

## ANALYSIS

### Item 10: Department of Education Department of Early Learning and Care Special Purpose Appropriation

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**Analyst:** Julie Neburka

**Request:** Allocate \$5,130,265 from the special purpose appropriation made to the Emergency Board for the Department of Education and the establishment of the Department of Early Learning and Care, appropriate \$650,618 General Fund for additional costs identified in the establishment of the Department of Early Learning and Care, and establish 34 positions (12.38 FTE).

**Analysis:** HB 5006 (2021) provided funding to implement the provisions of HB 3073 (2021), which established the new Department of Early Learning and Care (DELIC). The Oregon Department of Education (ODE) was provided with \$3.5 million General Fund and fourteen positions (12.92 FTE) for its Early Learning Division to begin hiring staff and developing payment systems, accounting structures, information technology systems, and other business infrastructure for the new department. The bill also made a special purpose appropriation (SPA) to the Emergency Board of \$5,130,265 to hire staff throughout 2022, and to cover certain ODE costs after the new department's January 1, 2023 operative date. The SPA included funding to cover the estimated cost for 34 positions (12.38 FTE) with staggered start dates based on planning work that was done during the development of HB 3073.

DELIC will be responsible for developing, implementing, and operating a statewide early learning and child care system. In addition to planning for future early childhood policies, programs, and services, it will continue operating existing programs run by ODE's Early Learning Division - including Oregon Prekindergarten, Preschool Promise, and the Office of Childcare - and will take on operation of the Employment Related Day Care (ERDC) program currently run by the Department of Human Services. The effective date in HB 3073 for transfer of the ERDC program is July 1, 2023. The Department has engaged the services of Alvarez and Marsal, a business consulting firm, to support the extensive planning that is underway for the changes to operations, systems, policies, and rules that will be required to transition programs, implement legislative priorities, and establish business functions and program requirements under a new agency<sup>1</sup>. The Department has begun filling the fourteen positions authorized in HB 5006, and has requested release of the SPA to begin the hiring process for the next 34 positions.

A preliminary fiscal impact statement prepared for HB 3073 in June 2021 assumed that of the 34 new positions assumed to be funded by the SPA, eight positions (4.04 FTE) would start after February 2022, and an additional 26 (6.50 FTE) would start after the January 1, 2023 operative date for DELIC. Twelve of the 34 are existing limited duration positions (seven of which are filled) for which the Department requests permanent funding. Approximately \$2.6 million of the SPA amount was planned for costs that would be incurred by DELIC and ODE after January 1, 2023, including state government service charges for DELIC and a backfill for lost indirect cost revenue to ODE resulting from federal programs moving to DELIC. With the advantage of six months of additional planning effort since the passage of HB 3073, the current request adjusts the FTE/start dates on certain positions, adjusts the job classifications for those

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<sup>1</sup> For additional information on the current status of planning for the new Department of Early Learning and Care and the transfer of the ERDC program from DHS to DELIC, please see Item #7 on the January 2022 Joint Interim Committee on Ways and Means Education Subcommittee agenda, titled "Department of Early Learning and Care Updates."

positions that have been reviewed by the Department of Administrative Services’ Chief Human Resources Office, and increases the amount planned for services and supplies expenses, thereby increasing the June 2021 estimate of expenses by \$650,618 and 1.84 FTE.

It would be difficult to overstate the complexity of creating this new state agency. Ensuring the seamless transition of programs that child care providers and families rely upon both practically and financially is a significant management challenge, one made more difficult by the need to create or otherwise provide for an administrative structure capable of managing budgets and accounting, information technology, human resources, procurements, and payments to providers. Planning activities are well-supported by the consultants, but the Early Learning Division reports that recruitment and hiring for both new positions and existing vacancies has moved slowly, with just five of the first 14 new positions having been hired to date. Given the current labor market, the proposed timeframes - even as revised - seem too short for recruiting, hiring, and onboarding staff critical for the operation of the new department, particularly given that current law has a start date of January 1, 2023 for DELC.

