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FISCAL IMPACT REPORT

SPONSOR Salazar/Trujillo, CH. **ORIGINAL DATE** 1/26/19
LAST UPDATED 3/13/19 **HB** 159/aSEC

SHORT TITLE Multicultural Education Framework **SB** _____

ANALYST Liu/Eckberg

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$1,344.0 - \$1,500.0	\$1,344.0 - \$1,500.0	\$2,688.0 - \$3,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 111, HB 182, HB 250
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Indian Affairs Department (IAD)
 Office of African American Affairs (OAAA)
 Regional Education Cooperatives (REC)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment to House Bill 159 removes sections, modifies language, and adds new language.

The amendment strikes Section 1 in its entirety, removing “Legislative Findings”, referencing bilingual multicultural education and the *Martinez* and *Yazzie* consolidated lawsuits. The amended bill now begins with “Definitions” as Section 1.

The amendment puts the responsibility of carrying out provisions of the Bilingual Multicultural Education Act on PED’s secretary by striking lines 18 through 22 on page 9 and inserting the following language: the secretary shall “ensure the duties prescribed in the Bilingual Multicultural Education Act are carried out and that each division within the department is collaborating to fulfill its responsibilities to bilingual and multicultural students.” Subsection D

on pages 9 and 10 are deleted which would have put those responsibilities on PED's assistant secretary of bilingual multicultural education.

The amendment adds language specifying how the state bilingual multicultural advisory council should stagger terms: five members are appointed to one-year terms, five members for two-year terms, and five members for three-year terms.

The amendment strikes Subsection E in its entirety, removing a framework for the advisory council.

The amendment also strikes language from the multicultural education framework, removing requirements and replacing with broad requirements for PED to provide guidelines for school districts and charter schools related to the development of curriculum, instructional materials, and other learning tools and resources relating to bilingual and multicultural education.

Finally the amendment changes the annual reporting requirements, requiring a statewide bilingual multicultural education status report including information on the participation and performance of students in bilingual multicultural education programs and English language learner students not enrolled in bilingual multicultural education programs, a program effectiveness analysis, statewide professional development efforts pursuant to the Bilingual Multicultural Education Act and based on the needs of English language learner students, and recommendations for improvement of programs.

Synopsis of Original Bill

House Bill 159 amends the Bilingual Multicultural Education Act (BMEA) and Hispanic Education Act (HEA) to create two new divisions, with respective assistant secretaries, at PED. The bill also creates a state advisory council for bilingual multicultural education and a multicultural education framework to ensure collaboration between all PED divisions and advisory councils.

FISCAL IMPLICATIONS

The bill does not make an appropriation but creates two new divisions in PED similar to the Indian Education Division (IED) and establishes a new state Bilingual Multicultural Advisory Council (BMAC). Currently, IED includes 8 FTE and average costs for PED total about \$84 thousand per FTE. Adding two similarly sized divisions in the department would cost approximately \$1.3 million, not including contractual services and other operating expenses. Additionally, members of BMAC would be eligible for per diem and mileage, which would likely be funded through the department. PED notes the creation of the non reverting Hispanic education fund would need to be funded through the general fund.

The House Appropriations and Finance Committee (HAFC) Substitute for House Bills 2 and 3 include \$2 million for PED operations. The LFC FY20 budget recommendation included language earmarking \$3.3 million for the department to comply with provisions of HEA and the Indian Education Act (IEA) and exercise appropriate oversight over school districts and charter schools; however, this language was removed. The HAFC substitute also includes \$2.5 million to support bilingual and multicultural education programs (BMEP) and English language learners (ELL), \$6 million for the Indian education fund, and \$7 million for bilingual and multicultural

programs through the funding formula.

SIGNIFICANT ISSUES

The bill acknowledges findings from the 1st Judicial District Court in the consolidated *Yazzie v. New Mexico* and *Martinez v. New Mexico* education sufficiency lawsuit and updates the statute to include charter schools, instructional administrators, and references to new federal law. The bill creates a new section establishing a bilingual multicultural education division and Hispanic education division within PED. Each division would have a new assistant secretary, charged with the following responsibilities:

- Ensuring compliance with BMEA, HEA, and IEA;
- Providing technical assistance to all school districts and charter schools;
- Reviewing and approving applications for programs and related funding;
- Monitoring and assessing the effectiveness of programs;
- Conducting research on the education of bilingual and ELLs;
- Coordinating with the IED assistant secretary, Indian education advisory council, BMAC, Hispanic education advisory council, higher education institutions, and other PED units;
- Developing a culturally and linguistically relevant standardized curriculum for students in pre-kindergarten through 12th grade; and
- Ensuring school districts and charter schools implement bilingual, multicultural, Indian, and Hispanic education programs into professional development plans.

The bill further creates a 15-member state BMEAC to advise PED, the governor, and Legislature on the implementation of BMEA. Members of the council would include three tribal members, nine educators, and three parents from diverse backgrounds and regions. For the initial term of the council, the members would include five members from the department-created state bilingual advisory group and other members appointed by the PED secretary for a maximum of two 3-year terms. The council's responsibilities would include the following:

- Developing a multicultural education framework,
- Studying the needs of ELLs and BMEPs,
- Strengthening the quality of BMEPs,
- Promoting culturally and linguistically responsive instruction,
- Identifying best practices and providing professional development opportunities,
- Developing and training effective teachers and other licensed employees, and
- Achieving programmatic goals, including academic achievement and biliteracy.

