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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB106</u>	Sponsor	<u>Morales</u>
Tracking Number	<u>.205269.2</u>	Committee Referrals	<u>SEC/SJC/SFC</u>
Short Title	<u>Early Childhood Services Department</u>		
Analyst	<u>McCorquodale</u>	Original Date	<u>2/3/17</u>
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BILL SUMMARY

Synopsis of Bill

Senate Bill 106 (SB106) proposes to create a cabinet-level Early Childhood Services Department (ECSD) according to provisions of the Executive Reorganization Act by transferring powers, duties, contractual obligations, and assets from several other executive agencies and bureaus, and combining them under the authority of the new department. ECSD would include the Children, Youth and Families Department (CYFD) early childhood services; the Department of Health's (DOH) Family Infant Toddler (FIT) program and Families First; and the Public Education Department's (PED) prekindergarten and Even Start family literacy. SB106 defines the administrative structure and duties of the new department and makes changes to a number of existing statutes and ensures appropriate references to and alignment with the ECSD. SB106 also reauthorizes the Early Learning Advisory Council (ELAC).

FISCAL IMPACT

SB106 does not contain an appropriation.

Though the provisions of SB106 reorganize existing government programs related to early childhood care and education from CYFD, DOH, and PED, there is not information available to provide a detailed cost estimate associated with establishing the new ECSD. The creation of a new government department would likely have recurring costs associated with human resources and staffing, new capital outlay or lease payments for a location, travel, insurance, and other indirect costs, as well as other materials and supplies. The bill also allows for the creation of an Administrative Services Division (ASD) and an Office of the Secretary, which will add to the fiscal demand associated with creating a new government department.

CYFD indicates there may be significant impact to the state's current early childhood services program operating budget due to the establishment of ECSD, as well as any necessary separation, combination, and establishment of data systems under the program. CYFD stated that although material, personnel, and fiscal assets will be transferred to the new agency, these transfers will not be sufficient to support the subsequent administration and other costs carried by

the transferred CYFD programs. Additionally, the work necessary to separate and merge divisions and programs cannot be absorbed by existing resources. Table 1 demonstrates the fiscal impact on CYFD if SB106 were enacted.

Table 1
CYFD Estimated Additional Operating Budget Impact (dollars in thousands)

FY17	FY18	3-Year Total Cost	Recurring or Nonrecurring	Fund Affected
(\$58,871.80)	(\$60,371.80)	(\$119,243.60)	Recurring	General Fund
(\$58,132.90)	(\$49,627.50)	(\$107,760.40)	Recurring	Other Transfer
(\$110,392.70)	(\$110,392.70)	(\$220,785.40)	Recurring	Federal Funds
(\$500.00)	(\$1,684.80)	(\$2,184.80)	Recurring	Fund Balance

Parenthesis () indicate expenditure decreases.

Source

The DOH indicated the FIT budget for FY16 expenditures was approximately \$51.3 million, which includes \$19.4 million of general funds, \$1.8 million in grants from federal Individuals with Disabilities Education Act (IDEA) Part C, \$1.6 million from private insurance, and \$28.5 million from Medicaid. SB106 would transfer all funding for the FIT program to the new ECSD. This includes \$567 thousand in funding for salaries and benefits, \$2.8 million in contractual services, \$12.6 million in operations and provider agreements, and \$8 million in interagency transfers (match for Medicaid payments to FIT providers).

SUBSTANTIVE ISSUES

SB106 adds new language to Section 24, Prekindergarten Eligibility, to address the development of three- and four-year-old children participating in a prekindergarten program. ECSD is required to implement program standards and performance measures to ensure the provision of high-quality and effective services so children are ready for kindergarten. The language also requires ECSD and PED to coordinate efforts to ensure alignment of program standards for prekindergarten and kindergarten. This includes requiring both departments to certify the prekindergarten program and standards prior to implementation. Both departments are required to enter into an agreement to share data necessary to report on the performance of the program, including the percentage of prekindergarten participants entering kindergarten that meet total child development expectations, need special services, are proficient in reading and math, and are retained in any grade through third grade. SB106 also requires ECSD to coordinate the prekindergarten program with federal head start agencies to avoid duplication of effort and to maximize the use of all available resources.

