

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 1/28/19
Original **Amendment** **Bill No:** SB22
Correction **Substitute**

Sponsor: Michael Padilla and Linda M. Trujillo **Agency Code:** 924
Short Title: EARLY CHILDHOOD EDUCATION & CARE DEPT. **Person Writing:** Daniel Manzano
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
\$2,500.0	\$500.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(\$600.0)	(\$600.0)	(1,200.0)	Non-recurring	(PED) General Fund (loss of administrative cost from PreK to PED)

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act: Relates to HB2

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB22 creates a cabinet-level department, the Early Education and Care Department, transferring early childhood functions of other state agencies to the Early Education and Care Department; expanding early pre-kindergarten and pre-kindergarten program eligibility; transferring personnel, functions, money, appropriations, other property and contractual obligations; changing references in law; making appropriations.

SB22 changes sections of New Mexico Administrative Code that address early childhood programs and services currently housed at PED, CYFD, and DOH. Much of the new language updates definitions and changes references to PED, CYFD, and DOH to the Early Education and Care Department. SB22 also makes an appropriation for both FY20 and FY21 to cover the costs of setting up the new department. SB22 also adds a new program, Early PreK for children aged 3 prior to September 1 of the current school year. CYFD has been awarded funds for a pilot Early PreK program for three fiscal years. SB22 makes Early PreK available to public schools and other providers.

Other changes are noted by section below:

Section 4: Organizational units: SB22 outlines the following organization for the department:

- administrative services division
- office of the secretary, which includes a Native American assistant secretary of early education who will be guided by a body representative of tribal communities in NM
- child care licensing and services division
- early childhood education division
- early intervention services division, consisting of:
 - early childhood mental health bureau
 - home visitation bureau
 - family, infant, toddler program

Section 5: Secretary: must have experience in early childhood education or care programs

Section 6: Reorganization: The secretary may reorganize the department

- must report the reorganization to the legislature
- with governor's approval, may appoint division directors
- may establish additional bureaus and appoint chiefs

Section 7: Secretary –Duties and General Powers

A. Lists evidence-based practices and interventions, but does not specifically require the use of evidence-based curricula in early education and care programs. However, a later section (27, G. 3) does require this for Home Visiting Programs only.

B: Coordinate and align an early childhood education and care system. This includes Head Start and Early Head Start, which are federal programs, with federal-to-grantee funding and accountability. The new department will not be able to govern these programs.

M. Develop and manage effective data systems. Both CYFD and PED implemented new data systems for NM PreK; PED preschool demographic data is included in STARS, and assessment data is stored in ECOT, which integrates with STARS while CYFD's EPICS system houses data on all CYFD early childhood programs. In addition, the ECIDS (Early Childhood Integrated Data System) is the state data warehouse developed under the Race to the Top Early Learning Challenge Grant and updates are included in the scope of work for the recently awarded federal Preschool Development Grant (PDG).

Section 11: Child Care Assistance:

A: Convene a group of child care providers, persons from LFC and DFA to

- develop an outcome measurement plan
- develop goals and objectives with indicators
- provide, by December 31 annually, a report that includes
 - demographics of the children and families served
 - evidence of increased school readiness, including the number of kindergarten-aged children who enter school ready to learn.
 - Evidence of family engagement
 - Staff wages, education levels, certification levels, and retention rates

Section 12: Early Childhood and Care Finance Plan: The items noted as requirements in this plan are also included in the needs assessment the CYFD, PED and DOH will conduct **with federal funding from the Preschool Development Grant (PDG) awarded to the state in December, 2018**. This PDG needs assessment will be completed by December, 2019. Please note also that a national partner, Center on Enhancing Early Learning Outcomes (CEELO) has this month proposed a research study of the cost of quality preschool.

Section 13: Changes the Procurement Code to exempt PreK and Early PreK from the Procurement Code.

Section 15 and 16: Changes to the Children's Cabinet Act to include the new department name and secretary. Allows the governor to appoint a chairperson.

Section 18: Pre-Kindergarten Act: Adds three-year-olds and the early pre-kindergarten program

Section 19: Pre-Kindergarten Act

D: defines an eligible child, but the definition conflicts with C and G. Children should reach

their third or fourth birthday **PRIOR to September 1** to align with kindergarten entry requirements. **Consider including “and are not age-eligible for kindergarten” to prevent programs retaining children in PreK to delay kindergarten entry.**

- F: mixed-delivery definition requires an equal distribution of funds to programs administered by public schools and “other programs” (not defined). What consideration is given if applications from either public schools or “other programs” request less than 50% of the appropriation? There are no “other programs” in some New Mexico communities.

