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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 1/27/15
LAST UPDATED _____ **HB** _____

SHORT TITLE Outdoor Youth Program Act **SB** 140

ANALYST Kludt

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
\$500.0		Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant	Significant	Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 140 declares an emergency and creates within the Children’s Code a new category of youth program, described as “a program that is designed to provide educational, disciplinary, counseling, behavioral or substance abuse services to a minor and that” also fulfills each of the next 19 delineated requirements.

This bill further establishes a six-member Outdoor Youth Program Board responsible for licensing and disciplinary actions of Outdoor Youth Programs operating within New Mexico; administratively attaches this Board to CYFD; and endows within the Board the responsibility of administering and enforcing provisions of the Outdoor Youth Program Act; examining, licensing, and renewing Outdoor Youth Program licenses; promulgating rules for health, safety,

and welfare of minors enrolled in outdoor youth programs; and providing or arranging for inspection of outdoor youth programs.

FISCAL IMPLICATIONS

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund to establish a board and cover administrative expenses associated with the board's duties. Any unexpended or unencumbered balance remaining at the end of FY15 shall revert to the general fund. While this appropriation is scored as non-recurring because it crosses two fiscal years, recurring appropriations will be required in FY17.

CYFD reported any additional fiscal impact of this bill is difficult to calculate as the bill does not use any existing regulatory structures, statutes or personnel resources currently allocated to CYFD's licensing of other behavioral programs for minors operating within New Mexico. As such, the agency indicated that in addition to establishing the board, CYFD be responsible for the administrative work of developing "rules to promote the health, safety and welfare of minors enrolled in outdoor youth programs", and developing the "provisions of the Outdoor Youth Program Act" that would be administered and enforced by a newly created Outdoor Youth Program Board. For these reasons the agency believes there will be a significant impact on the operating budget, but did not quantify the amount.

Additionally, the emergency clause in this bill requires immediate research and development of the licensing rules to be administered by the Outdoor Youth Program Board, as the Outdoor Youth Program is not based upon the existing Public Health Act or other NMAC state regulations, which govern other licensed facilities operating within New Mexico, which may also have significant impacts on the operating budget.

SIGNIFICANT ISSUES

This bill creates a board for one specific type of child care service delivery which historically would be placed in the authority of CYFD. If a board was created for every type of child care service, the agency analysis indicated that the system would not be manageable. However, CYFD stated that the agency currently has the infrastructure, employees, experience, and specialized training for these specific youth populations.

CYFD identified an issue regarding board membership, that only the two public members, out of the six total, may not have any financial interest, direct or indirect, in any outdoor youth programs as stated on page 5 lines 5-8. A quorum for this board is a simple majority and therefore a decision making of 3 of the 4 members of the quorum could consist of all members with direct financial interests in outdoor youth programs.

The agency also reported an issue beginning on page 7 starting on line 19 begins the background check provisions. The background check provisions only allow for revocation, denial or suspension of a clearance based on information contained in the FBI records which may not contain all pertinent information. Page 8 line 8 which is also in the background check section creates a privilege for records and related information. Agency analysis indicated the bill may be unclear if this section applies only to the background check records or any of the licensing records. Additionally, it is not clear to CYFD if the agency or the board will be conducting and making decisions regarding the background checks. Section 8.D makes reference to the board

making approval and denial decisions. If CYFD conducts the background checks pursuant to existing regulations, there will be a conflict with respect to the standards for a licensee verses employees given the language in Section 7.B. Pursuant to this section a licensee may not have a conviction for child neglect, exploitation or abuse. Current CYFD regulations only require a denial for child abuse convictions. This requirement regarding the licensee may also be in conflict with the Criminal Offender Employment Act.

This bill allows the board to take action against a licensee if they find that a licensee has been conviction of a felony (Page 9, line 15). CYFD analysis indicates the inclusion of this provision would preclude the board from taking action pending the outcome of felony charges. If the licensee is charged but not yet convicted of first degree child abuse for example, the board would not be permitted to suspend pending the outcome of those charges according to CYFD.

Additionally, a licensee would need to report charges filed against, or convictions of, a licensee or their employee for any felony or misdemeanors involving moral turpitude. However the agency believes that without a comma after felony (Page 10, line 24), this provision would only require felonies to be reported if they fall into the moral turpitude category. According to the agency, licensees would not be required to report charges or convictions for crimes such as drug trafficking even though those crimes could potentially affect their background clearances.

PERFORMANCE IMPLICATIONS

According to CYFD, this bill could have a negative effect on the efficiency of licensure survey completions.

ADMINISTRATIVE IMPLICATIONS

This bill does not build upon any existing NM state statutes or licensing regulatory structures currently in existence within CYFD for the licensure of other youth programs operating within New Mexico. As such, the agency believes there may be significant staff time and resources necessary to develop the new structure which the agency does not believe can be absorbed by existing resources.

Additionally, this bill specifies the board will collect application, renewal, late and inspection fees and therefore CYFD will need an agency code, program code and fund number to track fees collected and perform an annual audit. The agency identified a need for additional staff to assume work to process board reimbursements, deposit fees collected in the appropriate funds and provide background checks.

TECHNICAL ISSUES

The agency also believes there may be a technical issue in the definitions of this bill. The bill defines “outdoor youth programs” to mean those that are designed to provide educational, disciplinary, counseling, behavioral or substance abuse services to a minor and then follows with 19 other conditions. Without a comma placed after the word “behavioral” (page 2, line 2), this provision requires the program to provide *all* of these services. However, agency analysis indicated that program that provides educational and disciplinary services, but does not provide counseling, may be therefore be exempt from licensure. It is unclear if this is a technical issue or the intent of the language.

With the inclusion of the word “and” at the end of line 17 on page 3, the additional requirements for the “outdoor youth program” definition would *all* need to be met in order for a program to meet the definition. Some of these requirements conflict, which would make it easy for program to define itself out of the licensure requirement. For example, line 5 page 2 includes a requirement that the program charge a fee *or* require the minor to work as a condition of enrollment, which is followed by a requirement at line 8 page 2 is “accepts anything of value in exchange for enrolling a minor in the outdoor youth program”, and subsequently by a line 10 page 2 includes “arranges for the enrollment of a minor in the outdoor youth program through a scholarship or any other means.” The requirement that the program charges a fee *or* requires the minor to work would negate the other 2 requirements, making meeting all three difficult.

KK/je