SB106 amends the Prekindergarten Act requiring request for proposals for services. This amendment potentially conflicts with Section 13-1-98, NMSA 1978, and exemptions from the Procurement Code, which allows for procurement by or through CYFD of prekindergarten services purchased pursuant to the Prekindergarten Act, Section 32A-23-1 through 32A-23-9 NMSA 1978.

SB106 proposes to change the composition and terms of the Early Learning Advisory Council (ELAC). SB106 requires term limits for council members; expands requirements for

recommendations by the council to ECSD and the Legislature; and extends the sunset date for the council.

SB106 would increase membership for ELAC from 15 to 17 adding the Legislative Education Study Committee (LESC) director and the Legislative Finance Committee (LFC) director as ex officio. Currently, ELAC has three ex officio members: the secretary of PED or designee; the secretary of CYFD or designee; and the director of the Head Start State Collaboration office within CYFD.

SB106 adjusts the composition of the 12 other members, who are appointed by the governor, of no more than five of whom are from the same political party in the following ways: one provider from an early care and education provider (down from two); four public members, including two members with knowledge and experience in early childhood programs (up from two); and two members appointed by the Board of Directors of the New Mexico Business Roundtable for Educational Excellence (down from three).

SB106 changes the term limits for ELAC's membership appointed by the governor from four years to two years with the exception that if the appointment is made before January 1, 2018, then the term limit will remain four years. Term limits will expire on December 31 of the appropriate year and council members cannot be appointed to serve for more than three terms.

SB106 adds new language requiring ELAC to make recommendations to ECSD and the Legislature on: statewide coordination of early childhood care and education; delineating gaps in child care programs and the early childhood care and education system; methods for improving and increasing capacity for growth in the early childhood education and care system (child care home visitation, prekindergarten, head start, early head start, and family infant toddler early intervention services); and describing prekindergarten academic and parenting components.

Lastly, SB106 repeals ELAC's termination date of July 1, 2017 and extends the council's sunset date to July 1, 2023. ELAC will continue to operate until July 1, 2024 when the sunset expires

CYFD Concerns. SB106 defines "child" as a child from birth to age 5, except for a child to age 8 or 13 in specific programs. CYFD stated the Children's Behavioral Health Services division administers the behavioral health services to children up to the age of 18. Transferring mental health clients between departments at the required ages could lead to a disruption in care.

CYFD indicates language in SB106 does not permit consideration of pending criminal charges or pending child abuse and neglect investigations in Section 14 when conducting background checks for employees. This limitation of only considering felony convictions for these positions would allow a person who is charged with violent or dangerous crimes, including manufacturing child pornography or criminal sexual penetration of a minor or kidnapping, to work unsupervised with children while pending charges are being prosecuted.

SB106 requires CYFD, DOH, and PED to give access to all records data and information; and requires these departments to enter into agreements to provide confidential information without violating federal or state confidentiality laws. CYFD is concerned an agreement between agencies does not negate confidentiality requirements, and several of the confidentiality statutes under which the department operates carry criminal offense charges for unauthorized access.

DOH Concerns. DOH indicates the FIT program has contracts and provider agreements with 34 community early intervention agencies; the New Mexico School for the Deaf, and the New Mexico School for the Blind and Visually Impaired that would need to be addressed in any transfer prior to July 2017. FIT currently has eight full-time employees in the developmental disabilities supports division. ECSD would need an agreement with the Human Services Department regarding Medicaid funding for FIT services.

According to DOH, SB106 appears to be redefining the Families First program from its current status as a case management program to a home visiting program. This change would impact the program's goals and mission, as well as impact reimbursement for case management services currently provided by the New Mexico Medicaid program. Current annual cost of the Families First program is \$1.3 million, which includes the salaries of 27 state employees statewide.

ADMINISTRATIVE IMPLICATIONS

According to CYFD and DOH if enacted, the new ECSD would create a significant administrative burden. Transitions of contracts and agreements for both departments must be resolved to ensure audit compliance and all contractors are paid for any billings during FY17. Additionally, federal grants will also have to be transferred to the new department.

