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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/09

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 597/HECS

SHORT TITLE School Textbooks On Compact Disc SB \_\_\_\_\_

ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
		Recurring	General Fund

(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
<b>Total</b>		Indeterminate	Indeterminate			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

House Education Committee substitute for House Bill 597, the Print Disability Access Act, modeled on the Braille Access Act, would establish in statute requirements for publishers to provide materials in one of several audio formats to students in the public schools or post secondary educational institutions who have a print disability certified by a licensed physician or osteopathic physician.

### FISCAL IMPLICATIONS

The PED states it is not possible to determine how much additional funding will be needed to fulfill the requirements of this bill. Publishers may have additional costs to provide National

Instructional Materials Accessibility Standard (NIMAS) files directly to school districts rather than what the publishers already do under federal requirements to provide NMIAS files directly to a National Instructional Materials Access Center (NIMAC).

## **SIGNIFICANT ISSUES**

The Print Disability Act would establish in statute the alternate media availability for textbook materials presently required for blind and visually impaired students through the Braille Access Act to students with a print disability, including but not limited to dyslexia.

The PED has implemented this requirement through rule at 6.75.4.10(A) NMAC for students in the public schools by including in the rule definition of student “the federal standards of the Individuals with Disabilities Education Improvement Act (IDEA) of 2004.” The PED relies on the IDEA definition of “blind or other persons with print disabilities” which references the federal Act to Provide Books to the Adult Blind, which in the implementing regulations by the Library of Congress include in addition to blind and visually impaired persons, “Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations. (iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.” The definition of student in the Braille Access Act is limited to blind or visually impaired students.

The PED relies heavily on the National Instructional Materials Access Center (NIMAC) to provide the source files meeting the National Instructional Materials Accessibility Standard (NIMAS) files for conversion to audio formats. According to the NIMAC website, “NIMAS file sets are source files and are not designed to be handed directly to students. In nearly all cases, some conversion work must be done in order to create a student-ready version. This work may be done by the state or local education agency, or it may be contracted out to an Accessible Media Producer. The NIMAC contains textbooks and related printed core materials published primarily for use in elementary or secondary education.”

The PED notes that if an LEA does not coordinate with NIMAC, it must provide assurances under PED rules that it will provide instructional materials to blind students or other students with print disabilities in a timely manner. In other words, it has to do whatever is necessary to get the materials in an alternative format to students, which could mean contacting the publishers directly regarding materials in alternative formats. Nineteen New Mexico LEAs have opted not to coordinate with NIMAC and all the rest are coordinating with NIMAC, which means that they get the NIMAS files from NIMAC for conversion either directly or through an authorized representative.

The NIMAC provides a mechanism to avoid questions of copyright violation in the production of alternate format materials from commercially produced sources. The PED is concerned that the bill would introduce copyright issues because of its requirement to furnish electronic files directly to schools without the NIMAC intermediary for NIMAS files and other electronic formats if no nationally recognized standard is appropriate.

The Print Disability Act, like the Braille Access Act, applies not only to public schools, but also to post secondary educational institutions. Post secondary institutions are not subject to IDEA but must make reasonable accommodations for students who self identify and provide

documentation of their disability under the federal Americans with Disabilities Act and the Rehabilitation Act of 1973. Typically this includes students who are dyslexic or with other disabilities which impair the ability to effectively read print. The student is responsible for documenting the disability and working with the post secondary institution to develop a set of mutually agreed reasonable academic adjustments which are modifications or adjustments to instructional methods and/or to a course, program, service, or facility of the institution that enables a qualified student with a disability to have equal access and opportunity to attain the same level of performance and to enjoy equal benefits and privileges as are available to similarly-situated students without a disability.

The NIMAC website notes that the legislation that created the NIMAC defines its scope as K-12 only. As such, the NIMAC is not able to serve students in higher education.

The UNM Accessibility Resource Center website notes that “Availability of textbooks in electronic format from the publishers is limited, forcing departments providing special services to students to develop their own methods to provide these materials to students who need them.” The Center converts print materials “based on the type of text available, student needs, and course requirements. E-Text is then provided as pdf, rtf, ASCII text, mp3 or wav audio files. This entire process is extremely time intensive and requires substantial individual attention to provide quality alternate versions of classroom materials in a timely manner. Providing e-text versions of classroom materials is a primary function of most departments providing services to students with special needs.” These conversions are also provided for syllabi, articles and other publications as well as textbooks.

## **TECHNICAL ISSUES**

The PED states:

On page 4, section F, lines 14 – 18, the publishers currently send NIMAS files of materials published after July 19, 2006 directly to NIMAC under federal requirements.

The bill does not specify that districts may also make these requests. The bill does not include charter schools within its scope. The bill does not include private schools, which are eligible for instructional material funding.

The bill includes students in postsecondary educational institutions who do not fall under the jurisdiction of the PED and with whom the PED has no review, adoption or price agreement.

## **OTHER SUBSTANTIVE ISSUES**

PED notes that the qualifications for students in this bill meet the requirements of NIMAS, and there seems to be no provision under federal law preventing the state from requesting those files directly from the NIMAC. It might be more appropriate to simply confirm the requirement that the publisher provide the files to the NIMAC, and then to follow the established NIMAS procedures for obtaining the files and using them to convert materials for this group of students.

The HED states the bill includes definitions of terms already defined in various parts of the Public School Code, to which it is added. Many of these definitions exist in some form in the

Braille Access Act and portions of the Instructional Materials Law within the Public School Code. Some language in Substitute HB597 duplicates existing statutory language; some augments it; and some conflicts with it. Because of similar language in the law to which Substitute HB597 is to be added, there is likely to be confusion about the application and administration of the Instructional Materials Law unless it is amended to clarify contradictions and eliminate duplication.

GH/mc