

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/17

SPONSOR Morales LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Early Childhood Services Department SB 106

ANALYST Klundt

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	(\$58,871.8)	(\$60,371.8)	-0-	(\$99,243.6)	Recurring	General Fund, CYFD Transfer
	(\$58,132.9)	(\$49,627.5)		(\$107,760.4)	Recurring	Other Transfer, CYFD Transfer
	(\$110,392.7)	(\$110,392.7)		(\$220,785.4)	Recurring	Federal Funds, CYFD Transfer
	(\$500.0)	(\$1,684.8)		(\$2,184.8)	Recurring	Fund Balance, CYFD Transfer
	(\$23,967.0)	(\$23,967.0)		(\$47,934.0)	Recurring	All revenue sources, DOH Transfer
	\$251,864.4	\$246,043.8		\$477,908.2		ECSD Operating Budget, All revenue source

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 289

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Human Services Department (HSD)  
 Children, Youth and Families Department (CYFD)  
 Department of Health (DOH)

#### Responses Not Received From

Public Education Department (PED)

## SUMMARY

### Synopsis of Bill

Senate Bill 106 establishes the Early Childhood Services Department (ECSD), combining early childhood services from the Children, Youth, and Families Department (CYFD); Department of Health (DOH) Family Infant Toddler Program, Interagency Coordinating Council, and Family First Home Visiting program; Public Education Department (PED) Pre-Kindergarten and Even Start Family Literacy programs.

Services and programs that would be transferred to the Early Childhood Services Department consist of the following: Child care licensing and services; early childhood education services; and early intervention services, which include early childhood mental health, family and nutrition, home visitation, and the Family Infant Toddler program.

SB 106 authorizes the secretary of ECSD standard authority to manage all operations of the department and administer and enforce laws which the secretary or department is charged. This authorization includes providing cooperation, at the request of administratively attached agencies and adjunct agencies, in order to minimize or eliminate duplication of services and jurisdictional conflicts; coordinate activities and resolve problems of mutual concern; and resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

ECDS shall: Develop priorities for services and resources based on state policy, national best-practice standards, evidence-based interventions and practices, and local considerations and priorities; strengthen collaboration and coordination in state and local services for early childhood programs by integrating critical functions, including service delivery, and contracting for services across divisions and related agencies; coordinate implementation of state, federal, and private early childhood programs and services to avoid duplication of effort and maximize available resources.

PED, Human Services Department (HSD), CYFD, DOH, and other publicly funded services shall collaborate with the ECSD to continue to provide services within their statutory authority.

ECSD shall comply with requirements of the federal Individuals with Disabilities Education Act (IDEA), Part C, and is designated as the custodian of monies appropriated by the federal government for the purpose of implementing the IDEA.

ECSD shall require that fingerprints for each ECSD employee be submitted to the Department of Public Safety and the Federal Bureau of Investigation. Criminal histories obtained shall remain confidential and used only for the purpose of determining suitability for employment.

ECSD shall convene a group of representatives from the Legislative Finance Committee, the Department of Finance and Administration, and child care providers to develop and monitor outcomes measures for child care assistance programs, develop goals and objectives, and submit an annual report to the legislature, Governor, and the early learning advisory council.

ECSD is added as a member of Behavioral Health Purchasing Collaborative. This section is also amended to clarify that all members may appoint designees and, if the secretaries of DOH and

CYFD appoint designees to the Collaborative, those designees shall serve as co-chairs. ECSD is also included as a publicly funded health care agency to comply with provisions of the Health Care Purchasing Act; and as a member of the Children’s Cabinet.

The pre-kindergarten program is expanded to include three-year old children in addition to four-year olds. It shall address total developmental to include physical, cognitive, social and emotional needs, health care, nutrition, safety, and multicultural sensitivity and implement program standards and performance measures to ensure the provision of high-quality and effective services. It shall further coordinate with the PED to ensure alignment of program standards for pre-kindergarten and kindergarten, and coordinate with federal Head Start agencies to avoid duplication of effort and maximize the use of all available resources.

Certain definitions in the Children’s Code (Section 32A-23A-2 NMSA 1978) shall be amended to include the ECSD and define early childhood as birth to five years.

ECSD replaces CYFD as a member of the State Early Learning Advisory Council and the Home Visiting Accountability Act, delineating departmental responsibilities for each.

The Insurance Code (Section 59A-22-34.2 NMSA 1978) is amended to include the ECSD as the administrator of the FIT program.

SB 106 transfers all contractual obligations, programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies, and other property from the associated departments to the ECDS. This includes infant mental health services from the Behavioral Health Services Division.

