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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/08

SPONSOR Kernan LAST UPDATED HB

SHORT TITLE Education Co-ops as Educational Agencies SB 389

ANALYST Escudero

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|-----------|-------------------------|------------------|
| FY08 | FY09 | | |
| | \$2,700.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB3 And Relates To: SB323

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 389 would amend Section 22-2B-3 NMSA 1978 to recognize regional education co-operatives (RECs) as local education agencies (LEAs), authorized to perform service functions for public schools. Further the amendment would make an appropriation of \$2,700.0 to the Public Education Department (PED) to be distributed in fiscal year 2009 “equally in twelve monthly installments equally” to the nine RECs to fund operational expenditures in fiscal year 2009.

In addition, Senate Bill 389 amends Section 22-2B-3 NMSA 1978 by recognizing RECs as local education agencies (LEAs), granting RECs the authority to perform service functions for public schools in their service area.

HED analysis of Senate Bill 389 focuses on the higher education implications of the proposed legislation. Additional insight may be obtained from PED’s analysis.

FISCAL IMPLICATIONS

This amendment would make an appropriation of \$2,700.0 to the PED to be distributed in FY

2009 in twelve monthly installments to the nine RECs. This would be \$25.0 per month to each REC for operational expenditures.

No fiscal implications apply for the purpose of HEDs analysis.

According to Section 22-8-38 NMSA 1978, unexpended or unencumbered balances in REC accounts shall not revert to the general fund unless the REC does not have a coordinating council, in which case the balance shall revert to the state treasury.

SIGNIFICANT ISSUES

According to HED, the intent of SB389 is twofold:

- Provide permanent base funding for the operation of the nine RECs
- Recognize RECs as LEAs without student membership

NMAC Title 6, Chapter 31, Part 2 defines a local education agency as that found in the Code of Federal Regulations (34 CFR Sec. 300.28):

a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a state, or of or for a combination of school districts or counties that is recognized in a state as an administrative agency for its public elementary schools or secondary schools.

The 2006-2007 New Mexico Educational Personnel Directory categorizes RECs as state agencies administratively attached to the Public Education Department.

Each REC must create a coordinating council comprised of superintendents or chief administrative officers of each local school district (as per 6.23.3 NMAC). The council is required to develop a manual of policies and procedures governing REC operations. In addition, RECs must abide by the State Procurement Code and are bound by fiscal and budget accountability guidelines when providing services to member school districts.

Recognizing RECs as LEAs allows RECs to apply for state and federal grants on behalf of rural districts that do not possess the in-house capacity to apply for these monies.

For the past 24 years, PED has appropriated federal discretionary funds for special education to local school districts, who in turn have allocated these monies to RECs. PED is redirecting these monies to other schools based on special education performance measure data.

The Cyber Academy Act of 2007 requires the Cyber Academy to select host institutions, including RECs, to provide distance learning. Further, the Cyber Academy must give highest priority to providing distance learning courses to students in rural districts, particularly those students in districts served by RECs three (High Plains), eight (Pecos Valley), and nine.

A PED administrator indicated that PED is proposing to add three additional RECs to the Cyber Academy requirements if approved during the 2008 Legislative Session.

The Senate Bill 389 appropriation does not apply to HED or to the publicly funded higher education institutions in New Mexico.

According to PED, the desired affect of being designated a local education entity is unclear. Should the intent of the proposed designation be the ability to apply for federal grants, the federal definition still has to be met under each specific grant. In addition, student membership is a part of formula-driven federal grants (e.g., Title I and IDEA-B). Without a child count, an REC as a LEA would not be eligible to receive these dollars. Should a REC as a LEA have student count under certain grants (e.g., IDEA-B Entitlement and Preschool), the base allocation calculation would be impacted. The district that loses the membership share would receive a reduced share. Further, the current estimate is that IDEA-B provides 10% of the cost to educate a child with a disability. Currently, RECs are not eligible to receive State Equalization Guarantee funds.

Under IDEA-B, LEAs must sign assurances and meet certain obligations to children (outlined under Section 300.201 – 300.213). Some of these obligations include: provision of free appropriate public education (FAPE); development of Individual Education Plans (IEPs); provision of services to children; meet federal requirements of Maintenance of Effort and Excess Costs; would be subject to due process; and provision of child find.

Each grant would have to be analyzed for eligibility and impact.

- Under this bill, each REC would be recognized as an LEA. The PED would then probably have to include RECs in the disparity calculation test. This test is required by the U.S. Department of Education's Impact Aid Office in order for a state to be classified as an equalized state and be able to take credit for basic impact aid payments in calculating state aid payments (funding formula allocations). Including RECs in the disparity calculation may have a negative effect on the state meeting the test for an equalized state.
- Although this bill would provide for operational costs, the monthly installment method outlined may not follow the expenditure patterns of a particular REC. Additionally, while these monies are for operational use for FY 2009, the amendment does not provide recurring funding.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB389 duplicates the appropriation in HB3: Education Appropriation Act, which allocates \$2,700,000 in recurring funds to PED for regional education cooperatives operations.

SB389 relates to SB323: Regional Educational Technology Assistance, which appropriates \$600,000 from the General Fund to the Board of Regents of New Mexico State University for FY09 for the regional educational technology assistance program.

OTHER SUBSTANTIVE ISSUES

As stated by HED, both the High Plains and Pecos Valley RECs have begun negotiations with neighboring institutions of higher education to offer dual credit courses via distance learning. Without permanent operational funds, these and other RECs who plan to pursue these partnerships may be unable to provide such services.