

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2019 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** 3/14/19  
**Bill No:** HB159SEC

**Sponsor:** Tomás E. Salazar  
Christine Trujillo  
Derrick J. Lente  
**Short Title:** MULTICULTURAL  
EDUCATION FRAMEWORK

**Agency Name and Code Number:** Agency Name  
and Code  
Number: PED-924  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(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)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

**HB 5, HB 111, HB 120, HB 159, HB 171, SB 1, SB 554, Executive Budget Recommendation**

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB159SEC amends the Bilingual Multicultural Education Act, 22-23 NMSA 1978, and Hispanic Education Act., 22-23B NMSA 1978. HB159SEC creates two new Divisions and Assistant Secretary positions at the Public Education Department with listed powers and duties for bilingual multicultural education programs (BMEPs) and Hispanic education. HB159SEC requires the Department to create a multicultural framework in collaboration with the Indian Education Division (IED), Indian Education Advisory Council (IEAC), Hispanic Education Division (HED), and Hispanic Education Advisory Council (HEAC), to support, evaluate, assess and report on program effectiveness. HB159SEC establishes a new State Bilingual Multicultural Advisory Council (SBMAC) to advise on BMEPs.

**Section 1.** HB159SEC amends the definitions section of the Bilingual Multicultural Education Act, 22-23-2 NMSA 1978 and establishes the Bilingual Multicultural Education Division (BMED), an assistant secretary for the new Division and establishes the SBMAC. Section 1 also includes a new definition for “tribal language” (p. 7, lines 12-15) and “tribe” (p. 7, lines 16-17).

**Section 2.** HB159SEC includes a new section in the Bilingual Multicultural Education Act, 22-23 NMSA 1978, that creates the BMED and establishes the Assistant Secretary’s duties. This section outlines a list of 12 responsibilities (p. 7-9):

- Achieve the purposes of the Bilingual Multicultural Education Act, 22-23 NMSA 1978
- Ensure that BMEPs are compliant with Bilingual Multicultural Education Act
- Ensure English Learner programs are compliant with relevant federal and state requirements
- Provide technical assistance and support to districts and charter schools in achieving the goals of the Bilingual Multicultural Education Act
- Coordinate and collaborate with the Assistant Secretaries of Indian Education and Hispanic Education to ensure public schools have resources and expertise to provide bilingual multicultural education
- Review and approve BMEP applications for funding
- Monitor and assess BMEP effectiveness
- Accept gifts, grants and donations for Bilingual Multicultural Education
- Enforce rules for the administration of the Bilingual Multicultural Education Act

- Conduct research and compile statistics related to education of bilingual and English Learner students
- Coordinate with IED, including Assistant Secretary of Indian Education, and IEAC, for the provision and assessment of BMEPs and English Learner programs for American Indian students enrolled in public schools
- Collaborate with Indian Education Division and Hispanic education division (new) and their advisory councils (IEAC and HEAC) for the provision of quality BMEPs and English Learner programs and services

In addition, Section 2 includes as the Secretary's duties to ensure that the Bilingual Multicultural Education Act is carried out and that each division within the department collaborates to fulfill its responsibility to "bilingual and multicultural students" (p. 9).

HB159SEC deletes additional requirements for the (Assistant) Secretary.

**Section 3.** HB159SEC includes a new section of the Bilingual Multicultural Education Act to create the SBMAC. In this section, the Council is to advise not only the Department but the Governor and legislature (through its interim and standing committees) on the effectiveness of Bilingual Multicultural Education Act implementation and support to English Learners. The council shall have a maximum of 15 members that of are representative of the geographic diversity of the state and include current P-20 teachers, administrators, faculty, parents and tribal members. The initial council must include at least 5 members of the current State Bilingual Advisory Council. Additionally, other SBMAC council members will be appointed by the Secretary with input from co-chairs from the SBMAC from an applicant pool the co-chairs submit, after consultation with various stakeholder groups. Members of the SBMAC will begin their appointments on July 1, 2019. The bill imposes two-term maximums with each term being no more than three years each (p. 12, lines 6-7). The Secretary is required to stagger the initial terms of the council such that a third of the 15-member council serves a one, two and three-year term, respectively.

HB159HEC deletes required duties of the SBMAC from a prior version of the bill (HB 159).

