

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 607

52nd Legislature, 1st Session, 2015

Tracking Number: .199868.1

Short Title: Create Early Learning Dept.

Sponsor(s): Senator Howie C. Morales

Analyst: Kevin Force

Date: March 12, 2015

Bill Summary:

SB 607 proposes to create a cabinet-level Early Learning Department (ELD) according to the provisions of the *Executive Reorganization Act*,¹ by transferring powers, duties, and assets from several other executive agencies and bureaus, and combining them under the authority of the new department.

A section-by-section synopsis of the bill follows.

Section 1 provides the short title of the act, the *Early Learning Department Act*.

Section 2 describes legislative findings and the purpose of the act:

- the Legislature finds that intense focus on young children and early learning leads to significant rewards in student achievement and taxpayer cost, including less academic remediation and truancy and higher attendance and graduation rates;
- the purpose of the act is to provide intense focus on the education of children from birth to five years old; and
- the ELD will be responsible for:
 - early childhood services currently administered by the Children, Youth and Families Department (CYFD) including child-care, home visitation, and pre-kindergarten; and
 - pre-kindergarten and the Even Start Family Literacy Program currently administered by the Public Education Department (PED).

Section 3 lays out the definitions for the act, including:

- “children,” which means children from birth to five years old;
- “department,” which means the ELD; and
- “secretary,” which means the Secretary of Early Learning.

Section 4 creates the department, pursuant to the *Executive Reorganization Act*, including provision for:

¹ Sections 9-1-1 through 9-1-10 NMSA 1978

- divisions for administrative services, the office of the secretary, child-care, and pre-kindergarten education; and
- the power of the secretary to reorganize the department, with the stipulation that the secretary shall inform the Legislature of the reorganization.

Section 5 addresses the appointment of the secretary, noting that:

- the secretary is to be appointed by the Governor, with the consent of the Senate, to serve in the executive cabinet at the pleasure of the Governor; and
- an appointed secretary shall have all the duties and authority of his or her office while awaiting final action by the Senate to confirm or reject the appointment.

Section 6 describes the general duties of the secretary, including:

- the management of the ELD's operations and the administration of laws with which the secretary is charged;
- every expressly enumerated power in law, whether granted to the secretary, the department, or any of its divisions, unless expressly exempted by statute, including:
 - general supervisory and appointment power over department staff, including the power to delegate duties to subordinates;
 - the power to reorganize the department;
 - the employment of staff and the establishment of their salaries;
 - the power to conduct research to improve the operation of the department;
 - provision of training for employees and others involved in the administration of the department;
 - preparation of an annual budget;
 - the ability to apply for and receive public or private funds in the department's name;
 - the adoption of procedural rules for the administration of the department;
 - the power to conduct administrative rulemaking, according to the provisions of the *State Rules Act*;² and
 - the power to engage in interim rulemaking, in the event that the secretary certifies to the Department of Finance and Administration that the ELD lacks the funds to operate any of the programs it administers, necessitating staff reductions, with the stipulation that these rules shall not be effective for more than 90 days.

Section 7 provides for additional departmental duties, including:

- development of priorities for department services and resources, based on state policy and national best practices, as well as local considerations;
- strengthening collaboration among state and local services for child-care, and home visitation;
- development of a statewide database to include client tracking of services for children;
- analysis of the policies of other departments that affect children to encourage common procedures, definitions, and a uniform system of access;
- development of reimbursement criteria for child-care centers and home providers;
- the duty to conduct a biennial assessment of child-care and early learning service gaps; and

² Chapter 14, Article 4 NMSA 1978

- fingerprinting and conducting nationwide criminal background checks on all department employees and volunteers who have direct contact with department clients.

Section 8 addresses procedures for criminal history investigations, including:

- the submission of fingerprints to the Department of Public Safety and the Federal Bureau of Investigation;
- assignment of the responsibility for the costs of criminal background checks to child-care facilities and pre-kindergarten programs;
- stipulation that background checks are confidential, and to be conducted only to determine the suitability of a prospective employee or volunteer, except that any criminal history may be supplied to another agency only upon court order, or with the written consent of the person subject to the investigation; and
- notice that anyone who releases confidential information related to background checks in violation of the provisions of the act shall be guilty of a misdemeanor.

