

HJR15 proposes to amend Article 4, Section 31 of the New Mexico Constitution to permit the exceptions to the Anti-Donation Clause and the Education Article of the state constitution proposed by the joint resolution.

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. HJR15 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 state 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. HJR15 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, HJR15 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 impeding equity and equality in education, which in turn have the potential to negatively affect many aspects of quality of life for New Mexico's citizens. It is widely recognized that education is necessary for children to grow into successful and productive adults. To strike the Constitution's requirement of uniformity, as this resolution proposes, would exacerbate inequalities and inequities for children, particularly those most at-risk.

In New Mexico, this issue was most recently addressed in the *Martinez* and *Yazzie* consolidated lawsuit, in which the 1st Judicial District Court ruled the state had failed its obligation to provide

its most at-risk children a *uniform* and sufficient education that the state Constitution requires. In its Decision and Order, the Court noted that New Mexico's constitutional requirement for uniformity in education supports state's marginalized at-risk student groups, including economically disadvantaged students, English learners, Hispanic students and Native American students, and special education students, in protection against educational inequalities. Deleting this constitutional requirement of uniformity might remove those vital protections from at-risk students in New Mexico, leaving them at an even greater risk of falling behind in the achievement of a sufficient public education and a secure and successful life beyond public schools.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

If passed and approved by voters and the US Congress, HJR15's amendments to the state Constitution would allow future legislation to be enacted that may result in the Public Education Department distributing funding to parents or legal guardians of school-age children.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

If approved by the voters, HJR 15 would create the Education Freedom Account Act in the Public School Code and the Education Freedom Account Fund as a non-reverting fund in the State Treasury. The Education Freedom Account Act would create the "education freedom account program" in PED to allow the department, in contract with parents of participating students, to pay for private school and other eligible expenses under the act through "education freedom accounts."

Relates to [HB480, Education Freedom Account Act](#), which would create the Education Freedom Account Act in the Public School Code and the Education Freedom Account Fund as a non-reverting fund in the state treasury.

Relates to [SB109, Education Freedom Acts](#), which is identical to HB480.

Relates to [SB113, Equal Education Opportunity Scholarship](#), which would create the Equal Education Opportunity Scholarship Act to grant educational scholarships of up to \$5,000 to eligible low-income students to attend certain public and non-public schools.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.