**Section 4.** HB159SEC includes a new section into the Bilingual Multicultural Education Act proposing a Multicultural Education Framework that the Department must develop, with collaboration with the SBMAC, for the full implementation of the Bilingual Multicultural Education Act, Indian Education Act, and Hispanic Education Act. The framework must include provisions that identify school districts and charter schools for technical assistance and support for implementing multicultural education. As well as provide guidelines for school districts and charter schools on how to align educational programming that is consistent with the Bilingual Multicultural Education Act, and provide guidelines for school districts and charter schools related to development of curriculum, instructional materials, and other learning tools and resources that are culturally and linguistically responsive and relevant to students.

In addition, this section also stipulates that the division shall:

- Work with the Higher Education Department and PED-approved teacher preparation programs to develop a Bilingual Multicultural Education teacher pipeline
- Develop professional development standards including culturally and linguistically responsive instruction and related support services for Bilingual Multicultural Education,

- Indian education and Hispanic education teachers
- Set up semiannual meetings among the SBMAC, IEAC and HEAC
- Conduct annual assessment of student needs in BMEPs
- Develop indicators to measure the effect of the multicultural education framework on the academic progress of students
- Identify strategies to close achievement gap for “culturally and linguistically diverse” students (p, 16, lines 21-22)
- Issue an annual report by November 15 that includes detailed information about the participation of English Learners and students in BMEPs, analysis of implementation effectiveness, statewide professional development efforts pursuant to Bilingual Multicultural Education Act, and recommendations for improving BMEPs

**Section 5.** HB159SEC amends the section pertaining to department powers and duties in the Bilingual Multicultural Education Act to include the division, and requires the department to consult with the division on the promulgation of rules to implement BMEPs.

**Section 6.** HB159SEC proposes changes to the Hispanic Education Act, 22-23B NMSA 1978.

**Section 7.** HB159SEC amends the definitions section of the Hispanic Education Act to establish an Assistant Secretary for Hispanic Education, and the HED. The definitions section includes the HEAC and deletes the department’s liaison to the HEAC. This section also introduced a new term, “tribe.”

**Section 8.** HB159SEC amends the Hispanic Education Act to delete the responsibilities of the HEAC liaison and instead create the Hispanic Education Division and outline its duties to:

- Achieve the purposes of the Hispanic Education Act, 22-23B NMSA 1978
- Provide technical assistance and support to public schools in achieving the goals of the Hispanic Education Act
- Coordinate and collaborate with the BMED and IED regarding implementation of the Bilingual Multicultural Education Act, Indian Education Act and Hispanic Education Act
- Review and approve applications for Hispanic education-related programs and services
- Accept gifts grants and donations for the implementation of the Hispanic Education Act, including hiring Hispanic liaisons
- Enforce the rules for administration of the Hispanic Education Act
- Conduct research and compile statistics relating to the education of Hispanic students
- Consult and collaborate with the HEAC for the quality of culturally and linguistically responsive education of Hispanic students and English Learner programs and services for Spanish-speaking students

The section also requires that the Secretary appoint the Assistant Secretary of Hispanic Education, with advice from the HEAC, that will direct the activities of the division and advise the Secretary on the policy development regarding Hispanic students and coordinate activities with other PED administrators to make implementation of the Hispanic Education Act a priority.

**Section 9.** HB159SEC creates a new section in the Hispanic Education Act establishing the Hispanic Education Fund, which shall be administered by the Hispanic Education Division for the purposes in the Hispanic Education Act. The department, in consultation with the division, must develop procedures and rules for awarding money from the fund.

## **FISCAL IMPLICATIONS**

HB159SEC does not include an appropriation. Since there are not funds currently allocated that directly support the proposed Hispanic Education Division or additional funds to grow the Bilingual Multicultural Education Division, funding will need to be allocated to support staffing and provide resources to meet the evaluation and reporting requirements in the bill. HB159SEC proposes establishing both an Assistant Secretary of Hispanic Education and Assistant Secretary of Bilingual Multicultural Education, each to lead those respective divisions. Given the detailed description of the responsibilities outlined for each new Division, additional staff beyond the Assistant Secretary positions included in the bill will be needed. For the 12 responsibilities of the BMED, see Section 2 of HB159SEC, p. 7-9. For the eight responsibilities of the HED, see Section 8 of HB159SEC, p. 20-21).

HB159SEC proposes that SBMAC members are entitled to receive per diem and mileage per the Per Diem and Mileage Act (p. 14, lines 7-9), however 22-23B-5F NMSA 1978 prohibits HEAC members from the same “Members of the council shall not receive per diem and mileage or other compensation for their services.” However, IEAC members may be entitled to receive per diem and mileage according to the Indian Education Act which states that “[m]embers of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act,” 22-23A-6E NMSA 1978. This creates inconsistency among the councils and may need to be addressed.

