

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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: Date 02/01/18
Original Amendment _____ Bill No: SB74
Correction Substitute _____

Sponsor: Senator Howie C. Morales Agency Code: 924
Short Create Early Childhood Person Writing Debbie Rael
Title: Services Dept. Phone: 827-5800 Email DebbieM.Rael@state.

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
\$1,500.0	\$0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
\$0	\$1,500.0	\$0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

2018 proposed Legislation

Conflicts with SJR 03 – Early Childhood Education Department, CA

Conflicts with HB 097 – Early Learning Advisory Council

Duplicates/Relates to Appropriation in the General Appropriation Act

Synopsis:

Senate Bill 74 relates to state government; creating the Early Childhood Services Department, providing powers and duties; assigning lead department status for certain federal programs and grants; transferring programs, functions, personnel, appropriations, money records, property, contractual obligations and statutory references; repealing nonconforming sections of law; making appropriations.

FISCAL IMPLICATIONS

The bill contains an appropriation of \$500,000 for expenditure in fiscal years 2019 and 2020 to develop the early childhood services finance plan and an integrated data visualization system and \$1,000,000 for expenditure in fiscal year 2019 to establish integrated field offices and transfer programs from other departments to the Early Childhood Services Department.

The bill allows for the creation of an Administrative Services Division (ASD) and Office of the Secretary, but there is no appropriation within this bill for that purpose.

SIGNIFICANT ISSUES

This bill establishes the Early Childhood Services Department (ECSD), consisting of programs from CYFD, DOH and PED. The programs transferred to the ECSD from CYFD include the Early Childhood Services division and early childhood mental health services. The programs transferred from DOH include the family, infant, and toddler program, the federally mandated interagency coordinating council, Family First Home Visiting and Women, Infants and Children Program. The only program transferred from PED is public Pre-Kindergarten.

The bill grants the ECSD standard authority for an administrative agency including the power to organize the divisions, appoint or hire personnel, promulgate rules, set salaries, take administrative actions, apply for grants, appoint directors, establish bureaus and bureau chiefs, and conduct research.

The bill requires the ECSD to develop priorities based on state policy and best practice, to collaborate and coordinate with state and local services, develop and maintain statewide databases, develop service standards and monitor outcomes to identify service gaps and needs, develop reimbursement criteria for licensed childcare centers and home providers, and assess

early learning service gaps.

The bill designates the ECSD as the lead agency for the family, infant, toddler program and requires CYFD, HSD, PED and DOH to collaborate with the ECSD and continue their statutory duties related to this program. The bill requires compliance with IDEA part C and places the ECSD as the custodian of all related funds.

The bill creates the Childcare Assistance program reporting requirements. The department is required to convene a group of LFC, DFA, and a representative sample of childcare providers to develop an outcome measurement plan, develop goals and objectives, and submit the plan to the legislature, the governor and early learning advisory council, by December 31, 2018. Annually thereafter the ECSD shall submit an outcomes report to the legislature, the governor and early learning advisory council.

The bill requires the ECSD to prepare and update a four-year early childhood services finance plan.

The bill adds the ECSD to the Children's Cabinet.

The bill amends the Early Childhood Care and Education Act to make the ECSD the agency responsible for administering the act. Prenatal is removed from the definition of "early childhood" and the definition becomes "birth to the age of five years."

The bill changes the membership of the State Early Learning Advisory Council to remove CYFD and replace its membership with the ECSD and requires the directors of the legislative education study committee and the legislative finance committee to serve on the Council *ex officio*. The amendment also changes the term of the council members to two years instead of four and limits membership to three terms total. In addition to the existing duties of the Council, the amendment requires the Council to make recommendations to the ECSD and legislature on:

- statewide coordination of early childhood care and education,
- addressing gaps in current child care programs, improving quality and growing early childhood education, and
- describing pre-kindergarten services and parenting components.

Additionally the sunset provision on the council is extended to 2025. The bill also includes a transition of early learning advisory council membership.

The bill also moves the Home Visiting Accountability Act from CYFD to the ECSD and requires the ECSD to enter into a joint powers agreement with HSD to use Medicaid funding for evidence-based home visiting programs.

The bill calls for the transfer of all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies, and other property from the associated agencies' divisions and programs. Additionally, the bill transfers all related contractual obligations to the ECSD.

