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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/17

SPONSOR Padilla LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Early Childhood Education Department Act SB 289

ANALYST Klunt

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		(\$220,576.8)	(\$220,576.8)	(\$441,153.6)	Recurring	All sources, CYFD
		(\$6,765.1)	(\$6,765.1)	(\$13,530.2)	Recurring	All sources, PED Prek
		\$227,341.9	227,341.9	\$454,683.8	Recurring	All sources, to ECED

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 289

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

#### Responses Not Received From

Public Education Department (PED)

### SUMMARY

Senate Bill 289 (SB 289), Sections one through 17 establishes the Early Childhood Education Department Act (the Act) and creates the Early Childhood Education Department (ECED). The purpose of the Act is to establish a comprehensive and voluntary early childhood education system to improve the developmental, physical, nutritional, cognitive, social, and emotional needs of children, and to administer certain laws and functions of the Children, Youth, and Families Department (CYFD) and the Public Education Department (PED).

Departmental duties include:

- (1) the development of priorities for services based on state policy and national best-practice

- standards;
- (2) strengthening of collaboration and coordination of state and local services for child care, home visitation, and early childhood education by integrating critical functions as appropriate, including service delivery;
  - (3) developing and maintaining a statewide database, including tracking of early childhood education provided by or through the state;
  - (4) developing reimbursement criteria for eligible providers, including establishing accreditation and correlating the highest reimbursement rate with accreditation;
  - (5) conducting biennial assessments to identify gaps or unmet needs;
  - (6) collaborating with the PED, CYFD and the Department of Health (DOH) for research, identification, and implementation of best practices for service delivery pursuant to the Early Childhood Education Act.

Sections 11 through 17 define specific activities and duties that would be required of the ECED.

Section 11: The ECED shall adopt rules specifying minimum qualifications for early childhood education providers, minimum criteria for selecting providers, minimum standards for awarding contracts to providers, and performance measures.

Section 12: Operation of home visiting services under the ECED using a standards-based program to include periodic home visits. This language is nearly identical to existing language in 32A-23B NMAC which defines the home visiting program conducted by CYFD. It states that a home visiting program shall provide culturally and linguistically appropriate face-to-face visits by nurses, social workers, and other early childhood and health professionals or by trained and supervised lay workers. This program shall do two or more of the following:

- (1) improve child health outcomes;
- (2) promote positive parenting practices;
- (3) build healthy parent and child relationships;
- (4) enhance social-emotional and language development;
- (5) support cognitive and physical development;
- (6) improve the health of eligible families;
- (7) provide resources and supports that help to reduce child maltreatment and injury;
- (8) increase readiness to succeed in school; and
- (9) improve coordination of referrals for, and the provision of, other community resources and supports for eligible families.

Section 13: Specifies that early childhood education shall be provided through a school district, pueblo or tribal entity, the New Mexico School for the Blind and Visually Impaired, the New Mexico School for the Deaf, or an eligible provider. Describes how the department will contract with providers. Eligible providers may include day care centers and licensed home providers. Contractual services shall be in compliance with the New Mexico Procurement Code.

Section 14: The ECED shall publish information on availability of services and locations, and how to apply on its website and provide printed notices to maternity wards of each hospital, offices of pediatricians, and public schools.

Section 15: Requires fingerprinting and criminal history record searches for any person who provides services under this program.

Section 16: Describes the process by which eligible providers are to be audited annually by the ECED.

Section 17: Creates an Early Childhood Education fund in the state treasury. The fund will be administered by ECED and the money in the fund shall be used to supplement, and not supplant existing revenue sources for early childhood education. Money in the fund is appropriated to the department to carry out the purposes of the Early Childhood Education Department Act.

Sections 18 through 33 amend existing sections of statute.

Section 18 amends 9-2A-8 NMSA 1978 related to the development of reimbursement criteria for licensed child care centers and home providers by CYFD to be done pursuant to the Children's Code, and for eligible providers, pursuant to the Early Childhood Education Department Act.