### **FISCAL IMPLICATIONS**

The Department of Health (DOH) reported SB106 would transfer all funding for the FIT Program to a new Early Childhood Services Department. This includes funding for Salaries and Benefits \$567K, Contractual \$2.8 million, Operations and Provider Agreements \$12.6 million, and interagency transfers \$8 million (match for Medicaid payments to FIT providers).

There is no appropriation included in this bill, CYFD believes there may be a significant impact to the Early Childhood Services program operating budget in order to establish an Early Childhood Services Department. The agency also believes that the cost of separating, merging, and/or establishing data systems may be significant.

The table reflects approximate revenue transfers to the new agency; however, it is incomplete because PED has not responded.

### **SIGNIFICANT ISSUES**

Family relationships and a child’s earliest experiences influence development from birth through adulthood, research shows. Early childhood initiatives have the potential for widespread economic and social benefits for both children and families. Starting prenatally and extending in a continuum of services, with priority for children and areas of the state most at-risk, early childhood programs may help break the cycle of poverty and reduce the need for more costly remediation in adulthood. Families living in poverty are exposed to risk factors that can impair a

child's development. More than half the academic achievement gap found between children from economically advantaged and disadvantaged families in later school years is already present when children enter kindergarten.

Currently, early childhood programs are administered under several state agencies: Public Education Department (Prekindergarten, Even Start, and Preschool Special Education); Children, Youth, and Families Department (Child Care, Prekindergarten, Home Visiting, Head Start Collaboration office, Infant and Early Childhood Mental Health); and the Department of Health (Family Infant Toddler Program and Families First).

The 2016 Legislative Finance Committee Early Childhood report states that the amount of funding for early childhood services across both state and federal funding sources is more than \$230 million.

Although federal and state laws specify the need for coordination among early childhood programs, including the New Mexico Early Childhood Care and Education Act, the LFC Program Evaluation Unit has found a lack of coordination among early childhood service providers. In a 2013 program evaluation examining early childhood programs the LFC found evidence that lack of coordination led to duplication of services and loss of \$1 million in federal funding for early childhood programming.

This bill focuses on the governance of these programs, as early childhood programs grow in size and funding nationally, the focus on governance is becoming increasingly significant. According to the National Conference of State Legislatures (NCSL), several states have considered similar legislation including Nevada, Florida, Georgia, Minnesota, and New York. Several LFC reports have highlighted significant issues which may be a result of administering the early childhood system through several agencies including possibility of duplicating efforts.

The Build Initiatives Early Childhood Governance Report (2013) which is titled "A Framework for Choosing a State-Level Early Childhood Governance System" recommends that "careful and deliberate assessment of a state's early childhood governance structure is an integral step in reducing fragmentation, uneven quality, and inequity in programs and services. The report reviews different models of governance that states might consider in order to promote coordination, alignment, sustainability, efficiency and accountability. These models of governance include: "Coordinated Governance" with administration of early learning across state agencies; "consolidated governance" where programs are administered through one state agency; and "creation of a new agency" with a comprehensive set of activities associated with early childhood be situated with the created entity. The report states that generally, these activities would include Head Start collaboration office, child care, and prekindergarten, and also include home visitation and oversight for Parts B and C of the Individuals with Disabilities Education Act (IDEA as referenced above). According to the Build report, only 3 states (Massachusetts, Washington and Georgia) have created a separate state agency for early learning programs.

In addition a recent early childhood governance analysis of national and local early childhood education structures by the New Mexico Early Childhood Development Partnership (NMEDCP) found:

"The needs of children and their families are complex and diverse. When programs work in silos, they negatively affect the impact they can have on the development of a child.

New Mexico needs better communication, coordination, and for a comprehensive vision to align these efforts. There is a need for stronger evaluation, the development of public-private partnerships, and increased funding to expand services.

Given these opportunities, NM should:

Create a Department of Early Learning to house all early childhood services, including:

- PreK for three-and four-year-olds
- Child Care
- Home Visiting
- Early Head Start and Head Start

Research and state interviews point to an array of benefits for states moving to a consolidation or creation model:

- Coherence among policies and services
- Coordination and alignment
- Clear accountability with governance authority
- Streamlined efforts with greater efficiency.”

CYFD’s response to the bill was:

“Neuroscience research demonstrates that the main indicator for school readiness is child wellbeing, with evidence that an infant’s healthy development is determined by the quality of the relationship with a significant adult which affects all the domains outlined in this bill. This is why prevention is a key part of CYFD Early Childhood Services and intervention is a key part of CYFD Early Childhood Behavioral Health. It is well known that Child Care Assistance and Home Visiting are prevention programs that help reduce abuse or neglect of children. Through coordination and integration of services with CYFD’s Protective Services, Juvenile Justice, and Domestic Violence programs, Early Childhood Services is able to provide prevention services to high-risk families and their children. It is unclear how removing these programs to a different agency will affect collaboration with CYFD Protective Services, Juvenile Justice, and Domestic Violence programs.