SB74 establishes a new agency for early childhood services that does not include IDEA part B services for 3 to 5 year old children. It only addresses IDEA part C for infants and toddlers.

Under this system, services for 3-5 year old children with disabilities in NM PreK programs would be fractured between 2 agencies, the PED and the new proposed consolidated agency.

Currently, districts are able to braid funding between PreK, Special Education, and Title I to provide inclusive settings, purchase specialized equipment and materials, provide longer hours and serve more children. Separating the governance of these three programs will create difficulties for school districts and charter schools because they would have to work across two agencies to accomplish these objectives.

The federal Office of Special Education Programs (OSEP) has provided guidance for including children with delays and disabilities in publically-funded PreK classrooms, as well as in child care centers with support from appropriate, highly qualified teachers and ancillary staff. Preschool special education staff are trained alongside PED NM PreK and Title I teaching staff and administrators to facilitate the skills and strategies needed to implement high quality preschool programs as outlined in the PED FOCUS Quality Rating and Improvement System. Teaching staff from all three programs also receive individualized job-embedded coaching and support. This is important as only one coach visits all the preschool programs in a school, guaranteeing a consistent message and maximizing administrators' time.

Currently, program staff from both the PED NM PreK program and the special education bureau review staffing patterns and requests for reimbursement to ensure proper use of funds. If NM PreK funding was awarded from the proposed ECSD department to school districts and charter schools, it would limit the collaborative checks and balances currently established by the two PED bureaus.

Districts are currently able to provide preschool for children birth through age 5 with Title I funds; it is unclear how this would work with the creation of a new agency. Some districts fund stand-alone Title I preschool, that is, operating without NM PreK funding, while others use Title I funding to expand hours or to provide additional personnel, supplies, materials and equipment for NM PreK programs. This is particularly important for small rural districts in that the PreK funding may not be sufficient to cover all costs, especially when extended hours are needed to correspond with established bus routes. Since early childhood programs funded by Title I are not addressed in HB74, districts would be hindered from braiding funding to support these efforts.

All public school preschool programs, including NM PreK, Title I and special education preschool, must implement the PED FOCUS Quality Rating and Improvement System. PED programs receive training, coaching, and administrative support to achieve a Five Star rating. While the public school FOCUS criteria covers the same elements as CYFD Childcare FOCUS, the PED standards include requiring a licensed teacher in every classroom as well as enhanced training requirements for early literacy and social-emotional development (Pyramid Model). Splitting the monitoring and support for PED FOCUS into two departments would considerably hamper the effective implementation of FOCUS and may diminish program quality.

PED PreK programs use the Early Childhood Observation Tool (ECOT) to record the NM Preschool Observational Assessment documentation and rubric ratings. This same secure, online application also houses the Kindergarten Observation Tool data, allowing for data sharing between preschool and kindergarten teachers, as well as family-friendly progress reports. As this application is housed at PED and connected to the STARS database, teachers will no longer be able to use this tool.

The bill revises the Pre-kindergarten Act to include 3-year olds, but is not clear how slots and funding will be allocated between 3-year olds and 4-year olds. SB74 removes the ability to procure pre-kindergarten services through a request for application and only allows for procurement through request for proposal even though there is an exemption in the procurement code for the procurement of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act NMSA 1978 §13-1-98(FF). It is not clear whether the public pre-kindergarten services can be procured through the exempt school districts without employing the request for proposal process.

The Pre-Kindergarten Act amendment specifies that ECSD and the PED shall coordinate efforts to ensure alignment of program standards from pre-kindergarten to kindergarten, and each department shall certify the pre-kindergarten program and standards prior to implementation. It is not clear what certifying the pre-kindergarten “program” will entail. This section appears to give PED oversight of the PreK program standards and the program.

The ECSD is also required to “coordinate the pre-kindergarten program with federal head start agencies to avoid duplication of effort and to maximize the use of all available resources.” This section appears to leave out the local head start grantees in New Mexico in favor of coordination with “federal agencies”.

The Pre-Kindergarten Act amendment also specifies “either half-day or full-day programs”, and requires applicants to indicate the number of children the provider can serve in each program type.

The provision regarding equal appropriations to public school programs and private programs adds language to the “extent practicable.”

