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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB131/aHAFC</u>	Sponsor	<u>Trujillo, C./Roybal Caballero</u>
Tracking Number	<u>.218130.3</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>Asst. Secretary of Hispanic Education</u>		
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Analyst	<u>Juliani</u>	Last Updated	<u>3/10/2021</u>

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

BILL SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to HB131 (HB131/aHAFC) strikes the appropriation.

Synopsis of Original Bill

House Bill 131 (HB131) creates an assistant secretary of Hispanic education position at the Higher Education Department (HED) and replaces the current Hispanic education liaison position at the Public Education Department (PED) with an assistant secretary of Hispanic education. The bill amends the purpose of the Hispanic Education Act to provide for assessment and accountability of equitable and effective educational systems, foster family and community engagement, and provide culturally sustaining pedagogy and culturally relevant instruction. The bill changes the composition of the existing Hispanic Education Advisory Council to include advocates, scholars, researchers and a minimum of two students, while also amending the Hispanic Education Act to allow advisory council members to receive a per diem and mileage. The bill requires the Hispanic Education Advisory Council, PED, and HED to hold biannual statewide meetings to release and discuss the annual Hispanic education status report. The bill contains a \$110 thousand appropriation from the general fund to HED to hire an assistant secretary of Hispanic education, though it does not include an appropriation to PED because the bill simply replaces the current liaison with an assistant secretary.

FISCAL IMPACT

The bill does not contain an appropriation. However, the Senate Finance Committee substitute for Senate Bill 377 as amended by HAFC includes a \$160 thousand appropriation to HED from the general fund for FY22 for an Assistant Secretary of Hispanic Education, contingent on enactment of House Bill 131 or similar legislation of the first session of the fifty-fifth Legislature. Any

unexpended balance of the appropriations remaining at the end of FY22 would revert to the general fund.

HB131/aHAFC would replace PED's current Hispanic education liaison position with a new full time equivalent for the assistant secretary of Hispanic education at a higher salary as the position entails considerably more elevated responsibilities. The mid-point salary of a division director at both PED and HED is \$98.7 thousand. Figuring benefits at 30 percent, the total cost to fund one division director position would be \$128.3 thousand. In addition, the salary difference between the Hispanic education liaison and Hispanic education deputy director would increase the total cost to fund the provisions in HB131/aHAFC by approximately another \$60 thousand. The House Appropriations and Finance Committee substitute for House Bills 2 and 3 does not contain an appropriation for the hiring of an assistant secretary of Hispanic education at the Higher Education Department (HED) or to offset the cost of replacing PED's Hispanic Education Liaison with an assistant secretary of Hispanic education.

PED's analysis indicated it was unclear what specific costs would be required to carry out the provisions in FY22 and subsequent years, and additional employees would need to be hired to assist with the requirements of HB131/aHAFC. The increased costs could include, among other things: the increased salary for the newly-created assistant secretary for Hispanic education at the PED, professional development opportunities, data collection, translation services related to the statewide annual report, and potential mileage and per diem from Hispanic education advisory council members.

According to analysis from HED, the cost of the position, including benefits at 30 percent, would total \$143 thousand. HED also indicated additional costs related to information technology, printing, and other overhead, such as travel.

According to analysis from the University of New Mexico (UNM), many parts of HB131/aHAFC require funding. UNM's analysis indicated the bill's recommendations for data collection, youth and family engagement, and community engagement include no funding for implementation or staff, and the assistant secretary would be solely responsible for implementation without a budget for either materials or workers, making it important to find recurring funds to support the requirements of the bill.

HB131/aHAFC amends Section 22-23B-5 NMSA 1978 to allow members of the Hispanic Education Advisory Council to receive per diem and mileage, which the current statute does not permit. The bill does not state how the costs for mileage and per diem would be covered.

