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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE School Library Material Donation SB 323

ANALYST Varela

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Cultural Affairs (DCA)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 323 amends 22-15C-2 NMSA 1978 (School Library Material Act) by defining a new category of school, "governmentally controlled school," consisting of Bureau of Indian Education (BIE) schools that are governmentally owned and controlled, located in New Mexico, provide 1st-12th grade instruction, and are not sectarian or denominational. The bill then provides for these schools to be included in the school library material allocations. The bill makes technical corrections to language.

FISCAL IMPLICATIONS

This bill carries no appropriation.

According to PED, the 2007-2008 Library Allocation Fund of \$2 million was distributed among 169 eligible entities (districts, charter schools, and state-supported schools). According to the Indian Education Division, there are 43 BIE schools in New Mexico. These schools have a total enrolled student population of 10,410 (U.S. Bureau of Indian Education Annual Report: DPA Statistical Review, 2008).

The number of eligible entities will increase by 25.4 percent, and the number of eligible students will increase by approximately 3.2 percent. Without a commensurate increase in funding, all schools currently funded will receive reduced allocations. Further, there will be a 25 percent increase in the number of entities reporting School Library Material Fund data to the Instructional Material Bureau with no budget to support this increase.

SIGNIFICANT ISSUES

According to PED, this legislation creates a new classification for eligibility to receive funding from the School Library Material Fund. This category is substantially different from all other eligible categories inasmuch as schools in the new category are not subject to the control of the state. There may be a conflict with Article XII, Section 3 of the Constitution of the State of New Mexico that requires that: the schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state.

There is also a possible conflict with Article XII, Section 6, of the Constitution of the State of New Mexico: The secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law.

The bill also implicates New Mexico Constitution Article IV, Section 31 which says:

No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine.

An additional issue is whether a new category for BIE schools will also apply to the distributions from the Instructional Material Fund. BIE schools are currently categorized as private schools because they have no reporting requirements other than the Instructional Material requirements for maintaining eligibility. Private school allocations are unique in that the state reimburses publishers directly for purchases, and these schools are required to purchase all supplemental and core/basal materials from the adopted list(s).

BIE schools, although schools created by the federal government, are not part of New Mexico school districts, are not political subdivisions of the state for the administration of public schools, and do not have geographical boundaries for taxation or bonding purposes. They are not public schools of the state.

PERFORMANCE IMPLICATIONS

There will be a 25 percent increase in the number of entities reporting School Library Material Fund data to the Instructional Material Bureau with no budget to support this increase.

RELATIONSHIP

This bill relates to the \$2 million in the executive recommendation for school library material fund.

TECHNICAL ISSUES

PED reports that placing BIE schools into one category for school library material funding and a different category for instructional material funding is an inconsistent application of the current classification system. This inconsistency needs to be addressed.

OTHER SUBSTANTIVE ISSUES

PED states that the inconsistent application of categories sets a precedent that may lead to other entities requesting reclassifications in order to increase their funding.

BIE schools are funded through the Indian School Equalization Program (ISEP), 25 CFR 39. Although the components the formula used to calculate a unit value do not include library materials explicitly, it does include an amount for "academic support services and operations." Further research would be needed to say conclusively that library material funding is not part of the overall ISEP allocation.

PV/mc:svb