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## FISCAL IMPACT REPORT

SPONSOR SEC ORIGINAL DATE 03/07/21  
LAST UPDATED 03/09/21 HB \_\_\_\_\_  
SHORT TITLE Special Ed Division of Ed Department SB 289/SECS/aSEC/aSFC  
ANALYST Becerra

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0 - \$128.3	\$0 - \$128.3	\$0 - \$256.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to:

- HB130, School Gifted Education Requirements
- HB222, Special Education Ombud Act

Relates to appropriations in the General Appropriation Act of 2021

### **SOURCES OF INFORMATION**

LFC Files  
LESC Files

#### Responses Received From

Office of the Attorney General (NMAG)  
Early Childhood Education and Care Department (ECECD)  
Public Education Department (PED)

#### No Response Received

Regional Education Cooperatives

### **SUMMARY**

#### Synopsis of SFC Amendment

The Senate Finance Committee amendment to the Senate Education Committee substitute for Senate Bill 289 (SB289/SECS/aSEC/aSFC) removes the \$1 million appropriation included in the original bill.

Synopsis of SEC Amendment

The Senate Education Committee amendment to the Senate Education Committee substitute for Senate Bill 289 (SB289/SECS/aSEC) adds language in Section 5 of the bill, describing the duties of the Special Education Division and assistant secretary for special education, that changes “students with disabilities” to “exceptional students,” ensuring inclusion of gifted students within these duties.

Synopsis of Original Bill

The Senate Education Committee substitute for Senate Bill 289 (SB289/SECS) appropriates \$1 million from the general fund to the Public Education Department to provide professional development for teachers and other school staff on working effectively with and meeting the needs of special education students. The bill creates the Special Education Division within PED and the position of assistant secretary for special education. SB289/SECS enacts the Special Education Act within the Public School Code outlining the powers and duties of the new Special Education Division and assistant secretary position that includes the creation of a statewide autism spectrum registry.

The effective date of this bill is July 1, 2021.

**FISCAL IMPLICATIONS**

SB289/SECS/aSEC includes a \$1 million appropriation from the general fund to PED to provide professional development for teachers, instructional support providers, school administrators, substitute teachers, school resource officers, school police, or security on working effectively with and meeting the needs of special education students. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3 includes \$2.5 million for professional development for principals and over \$2.8 million for teacher professional development in FY22, that PED could use to provide this professional development. Additionally, the appropriation bills include \$5.1 million for FY22 for indigenous, multicultural, multilingual, and special education initiatives, a portion of which the department could use for the professional development required by the bill.

SB289/SECS/aSEC requires the new Special Education Division to have an assistant secretary for special education. The only PED division headed by an assistant secretary in current statute is the Indian Education Division, who has a designated job code of a division director. The mid-point salary of a PED division director is \$98.7 thousand. Calculating benefits at 30 percent, the total cost to fund a division director position would be \$128.3 thousand. Currently, the Special Education Bureau is led by a division director. It is unclear if a change in title would lead to a change in salary.

It is also unclear if the current Special Education Bureau would become the Special Education Division and, if so, if there would be changes in necessary staffing levels. The need for additional staff could potentially lead to an agency request for increased funding in subsequent years. Charter schools will likely incur a fiscal impact to provide services to gifted students and students with disabilities, including 3-year-old and 4-year-old preschool children with disabilities, as

outlined in the provisions of the bill. The provisions will require charter schools that do not already have special education programs to hire licensed special education teachers and develop the adequate programs and services.

## **SIGNIFICANT ISSUES**

### **Duplicative Efforts**

***Special Education Bureau.*** PED currently houses the Special Education Bureau that provides support to districts, parents and students with disabilities to ensure outcomes of a free appropriate public education for students protected under the Individuals with Disabilities Education Act (IDEA). The bureau reviews data to make decisions that impact support for students with disabilities to meet college and career ready standards. Additionally, the bureau engages in culturally responsive practices, promotes student relationships, family and community engagement and a collective responsibility for students with disabilities and their families.

