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## FISCAL IMPACT REPORT

SPONSOR Rodriguez DATE TYPED 3/18/05 HB \_\_\_\_\_

SHORT TITLE Sign Language Interpreting Licensing Act SB 1054

ANALYST McSherry

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	\$13.0-130.0	\$13.0-130.0	Recurring	Proposed Sign Language Interpreting Services Practice Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SJM 78 and HJM 80 and Section 28-11C-3 NMSA, "Educational rights of deaf and hard of hearing children."

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Public Education Department (NMPED)

New Mexico School for the Deaf

Regulations and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 1054 proposes to create a "Sign Language Interpreting Practices Act." The act would establish an eight-member board attached to the Regulations and Licensing Department. Members of the board would be appointed by the Governor and approved by the Senate.

The board would be charged with the administration and enforcement of the provisions of the proposed act, setting forth rules for qualification and licensure of interpreters, establishing application fees for licensure, and setting forth rules to effectively carry out and enforce the provisions of the act. The board would be required to hold at least one meeting annually and submit an annual report to the department.

The proposed “Sign Language Interpreting Practices Act” would be enforceable according to the procedures set forth in the Uniform Licensing Act.

### Significant Issues

The proposed Sing Language Interpreting Practices Act and the associated licensing board have not been reviewed by the Sunrise/Sunset subcommittee of the Legislative Finance Committee as is provided for in the Sunrise Act.

It is stated in the Sunrise Act that:

“In determining whether to enact legislation to create a new board or commission to provide for licensure or regulation of a profession or occupation that is currently not subject to state licensure or regulation, the legislature shall consider whether the following criteria are met:

- A. unregulated practice of the profession or occupation will clearly harm or endanger the health, safety or welfare of the public, and the potential for harm is easily recognizable and not remote;
- B. regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest;
- C. existing protections available to the consumer are insufficient, no alternatives to regulation will adequately protect the public and this licensure or regulation will provide that protection and mitigate the problems;
- D. functions and tasks of the occupation or profession are clearly defined and the occupation or profession is clearly distinguishable from others already licensed or regulated;
- E. the occupation or profession requires possession of knowledge, skills and abilities that are both teachable and testable and the practitioners operate independently and make decisions of consequence;
- F. the public needs and can reasonably be expected to benefit from the assurance from the state of initial and continuing professional competence; and
- G. the public cannot be effectively protected by other means in a more cost-effective manner.”\

The Sunrise Act also stipulates that:

“Any group seeking licensure or regulation of a profession or occupation through creation of a new board or commission shall, upon payment of an application fee not to exceed one thousand dollars (\$1,000), request a review and evaluation of such proposed licensure or regulation from the regulation and licensing department and the department shall conduct such a review and evaluation and provide a report to the legislative finance committee so it may conduct a hearing or consider action on the proposed licensure or regulation. In conducting a review and evaluation, the department shall consider the criteria in Section 3 [12-9A-3 NMSA 1978] (those criteria listed above)”

According to RLD, the requirement that members of the proposed board be confirmed by the Senate would delay the process of appointments and subsequently could affect the board’s ability to conduct business in a timely and effective manner.

RLD estimates that this legislation will authorize licensure of potentially 100-136 people. The proposal calls for eight board members one of whom is an ex-officio member. Based on the board member to licensee ratio, RLD reports that the proposed number of members on the board would be high as compared to other licensing boards and that because of this, Per diem and mileage for board meetings and hearings will be costly, particularly when the revenues will likely be very low. The Department recommends five members for a board with a small licensee base.

No FY06 budget has been proposed for the proposed board and the Act would take affect in FY06.

According to the New Mexico School for the Deaf, it is important that the state create a mechanism for licensure of sign language interpreters for the safety and welfare of persons residing within the state of New Mexico for the following reasons:

Interpreters are relied upon to interpret oral communication into sign language and vice versa in many very critical circumstances including, but not limited to, legal proceedings, health care settings, educational settings, business and professional settings.

The interpreter not only serves deaf and hard of hearing person(s), but also serves the hearing persons involved in the communication situation. (e.g. a physicians are severely limited in their ability too make an accurate diagnosis without clearly understanding the symptoms being described by the person using sign language.)

## **PERFORMANCE IMPLICATIONS**

RLD predicts that sufficient income either to implement, or sustain the on-going administrative operation of the board would not be achieved based on the projected 100 to 130 licensees. RLD currently serves as the administrative department for 28 professional licensing boards and commissions. Some boards serve large licensee populations (1000s) others serve very small licensee populations (<100).

NMSD predicts a significant positive performance implication because the school, in conjunction with the Public Education Department (PED), has an interest and responsibility related to access to the general curriculum for all deaf and hard of hearing students in the state of New Mexico. NMSD believes that the quality of interpreter services, and the IEP team decision making regarding the appropriateness of interpreter services for deaf and hard of hearing students, would be enhanced as a result of the creation of a state licensure mechanism.

## **FISCAL IMPLICATIONS**

It is not clear what the level of revenues generated would be because the potential cost of licensure as an interpreter is not known, however RLD predicts that there would not be enough licensees to generate sufficient income either to implement or sustain the on-going administrative operation of the board.