SUBSTANTIVE ISSUES

Martinez-Yazzie Lawsuit. In the consolidated *Martinez-Yazzie* education sufficiency lawsuit, the 1st Judicial District Court ruled the state failed to provide quality programs targeted to meet the specific needs of at-risk students, especially low-income, minority students, English learners, and students with disabilities. The court found at-risk students were not attaining proficiency at the rate of non-at-risk students and PED programs were not changing these student groups' historically poor outcomes, whether measured by test scores, graduation rates, or the need for college-level remedial courses. The judge ruled the state failed to provide at-risk students, especially minority students from low-income backgrounds, with the programs and services needed to prepare them to be ready for college and career, including culturally and linguistically relevant education. Further, the court noted the state would need to improve compliance with the

Indian Education Act, the Hispanic Education Act, and the Bilingual Multicultural Education Act to provide students with services needed to improve student outcomes.

Assistant Secretaries of Hispanic Education. HB131/aHAFC creates an assistant secretary of Hispanic education position at HED and eliminates PED’s current Hispanic education liaison to create an assistant secretary of Hispanic education, focused on improving educational opportunities and outcomes for Hispanic students. The fundamental duties of the two positions overlap considerably but are not duplicative, as the former works primarily in the higher education realm, while the latter is focused mostly on elementary and secondary school education. Both serve primarily in advisory roles to the secretaries of their respective departments on the development and implementation of policies for the Hispanic education, including undocumented students.

Additional principal duties common to both assistant secretary positions include:

- Support families and communities on the development and implementation of multicultural education, historically accurate materials, place-based and culturally sustainable curricula and pedagogy and cultural activities in the schools;
- Collaborate with the Hispanic Education Advisory Council and communicate its findings and recommendations;
- Provide resources for family and community engagement to enhance educational opportunities for Hispanic students;
- Advise the assistant secretaries’ respective departments and collaborate with the Hispanic Education Advisory Committee;
- Collaborate, support and provide professional development on multicultural education and equity audits;
- Collaborate in preparing annual Hispanic education reports for pre-kindergarten through post-secondary education;
- Serve as a resource to enable school districts, charter schools, and public post-secondary educational institutions to provide multicultural education with historically accurate materials, equitable and culturally relevant learning environments, culturally sustaining pedagogy, educational opportunities and culturally and linguistically relevant instructional materials for their Hispanic students and their families and communities;
- Organize and oversee systemic and sustainable opportunities for families, other community stakeholders, public schools, post-secondary educational institutions, and policymakers to work together to improve educational outcomes for Hispanic students; and
- Assist with a community-based statewide consortium for intersectional racial equity to collect data on the impact of the curriculum as it intersects the demographics of the classroom and the educational institution.

Additional duties particular to HED’s assistant secretary of Hispanic education include:

- Create a common application for public post-secondary educational institutions in the state that collects parental educational attainment and other data to inform intersectional racial equity practice and policy;
- Provide for the implementation of teacher, administrator and Hispanic leadership preparation programs in post-secondary educational institutions.

Additional duties particular to PED’s assistant secretary of Hispanic education include:

- Provide effective communication tools in the primary language of the family;

- Support school districts, charter schools and public post-secondary educational institutions to recruit families to serve on committees representative of the ethnic diversity of the community;
- Support alignment and collaboration between communities, school districts, and PED on curriculum and pedagogy;
- Monitor the statewide textbook adoption process to ensure the adoption of historically accurate, locally written and culturally relevant materials and resources; and
- Design an assessment plan that includes qualitative and quantitative measures on teaching and learning.

Currently, HED has no division or individual position dedicated strictly to Hispanic students. PED has a Language and Culture Bureau responsible for implementing the provisions of the Bilingual Multicultural Education Act, but has no separate division focusing on Hispanic education. The bureau consists of a director, deputy director, three specialists, and one clerical support provider, with three current specialist vacancies whose duties include supporting English learners and bilingual students and implementing the Hispanic Education Act. HB131/aHAFC would expand PED's organizational structure with the assistant secretary of Hispanic education.