Also, HB159SEC creates the Hispanic Education Fund, which the Hispanic Education Division would administer, however, no appropriation has been made to the fund.

## **SIGNIFICANT ISSUES**

HB159SEC both explicitly and implicitly requires the execution of complex coordination at the Department level across three Assistant Secretaries, divisions, and councils. Several considerations are summarized below by area.

**Bilingual Multicultural Education Division duties.** Section 3 lays out a list of 12 duties for the proposed BMED, duplicating the work which the current Language and Culture Bureau (previously known as the Bilingual Multicultural Education Bureau) is already charged with leading and is currently doing. Thus, the proposed changes to the Bilingual Multicultural Education Act via this bill amends statute to reflect and reinforce current practice. Nevertheless, mandating in statute a Department’s specific duties does not allow the Secretary flexibility to exercise executive power to direct the Department, whereby amending its regulations would achieve the same end.

It also adds a new requirement to “accept gifts, grants and donations to be used for bilingual multicultural education” (p. 8, lines 19-20) without a mechanism for doing so. In contrast, later in the bill, the proposed HED is tasked with this same responsibility (p. 21, lines 3-8) but in that case the Hispanic Education Fund is created. No such Bilingual Multicultural Education Fund is established. The Sponsors or next reviewing committee may wish to address this inconsistency.

**Multicultural Education Framework.** In addition to outlining the BMED’s duties (see above),

the proposed statute also amends the Bilingual Multicultural Education Act requiring the development and use of a new multicultural education framework which require the division to:

- Identify how and to whom to provide technical assistance
- Establish guidelines for providing services that meet statute
- Establish guidelines for locally-determined processes for selection or development of curriculum and instructional materials

That is, the proposed changes to statute will direct the work that must be done and also outline the manner in which it must be done (see Section 4 of HB159SEC starting on p. 14). As described, the multicultural framework appears to be a project management plan designed to evaluate effectiveness of three different statutes— the Bilingual Multicultural Education Act, Indian Education Act, and the Hispanic Education Act—without amending the Indian Education Act or the Hispanic Education Act to reflect this new expectation in either of those laws, respectively.

Later in the proposed bill under the Multicultural Education Framework (Section 4), another set of duties are included for the proposed BMED (p.15-17) under subpart C, which includes that the BMED develop professional development standards that includes culturally and linguistically responsive instruction. In 2006, the department adopted into rule a professional development framework (6.65 NMAC).

Further, the Department has adopted the following culturally and linguistically responsive content standards: Spanish language arts standards (6.29.15 NMAC), English language development standards (6.29.5 NMAC), Spanish language development standards (6.29.16 NMAC), world-readiness standards for learning languages (6.29.8 NMAC), and the English language arts standards (6.29.4 NMAC) include an additional 15% of state-specific standards which focus on cultural responsiveness. The department has also adopted into rule the requirement for instructional materials to be culturally and linguistically responsive (6.75.2 NMAC).

**State Bilingual Multicultural Advisory Council (SBMAC).** HB159SEC proposes the creation of the SBMAC, converting the currently existing State Bilingual Advisory Council which advises the Department on matters related to bilingual multicultural education. SBMAC would not only advise the Department, but also the Governor and legislature directly to report on Department activity. Granting the SBMAC this power creates inconsistency of access across the councils and allows SBMAC to report on the Department’s progress to various entities. This is an advisory power that neither the IEAC or HEAC currently possess; both the IEAC and HEAC have been established to only advise the PED Secretary.

Also, SBMAC membership is proposed to include members representing pre-K even as current state-funding for BMEPs does not extend to that grade level. Perhaps the bill should be amended to remove “pre-K” and begin with Kindergarten. In addition, the membership of the new and initial SBMAC must include at least five of the current SBAC members. However, it is unclear from what pool the other 10 SBMAC would come, given the lack of clarity in the proposed bill. Perhaps subpart C of Section 3 should be revised to ensure clarity (p. 11, line24 through p.12, line 4). Lastly, the new council shall begin their appointment on July 1, 2019, leaving very little time for the Department to follow an appointment process.

**Inconsistent use of terms in amendments to Bilingual Multicultural Education Act.** In two different sections of HB159HEC, two different terms are used for students which creates inconsistency within the Bilingual Multicultural Education Act. In Section 2, subpart C (p.9, according to changes from the SEC report), students are referred to as “bilingual and multicultural students.” However, later in the bill making amendments to the same statute, Section 4 refers to students as “culturally and linguistically diverse students” which reflects language in the current statute (p. 16, lines 21-22). The reference in Section 2 should be changed to be consistent with current language in statute, since it is currently defined in statute (previously as subpart B but now as subpart D should proposed changes per HB159SEC be enacted).