Section 9 prohibits the employment of persons with substantiated allegations of child abuse or those who have been convicted of felonies, and it specifies that:

- no employee or volunteer of the department having direct contact with clients may have been the subject of substantiated allegations of child abuse or neglect, or have been convicted of a felony that is directly related to his or her job duties;
- no employee or volunteer at a child-care or pre-kindergarten facility may have been the subject of substantiated allegations of abuse or neglect;
- any employee subject to the *Personnel Act*³ who has been the subject of a substantiated allegation of abuse or neglect may be subject to increased supervision or disciplinary action; and
- employees subject to dismissal according to this section shall have no right to progressive discipline.

Section 10 addresses the several organizational units of ELD, as well as their powers and duties, including:

- subjection of the organizational units' execution of their powers and duties to the direction and supervision of the secretary; and
- the department's right of access to all records and information of other state departments that are not specifically held confidential under the law.

Section 11 grants the secretary the power to appoint division directors, who shall not be subject to the *Personnel Act*, with the approval of the Governor.

Section 12 grants the secretary the authority to create bureaus within each division, as well as to appoint bureau chiefs, who shall be subject to the *Personnel Act*.

Section 13 amends that section of the *Public School Code* that creates the "Even Start Family Literacy Program"⁴ by creating it within the ELD, rather than PED, and by transferring powers and duties under the program from PED to ELD.

³ Chapter 10, Article 9 NMSA 1978

⁴ Section 22-13-3.1 NMSA 1978

Sections 14 and 15 amend the *Children's Cabinet Act* by specifying those sections of law containing the act,⁵ and by adding the Secretary of Early Learning to the cabinet.

Sections 16 through 21 amend the *Pre-Kindergarten Act*.⁶ Specifically:

- Sections 16 and 17 specify those sections of law that contain the act, and:
 - strike the definition for “departments” that meant CYFD and PED; and
 - add a definition for “department,” which means ELD;
- Sections 18 and 19 transfer powers and duties that address contracts and requests for applications from CYFD and PED to ELD;
- Section 20:
 - transfers administration of the Pre-Kindergarten Fund from PED to ELD; and
 - strikes the Children, Youth and Families Fund; and
- Section 21 transfers any appropriations for pre-kindergarten programs from PED and CYFD and divides them equally between public schools and private providers.

Sections 22 through 24 amend the *Early Childhood Care and Education Act*. Specifically:⁷

- Section 22 specifies those sections of law containing the act;
- Section 23 defines:
 - “department” as ELD rather than CYFD;
 - “pre-kindergarten” as a voluntary program for children who have attained their third birthday — rather than their fourth — by September 1; and
 - “secretary” as the Secretary of Early Learning, rather than the Secretary of CYFD; and
- Section 24 adds the Secretary of Early Learning to the membership of the Early Learning Advisory Council (ELAC).

Sections 25 and 26 amend the *Home Visiting Accountability Act* by:

- specifying those sections of law containing the act;⁸ and
- defining “department” as ELD, rather than CYFD.

Section 27 creates a temporary provision to:

- transfer all functions, personnel, appropriations, money, records, furniture, equipment, supplies, and other property pertaining to early childhood care and education from CYFD to ELD, including all such that currently belong to:

⁵ Chapter 32A, Article 22 NMSA 1978

⁶ Chapter 32A, Article 23 NMSA 1978

⁷ Chapter 32A, Article 23A NMSA 1978

⁸ Chapter 32A, Article 23B NMSA 1978

- the Child Care Services Bureau, excepting the licensing of facilities;
 - the Head Start Collaboration Office;
 - training and technical assistance programs;
 - child-care resource and referral;
 - the Early Childhood Higher Education Task Force;
 - home visitation programs;
 - pre-kindergarten; and
 - the Office of Child Development, as it pertains to children from birth to five years;
- transfer all contractual obligations of CYFD, pertaining to any of the functions listed above, and all contractual obligations of PED pertaining to the *Pre-Kindergarten Act*, to ELD; and
 - as of July 1, 2015, deem all references in law to CYFD that pertain to any of the functions listed above, as well as any legal references to PED pertaining to pre-kindergarten or the Even Start Family Literacy program, to be references to ELD.

Section 28 repeals:

- Section 32A-23-7, pertaining to CYFD and PED reimbursement of eligible providers; and
- Section 32A-23A-7, pertaining to the sunset of ELAC.

Fiscal Impact:

SB 607 does not contain an appropriation.

Fiscal Issues:

While there is no appropriation in SB 607, CYFD indicates that there may be significant impact to the state's current Early Childhood Services program operating budget due to the establishment of ELD, as well as any necessary separation, combination, and establishment of data systems under the program.