According to analysis from office of the Attorney General (OAG), many of the roles outlined by the bill of the Assistant Secretary of Hispanic education in both HED and PED lack clarity as to the authority of the position. For instance, the Assistant Secretary of Hispanic education at PED is required to “monitor the statewide textbook adoption process to ensure the adoption of historically accurate, locally written and culturally relevant materials and resources.” However, the bill does not explicitly grant the assistant secretary any specific authority to take action on either textbooks generally or the adoption process more specifically. Similarly, the Assistant Secretary of Hispanic Education would be responsible for “establish[ing] a process by which degreed or credentialed teachers from Spanish-speaking countries can become licensed teachers in New Mexico.” This provision does not state how the assistant secretary might take action to establish this process, for instance through an administrative rulemaking process.

Amending the Hispanic Education Act. HB131/aHAFC would amend Section 22-23B-1 NMSA 1978, the Hispanic Education Act, adding the following purposes to the act:

- Provide for the assessment and accountability of equitable and effective educational systems to expand opportunities for students;
- Provide sustainable frameworks and systemic opportunities to identify resources and communication tools for student, family, and community engagement and empowerment;
- Ensure inclusion and transparency for informing and involving family and community members in decision making;
- Foster family and community engagement through collaborative decision-making and an on-site family and community engagement coordinator at each school;
- Co-create systems and opportunities with families to close the opportunity gap;
- Provide culturally sustaining pedagogy and culturally relevant instruction through multicultural education models proven effective with Hispanic students; and
- Provide for the study and development of new educational initiatives when current methods prove unsuccessful for student success.

These measures represent a significant expansion in the purposes of the Hispanic Education Act, focused primarily on expanding opportunities for students, fostering family and community

engagement, and providing for culturally relevant education practices. These purposes align with current research into effective ways to improve education for minority students.

The Opportunity Gap. Researchers have noted the existence of numerous roadblocks standing between disadvantaged students and school success, noting many motivated students struggle to excel academically due to a lack of knowledge of functioning socially and academically in an educational setting. Students who have this knowledge, or have easy access to this knowledge through parents, guardians, or other significant relationship, will have a much greater chance to succeed in secondary schools and navigate the college process.

This approach recognizes the reality of the achievement gap and its impact on minority communities, while also acknowledging its deeper causality represented by a fundamental “opportunity gap,” or an inequitable distribution of educational resources and opportunities, based on a host of factors, including race, linguistic background, and/or socioeconomic status, resulting in lower levels of aspirations, academic achievement, and attainment for students. HB131/aHAFC includes many initiatives dedicated to providing the means to ameliorate the effects of these disparities through programs that expand opportunities for students and their families, in turn equipping them with the requisite skills and knowledge for school, college, and career success.

Family and Community Engagement. Researchers and practitioners consider family and community engagement in a student’s education extremely impactful. Such involvement represents a potential source of academic, financial, and social support. Families’ and communities’ collective knowledge and connections can aid children in their secondary and postsecondary endeavors, and research indicates higher levels of such engagement leads to greater student achievement, even when parents are not themselves highly educated or affluent. HB131/aHAFC includes many initiatives designed to foster greater family and community engagement as a means to improving educational outcomes for Hispanic students.

Culturally Relevant Education. HB131/aHAFC includes numerous opportunities for schools and post-secondary educational institutions to develop and implement educational programs and curricula that are culturally relevant. The court’s ruling in the consolidated *Martinez-Yazzie* lawsuit displayed particular concern about the lack of a framework for schools to provide culturally and linguistically relevant education. Culturally relevant education is grounded in a belief that making content relevant to students’ lives, allowing for greater student ownership of learning, and providing multiple opportunities for meaningful student interaction will improve academic, social, and emotional outcomes. The move toward culturally relevant education or culturally responsive teaching has been seen as a way to better serve minority students by acknowledging and addressing inequities built into various aspects of education, such as curriculum design, classroom discipline, and student-teacher relationships. Researchers cite these inequities as contributing factors in the long-standing achievement gap between racial or ethnic minority students and their white peers. A January 2021 Legislative Finance Committee report found emergent quantitative evidence for the efficacy of culturally relevant education to increase student engagement and outcomes, but noted quantitative research on culturally relevant education remained limited.