**Amendments to Hispanic Education Act.** HB159SEC proposes deleting the definition and duties of the Hispanic Education Liaison in Sections 7 and 8 of the bill. In Section 8 where the duties of the newly created HED is created, the bill proposes that the Division can accept gifts, grants and donations for use in the implementation of the Hispanic Education Act including using the money to “hire Hispanic liaisons” (p. 21, lines 7-8). Given that the definition and duties for the Hispanic Education Liaison were deleted, it is unclear how the Hispanic liaison referenced on page 21, line 8 fits into the new proposed Division. This should be clarified or deleted from the proposed language as it may cause confusion.

The bill also includes language regarding the HED being required to “**enforce [emphasis added]** rules for the administration of the Hispanic Education Act” (p. 21, lines 9-10), however, the statute, elsewhere, does not direct the Department to promulgate rules for the implementation of the Act. The Sponsor may wish to clarify if it will amend the Hispanic Education Act to require the Department to promulgate rules to enforce as indicated in this language or delete this requirement. Furthermore, in Section 9 of the bill where the Hispanic Education Fund is created, the Department is required to “develop procedures and rules for the award money from the fund” (p. 23, lines 24-25). While the term “rule” means New Mexico Administrative Code and in this context the Sponsors may intend to require the development of procedures and processes and transparent policy governing the uses of fund, promulgating rules for the fund may be too inflexible. Additionally, the proposed amendment to the eight responsibilities of the HED require it to “review and approve applications for education-related programs and services” (p. 21, lines 1-2), however, no specific programming or funding has been identified.

## **PERFORMANCE IMPLICATIONS**

Performance expectations beyond required collaboration of the IED and the proposed HED and BMED, no tangible performance expectations have been identified in the bill. While the three divisions will need to closely collaborate to coordinate on:

- Allocation of funding from each division budget or fund
- Clear delineation of lead division on certain types of technical assistance and support provided to avoid duplication of efforts and resources
- Coordination to ensure respective advisory council meet together
- What division is responsible for what parts of accountability and reporting to whom

As proposed and if enacted, the statute requires the BMED to conduct all work related to the Bilingual Multicultural Education Act. Given that there currently exists a Bureau within the PED (i.e. Language and Culture Bureau) that is assigned this work, the Department would need to

determine if the LCB's staff, work, and resources is to be absorbed into the BMED or instead focus on implementing programs or initiatives for all culturally and linguistically diverse students. That is, programs and initiatives that are inclusive of groups beyond American Indian and Hispanic students such as African American students or refugees, etc. and English learners that do not participate in BMEPs. For example, state-directed activities which are not addressed in the Bilingual Multicultural Education Act, would include:

- Administration of federal Title III grants for English Learners
- Support of effective implementation of world language instruction
- Support of effective implementation of culturally and linguistically responsive instruction
- Implementation of the New Mexico diploma of excellence state seal for bilingual and biliterate graduates per 22-1-9.1 NMSA 1978 and correspondingly rule, 6.32.3 NMAC

The Department would need to consider how it will ensure all students that are culturally and linguistically diverse are served given that not all students in the state are specifically served by the Indian Education, Hispanic Education and Bilingual Multicultural Education Acts and proposed Divisions.

HB159SEC creates the Hispanic Education Fund by amending the Hispanic Education Act, which is the case for the IED and fund currently. However, HB159SEC does not similarly create a fund for Bilingual Multicultural Education although the proposed council will be entitled to per diem and mileage. Currently, BMEPs are supported directly through the public school funding formula, with no funds set aside for administrative needs at the Department level. Therefore, as written, HB159SEC creates inconsistency in funding, staffing and resources across the three divisions. Given that no funds have been allocated to a Division for this purpose, the Department will need to fund this from other sources.

## **ADMINISTRATIVE IMPLICATIONS**

HB159SEC both explicitly and implicitly requires the execution of complex coordination at the Department level across three Assistant Secretaries, divisions, and councils. HB159SEC requires collaboration and coordination between the Department's current IED and Language and Culture Bureau as well as the proposed HED and BMED for the planning, development, implementation and review of distinct and potentially shared programming.

Given major changes proposed to the public school funding formula requiring additional operational budgets and review of education plans, the BMED would be tasked with significant, additional review of district budgets before approval is granted in addition to current 40, 80 and 120 day data reviews. The BMED would need to coordinate closely with the School Budget and Financial Analysis Bureau to conduct education plan reviews timely and effectively.