The bill revises the Pre-kindergarten Act to include 3-year olds, but is not clear how slots and funding will be allocated between 3-year olds and 4-year olds. It also eliminates a request for application, requiring request for proposals to secure pre-kindergarten services. This change could introduce significant delays in the allocation process.

The bill increases the State Early Learning Advisory Council membership number from 15 to 17, and changes the composition to ensure representation of a cross-sector approach and to allow for the directors of the legislative education study committee and legislative finance committee to serve *ex officio*. However, this bill does not include a parent(s) representative, as recently recommended during the sunset LFC analysis.

New Mexico’s early childhood community has committed to establishing an integrated continuum of early learning services with the goal that each child in the state has access to high quality early learning opportunities. The creation of this cross-sector system is

the foundation of the Early Learning New Mexico initiative. It is critical that any significant legislation (such as this bill) that impacts the state's early learning infrastructure be consistent with the commitments and accomplishments already made. CYFD's Early Childhood Behavioral Health Services has committed to providing high quality intervention services to infants and young children who are in foster care or are referred by CYFD Protective Services, Juvenile Justice, or the Domestic Violence program. The CYFD Early Childhood Behavioral Health Services are an integral part of the Protective Services Division's Permanency Planning and coordination with Children's Court Attorney and Court Appointed Special Advocate. It is unclear how this bill will impact collaboration with CYFD Protective Services, Juvenile Justice, and Domestic Violence programs.

The language used on page 2, lines 16 through 21 "The early childhood services department is responsible for administering all laws and exercising all functions formerly administered by other departments or agencies, including programs and functions of various departments of the executive branch pertaining to early childhood from: ... "is vague and does not clearly define which agencies and programs are to be transferred to the new department. The language does not limit the transfer to only the programs listed although it specifically includes those programs in the transfer. This will lead to a confusing application and uncertainty in which agencies and programs will become part of the ECSD.

Included in the transfer from CYFD are the early childhood services division and infant and early childhood mental health services. CYFD's Children's Behavioral Health Services division administers the behavioral health services to children. Many of these services are provided to children up to age 18 and sometimes age 21. The bill does not contain a definition of what is to be included in the infant and early childhood mental health services that are to transfer to the ECSD. It would be very difficult to artificially separate these children's behavioral health services into infant and early childhood mental health services, especially without a definition. The definition of "child" as specified in the bill "means a child from birth to age five, except for a child to age eight or thirteen in specific programs." There is no listing of programs which are the specific programs that serve children until ages eight or thirteen. Additionally, this definition leaves CYFD with programs that serve children from five, eight or thirteen or older and with any prenatal services that have previously been attached to the programs that are required to transfer to the new division. Transferring mental health clients between departments at the required ages could lead to a significant disruption in care.

Under Section 7, Additional duties, on page 10, lines 12-13, the bill requires the ECSD to develop reimbursement criteria for child care centers and home providers licensed by the department. However, there is no indication *what* the child care centers and home providers are being reimbursed for under this section.

Also under Section 7, Additional duties, on page 10, lines 17-25, the bill requires the ECSD to "fingerprint and conduct national criminal background checks on all department employees and on staff members and volunteers of early childhood service providers whose jobs involve direct contact with *department clients*, ..." however "department client" is not defined in the bill. It is unclear if this means *only* children that are receiving ECSD services, or if it would include *any* child attending child care centers or child care

in private homes. It is possible that this would lead to a loophole allowing a number of children to be cared for by staff who do not have background clearances.

Section 10 requires CYFD to give ECSD access to all records data and information which is not confidential by law; and requires CYFD to enter into agreements to provide confidential information without violating federal or state confidentiality laws. An agreement between agencies does *not* negate confidentiality requirements, and several of the confidentiality statutes under which CYFD operates carry criminal offense charges for unauthorized access.

Section 13, Criminal History Record Investigations, requires ECSD to run a criminal background check, while section 14 prohibits listed staff from having direct unsupervised contact with department clients or supervising those employees who have direct unsupervised contact with department clients if they have a substantiation of abuse and neglect or a felony conviction that directly relates to the job duties of the employee. This section does *not* contemplate violent misdemeanors committed as an adult against a child as required by the federal Child Care Development Block Grant Act Section 658H, and would jeopardize the federal childcare assistance funding. Also, as the New Mexico Criminal Offender Employment Act is not referenced in this section, it is unclear whether or not it is intended to apply.