Section 20: Early Pre-Kindergarten and Pre-Kindergarten Programs

- A. Requires contracts with eligible providers. State agencies providing PreK services have entered into agreements with private providers and issued award letters to public schools in alignment with state law. To return to the Request for Proposal process in order to issue contracts for NM PreK will prevent some child care businesses and school districts from applying for funding as this is a labor-intensive and cumbersome requirement. In addition, this requirement will delay funding to districts and other providers for FY20 as this process is lengthy. Also mentions the “per child” rate paid to public elementary schools designated as Title 1, but does not reference the Student Equalization Grant (SEG) formula, which determines this rate. In addition, the rate paid to schools is for children in kindergarten through 12 grade, or a child three to five years of age with a disability requiring special education services. It is not clear how this “per child” rate would be determined for children who are not currently included in the SEG. The SEG also varies based on socio-economic and demographic factors.
- B. Standards, the New Mexico Early Learning Guidelines, often called the ELG, already exist. These standards align with the public education’s kindergarten standards and have been recently updated.

This section also includes a data-sharing agreement, which PED, CYFD, and DOH have already implemented for ECIDS.

Section 21: Requests for Proposals (RfP)–Contracts for Services

- A. Requires a request for proposal process. Again, this is a cumbersome process which significantly delays the funding awards. State agencies are not required to contract with public schools, but may issue an award letter. As both PreK and Early PreK are exempt in this legislation from the procurement code, it does not seem appropriate to put the burden of the RfP process on small businesses and public schools.
- B. The list of requirements to include in the application is from the earliest PreK legislation and was appropriate for first-time applicants in 2005. It would be more appropriate to update the selection criteria to include such items as FOCUS TQRIS/QRIS participation, early childhood staff training completed, available facilities, and evidence-based curriculum implementation, evidence of collaboration with other early care and education programs in the community, and degree of inclusive practices. Current CYFD and PED PreK staff would provide guidance on the wording of this section if requested.
- C. It is not clear as to whether current Pre-K and Early-Pre-K grantees would be required to participate in the RfP process. Both CYFD and PED have invested in current programs and have issued continuation applications for several years as the questions in the list are not appropriate for continuing programs.

Section 22 and 23: Requires a mixed-delivery system, Section 22 requires equal distribution of funds appropriated, Section 23 requires mixed-delivery system programming.

Sections 24 and 25: Changes department name and definitions to reflect that name; strikes the state early learning advisory council (ELAC) from definitions. This appears to discontinue the ELAC that was subject to sunset on June 30, 2018, and was reinstated in FY19 by executive order.

Section 26 and 27 Changes; changes title and definitions to reflect the name of the new department and moving programs from existing agencies to the new department.

FISCAL IMPLICATIONS

- Public school PreK programs currently use PED's Operations Budget management System (OBMS) for reimbursements. Under a new department, business managers would be required to use a separate financial system for NM PreK.
- Early Childhood Observation Tool (ECOT): This is the assessment platform for both the Preschool Observation Tool and the Kindergarten Observation Tool. The tool was developed for kindergarten under the Race to the Top grant, and expanded for preschool using PreK administrative costs. Currently, the updates and maintenance of this tool are funded through the administrative cost from the PreK program. Without PreK dollars, PED will not be able to keep the system operational. The tool is used by all public school preschool programs, including NM PreK, Title 1, and special education preschool, as well as kindergarten. As special education, Title 1 and kindergarten are not part of the new department, the tool could not be wholly moved, but efforts could be made to allow the use of this application by early childhood providers in the new department.
- Current furniture, and equipment used by early childhood employees of the three agencies is to be moved to the new department. Program records will also be moved. As the financial records of school districts participating in PreK are housed in PED's financial system, a process for converting those histories will need to be developed.

SIGNIFICANT ISSUES

Public schools will be accountable to two different agencies for NM PreK and Early PreK classrooms. As classrooms are inclusive of children receiving special education services, teachers will use two separate data systems for child and staff demographics, two child assessment data systems, and districts will use two separate fiscal accounting systems to receive PreK reimbursement unless the IDEA B, Section 619 preschool programs are included in the new department. These children are funded using SEG for their special education services.

Section 21: It is not clear as to whether current Pre-K and Early-Pre-K grantees would be required to participate in the RfP process, particularly for FY20 funding. Both CYFD and PED have invested in current programs and have issued continuation applications as the questions in the list for new applications do not provide the most important questions for continuing PreK programs.

The new department does not include three-and-four year-olds served under Part B of IDEA, possibly segregating these children. PED has made significant progress in serving these children in inclusive NM PreK programs and in working with districts to serve children in childcare and Head Start programs when appropriate.

Does not address participation by any program in the state's Quality Rating and Improvement System (QRIS, or in the case of CYFD, FOCUS is Tiered, so TQRIS), FOCUS. Each department that is currently implementing early childhood services has FOCUS criteria.

Does not require that Early Pre-K or Pre-K programs implement evidence-based curricula. Only Home Visiting programs are required to do so. PED Pre-K currently has this requirement.

PERFORMANCE IMPLICATIONS

P-3 Continuum: School and district leadership will need to work closely with the new department and PED to determine appropriate professional development to ensure a continuum of learning through third grade.

