

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 323

49th Legislature, 1st Session, 2009

Short Title: School Library Material Donation

Sponsor(s): Senators Lynda M. Lovejoy, Cynthia Nava and Others

Analyst: Eilani Gerstner

Date: February 5, 2009

Bill Summary:

SB 323 amends the *School Library Material Act* to (1) include “governmentally controlled schools” among those eligible to receive distributions from the School Library Material Fund to pay for the cost of purchasing school library material, and (2) make technical changes to existing language.

Specifically, SB 323:

- defines a “governmentally controlled school” as a Bureau of Indian Education (BIE) school that is governmentally owned and controlled, located in New Mexico, provides instruction for grades 1 through 12, and is not sectarian or denominational;
- includes students at governmentally controlled schools in the definition of “qualified student;”
- requires the Instructional Material Bureau in the Public Education Department (PED) to enforce inventory and accounting procedures for governmentally controlled schools, in addition to school districts and state institutions; and
- makes technical changes to update language referring to the former State Department of Education and the former State Superintendent of Public Instruction.

Fiscal Impact:

SB 323 contains no appropriation.

For FY 10, the Legislative Education Study Committee (LESC) and the Legislative Finance Committee recommendations for public school support do not include funding for the School Material Library Fund; the Executive recommendation is \$2.0 million.

The Legislature has appropriated \$9.0 million to the School Library Material Fund since FY 04, including \$2.0 million each for FY 08 and FY 09 (a \$1.0 million appropriation to the fund for FY 04 was vetoed).

According to PED, for FY 08, the final distribution of approximately \$2.0 million was made at a rate of \$5.90 per pupil to all qualifying school districts and state-supported schools.

Fiscal Issues:

According to the PED analysis of SB 323, without a commensurate increase in funding, all schools currently funded under the *School Library Material Act* will receive reduced allocations:

- in FY 08, the appropriation of \$2.0 million was distributed among 169 districts, charter schools, and state-supported schools; however,
- there are 43 BIE schools in New Mexico with a total student enrollment of 10,410, which would represent a 3.2 percent increase in the number of eligible students and a 25.4 percent increase in the number of entities receiving library material funds.

Issues:

According to the PED analysis of SB 323, BIE schools are created by the federal government and are considered nonpublic schools. As such, PED cites some possible conflicts with several provisions of the New Mexico Constitution, including:

- Article 4, Section 31, which states that “[n]o 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”; and
- Article 12, Section 6, which requires that “[t]he 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”.

Background:

The *School Library Material Act* was enacted in 2003, creating the School Library Material Fund to provide for the distribution of funds, as available, for the purchase of school library material based on a per student cost that is determined by the 40th day student membership of the current school year. The act also:

- grants eligibility for funding to school districts and state-supported schools;
- includes state-chartered charter schools in the term “school districts”;
- defines qualified students as those enrolled in an early childhood education program and in grades 1 through 12 in a public school or a state-supported school;
- allows public school districts and state-supported schools, with the approval of PED, to sell school library material and to recover damages for lost or destroyed materials;
- allows public school districts and state-supported schools that have funds remaining for the purchase of school library material at the end of a fiscal year to retain the funds for expenditure in subsequent years; and
- requires public school districts and state-supported schools to maintain and report inventory and cost records to PED on an annual basis.

Related Bills:

HB 49 *Tribal Colleges in Dual Credit Program*
HB 50 *American Indian Post-Secondary Education Act*
HB 508 *School Library Material Distribution* (identical)