The PED questions whether public schools could absorb increase/decrease in costs resulting from the proposed changes.

New Mexico School for the Deaf does not anticipate fiscal implications resulting from the enactment of this bill.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

### **ADMINISTRATIVE IMPLICATIONS**

New Mexico School for the Deaf stands prepared to cooperate with the New Mexico Commission for Deaf and Hard of Hearing Persons and the New Mexico Regulation and Licensure Department to assist with implementation of the Interpreter Practices Act, particularly as the act would impact upon the provision of educational services for deaf and hard of hearing students. This would probably require additional training of staff providing interpreter services as well as staff providing Outreach services for New Mexico School for the Deaf. As necessary, New Mexico School for the Deaf will include this training in the professional development plans of appropriate staff.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 1054 relates to HJM 80 and SJM 78 Sign Language Interpreter Licensure System

### **TECHNICAL ISSUES**

The proposed act does not include the following sections which are common to many professional licensing boards: Purpose, Scope of Practice, Criminal Offender Employment Act, Other Licensing Provisions, Display of License, Disciplinary Action, Denial, Suspension, Revocation of License, Penalties, Termination of Agency Life.

New Mexico School for the Deaf recommends that:

1. On page 6, Line 17, Section 8. REQUIREMENTS FOR LICENSURE requirements for Licensure be established and promulgated by board regulation as provided for in Section 7.A.(1)(2) and (3) BOARD POWERS AND DUTIES because there is an assumption that a viable national certification authority exists and would always exist in the future,. “
2. On page 3, line 20, replacing “person” with “person (s)”
3. Section 8. REQUIREMENTS FOR LICENSURE; Deleting lines 18 through 25 on page 6 and delete lines 1 and 2 on page 7. and replacing with: “Pursuant to Section 7 of this act, the board shall promulgate regulations specifying the criteria necessary to obtain and hold licensure as a sign language interpreter in the state of New Mexico.”
4. Adding a section titled: EMPLOYMENT OF SIGN LANGUAGE INTERPRETERS. –and including the provision “Notwithstanding the exemption listed in Section 4 of this act, all state agencies and political subdivisions, including, but not limited to, public health care facilities, courts, law enforcement agencies, and local education agencies, shall only employ or otherwise engage the services of sign language interpreters licensed by the Sign Language Interpreting Practices Board, as necessary in order to serve deaf and hard of hearing persons.”

### **OTHER SUBSTANTIVE ISSUES**

NMSD points out that on Page 3, Lines 17 through 20 it is stated:

Section 5. CONFIDENTIAL COMMUNICATION. – A communication is confidential if

it is not intended to be disclosed to third persons other than those present to further the interest of the *person* requiring the interpreting.”

By the use of the word “person” in the singular form on line #20 it is implied that only one person is requiring or benefiting from the provision of the interpreter service. NMSD asserts that one might mistakenly assume that only the deaf person would be a consumer of the service, but in reality, both the deaf / hard of hearing and the hearing persons would be beneficiaries of the interpreting service.

Page 3, Lines 3 through 16 address the allowable exemptions to the Sign Language Interpreter Act, but the bill does not stipulate or require that state agencies and political subdivisions only engage the services of appropriately licensed interpreters in the conduct of public business.

### **ALTERNATIVES**

According to RLD, a small group of sign language interpreters applied to participate in the Sunrise Process at the Regulation and Licensing Department in late September, well after the April deadline for the 2005 legislative session. The Department cites repeatedly meeting with these individuals in an effort to assist the group with their application. RLD further points out that, the applicant group’s questionnaire, required by statute, remains incomplete due to “missing, contradictory or misleading information.”

The Sunrise Act mandates obtaining input from members of the profession, public and appropriate legislative committees prior to creation of new professional licensing boards.

It is uncertain whether funds to start a licensing board are available or substantial to create a interpreter licensing board in FY06.

According to RLD, the majority of the newly proposed group of licensees does not support licensure at this time as the House Memorial study provided data suggesting that only 23% of interpreters support licensure.

RLD reports that the Sunrise application associated with the proposed act states that an estimated 300 individuals would be eligible for licensure, but that only 100 are currently eligible without additional education and training.

House Joint Memorial 1 reports 225 total interpreters working statewide with 125 holding national certification.

This bill would result in more limited pool of interpreters resulting in an increased demand, According to RLD, there are 8,100 requests for interpreting services made statewide on an annual basis and the current pools interpreters is already unable to serve the state.

The bill does not provide a “grandfather” provision; all existing interpreters must eventually satisfy the newly proposed standards. Temporary provisional licenses are provided for in the bill.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Sign Language Interpreting Practices Act Board would not be established and licensing of interpreters would not be implemented.

According to the NM School for the Deaf, PED would not have the appropriate authority with whom to consult on the development of the three level licensure system for sign language interpreters. The Department asserts that the lack of the board would have a severe and negative impact upon the right of deaf and hard of hearing students to have access to the general curriculum.

NMSD asserts that deaf and hard of hearing adults could receive inadequate and inappropriate interpreting services in some settings which may endanger the health and welfare of all parties involved in the communication.

**EM/yr**