The Legislative Fiscal Office remains concerned that there is not sufficient time prior to January 1, 2023 to stand up the new agency. To date, the DELC transition team has identified 40 discrete planning and operational projects that must be completed prior to or just after the new agency’s operative date, not all of which are completely mapped out and resourced. The Early Learning Division does not have the business infrastructure required to function as a stand-alone agency, as most of its business services are currently provided by ODE. Though plans are still being refined, the proposed business operations structure for DELC totals 93 positions across human resources, budget, accounting, grants management and procurement, information technology, and the Direct Pay Unit for the ERDC program. Of those functions, the Direct Pay Unit and the grants management unit alone have a full complement of existing positions, most of which are filled. The table below shows a subset of the current staffing plan and status for the other business units, including positions proposed, number currently existing, the number included in the current request, and the number of months the position would be funded in the current biennium (start dates). As mentioned above, the agency’s request also includes approval to make existing limited duration positions permanent, along with adding new positions supporting consumer education, civil rights, equity, rulemaking, data coordination, facilities, and publications.

<b>Business Unit</b>	<b>Number of Positions Planned</b>	<b>Number of Existing* Positions</b>	<b>Current request</b>	<b>Start Dates for Positions in Current Request (2022)</b>	<b>Positions to be requested at a future date</b>
Human Resources	8	3	2	4/1, 5/1	3
Accounting	12	2	5	4/1, 8/1, 1/1/23	5
Budget	7	4	3	3/1, 11/1	0
Procurement	8	3	2	4/1, 1/1/23	3
Information Technology	17	9	3	7/1, 11/1, 1/1/23	5

*\* includes a total of five positions planned for transfer from ODE*

How the new agency will transact business is of particular concern because it is the least developed aspect of the otherwise robust DELC plan. For example, the budget positions identified above start on or after the date the budget development process for the 2023-25 biennium begins, and the currently existing positions are or will be vacant as of mid-January 2022. Some of the proposed accounting and grants management positions included in this request are contingent upon whether or not an interagency agreement can be reached with ODE to continue providing those services to DELC. The status of such interagency agreements is unclear and is complicated by the fact that the Early Learning Division is currently without a financial services subject matter expert to develop cost estimates or

business and operations plans. Cost comparisons, choices among alternatives, and budget decisions cannot yet be made as cost information has not yet been developed, potentially compounding both financial and operational risks.

A final consideration with regard to releasing the SPA is that it contains funding for \$2.6 million of expenses that would not occur in the 2021-23 biennium if the operative date for DELC is changed to July 1, 2023. This date change has been discussed among ODE and Early Learning Division leadership teams, the Governor's Office, the Chief Financial Office, legislators, and others. This change in the start date for the agency could only be implemented with legislation during the 2022 legislative session. In light of this possibility, and to allow time for the DELC transition team to develop business alternatives and refine costs, timelines, and operational plans, the Legislative Fiscal Office (LFO) recommends that the Early Learning Division continue to work with LFO on the development of a funding plan for legislative action during the 2022 session.

**Recommendation:** The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend including proposed budgetary changes, after further review and refinement, in a budget reconciliation bill during the 2022 legislative session.

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**Request:** Allocate \$5,130,265 from the special purpose appropriation made to the Emergency Board for the Department of Education and the establishment of the Department of Early Learning and Care. Appropriate \$650,618 General Fund for additional costs identified for the establishment of the Department of Early Learning and Care. Establish 34 positions (12.38 FTE).

**Recommendation:** Approve the request during the February 2022 Legislative Session.

**Discussion:** House Bill 5006 (2021) included a special purpose appropriation to the Emergency Board in the amount of \$5,130,265 General Fund. This funding was set aside until the Early Learning Division (ELD) was able to develop a more concrete plan for the needed positions and operational costs for establishment of the new Department of Early Learning and Care (DELIC). House Bill 5006 also provided \$3.5 million General Fund to establish an additional 14 positions (12.92 FTE) in ELD. The funding was included in the adopted budget to allow ELD to start the transition work by bringing on key staff, necessary to begin developing its payment systems, accounting structures, information technology systems, employee hiring processes, and other activities. As shown in the request letter, five of those positions have been filled, leaving more recruitment work yet to be done on the initial 14 positions. The Division has filled some of the key leadership positions with this initial round, including a Chief Information Officer and Chief Administrative Officer, as well as a Human Resource Specialist 2, which will be essential to increasing the speed of hiring.

From early September to mid-October 2021, ELD conducted an extensive Current State Analysis with the assistance of Alvarez and Marsal (A&M). This work will be detailed in a separate report, which will also be reviewed in the January interim Legislative Days. The Current State work entailed interviewing 29 ELD staff members to better understand ELD's organizational structure and key capabilities. Interviewed staff were from across ELD, from the Office of Child Care (OCC), operations and fiscal management, information technology, policy, programs, and community systems teams, among others. Through this work, ELD was able to fine tune the original special purpose appropriation estimate produced at the time House Bill 3073 (2021) was passed into law. In addition, ELD worked with the Department of Administrative Services Chief Human Resource Office on the position classifications and the expected work to be performed. The changes to the individual position classifications are detailed in the letter submitted by ELD. Additionally, the revised request for the special purpose appropriation includes a change in the timing of when certain positions would be onboarded, resulting in a new full-time equivalent (FTE) estimate.