The bill increases the State Early Learning Advisory Council membership number from 15 to 17, and changes the composition to allow for the directors of the Legislative Education Study Committee and Legislative Finance Committee to serve *ex officio*. However, this bill does not include a parent(s) representative, as recently recommended during the sunset LFC analysis.

New Mexico’s early childhood community has committed to establishing an integrated continuum of early learning services with the goal that each child in the state has access to high quality early learning opportunities. The creation of this cross-sector system is the foundation of the Early Learning New Mexico initiative. It is critical that any significant legislation (such as this bill) that impacts the state’s early learning infrastructure be consistent with the commitments and accomplishments already made.

Neuroscience research demonstrates that the main indicator for school readiness is child wellbeing, with evidence that an infant’s healthy development is determined by the quality of the relationship with a significant adult which affects all the domains outlined in this bill. This is why prevention is a key part of CYFD Early Childhood Services and intervention is a key part of CYFD Early Childhood Behavioral Health. It is well known that Child Care Assistance and Home Visiting are prevention programs that help reduce abuse or neglect of children. Through coordination and integration of services with CYFD’s Protective Services, Juvenile Justice, and Domestic Violence programs, Early Childhood Services is able to provide prevention services to high-risk families and their children. It is unclear how removing these programs to a different agency will affect collaboration with CYFD Protective Services, Juvenile Justice, and Domestic Violence programs.

CYFD's Early Childhood Behavioral Health Services has committed to providing high quality intervention services to infants and young children who are in foster care or are referred by CYFD Protective Services, Juvenile Justice, or the Domestic Violence program. The CYFD Early Childhood Behavioral Health Services are an integral part of the Protective Services Division's Permanency Planning and coordination with Children's Court Attorney and Court Appointed Special Advocate. It is unclear how this bill will impact collaboration with CYFD Protective Services, Juvenile Justice, and Domestic Violence programs.

Included in the transfer from CYFD are the early childhood services division and infant and early childhood mental health services. CYFD's Children's Behavioral Health Services division administers the behavioral health services to children. Many of these services are provided to children up to age 18 and sometimes age 21. The bill does not contain a definition of what is to be included in the infant and early childhood mental health services that are to transfer to the ECSD. It would be very difficult to artificially separate these children's behavioral health services into infant and early childhood mental health services, especially without a definition. The definition of "child" as specified in the bill "means a child from birth to age five, except for a child to age eight or thirteen in specific programs." There is no listing of programs which are the specific programs that serve children until ages eight or thirteen. Additionally, this definition leaves CYFD with programs that serve children from five, eight or thirteen or older and with any prenatal services that have previously been attached to the programs that are required to transfer to the new division. Transferring mental health clients between departments at the required ages could lead to a significant disruption in care.

Under Section 7, Additional duties, on page 10, lines 12-13, the bill requires the ECSD to develop reimbursement criteria for child care centers and home providers *licensed* by the department. However, there is no indication *what* the child care centers and home providers are being reimbursed for under this section. Currently, reimbursement for child care assistance and Child-Adult Care Food Program are not limited to licensed programs, this can potentially leave over 1,000 registered child care providers out of the reimbursement system.

Also under Section 7, Additional duties, on page 10, lines 17-25, the bill requires the ECSD to "fingerprint and conduct national criminal background checks on all department employees and on staff members and volunteers of early childhood service providers whose jobs involve direct contact with *department clients* ..." however "department client" is not defined in the bill. It is unclear if this means *only* children that are receiving ECSD services, or if it would include *any* child attending child care centers or child care in private homes. It is possible that this would lead to a loophole allowing a number of children to be cared for by staff who do not have background clearances, and may risk a violation of federal requirements for the Child Care Development Fund. In addition, this section may pose additional background check requirements on public schools.

Section 10 requires CYFD, PED, and DOH to give ECSD access to all records data and information which is not confidential by law; and requires these departments to enter into agreements to provide confidential information without violating federal or state confidentiality laws. An agreement between agencies does *not* negate confidentiality requirements, and several of the confidentiality statutes under which CYFD operates carry criminal offense charges for unauthorized access.

Section 13, B-2 items (i), (j), (k) and (n) are elements that are currently not being tracked and

may require additional information to be requested from child care providers serving children in child care assistance.