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

HB159SEC relates to the Bilingual Multicultural Education Act, Indian Education Act, and Hispanic Education Act. For inconsistencies within each act and inconsistencies across the three acts in HB159SEC, see the *Significant Issues* section. Additionally, this bill should be reviewed in concert with HB 111 and HB 120, as well other bills that impact the public school funding formula (HB 5 and SB 1, with amendments, respectively) since those have implications for professional development.



## TECHNICAL ISSUES

Given that amendments to the Bilingual Multicultural Education Act come after the change of the federal education law amended as the Every Student Succeeds Act (ESSA), it may be necessary to either delete such references or amend state statute to reflect changes to federal law, for example see 22-23-1.1E NMSA 1978. While HB159SEC deletes any changes to 22-23-1.1 NMSA, this opportunity is missed.

Additionally, the Department recommends that HB159SEC includes amendments to the Bilingual Multicultural Education Act to remove the following language “*who may or may not be part of stand-alone federal Title 3 programs*” in 22-23-1.4 (E)(1)(c). Under ESSA, Title 3 is a federal **supplemental** grant provided to states to support the acquisition of the English language and the academic success of English Learners. Regardless if a state is granted Title III dollars or if the state sub-grants Title III dollars to districts, applying for the sub-grants, **all districts and schools are required** by the US Department of Education and Office for Civil Rights to provide eligible students English Learner programs.

As written, HB159SEC does not address the variety of language education or initiatives that reflect language education programming lead by the Language and Culture Bureau, see *Performance Implications* section. If the intent of the bill is to ensure that all current responsibility of the PED’s LCB is absorbed into the new BMED, perhaps the statute should reflect such or require the Department to amend current rule related to the Bilingual Multicultural Education Act, namely 6.32.2 NMAC, to include all current scope of work.

Given the concern identified in the *Significant Issues* section about creating inconsistency with respect to the three divisions and councils, the Department recommends that HB159SEC be amended by requiring the SBMAC to advise the Secretary of Education as does the IEAC and HEAC. This would require a change to HB159SEC to update subpart A of Section 3 to read as follows:

A. The "state bilingual multicultural advisory council" is created to advise the secretary, ~~department staff, the governor and the legislature through its interim and standing committees~~ on the effective implementation of the Bilingual Multicultural Education Act and the support of all English language learners to have equitable access to instruction and learning as required by state and federal education and civil rights laws.

Making this change would ensure consistency of advisory powers across all councils, especially since HB159SEC deleted any requirements or description of duties from the SBMAC, unlike the IEAC and HEAC have outlines in their Acts, respectively.

Since amendments to the Bilingual Multicultural Education Act are proposed, it would be important to align and reconcile the definition of English Learner as used in the department regulation, 6.19.8.7C NMAC, Grading of Public Schools, because this definition reflects a strength or asset-based as opposed to deficit-based language and is consistent with current language in the field and ESSA:

“English learner” or “EL” means a student whose first or heritage language is not English and who does not yet understand, speak, read, or write English at a level comparable to grade-level English proficient peers and native English speakers.

Given that the names of other councils are consistent with their respective Acts and Divisions, it may be important for the council administratively attached to the Bilingual Multicultural Education Division be called the “Bilingual Multicultural Education Advisory Council” for consistency, especially since within HB159SEC the council is referred to by two different names, see *Significant Issues* section.

Lastly, the Bilingual Multicultural Education Act should be updated to reflect the recently updated department regulation, 6.32.2 NMAC, which included Native American language and culture teachers, and additional areas of professional development focus based on stakeholder engagement. Given other changes proposed to the Bilingual Multicultural Education Act, this would be an opportunity to align law to current and expected practice in the field.

## **OTHER SUBSTANTIVE ISSUES**

None

## **ALTERNATIVES**

While HB159SEC addresses the work of several distinct bureaus/division and councils, it may be important to allow the Department, under new leadership, to evaluate current processes. This would allow the new team to determine, with advice from various stakeholders, how to ensure that the various needs, concerns and work are aligned to reduce duplicative efforts, establish clear roles and responsibilities for each, and ensure synergistic alignment for a multicultural education framework.

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

The Department will continue to be responsible for coordinating and communicating internally and externally how the Bilingual Multicultural Education, Indian Education and Hispanic Education Acts will be implemented, supported, and enforced across the Department. The Department will continue to ensure that the State Bilingual Advisory Council , IEAC, and HEAC are aware of their work being done by other councils and the Department to address related concerns.

## **AMENDMENTS**

See *Technical Issues* section.