The multicultural education framework requires the three PED divisions and three associated councils to develop curriculum and resources, collaborate with higher education institutions on the teacher pipeline, create professional development standards, set up semiannual meetings, assess student needs annually, monitor school district and charter school expenditures, ensure alignment of state funds to statutory provisions, and issue an annual report.

The bill further establishes a Hispanic education fund and requires the Hispanic education division assistant secretary hire Hispanic liaisons and educate Hispanic parents about the Education Trust Act within budget limitations.

On July 20, 2018, the 1st Judicial District Court issued an initial decision and order on the consolidated *Yazzie v. New Mexico* and *Martinez v. New Mexico* education sufficiency lawsuits,

which found New Mexico’s public education system failed to provide a sufficient education for at-risk, ELL, Native American, and special education students. On December 20, 2018, the court issued its final findings and conclusions of law in the consolidated lawsuits. In both the initial decision and final findings, the court cited evidence highlighting areas where funding levels, financing methods, and department oversight were deficient. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

The court ruling in the *Yazzie* and *Martinez* case found PED did not provide sufficient technical support to schools and failed to comply with provisions of BMEA, HEA, and IEA. Testimony from the trial suggested that PED did not adequately monitor or take enforcement actions on schools or programs relating to bilingual, multicultural, Indian, and Hispanic education.

ADMINISTRATIVE IMPLICATIONS

The bill creates two divisions within PED and BMAC and establishes new responsibilities for all entities. PED notes the department’s language and culture bureau, which currently supports BMEPs, would no longer provide support for state-funded BMEPs but shift functions to support districts and charters with federal Title III subgrants, entities providing the state seal of bilingualism and biliteracy on the diploma of excellence, and language and culture programs for students not specifically served by the divisions created in the bill. PED notes all language programs, including department support for world language and bilingual seals, could be supported under the proposed BMAC but would need to be explicitly stated in the bill.

The bill creates a Hispanic education fund administered by the department. PED notes funding for BMEA remains within the funding formula, while funding for IEA and HEA become categorical appropriations under provisions of this bill.

RELATIONSHIP

This bill relates to House Bill 111, which appropriates funding to RECs to provide culturally and linguistically responsive assistance to schools; House Bill 182, which establishes literacy and biliteracy requirements in statute; and House Bill 250, which formalizes an annual process for assessing Native American student needs. This bill also relates to the PED operational appropriation in the General Appropriation Act.

TECHNICAL ISSUES

The sponsor may want to consider changing the term “English language learners” to “English learners” to align the category with current federal language.

PED recommends striking “who may or may not be part of stand-alone federal Title 3 programs” on page 12, lines 23-24. The department notes ELL programs are required by the U.S. Department of Education’s Office for Civil Rights.

OTHER SUBSTANTIVE ISSUES

IAD notes four indigenous language families are primarily found in New Mexico. These

language families are the Tanoan (Tiwa, Tewa, Towa), Keresan, Athabaskan, and Zuni. The individual language family is spoken by different nations, tribes and pueblos. For example, the Pueblos of Isleta, Picuris, Sandia and Taos speak Tiwa; the Pueblos of Nambe, Pojoaque, San Ildefonso, Ohkay Owingeh, Santa Clara, and Tesuque speak Tewa; the Pueblo of Jemez speaks Towa; the Pueblos of Acoma, Cochiti, Laguna, San Felipe, Santa Ana, Santo Domingo and Zia speak Keresan; the Navajo Nation speaks Navajo, the Jicarilla Apache Nation and Mescalero Apache Tribe speak dialects of the southern Athabaskan language family; and Zuni is a completely unique unrelated language family spoken only in Zuni Pueblo.

According to IAD, the indigenous languages of New Mexico have faced near decimation for hundreds of years. The tribes and pueblos recognize the critical importance of protecting native languages: their language is a direct link to each tribal communities' unique cultural, traditional and most-sacred practices and integral to tribal identity and welfare, especially of their children. While individual tribal leaders, through approval of their tribal council, may approve the development and standardization of their language as a way to increase the number of fluent speakers and teach cultural ways, others may vigorously oppose the development and standardization of that same language family.

The state of New Mexico, through its own laws and programs, recognizes the sovereignty of pueblos. IAD notes the state must also recognize the inherent right of each individual tribe or pueblo to protect its own language and to determine whether a standardized language curriculum is in the best interest of that individual tribe, school, and language family and to whom it may be taught. This information could be captured through an individualized needs assessment conducted throughout the nations, tribes and pueblos of New Mexico.

OAAA notes the bill does not explicitly mention services for black and refugee students, who also face challenges in New Mexico schools. IAD notes the bill creates a multicultural education framework to provide sufficient resources to school districts and charter schools to prepare students for college and careers. This multicultural education framework would be implemented in all public elementary and secondary schools in the state.

ALTERNATIVES

Alternatively, the bill could establish one assistant secretary to oversee bilingual, multicultural, Indian, and Hispanic education rather than three assistant secretaries to coordinate all responsibilities under one division, reduce administrative costs, and streamline operations.

SL/sb