Sections 19 and 20 amend 32A-22 -1 NMSA 1978 and 32A-22-2 NMSA 1978, adding ECED to the Children's Cabinet.

Sections 21 through 27 amend 32A-23-1 NMSA 1978, 32A-23-3 NMSA 1978 through 32A-23-6 NMSA 1978, 32A-23-8 NMSA 1978 and 32A-23-9 NMSA 1978, requiring ECED to assume responsibility for the duties and activities under the Pre-Kindergarten Act and makes certain amendments to the Pre-Kindergarten Act. Section 26 proposes CYFD's and PED's Pre-Kindergarten Funds be moved to the new ECED.

Sections 28 through 32 amend 32A-23A-1 NMSA 1978 through 32A-23-5 NMSA 1978 relating to the Early Childhood Care and Education Act, replacing CYFD with ECED as the primary agency responsible for carrying out the duties and activities of the Act.

Section 33 amends Section 32A-23B-3 NMSA 1978, which is the home visiting program currently operated by CYFD. It is unclear if the intent of the bill is to shift administration of this program from CYFD to ECED. Section 33 adds the following statement to 32A-23B-3 NMSA: "The department may prioritize funding for standards-based programs with strong evidence of effectiveness and high-risk populations." Except for the inserted statement above, the language describing the home visiting program in section 12 of the bill is almost identical to the first six subsections of Section 33 of the bill.

Section 34 transfers to the new ECED the programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property and contractual obligations belonging to CYFD's early childhood services division and PED's public pre-kindergarten program. All references in law to CYFD's early childhood services division and PED's public pre-kindergarten program shall be references to the ECED.

## **FISCAL IMPLICATIONS**

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 create ECED. The agency also believes that the cost of separating, merging, and/or establishing data systems may be significant.

## 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:

*“The creation of this new department would create a fractured system for many of the programs that would overlap between CYFD and the ECED. One area that would be most impacted is the licensing of the private child care providers. In order to provide childcare in New Mexico the provider must be licensed. CYFD would retain the licensing authority. In order to become an eligible provider for ECED, the provider would then be required to adhere to an entirely separate set of rules set by that department. In order to be licensed, a provider is required to have each employee go through an extensive background check process. However, if the provider wanted to become eligible for ECED services, the provider would be required to have each employee obtain a new background clearance through ECED.*

*Under the new bill, the ECED would be required to evaluate and set reimbursement rates for eligible providers. However, CYFD is still statutorily mandated to set reimbursement rates for licensed providers. Although the bill would require CYFD to use the Early Childhood Education Act in the determination of the reimbursement rates, this could still lead to a different reimbursement rate between the two agencies and a duplication of effort in the determination of the rates.*

*The definition of “early childhood education” is unclear. Under the bill early childhood education means programs that improve the brain development and school readiness of children including the following: 1. Home visiting; 2 child care; 3. Preschool and pre-kindergarten; and, 4. Parent and family involvement services. This definition is extremely broad. This could include licensing of childcare facilities although no authority to license private childcare providers is included in the bill. Many additional programs run through CYFD including protective services programs would meet the definition of “parent and family involvement services”, yet those services are not defined in this bill. Additionally many of the behavioral health programs for children currently run through the children’s behavioral health services division of CYFD could meet this definition as well, yet the bill does not provide the authority for the ECED to run those specific services or remove CYFD’s authority to do so. This could lead to duplicative and fractured services.*

*In New Mexico, the early learning system has incorporated all services prenatally to kindergarten entry that are described and shown in a graphic at [www.earlylearningnm.org/programs](http://www.earlylearningnm.org/programs). Early learning programs include home visiting, child care, and pre-kindergarten that are described in SB289, but also include Family Infant Toddler (FIT) Program early intervention, Preschool Special Education, as well as the Head Start.*