Though the provisions of SB 607 reorganize existing government programs related to early childhood care and education from CYFD and PED to the new ELD, there is not information available to provide a detailed cost estimate associated with establishing the new ELD. The creation of a new government department would likely have recurring costs associated with:

- human resources and staffing;
- new capital outlay or lease/rental payments for a location;
- travel, insurance, and other indirect costs; and
- other materials and supplies.

Further, while SB 607 proposes to transfer all functions, personnel, appropriations, money, records, furniture, equipment, supplies, and other property belonging to CYFD pertaining to early childhood care and education from CYFD to the ELD, there is no corresponding transfer of related functions, personnel and property belonging to the PED's Pre-K or Even Start Family Literacy Programs.

According to the PED and CYFD bill analyses:

- there would be costs associated with separating, merging, or establishing data systems; and
- CYFD is developing an integrated web-based data system that, as well as PED's data system, would need to be reconfigured and would require agreements between multiple departments.

The Legislative Finance Committee (LFC) Fiscal Impact Report (FIR) identifies the following FY 15 appropriations related to the provisions of SB 607:

- \$10.6 million for CYFD Home Visiting;
- \$97.7 million for CYFD Child Care Assistance; and
- \$39.6 million for CYFD and PED Pre-Kindergarten programs.

The sponsor may wish to consider amending the bill to:

- allow for the appropriation of planning, research and development, and evaluation costs related to the creation of the ELD and;
- delay implementation of the legislation to ensure that the state's resources are deployed in the most efficient and effective manner.

Technical Issues:

LESC staff note several technical issues in SB 607, such as:

- the definition for "pre-kindergarten" contained in the bill means a voluntary program for children who have attained at least three years of age, while the definition in the *Pre-Kindergarten Act* includes children of up to four years of age;
- Section 19 of the bill amends Section 32A-23-6 NMSA 1978 ("Requests for proposals – Contracts for services") and strikes all references to "proposals," leaving references to "applications," while the title of the section refers solely to requests for proposals; the sponsor may wish to consider amending the bill to change the title of Section 32A-23-6 to reflect the language of the proposed amendment;
- Section 21 of the bill would take any appropriations for pre-kindergarten programs from PED and CYFD and divide them equally between public schools and private providers directly:
 - without channeling these funds through any administrative agency for disbursement; and
 - possibly implicating constitutional issues, such as the prohibitions of the Antidonation Clause of the constitution of New Mexico;⁹ and
- Section 27 of SB 607 proposes to transfer all functions, duties, and funds from several offices, including the "Headstart Collaboration Office," to ELD, yet the statutory section that makes mention of that office¹⁰ refers to the "Head Start State Collaboration Office." The sponsor may wish to consider amending the bill to reflect this language.

⁹ Article IX, Section 14, constitution of New Mexico

¹⁰ § 32A-23A-4, State early learning advisory council created; membership (Repealed effective July 1, 2018.)

As noted in the Fiscal Impact Report (FIR):

- certain provisions of SB 607 refer to the Even Start Family Literacy Program within PED, yet that program has not been funded since 2011; and
- SB 607 transfers all CYFD functions, personnel, funds, etc., to ELD, but does not transfer the corresponding functions, personnel, and funds from PED to ELD, potentially affecting the continued alignment of support for public school pre-kindergarten programs.

The analysis from PED indicates that “many of the activities provided for in the new Early Learning Department [Act] are in direct conflict with many federal programs and could cause the state to be out of compliance with federal regulations putting significant federal revenues at risk, particularly special education and Title I funding.” Additionally, PED notes that:

- the creation of the new agency implicates personnel, infrastructure, and organizational costs that cannot be covered by the transfers of funds from CYFD that are provided for in the bill; and
- other significant costs may arise from reorganization of data systems for the various agencies implicated by the act.

The analysis from the Department of Health (DOH) indicates that ELD will serve children from “zero to five,” while home visitation under the auspices of CYFD serves children prenatally.

Substantive Issues:

According to the FIR:

- reports from LFC in prior years have indicated several issues that may have arisen as a result of administering the early childhood systems across several agencies, including the possibility of duplicative efforts;
- not all programs related to early childhood are to be transferred to the proposed ELD;
- acknowledging the importance of continued focus on early childhood issues from the various agencies, it may be more beneficial to convene some sort of interim work group or task force to conduct a comprehensive review of early childhood programs in New Mexico, to determine which would be best suited for transfer to ELD;
- New Mexico’s current Race to the Top – Early Learning Challenge (RTT-ELC) grant is effective through December 2016, and is reflective of the current administrative structure, and coordinated effort across PED, CYFD, and DOH; changes to these arrangements would necessitate an amendment to the grant; and
- one of the projects currently being developed by these three agencies under RTT-ELC is an Early Childhood Integrated Data System, which would require systemic reconfiguration for the proposed ELD.

