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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 2nd Session, 2022

Bill Number	<u>SB38/aSJC</u>	Sponsor	<u>Gonzales/Hemphill</u>
Tracking Number	<u>.221495.2SA</u>	Committee Referrals	<u>SCC/SEC/SJC; HHC/HGEIC</u>
Short Title	<u>Early Childhood Education Dept Authorizations</u>		
Analyst	<u>Duffy</u>	Original Date	<u>1/19/2022</u>
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BILL SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 38 grant the Early Childhood Education and Care Department (ECECD) the authority to promulgate rules for the investigation and determination of qualifications in regards to undergoing a criminal background check in order to apply for child care employment, volunteering, or licensure or registration as a childcare facility from the department. SB38/aSJC also amends a technical error allowing for the secretary's designee to serve as an appointee to the Developmental Disabilities Council.

Synopsis of Original Bill

Senate Bill 38 (SB38) amends existing statute to clarify the scope and duties of the Early Childhood Education and Care Department (ECECD). The bill would amend statute to reflect ECECD's inclusion in the Behavioral Health Collaborative and the New Mexico Developmental Disabilities Council and transfer background check authority, childcare licensing authority, and duty to convene the Family, Infant, Toddler Interagency Coordinating Council (FIT ICC) to allow the department to conduct its essential functions and responsibilities as mandated by the Early Childhood Education and Care Department Act of 2019 and federal law.

FISCAL IMPACT

This bill does not contain an appropriation. ECECD indicates the bill does not have a fiscal implication for the department.

SUBSTANTIVE ISSUES

SB38/aSJC proposes amending several existing sections of law in the Early Childhood Education and Care Department Act, Public Health Act, Children's Code, Developmental Disabilities Act, and the Department of Health Act.

The Early Childhood Education and Care Department Act, enacted in Laws 2019, Chapter 48, (Senate Bill 22) created a new cabinet agency to better coordinate early childhood programs. The act consolidated early childhood education and care programs historically administered by the Children, Youth and Families Department (CYFD), the Department of Health (DOH), the Human Services Department (HSD), and the Public Education Department under ECECD to reduce duplication and fragmentation of services.

The department officially launched in FY21, taking authority for the coordination and alignment of childcare, early prekindergarten, prekindergarten, home visits for parental education and support, and early intervention and family support. SB38/aSJC transfers to ECECD the authority and responsibility for early childhood programs that currently remain with the agencies formerly responsible for early childhood programs.

Background Check Authority. The department’s authority to conduct background checks is currently derived from CYFD’s prior authority. SB38/aSJC creates a new section of statute in the Early Childhood Education and Care Department Act to give the agency authority to conduct background checks through fingerprint-based state and federal criminal history records checks for all providers, employees, and volunteers of programs overseen by the department. SB38/aSJC amends the Children’s Code to divide access to criminal history information between ECECD and CYFD by program.

Child Care Facility Licensing Authority. Current statute provides for ECECD to have authority over “appropriate care and education services,” administering childcare licensing and developing reimbursement criteria for childcare centers. SB38/aSJC amends the Early Childhood Education and Care Department Act to specify department authority for the licensing and reimbursement criteria of all early childhood facilities.

Family, Infant, Toddler Program. ECECD reports the FIT program overseen by the department is currently federally noncompliant because authority to convene the FIT ICC, convened to address FIT quality assurance, remains in DOH. SB38/aSJC amends the Early Childhood Education and Care Department Act to statutorily include FIT in services overseen by the department. SB38/aSJC amends the Developmental Disabilities Act to transfer responsibility from DOH to ECECD for the team evaluating a child for FIT services and overseeing policies and procedures for services and reimbursement.

Behavioral Health Collaborative. Though ECECD oversees programs that include behavioral health services focused on behavioral health services—FIT, Families FIRST (a targeted case management program funded through Medicaid), and Home Visiting—the department is not currently an independent member of the Behavioral Health Collaborative. SB38/aSJC amends the Department of Health Act to add ECECD to the Interagency Behavioral Health Purchasing Collaborative.

Public Health Act. ECECD does not currently have health and safety oversight authority as outlined in the Public Health Act. SB38/aSJC amends the Public Health Act to provide the department with statutory authority to oversee the health and safety of early childhood facilities.

New Mexico Developmental Disabilities Council. ECECD does not currently have membership on the New Mexico Developmental Disabilities Council, even though the department oversees programs that provide services to children with disabilities and their families. SB38/aSJC amends Developmental Disabilities Act to include the following:

- Add the secretary of ECECD or the secretary’s designee to the Developmental Disabilities Council;
- Designate authority to ECECD to define developmental delay for a child birth to 2 years through department rule;
- Include ECECD among the agencies that must annually provide the Developmental Disabilities Council with the following reporting data:
 1. The actual or estimated number of persons with disabilities served by the agency,
 2. Types of services provided;
 3. Major policy changes, and;
 4. Gaps in eligibility or services.
- Include ECECD in the Developmental Disabilities Council’s Information and Referral System;
- Include ECECD in jointly providing the developmental disabilities early childhood diagnostic evaluation system, and;
- Include ECECD on Information and Referral Task Force.

Governor’s Commission on Disability. ECECD is not currently a member of the Governor’s Commission on Disability. SB38/aSJC amends 28-10-1 NMSA 1978, which establishes the Governor’s Commission on Disability, to add the secretary of ECECD or designee.

ADMINISTRATIVE IMPLICATIONS

ECECD indicates SB38/aSJC is necessary to provide the department with full and clear authority to conduct the department’s essential functions and responsibilities as outlined in statute. ECECD notes SB38/aSJC would allow the department to work directly with the FBI and local law enforcement agencies.

CONSEQUENCE OF NOT ENACTING THE BILL

According to the department, if SB38/aSJC is not enacted:

“(1) ECECD's authority to conduct background checks and its authority to regulate and license child care facilities and registered care homes could be challenged as ambiguous, as derivative of CYFD's prior authority, and in conflict with the Early Childhood Education and Care Act, (2) ECECD's FIT program will remain federally non-compliant because the authority to convene the FIT ICC will remain at NMDOH, and (3) ECECD will be denied the benefits of Behavioral Health Collaborative and Developmental Disabilities Council membership, and Behavioral Health Collaborative membership and the Developmental Disabilities Council will be deprived of ECECD's expertise and input on matters related to families and young children.”

SOURCES OF INFORMATION

- LESC Files
- Early Childhood Education and Care Department

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