Hispanic Education Advisory Council. The purpose of the Hispanic Education Advisory Council, established by statute in 2010 and appointed by the secretary of education, is to advise PED, school districts, and charter schools on matters related to improving public school education for Hispanic students. HB131/aHAFC adds to the advisory council advocates, scholars, researchers and a minimum of two students with demonstrated commitment to equity and inclusion, while directing the secretary of education to give due regard to gender, disability, first-

generation college students, and socioeconomic representation. The bill also expands the scope of the council's reporting, requiring the council to now report to the governor and secretary of higher education, as well as the secretary of public education.

According to PED, the bill's requirement that the assistant secretary for Hispanic education report to the governor directly is not consistent with the department's other assistant secretaries currently in statute, who only advise or report to their respective secretaries. The sponsor may wish to change this language to be consistent with the requirements of all assistant secretaries.

The bill allows for meetings of the Hispanic Education Advisory Council to occur remotely, as long as all members have the opportunity to read or hear and participate fully in the proceedings as they occur in real time. HB131/aHAFC requires PED to provide an interpreter, simultaneous translations, or other accommodations for members who are hearing impaired, deaf, blind, or do not understand English. However, as PED's analysis indicated, the mandate to provide such accommodations is already covered by the federal Americans with Disabilities Act and state laws and regulations.

Hispanic Education Status Report. The bill requires the Hispanic Education Advisory Council, PED, and HED to hold biannual statewide meetings to release and discuss the annual Hispanic education status report. The bill significantly expands the scope of this annual report, requiring the inclusion of additional data on student discipline, discrimination, community engagement, educational outcomes of Hispanic students compared with other student ethnic groups, degree completion time for Hispanic students at all levels of post-secondary education, and the number of Hispanic teachers, administrators, and staff members in school districts and charter schools and tenure-track faculty and leadership positions at public post-secondary institutions.

It is unclear what impact, if any, PED's expanding array of advisory councils with their mandated annual reports has had on improving student outcomes. Currently, PED has advisory councils for Indian education, Hispanic education, bilingual multicultural education, and special education, most of which have been in existence for decades serving the very student sub-groups cited by the judge in her ruling in the consolidated *Martinez-Yazzie* lawsuit as having historically poor student outcomes. The Hispanic Education Advisory Council has reported little progress in closing the achievement gap in its annual reports over its past decade of existence.

ADMINISTRATIVE IMPLICATIONS

The bill would require increased collaboration and coordination between assistant secretaries and divisions of bilingual multicultural education, Hispanic education, and Indian education, as well as between the Assistant Secretaries of Hispanic Education at both PED and HED.

TECHNICAL ISSUES

As analysis from the Office of the Attorney General (NMAG) indicated, the bill's amendment to Section 22-23B-5(F) NMSA 1978, making members of the Hispanic Education Advisory Council eligible for per diem would also subject them to the provisions of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, which defines "public officer or employee" in part as "any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage."

According to NMAG, the bill, as drafted, might create some ambiguity as to whether the Hispanic Education Advisory Council is subject to the Open Meetings Act (OMA), Sections 10-15-1

through 10-15-4 NMSA 1978. Currently, the council is likely subject to OMA as a public body created by statute, according to the Attorney General’s Open Meetings Act Compliance Guide, which states, “A committee created by statute is a public body subject to the Open Meetings Act because the legislature considered the committee’s functions important enough to provide it with a separate existence as a public body, and because the committee is not simply created by a public body as a means to carry out that body’s business.” However, HB 131/aHAFC would deviate from OMA by permitting the council to meet telephonically or virtually outside of a state of emergency. In addition, the provision of the bill addressing meetings of the council is entirely silent as to the public’s right to attend and listen. On balance, the council would likely still be subject to OMA, but to provide clarity an amended subsection G could state that the council must comply with the requirements of OMA. The NMAG indicated, an amended to subsection G should expressly state that the council is subject to the requirements of OMA, IPRA, GCA and other laws, as may be applicable.

SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee (LFC)
- University of New Mexico (UNM)
- Higher Education Department (HED)
- Public Education Department (PED)
- Office of the Attorney General (NMAG)

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