*The above early learning programs are currently administered across the Department of Health, Public Education Department and Children Youth and Families Department, which have been working collaboratively for four years as part of the Race To the Top – Early Learning Challenge to develop:*

- *The Early Childhood Integrated Data System*
- *An aligned Tiered Quality Rating and Improvement System*
- *Aligned professional development system*
- *Early childhood investment zones*
- *EarlyLearningNM communications (website, newsletter, etc.)*

*This bill, rather than integrating the Early Learning System that New Mexico has been working diligently to create, promotes fragmentation in the system by creating a department that serves children birth to five without inclusion of services for children with disabilities and developmental delays. There is mention of prevention and early interventions, but programs such as the FIT Program (IDEA Part) provides early intervention services to infants and toddlers with developmental delays and disabilities in order for them to meet developmental outcomes, and preschool special education (IDEA Part 619) for preschoolers, were not only not mentioned in the main part of the bill but eliminated from the Early Care and Education Act section of the Bill.*

*There is also no mention of Federal Title I program that provides funding to public education and is used for programs serving children birth to age five, this programs gets integrated with public education PreK programs. There is no mention in the bill about the Child Adult Care Food programs that supports early learning programs in providing nutritious meals for children particularly low income children, as well as the Summer food program. While this bill calls out “child care”, it does not specify the functions*

*within child care such as the child care assistance program or the licensing and regulatory oversight of licensed child care providers and registered child care homes.*

*A report by the national organization Build Initiatives was published in 2013 on early childhood governance [A Framework for Choosing a State-Level Early Childhood Governance System](#). This report 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”. The report also states that “Generally, these activities would include Head Start collaboration (the state’s primary responsibility in the Head Start programs), child care, and prekindergarten, home visitation and oversight for Parts B and C of the Individuals with Disabilities Education Act”*

*The requirement for ECED to, “develop and maintain a statewide database for the purposes of tracking of services for children” is already a requirement under the RTT-ELC grant and the Early Childhood Integrated Data System (ECIDS) is already being developed as a requirement within RTT-ELC and will be housed within the Public Education Department. Further, developing this longitudinal data system would cost millions of dollars, and there is no appropriation attached to this bill for that purpose.*

*Race to the Top – Early Learning Challenge grant investments in a longitudinal data system linking information between CYFD, DOH and PED could be rendered useless. Over \$10 million of federal awards were granted to create this system. A reorganization of the departments would mean all or a significant portion of work to date could be lost.*

*This bill also makes ECED responsible for “children's mental health and substance abuse services in the state,” but does not transfer the licensing and certification authority for children’s behavioral health out of CYFD, “assum[ing] and implement[ing] the lead responsibility among all departments for domestic violence services”, but does not transfer the contracts and related supports from CYFD’s protective services division, and finally, for “implement[ing] prevention and early intervention as a departmental focus”; this will move the core function for early childhood services to duplicative programs in existence in other divisions. Early Childhood Services partners with these programs to support families, but is not the CYFD division responsible for children’s mental health, substance abuse, or domestic violence.*

*Next, the background checks requirements as listed in the bill do not meet the federal requirements for the Child Care Development Block Grant, such as the periodicity, specificity and depth of the background checks.*

*Finally, New Mexico has a Tiered Quality Rating and Improvement System (TQRIS) called FOCUS to measure and assess the level of quality for each child care program based on an established criteria. This bill requires ECED to “develop reimbursement criteria for licensed child care centers and licensed home providers establishing that*

*accreditation by a department-approved national accrediting body...to receive the highest reimbursement rate...” which will eliminate the opportunity for programs to move through the Tiered Quality System with the free FOCUS program, thereby eliminating several providers who have reached that goal and are currently receiving the highest reimbursement rate as well as the accredited programs. In addition, there is no mention of the licensed-exempt, registered providers who are a very important part of the child care system and are part of New Mexico’s TQRIS.”*

## RELATIONSHIP

SB 11 Child Early Intervention Reimbursement Basis proposes that the Secretary of the Human Services Department (HSD) seek any necessary authority under federal law to adopt and promulgate rules under the State’s medical assistance program (Medicaid) to provide for the reimbursement of preventive and early intervention services delivered to children on the basis of need without specifying as a condition of reimbursement that a child be identified as a child with a mental health diagnosis or be diagnosed as having a serious emotional disturbance. SB 11 is about the State’s medical assistance programs, but not about early childhood education.

