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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/11

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE Conform to Federal Disability Definitions SB 192

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
0	0		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Bill 142

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	>\$750.0	>\$750.0	\$1,500.0	Recurring	Public School Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 192 would align the Public School Code (Chapter 22 NMSA 1978) with the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA) with respect to definitions used by the IDEA. Specifically, it changes the definitions used in the Public School Code and provides for funding for both students with disabilities and gifted students. The bill also authorizes a school district or charter school to provide special education and related services to students with a developmental delay, updates the provisions applicable to gifted education, and aligns the Public Education Department's (PED) responsibility to monitor special education with the IDEA.

FISCAL IMPLICATIONS

The PED reports that Senate Bill 192 as drafted on p. 9, lines 14 and 20, provides funding for students who are gifted only, not disabled and gifted, at all program levels, which would generate additional funding under the State Equalization Guarantee (SEG) formula if school districts provided gifted programs at either C or D levels. Under the Standards for Excellence (6.29.1.9(H) NMAC), a C level program would involve an extensive amount of special education services which shall be provided 50 percent or more of the school day and a D level program would involve a maximum amount of special education services which shall be provided in an amount approaching a full-school day. The fiscal impact of funding students who are gifted only at C and D levels would be to generate more SEG funding for those districts that do so. For example, Albuquerque Public Schools reported 201 C level students who are gifted and 5 D level students who are gifted. The SEG funding generated for the C level students would be \$746,202.45 and that for D level students would amount to \$37,124.50. However, funding those same students at A and B levels would generate SEG funding in the amount of \$535,335.29, which is \$247,991.66 less than funding those students at C and D levels.

The additional fiscal impact on school districts outside of Albuquerque Public Schools has not been estimated, but is likely to be substantial.

SIGNIFICANT ISSUES

In 1967, eight years before there was federal legislation governing the education of individuals with disabilities, the New Mexico Legislature included a section in the Public School Code providing for the education of students with disabilities. For some time, however, and particularly since the reauthorization of the IDEA by Congress in 2004, the language of the federal and state laws has not been aligned.

In 2007, after the U.S. Department of Education promulgated new federal regulations pursuant to the reauthorized IDEA, PED promulgated new rules aligned with the federal regulations. However, pre-existing state special education law remained unchanged even where changes in the pre-emptive language of federal law rendered certain language in state law obsolete. As a result, PED rule currently is not fully aligned with state law. This resulted in action by the Legislative Education Study Committee (LESC), the result of which is SB 192.

The PED and local school districts receive more than \$90.0 million annually in IDEA funds to provide special education services to students with disabilities, but among the conditions for doing so, PED is required, among other duties, to ensure that state law relating to the education of children with disabilities conforms with the purposes of Part B of the IDEA. Senate Bill 192 accomplishes that goal which PED supports.

With respect to the gifted, an intellectually gifted student is not considered disabled under the IDEA solely on that basis. (Such students might, however, qualify with other recognized disabilities.) However, the State of New Mexico includes within the special education definitions “a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the department pursuant to that section. Nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department-approved gifted programs for those students who meet the established criteria.” Section 22-13-6(D) NMSA 1978. Section 22-13-6.1(C) NMSA 1978 establishes certain requirements for each school district offering a gifted education program. It is not entirely clear whether the statute actually mandates that districts offer gifted programs in their schools.

With respect to state funding for programs for gifted-only students, Section 22-13-6(D) NMSA 1978 provides that only those PED-approved gifted programs for those students who meet the established

criteria will receive state funds. However, the Legislature has not created a specific funding mechanism for gifted programs, nor is there specific statutory direction with respect to calculating gifted-only program units. As a result, the term “exceptional children” was anecdotally interpreted to include the gifted which allowed funding under Section 22-8-21 NMSA 1978 of the Public School Finance Act and that interpretation was incorporated into the state rules governing the gifted. See 6.31.2.12(F)(3) NMAC. In the future, the PED will recommend that gifted program units be created separately from the special education program units in Section 22-8-21 so that proper weighting of the cost of providing gifted programs can be generated for districts offering gifted programs. The recommended changes will also reflect that gifted programs are distinguishable programmatically from special education programs and that accurate counts are made of both populations for federal compliance and other purposes.

The bill as presently drafted provides funding for students who are gifted-only at C and D levels as noted above and in the Fiscal Implications section. This raises the question of whether districts should be providing gifted only programs at C and D levels as a matter of policy since a D level program would have a gifted-only student in a full-day program. Normally, D level programs are reserved for students with a severe disability who, because of their disability, cannot benefit from education in the regular classroom. These students usually require intensive services, multiple related services, and the use of 1:1 instructional assistants. It is unclear as to how a D level program would look like for a student who is gifted only.

While the PED supports this bill because it is important to align the Public School Code with the IDEA, PED also feels that the Legislature should address at some future time the issues raised concerning gifted programs. Many of these concerns would have been resolved if the Public School Formula bill had passed in the 2009 Session but since it did not, the problems remain.

ADMINISTRATIVE IMPLICATIONS

The proposed bill would not have administrative implications on the PED since monitoring has been administered consistently with the PED special education rules, which conform to the IDEA. Senate Bill 192 will conform state statute to the IDEA, as well.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 192 conflicts with Senate Bill 142. Senate Bill 142 would amend Section 22-8-21 NMSA 1978 by changing the State Equalization Guarantee distribution formula to establish a cap on the number of ancillary Full Time Equivalent (FTE) that may be considered for calculating SEG funding. The cap is based on the enrollment of qualified students for Special Education Program Units and their placement in class programs A, B, C or D.

TECHNICAL ISSUES

The PED recommends adding “At its discretion” to the beginning of line 24 on page 12 and “in conformance with department rule” at the end of line 4 on page 13. The PED also recommends deleting “or gifted” on lines 14 and 20 on page 9.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Public School Code will remain out of conformance with the IDEA.

JCH/bym