The bureau also collaborates with the Region 9 REC Special Education Division and supports the use of resources like the Early Childhood Technical Assistance Center and WestEd National Center for Systemic Improvement. The PED Special Education Bureau (also referred to as the Special Education Division) developed a District Profile Report (DPR) system that makes relevant data available to the public and to districts based on special education data submitted by the districts. It is unclear how the Autism Spectrum Registry differs from the current District Profile Report and if districts will be required to submit duplicated data for both of the reporting systems or if each reporting system will provide distinct data.

The bureau is headed by a State Director of Special Education and a State Deputy Director of Special Education. The director and deputy director are supported by 19 other staff positions within the bureau; three positions are currently vacant, but if fully staffed, the bureau would be comprised of a total of 25 staff members.

The bureau website includes information on services such as:

- Information and training on Autism Spectrum Disorder;
- Education administrator LEA assignments;
- IDEA advisory panel;
- Pre-Kindergarten services and resources;
- Dispute resolutions;
- Fiscal information
- Laws, rules and governance;
- Public notices and state performance
- Technical manuals;
- District data;
- Forms; and,
- Parent information and resources.

SB289/SECS/aSEC leaves unclear how the proposed Division of Special Education would differ from the current Special Education Bureau that is already referred to as the Special Education Division. It is also unclear if and how the proposed Assistant Secretary position would differ from the current State Director of Special Education. The current position and bureau already seem to have the same responsibilities and duties as those proposed in SB289/SECS/aSEC.

## **PERFORMANCE IMPLICATIONS**

SB289/SECS/aSEC specifies that the division shall establish and maintain a program of evaluation of the implementation and impact of all programs for special education students in the public schools requiring that periodic reports regarding the efficacy of programs for special education students be made to the legislative education study committee. The bill does not specify nor define “periodically” or clarify how often reports should be submitted. It also does not specify what information should be included in the report.

## **ADMINISTRATIVE IMPLICATIONS**

SB289/SECS/aSEC requires PED be responsible for promulgating rules for school districts and charter schools to follow in implementing the provisions of the bill.

Analysis from the Early Childhood Education and Care Department (ECECD) indicated its secretary, deputy, and assistant secretaries are active participants in PED’s Transformation of the Special Education System Workgroup, which is weighing in on all the special education reform efforts. It also noted SB289’s mandate for charter schools to provide services to gifted students and students with disabilities, including 3-year-old and 4-year-old preschool children with disabilities, the local collaboration with charter schools and ECECD needs to be part of the expectations to ensure children who are dually enrolled have the opportunity to receive their supports and services in a coordinated manner.

The ECECD analysis also noted that ECECD administers the IDEA Part C (Early Intervention Program) for children with developmental delays, disabilities, or established conditions under the age of three, has the responsibility for pre-kindergarten education. With statewide special education services housed at PED, alignment and coordination between the two departments are important to ensure children transitioning from Part C to Part B services have supports such as participation in the autism registry.

Additionally, the ECECD’s analysis noted that collaboration between public schools and the child care provider or pre-kindergarten program is crucial and having a special education team focused on early childhood special education can improve the communication with ECECD and the programs administered by PED to ensure that parents, children, and educators receive the necessary supports and services in school.

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

Relates to HB130, School Gifted Education Requirements, which would require PED to adopt standards related to the child find mandate, universal screening, and equity in gifted education.

Relates to HB222, Special Education Ombud Act, which would establish the office of the state special education ombudsman.

## **TECHNICAL ISSUES**

SB289/SECS/aSEC leaves unclear how the proposed Division of Special Education would differ from the current Special Education Bureau that is already referred to as the Special Education Division. It is also unclear if and how the proposed Assistant Secretary position would differ from

the current State Director of Special Education. The current position and bureau already seem to have the same responsibilities and duties as those proposed in SB289/SECS/aSEC.

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