SB 106 Early Childhood Services Department proposes to establish the Early Childhood Services Department (ECSD), consisting of programs from CYFD, DOH and PED.

- The programs transferred from CYFD include:
  - Early Childhood Services division; and,
  - Early childhood mental health services.
- The programs transferred from DOH include:
  - Family, infant, and toddler (FIT) program;
  - Interagency coordinating council; and
  - Family First Home Visiting.
- The programs transferred from PED include:
  - Public Pre-Kindergarten; and,
  - Even Start Family Literacy program.

SB 206 State Early Learning Advisory Council proposes changes to the composition and terms of the State Early Learning Advisory Council and extends the termination date of the council from July 1, 2017 to July 1, 2024. Section 31 in SB 289 amends the composition of the Early Learning Advisory Council but not the term.

## TECHNICAL ISSUES

CYFD noted the following technical issues:

- CYFD believes these may be an issue regarding this bill would *only* serve ages zero to five years, and older for some services *if required*. When ECED would serve older children is unclear, and as the Early Childhood Services program of CYFD provides services to children up to age thirteen, the agencies believes moving the program to ECED may result in divided service delivery.
- CYFD also noted this bill does not mention anything about the food and nutrition program which is currently coupled with childcare, and are part of the ECS division of CYFD.



- CYFD stated language regarding Request for Proposals with School Districts and eligible providers for preschool and PreK services, requiring that “money appropriated for pre-kindergarten programs shall be divided equally between public school programs and private programs to the extent practicable...” This may place the private providers at a disadvantage and may require *two separate* Request for Proposals, one for public schools and one for private providers, to ensure an even distribution of monies.
- CYFD reported the bill proposes the creation of the *"early childhood education fund"* in the state treasury fund, from which monies will be appropriated to ECED to carry out the purposes of the Early Childhood Education Department Act. However, there is currently no appropriation for this fund. The bill further creates the *"the pre-kindergarten fund is created as a nonreverting fund in the state treasury"*, and then cites the "Early Childhood Care and Education Act" section D. stating that *"fund" means the early childhood care and education fund*; “. It is unclear whether these are three different funds that the proposed department will be administrating, or if they are all part of the same *"early childhood education fund"*
- CYFD noted the timelines this bill establishes *"On July 1, 2017, money in the children, youth and families pre-kindergarten fund and the public education pre-kindergarten fund shall be transferred to the prekindergarten fund."* And *"On July 1, 2017, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the following departments shall be transferred to the early childhood education department:(1) from the children, youth and families department, the early childhood services division; and (2) from the public education department, the public pre-kindergarten program..."* and *"On July 1, 2017, all contractual obligations of the early childhood services division of the children, youth and families department or pre-kindergarten program of the public education department shall be deemed contractual obligations of the early childhood education department..."* represent a financial, legal and logistical issue for all affected departments, service providers, and families served by the programs.
- CYFD also noted by establishing specific requirements for the ECED Cabinet Secretary, this significantly limits the pool of individuals eligible for the position, which means that qualified individuals will necessarily require a higher salary. There is no information provided as to why ten years of experience is adequate, particularly in light of the requirement that those ten years have been spent engaged in no less than four separate roles with respect to early childhood education.

## ALTERNATIVES

CYFD requested the following alternative:

*"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 educational services to an existing department."*