Although the bill transfers the contractual obligations, the liabilities and benefits of the contractual relationship are *not* addressed in the bill. A unilateral transfer of a contract without consent of the other party is an inappropriate transfer mechanism.

PERFORMANCE IMPLICATIONS

Any performance measures CYFD has for early childhood services will transfer to the new department. The PED's NM PreK performance measure would also transfer to the ECSD.

PED has invested in developing monitoring and reporting processes and tools. PreK monitoring aligns with the department mandates to meet regulatory guidance for this work. Technical assistance, training, and coaching employed in PED PreK programs align with that occurring in other grade levels. PreK and kindergarten teachers are trained together on the Early Childhood Observational Tool, the Pyramid Model for Social Emotional Development, and early literacy strategies. These important connections to the K-3 system will be lost if PED PreK moves to the new department.

PED PreK programs use the Early Childhood Observation Tool (ECOT) to record the NM Preschool Observational Assessment documentation and rubric ratings. This same secure, online application also houses the Kindergarten Observation Tool data, allowing for data sharing between preschool and kindergarten teachers, as well as family-friendly progress reports. Families can track their child's progress from preschool into kindergarten. For children receiving special education services, parent will see up to three years of data. As this application is housed at PED and connected to the STARS database, teachers will no longer be able to use this tool.

A report by the national organization, Build Initiatives, was published in 2013 on early childhood governance [*A Framework for Choosing a State-Level Early Childhood Governance System*](#). The report recommends that "careful and deliberate assessment of a state's early childhood governance structure is an integral step in reducing fragmentation, uneven quality, and inequity in programs and services. Without a careful and intentional assessment of the appropriate composition, timelines, process, concerns, etc. the consolidation may lead to possible and detrimental gap in crucial, early childhood services.

ADMINISTRATIVE IMPLICATIONS

There are significant administrative implications. The work necessary to separate and merge divisions and programs cannot be absorbed by existing resources.

The PED's appropriation for PreK will be the only transfer to the new department. PED will require time to close out the existing awards and contracts to ensure proper reimbursement to school districts, charter schools, and contractors for FY2018.

Also, since the bill transfers *all* appropriations to the new Early Childhood Services Department, that will require all federal grants attached to CYFD's ECS division to transfer to the new department. CYFD will need time to close out existing grants to ensure audit compliance. In

addition, all existing contractual service agreements will need closing to ensure contractors are paid for any billings during fiscal year 2018.

In addition, NMAC regulations related to the involved programs will need to be updated to reflect the Early Childhood Services Department and will require Public Comment, Public Hearings and other related activities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill amends the Pre-Kindergarten Act requiring request for proposals for pre-kindergarten services. This amendment potentially conflicts with 13-1-98 (FF) NMSA – Exemptions from the Procurement Code, which allows for procurement by or through CYFD of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [32A-23-1 through 32A-23-9 NMSA 1978].

This bill includes conflicting provisions within Sections 28 and 38 regarding Early Learning Advisory Council membership and transition of membership. Section 28 reduces the early care and education membership to one provider and reduces the New Mexico business roundtable membership from three to two, while Section 38 includes *two* providers of early care and education services and *three* members of the New Mexico business roundtable

TECHNICAL ISSUES

Page 38 lines 1-3 continues to define “pre-kindergarten” as a program for four year olds. The amendments to the Pre-Kindergarten Act expand pre-kindergarten to three and four year olds. This definition will need to be amended as well.

The timeline for creating the new department is too short to ensure that programs can open on time for school year 2018-19. Both PED and CYFD will need to issue request for proposals, and award contracts. Just this action can take two months, and with school starting in August, programs will not have funding to open. Teachers in existing public school programs must be provided with contracts per collective bargaining agreements in the spring. Waiting until September or October to award contracts will result in these highly qualified early childhood professionals taking jobs in other grades or systems. In addition, locating office space and transferring furniture, files, etc., will take a significant amount of time. Staff from PED, CYFD and DOH will need to maintain their normal duties while preparing for the move and closing out existing awards and contracts.

OTHER SUBSTANTIVE ISSUES

None identified by PED

ALTERNATIVES

None proposed by PED

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PED, CYFD, and DOH will continue to collaborate to implement a system of systems to deliver high quality early childhood services to New Mexico’s young children and their families.

AMENDMENTS

None as of 1/17/2017