The analysis from CYFD makes note of other concerns related to RTT-ELC. Stressing that New Mexico’s early childhood community has integrated a continuum of services to guarantee all of the state’s children access to quality early learning opportunities, CYFD notes that this integrated “system of systems” is the foundation of the state’s RTT-ELC initiative. Therefore, it is vital that any significant legislation, such as SB 607, that has an impact upon New Mexico’s early learning infrastructure be consistent with commitments already made by the state’s agencies, including a number of programs that the bill would *not* transfer to ELD, such as:

- the Family Infant Toddler/Early Intervention Program, also known as *Individuals with Disabilities Education Act*, Part C (IDEA Part C), administered by DOH;
- the Early Childhood Special Education Program (IDEA Part B), administered by PED;
- child-care licensing, overseen by CYFD;
- the US Department of Agriculture (USDA) Child Care Food Program, administered by PED and CYFD; and
- other early learning programs, such as those funded by Title I, at PED, that are not included, as well as other such programs that may arise in the future.

In its analysis, CYFD notes further areas of concern, such as:

- the limitation of the jurisdiction of the proposed ELD to children from birth to five years of age, because:
 - a growing body of research indicates that prenatal care, helping to ensure healthy birth weight and, perhaps, avoid premature delivery, is critical to early learning; and
 - child-care assistance in New Mexico is available to children up to age 12; and
- SB 607 proposes to transfer all CYFD appropriations to ELD, including the transfer of federal grants, necessitating extra time for CYFD to:
 - close out existing grants to ensure audit compliance; and
 - finalize contractual agreements and ensure that contractors are paid for any remaining services from FY 15.

The Department of Finance and Administration (DFA), in its analysis of identical HB 547, indicates a number of administrative issues that would require action before the effective date of July 1, 2015, including:

- the creation of a new SHARE¹¹ business unit, a new fiscal agent bank account and associated SHARE ledger, and new funds associated with ELD's business unit;
- an inventory of all functions, personnel, appropriations, money, records, furniture, equipment, and other property currently belonging to CYFD that pertains to early childhood care and education; and
- the need to identify staff positions that are to be transferred to ELD, and to notify the persons filling them would need to be notified, a very work-intensive process necessitating coordination with the State Personnel Office and the Department of Information Technology.

Moreover, DFA also notes a number of administrative tasks that would have to occur *on* July 1, 2015, such as:

- transfer of ownership of appropriations, equipment, money, records, etc. from CYFD to ELD; and
- the shifting of responsibilities for contractual obligations of CYFD and PED programs and activities to the newly created ELD.

¹¹ SHARE (Statewide Human Resources Accounting and Reporting) is New Mexico's enterprise resource planning software system that contains financial, accounting, and human capital management information.

Additionally, DFA identifies those actions that would have to occur after the completion of CYFD's FY 15 audit, such as:

- analysis of audited financial statements of CYFD and PED to determine which balance sheet account balances of the appropriate funds that are to be transferred to the new department; and
- completion of manual journal entries and operating transfers in SHARE to transfer the balances to the new department.

Finally, in its analysis, PED notes concerns that:

- the newly proposed department's administration of pre-kindergarten programs may intrude on the Secretary of Public Education's constitutional responsibilities over all public education;¹² and
- the provisions of the bill may cause disruptions in the school districts by requiring them to respond to two different agencies.

Background:

BUILD Initiative Report

According to a report¹³ from the BUILD Initiative:¹⁴

- the structure of government efforts to administer early childhood programs generally falls into three categories:
 - coordination, where several agencies exercise administrative authority over particular elements of early childhood care and strive to collaborate on the administration of the programs, and where some states have relied upon a "children's cabinet"¹⁵ as an ad hoc central administrative body (the sort of system currently employed in New Mexico);
 - consolidation, wherein multiple, possibly somewhat disparate, programs are administered by one agency, typically the state public education agency; and
 - creation, where a new agency is created and specifically dedicated to administration of early childhood education and care programs (the sort of system proposed by SB 607);

¹² See constitution of New Mexico, Article XII, Section 6.

¹³ See *A Framework for Choosing a State-Level Early Childhood Governance System*, Regenstein & Lipper, February 2013, at: <http://www.buildinitiative.org/WhatsNew/ViewArticle/tabid/96/smId/412/ArticleID/628/Default.aspx>. (The BUILD Initiative has identified an early childhood system as a system of systems that encompasses many programs and initiatives pertinent to early childhood learning and care that may be administered by one or several state-level agencies.)

