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FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/06

SPONSOR Marquardt LAST UPDATED _____ HB 857

SHORT TITLE Statewide Teen Pregnancy Prevention SB _____

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	450.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 664

Relates to HB 193 (Teen Pregnancy Prevention & Parent Programs)

Relates to SB 160 (Teen Pregnancy Prevention Programs)

Relates to SB 591 (South Valley Male Involvement Program)

Relates to SB 592 (Statewide Teen Pregnancy Prevention Program)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Office of the Attorney General (AGO)

Human Services Department (HSD)

Health Policy Commission (HPC)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 857 appropriates \$450,000 from the general fund to the Department of Health as follows:

- 1) \$200,000 to expand the Male Involvement Program to Southern and Eastern New Mexico and to develop a youth alliance program component that could be linked to school-based health center programs; and
- 2) \$250,000 to develop and implement a model community-wide program that involves parents, schools, businesses, faith-based organizations, health care providers and civic organizations in providing support to youth in the areas of employment skills, healthy behaviors, sex edu-

cation and academic achievement. The program shall be modeled after the Carrera pregnancy prevention program that links school-based programs, parallel family systems, community service and recreational activities.

FISCAL IMPLICATIONS

The appropriation of \$450,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

SIGNIFICANT ISSUES

According to the Office of the Attorney General (AGO), the inclusion of faith-based organizations raises serious and substantial federal and state constitutional questions. HB 857 implicates (1) the Establishment Clause of the First Amendment and (2) N.M. Const. art. IV, § 31.

1. Establishment Clause of the First Amendment

A direct or indirect appropriation to faith-based entities implicates the First Amendment Establishment Clause. First Amendment Establishment Clause inquiries involve a three-prong test. The governmental action (1) must have a secular legislative purpose, (2) the primary effect must be one that neither advances nor inhibits religion, and (3) the action must not foster an excessive government entanglement with religion. *Lemon v. Kutzman*, 403 U.S. 602, 512-13 (1971). Depending on the extent of the involvement of the faith based entity, HB 857 probably could be challenged under all three aspects of the test.

(1) First, lack of secular legislative purpose will invalidate governmental action as a violation of the Establishment Clause. The motivation behind the governmental action must be secular. It is appropriate to ask what is the actual purpose of the legislation. While the legislative purpose of providing aid to agencies that support teen pregnancy prevention is secular, HB 857 specifies that the appropriation is to provide services through funding “faith-based” entities. Specific appropriation to faith-based entities is contrary to the position that HB 857 has a secular legislative purpose.

(2) Second, the principle or primary effect of the government action must not be to endorse or inhibit religion. By making an express statement that the appropriation is to fund “faith-based” entities, it is hard to defend HB 857 as neutral legislation. The question is whether the governmental action promotes religion. Symbolic benefit to religion is enough; it “need not be material and tangible advancement.” *Friedman v. Bd. of County Comm’rs of Bernalillo County*, 781 F. 2d. 777, 781 (10th Cir. 1985). Because HB 857 specifies funding to DOH for faith-based entities, it is difficult to see how HB 857 does not promote religion.

(3) The third test is that the governmental action must not foster an excessive government entanglement with religion. Although the “excessive entanglement” test will be determined according to the facts of the specific government action, programs that involve vulnerable populations are usually highly regulated by state agencies. Public funding of these services typically involve outcome results measures and other oversight responsibilities. The public funding source frequently analyzes service delivery models to determine program effectiveness and cost benefits. The programs usually involve compliance with minimum program criteria for services, minimum quali-

fications for service providers, and periodic fiscal and program audits. Budget and program oversight mechanisms are routine. It would be unusual for a government agency to fund a service in such a sensitive area and not mandate minimum reporting requirements and possible on site visits. Funding of faith-based programs to provide pregnancy prevention could very likely involve government intrusion into all aspects of the funded programs sufficient for a court to find excessive government entanglement in religion.

2. N.M. Const. art IV, § 31.

Art. IV, § 31 states in pertinent part: “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....” Although the appropriation is identified as going to DOH, a state agency, HB 857 expressly mandates that DOH fund “faith-based organizations” related to teen pregnancy prevention. A valid constitutional challenge may be raised on the theory that HB 857 attempts to do indirectly (make an appropriation to private entity not under the absolute control of the state) that it cannot do directly. This indirect appropriation to private entities may be held by a court to be a violation of N.M. Const. art. IV, § 31.

The inclusion of faith-based organizations in the teen pregnancy prevention program does not automatically result in a constitutional conflict. However, it does trigger the analysis and renders the program vulnerable to a constitutional challenge.

According to the Department of Health (DOH), The Carrera model is a comprehensive youth development/sex education program designed for a cohort of young people from ages 11 to 18. The cost is approximately \$4,000 per young person per year (based on personal conversation with Dr. Michael Carrera). The appropriation in HB 857 would serve 62 teens. This model has been shown to delay initiation of sexual intercourse, increase resistance to sexual pressure and increase use of dual methods of contraception with Hispanic and African American teens in New York. Currently, there is no entity in New Mexico that has been trained and is qualified to implement the Carrera model.

DOH notes that the South Valley Male Involvement Project, based out of the Alamosa Public Health Office, has provided services to an estimated 6,000 males through local health offices, seven public and charter schools, and community-based organizations. The Project provides education, outreach and clinical services to improve services for men of all ages in the South Valley and increase prevention of teen pregnancy, HIV/STD’s and violence. The South Valley Male Involvement Project currently receives \$125,000 per year in federal funds.

The Human Services Department (HSD) notes that HB 857 would bring in programs, resources, education and support that are currently needed to educate teens in preventing and postponing pregnancy for later years when they are better able to care for their children. While there is no direct link to HSD, an improvement in child and teen health and a reduction in childhood pregnancies will result in cost savings for the Medicaid program.

PERFORMANCE IMPLICATIONS

Although this appropriation is not included in the Executive Budget Request, HB 857 does fall within the DOH 2007 Strategic Plan, Program Area 1, Public Health, Objective 2, Reduce Teen Pregnancy.

ADMINISTRATIVE IMPLICATIONS

According to DOH, two full-time health educators implement the South Valley Male Involvement Project. Two additional FTEs would be needed for each expansion community. An additional FTE would be needed to learn and implement the Carrera model. The cost would be \$60,000 each for salary and benefits and \$11,500 each for start-up costs of computer, office furniture and supplies, etc.

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