For background check purposes, the bill does *not* permit consideration of pending criminal charges or pending child abuse and neglect investigations. 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 what is often a lengthy prosecution proceeds. Although the ECSD would be able to take administrative action including placing the ECSD staff member on administrative leave or no client contact, the ECSD does not have the same control over private employers or home child care providers. This limitation would expose many children in care to very dangerous situations. A parent or employer who may not know of these charges or a CYFD child abuse investigation could unknowingly leave their child with a person who is cleared by ECSD to work with children even as they face pending child pornography, child abuse, or other dangerous charges.

Under the Pre-Kindergarten act amendment, this bill removes the ability to procure pre-kindergarten services through a request for agreement and only allows for procurement through request for proposal even though there is an exemption in the procurement code for the procurement of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act NMSA 1978 §13-1-98(FF). The public pre-kindergarten services can be procured through the exempt school districts and would be completed much more quickly than the more lengthy procurement process of a request for proposal. This would lead to public pre-kindergarten contracts being issued much more quickly than the private pre-kindergarten contracts.

Although the bill transfers the contractual obligations, the liabilities and benefits of the contractual relationship are *not* addressed in the bill. A unilateral transfer of a contract without consent of the other party is an inappropriate transfer mechanism.”

DOH reported the following information regarding the FIT program:

“The budget for the FIT Program is approximately \$51.3 million, which includes State General Funds \$19.4 million, federal IDEA Part C grant \$1.8 million, private insurance \$1.6 million and federal Medicaid \$28.5 million (FY16 expenditures).

The FIT Program is responsible for the administration of a statewide system of early intervention services in accordance with the Individuals with Disabilities Education Act (IDEA) Part C. The FIT program services children birth to age three who are either at risk for developmental delays and disabilities, or who have developmental delays and disabilities. In FY16, FIT served more than 14,000 infants, toddlers and their families.

The FIT program has contracts and provider agreements with 34 community early intervention agencies, the NM School for the Deaf, and the NM School for the Blind that would need to be addressed in any transition prior to July 1, 2017 if SB106 is enacted. Additionally, there are also contracts that would need to be transitioned including: the University of New Mexico; fiscal agent; data base hosting and support; family support and training. The FIT Program currently has eight (8) FTE in the Developmental Disabilities Supports Division. A new agreement with the Human Services Department regarding Medicaid funding for FIT services would need to be developed.

The FIT Program currently receives administrative support from the Developmental Disabilities Supports Division and Department of Health for contracts, budget and finance, payments, and human resources that would need to be provided through the proposed Early Childhood Services Department.”

## **ADMINISTRATIVE IMPLICATIONS**

SB 106 amends the Pre-Kindergarten Act requiring request for proposals for pre-kindergarten services. This amendment potentially conflicts with 13-1-98 (FF) NMSA – Exemptions from the Procurement Code, which allows for procurement by or through CYFD of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [32A-23-1 through 32A-23-9 NMSA 1978].

## **RELATIONSHIP**

Relates to SJM 17 and SB 289.

## **TECHNICAL ISSUES**

SB106 does not address administration of the Early Childhood Integrated Data System (including ongoing data governance); the FOCUS Tiered Quality Rating System or the Early Learning NM communications (including [www.earlylearningnm.org](http://www.earlylearningnm.org)) that have been developed through the federal Race To the Top – Early Learning Challenge grant. The RTT-ELC grant continues until December 2017. There are plans to continue these activities after the end of the grant in December 2017.

The Department of Health believes under SB106, the Families FIRST program, which is an established case management program for Medicaid pregnant women and children up to three



years, would be moved into the newly created Early Childhood Services Department. 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 and its ability to obtain reimbursement for case management services currently provided by the New Mexico Medicaid program.

DOH also noted Page 12, Section 10 B does not include the Department of Health in the state agencies with whom the Early Childhood Services Department would have an agreement to share confidential information.

CYFD reported this bill contains a Section for Child Care Assistance Program reporting that makes reference to a Child Care Assistance Accountability Act that currently does not exist.

## **AMENDMENTS**

DOH notes an amendment may be necessary to assure the Families First programs remain unchanged. The agency stated Page 49, line 24 states:

“(3) does not include:

- (a) Provision of case management or a one-time home visit or infrequent home visits, such as a home visit for a newborn child or a child in preschool or kindergarten;”

Families FIRST is a case management program, but based on the line referenced above, its mission would have to change in the proposed Early Childhood Services Department to a home visiting like model. This change would possibly eliminate the programs eligibility to match federal funding requirements

KK/jle/sb