¹⁴ The BUILD Initiative is an organization that works with early childhood leaders, both nationally and within several states, to better prepare young children to succeed by helping state leaders develop early childhood systems tailored to the unique needs of young children from birth to age five. See, generally: <http://www.buildinitiative.org/Home.aspx>.

¹⁵ See the *Children's Cabinet Act*, §§ 32A-22-1 through 32A-22-4 NMSA 1978.

- only three states, thus far, have created a separate agency dedicated solely to early learning programs:
 - Georgia, which established their early learning department by statute in 1996;
 - Massachusetts, whose agency was established in 2005; and
 - Washington, whose agency was established in 2013, and which is the only one of the states listed as delegating administration of all pertinent programs to their centralized Department of Early Learning; and
- whichever administrative model a state chooses, there are a number of overarching concerns that all states should address, including:
 - the creation of an early childhood advisory council, such as New Mexico’s ELAC, tasked with recommending strategic plans and best practices for comprehensive services, statewide (see “Background,” below);¹⁶
 - the degree to which regional governance structures can facilitate achievement of a state’s early learning goals;
 - the consideration of the role that may be played by public-private partnerships under the governance model of each state, with the understanding that states must exercise vigilance in the administration of these relationships, to avoid any potential conflicts of interest; and
 - recognition that the sort of structural changes implicated by changing governance models, such as those proposed by SB 607, only address part of the issue, and that these changes need to be reflected in changes to rules, procedures, monitoring and reporting, and the like.

The Early Childhood Care and Education Act

Enacted in 2011, the *Early Childhood Care and Education Act* has as its purpose “to establish a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention, child-care, early head start, head start, early childhood special education, family support and pre-kindergarten, and to maintain or establish the infrastructure necessary to support quality in the system’s programs.” During the 2013 interim, the LESC heard an update on the implementation of the act.

Testimony included an LESC staff review of the history and provisions of the act, including:

- a review of seven core principles, arising out of collaborative efforts of the New Mexico Business Roundtable (NMBR) and the New Mexico Early Childhood Development Partnership:
 1. early childhood learning and development;
 2. standards that are aligned with the state’s K-12 academic standards;
 3. teachers and providers who possess the skills, knowledge, and attitude to help young children prepare to be successful in school;
 4. supporting parents as children’s first teachers, and providing high-quality educational options to parents;
 5. embracing accountability for measurable results;

¹⁶ ELAC was created in the *Early Learning Education Act*, §§ 32A-23A-1 through 32A-23A-7.

6. building crosscutting partnerships to govern, finance, sustain, and improve early childhood education; and
 7. evaluation and return on investment, best accomplished through proper allocation of resources to programs that are shown to lead to positive child outcomes;
- the establishment of ELAC and its designation as the state’s official council for the Head Start program, as required by federal law;
 - the membership of the council, comprising three *ex officio* members; three members appointed from, and by, the NMBR Board of Directors; and nine other members, from various other stakeholder groups, appointed for staggered terms by the Governor;
 - the creation of the Early Childhood Care and Education Fund; and
 - requirements that ELAC make recommendations to the Legislature and CYFD on the best manner of leveraging available program funds, as well as general recommendations regarding the coordination and alignment of an early childhood care and education system in New Mexico, with particular attention to several prescribed components.

Committee Referrals:

SEC/SJC/SFC

Related Bills:

SB 86 *Child Care Teacher Retention* (Identical to HB 56)
 SB 224 *Early Learners Events*
 CS/SB 301a *Create Early Childhood Funds*
 CS/SB 379 *Child Care Assistance Accountability Act*
 SB 668 *Child Care Licensure Recognition*
 SJM 10 *Reconvene J. Paul Taylor Childhood Task Force*
 SJR 5a *School Fund for Early Childhood, CA* (Identical to HJR 16)
 HB 56 *Child Care Teacher Retention* (Identical to SB 86)
 HB 271 *CYFD & PED Information Sharing*
 HB 281 *Child Care Licensure Recognition*
 HB 451 *Increase Number & Quality of Pre-K Programs*
 HB 547 *Create Early Learning Dept.* (Identical)
 HB 555 *Early Childhood Educator Scholarship Fund*
 HJR 16 *Land Grant Fund for Early Childhood, CA* (Identical to SJR 5)
 HM 47 *Reconvene J. Paul Taylor Childhood Task Force*
 HM 92 *Federal Child Care Program Task Force*