TECHNICAL ISSUES

Section 7 of SB106 requires ECSD to “finger print and conduct national criminal background checks on all department employees and all staff members and volunteers of early childhood service providers whose jobs involve direct contact with *department clients*.” The term “department clients” is not defined in the bill and it is unclear if the term means only children that receive services from ECSD, or if it would include any child attending child care centers or child care in private homes.

Regarding background checks for employees in SB106, Section 14, the term “substantiated allegation” is used several times in this section when referring to child abuse or neglect of a child, yet the bill does not include a definition. It is unclear if the term is different from a charge, or an arraignment.

In Section 22, paragraph E, prekindergarten is defined as a voluntary developmental readiness program for children who have attained their “third” birthday prior to September 1. However, in Section 29, paragraph E, prekindergarten is defined as a voluntary developmental readiness program for children who have attained their “fourth” birthday prior to September 1. This definition needs to be amended to be consistent with the bills intent to serve 3- and 4-year-old children in prekindergarten.

OTHER SIGNIFICANT ISSUES

New Mexico needs to better coordinate early childhood programs to prevent duplication and fragmentation of services, and to build capacity by braiding federal and state dollars to strategically expand services for children birth through kindergarten. An effective model of governance for early childhood programs should create coherence among policies and services. Build Initiative, a national organization that helps state leaders develop a comprehensive system of early childhood programs, indicated programs that are delivered to young children have different designs and purposes, including Head Start, and state child care programs that represent

a combination of federal and state funds and requirements, as well as state-funded prekindergarten. A well-built structure of early childhood programs is a crucial step in reducing fragmentation, uneven quality, and inequity in early childhood programs and services.

There are a broad range of structures used for early childhood governance. The Build Initiative outlines three governance models of early childhood programs: a coordinated governance model; consolidated governance model; and creation of a new agency model.

The governance coordinated model “places authority and accountability for early childhood programs and services across multiple public agencies.” New Mexico falls into this category and often seeks to improve coordination and collaboration among agencies that provide early childhood services. Many states with this model relied on a children’s cabinet or special task force established by their governors to encourage coordinated early childhood governance. New Mexico has ELAC, which makes recommendations to CYFD and the Legislature without overstepping its boundaries as an advisory body. Other states like Connecticut, Nebraska, and Wisconsin have similar early childhood program structures.

The consolidated governance model “occurs where the state places authority and accountability for the early childhood system in one executive branch agency.” Three states have a consolidated governance model, California, Maryland, and Michigan. These states have consolidated child care funds and state prekindergarten into a single state education agency. In Maryland, the state education agency eventually created the Division of Early Childhood within the agency.

The creation of a new agency model “creates a new executive branch agency or entity within an agency that has the authority and accountability for the early childhood system.” Three states have created separate state agencies tasked with the authority over the state’s early childhood services and programs, Massachusetts, Washington, and Georgia. This is what SB106 proposes to do.

ALTERNATIVES

CYFD suggests prior to establishing a new department, consider convening a group to study the issues surrounding the governance of New Mexico’s early childhood services, including the possibility of maintaining the current infrastructure but co-locating all early childhood services to an existing department.

RELATED BILLS

SB206, State Early Learning Advisory Council Changes, proposes to change the composition and terms of ELAC.

SB289, Early Childhood Education Dept. Act, proposes to create a cabinet-level Early Childhood Services Department (ECSD) according to provisions of the Executive Reorganization Act.

SJM5, Reconvene J. Paul Taylor Childhood Task Force, to implement and sustain the task force’s recommended early childhood behavioral health action and child abuse plans.

SJR17, Early Childhood Education Dept., CA, amends Article XII of the Constitution of New Mexico by adding a new section to create the Early Childhood Education Department.

SM23, Early Childhood Service Collaboration, requests CYFD to convene a task force to study communication and coordination efforts among early childhood service providers.

SOURCES OF INFORMATION

- Children, Youth and Families Department
- Department of Health
- LESC Files

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