Early Childhood Observation Tool: If the ECOT remains with PED to serve kindergarten, Title 1 and special education (IDEA, Part B, Section 619) preschool programs, public school teachers in inclusive classrooms will use two separate data collection programs to assess children. It will be important to be able to combine data from the two systems for classroom, school, and district level reports. PED's ECOT includes a robust reporting system that will be lost to NM PreK teachers.

STARS: Districts and charter schools will use two separate child and teacher data systems for preschool children based on funding stream.

Practice-based coaching: PED has implemented a research and evidence-based coaching model, Practice-based Coaching, to meet the needs of public school early childhood staff. CYFD uses a consultation model. Coaches in public school programs must be licensed teachers with graduate degrees. The NIEER (National Institute of Early Education Research) criteria by which each state's publically-funded PreK programs are rated, now require a coaching model.

ADMINISTRATIVE IMPLICATIONS

Public school superintendents, administrators, and teachers will be required to report to two different state departments.

- IDEA requires inclusive early childhood classrooms so that children receiving special education services. Teachers in these inclusive classrooms in public schools will need to be responsive to two departments. Funding for these PreK classrooms are often braided, with costs shared between the district/charter school's PreK and special education budgets, depending on the nature and severity of the needs of children in the classroom.
- The training and coaching needs of degreed, licensed teachers differ from the needs of non-degreed and licensed child care staff. Contracts for the required training, technical assistance and coaching must be tailored to the needs of the teachers, educational assistants, and administrators in both public school and child care programs. This support is currently provided by two different divisions at UNM,
 - the Center for Development and Disability for public school preschool (PreK, special education, and Title 1) programs and the DOH's Family Infant Toddler

- programs,
 - the Division of Continuing Education for programs currently funded by CYFD
- Coordination of P-3 initiatives at the district or school level will be more cumbersome, but with intentionality by both the new department, PED, and school districts, this can be accomplished.
- Coordination of professional development at the building and district level will be impacted. Currently, some training is shared among PED PreK and kindergarten.
- Under the Race to the Top grant, the state developed a Quality Rating and Improvement System, FOCUS. All three affected departments, PED, CYFD, and DOH, used a common framework for program-specific elements of quality. PED's FOCUS criteria includes a requirement that Title 1 and special education preschool programs, which are not included in the new department, must also comply with FOCUS.
- The Early Childhood Observation Tool (ECOT), developed to house both the Preschool Observational Assessment and the Kindergarten Observation Tool, is housed at PED. ECOT integrates with STARS, the Student Teacher Accountability System, which contains all demographic data for students and school personnel. This tool has increased the efficiency and accuracy of data collection and reporting for public school preschool programs, including PreK, special education and Title 1 preschool programs. For the first time, preschool special education students are measured with the same instrument as their typically developing peers using the standards and benchmarks for their age and level of development. The preschool students can be tracked through high school graduation. Currently, this tool is funded through the administrative cost from the PreK program. Without PreK dollars, PED may not be able to keep the system operational.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Related to HJR 1: Permanent Funds for Early Childhood Education

HB1: Phased-in Minimum Wage Increase

Related to HB134: PreK in Community Schools Act

HB160: Requirements for Child Care Assistance

Related to HB171 Raising Minimum Teacher Salaries

Related to HB173 and SB202: Child and Family Databank Act (some duplication)

Related to SB47: Increase School Personnel Salaries

TECHNICAL ISSUES

Page 25, Section 19, D– Language conflicts with C and F in that section. Children must be three or four prior to September 1, not “on September 1. It is also important to include “and not be age-eligible for kindergarten” as PreK was not designed to allow either retention of children or to be used to delay kindergarten entry of an eligible child.

Page 25, Section 19, E: “eligible provider” – It is not clear as to whether the preschool special education, public school, tribal program or head start program would need to be licensed by the Early Education and Care Department, as the first part of the sentence addresses “a person licensed”. Does this refer to child care licenses? Public schools, tribal programs, and preschool special education programs, which are public school programs, are not required to have a child care license.

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

Allow the needs assessment funded by the Preschool Development Grant (PDG) to inform creation of a new department, with FY20 as a planning year for this department. The PDG assessment will be completed by December 2019.

Consider the New Mexico Now proposal to create an Early Learning and Care Department for programs and services for ages birth to 3, and create an early childhood division within PED for programs and services for preschool children, ages 4 through 8, and those 3 and 4 year-olds receiving IDEA Part B special education services. Allow public schools in small rural communities to have mixed-age programming for Early PreK and PreK (three and four year olds).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

CYFD, DOH and PED will continue to collaborate to implement high quality early learning and care programs. The three departments will use the federal Preschool Development Grant to complete a thorough needs assessment, including determining the costs of programming and means of financing by December 31, 2019.

AMENDMENTS

None as of 1/17/2019