The original special purpose appropriation estimate included 34 positions (10.54 FTE). At this time, that remains unchanged in this funding request. What has changed, is ELD is requesting an additional \$650,618 General Fund for an added 1.84 FTE at the cost of \$412,618 General Fund, as well as an additional \$238,000 for Services and Supplies. The increase in FTE is due to a plan to bring certain positions on sooner than originally priced, and an overall increase to Services and Supplies, due to projected rising costs for information technology equipment and training costs for new employees. Specifically, ELD would like to increase the months of funding for two Accountant 3 positions for grant accounting, two Fiscal Analyst positions, and three Operations and Policy Analyst positions, along with a decrease in months to an Administrative Specialist position.

It should be noted that this request assumes a start date for DELC on January 1, 2023, which is the start date in current law. However, conversations continue, leaving open the possibility that the start date will be moved to a future date beyond the 2021-23 biennium. If the start date for DELC is moved to July 1, 2023, this spending plan will likely need to be revised. For example, this funding plan includes \$1.9 million General Fund for backfill of indirect revenues that will no longer be collected by the Oregon Department of Education (ODE), as well as DELC. That amount totals \$1.9 million, which would no longer be needed under a revised start date. The table below shows the net change in the special purpose appropriation request compared to the original estimate.

#### 2021-23 ELD Special Purpose Appropriation Projection Changes

June 2021 Estimate	ODE	DELC	Total	Positions	FTE
New Positions hired after February 2022	\$ 554,112	\$ 426,281	\$ 980,393	8	4.04
New Position S&S (after February 2022)	\$ 17,235	\$ 42,765	\$ 60,000		
New Positions: ODE/DELC Only		\$ 1,342,807	\$ 1,342,807	26	6.50
New DELC S&S Position Costs		\$ 195,000	\$ 195,000		
New S&S needs		\$ 650,000	\$ 650,000		
Indirect revenue backfill ODE/DELC	\$ 1,623,149	\$ 278,916	\$ 1,902,065		
<b>Total June 2021 Estimate</b>	<b>\$ 2,194,496</b>	<b>\$ 2,935,769</b>	<b>\$ 5,130,265</b>	<b>34</b>	<b>10.54</b>

Revised Request January 2022					
New Positions hired after February 2022	\$ 685,290	\$ 426,281	\$ 1,111,571	8	4.67
New Position S&S (after February 2022)	\$ 73,235	\$ 42,765	\$ 116,000		
New Positions: ODE/DELC Only	\$ 254,010	\$ 1,370,237	\$ 1,624,247	26	7.71
New DELC S&S Position Costs	\$ 40,801	\$ 336,199	\$ 377,000		
New S&S needs		\$ 650,000	\$ 650,000		
Indirect revenue backfill ODE/DELC	\$ 1,623,149	\$ 278,916	\$ 1,902,065		
<b>Total January 2022 Estimate</b>	<b>\$ 2,676,484</b>	<b>\$ 3,104,398</b>	<b>\$ 5,780,883</b>	<b>34</b>	<b>12.38</b>

Net Change					
New Positions hired after February 2022	\$ 131,178	\$ -	\$ 131,178		0.63
New Position S&S (after February 2022)	\$ 56,000	\$ -	\$ 56,000		0.00
New Positions: ODE/DELC Only	\$ 254,010	\$ 27,431	\$ 281,440		1.21
New DELC S&S Position Costs	\$ 40,801	\$ 141,199	\$ 182,000		0.00
New S&S needs	\$ -				
Indirect revenue backfill ODE/DELC	\$ -				
<b>Total Net Change</b>	<b>\$ 481,988</b>	<b>\$ 168,630</b>	<b>\$ 650,618</b>		<b>1.84</b>

\* All funding shown in this table is General Fund.

Within this request there is funding to convert 12 positions from limited duration to permanent. ELD confirmed these positions continue to be budgeted as limited duration, although the work being performed is ongoing and the positions should be permanent. Most of these positions are currently filled. This portion of the request is unchanged from June 2021, except for one reclassification for the Professional Learning Director.

The projected 2023-25 roll up costs for the 34 positions and related Services and Supplies costs is \$6.7 million, which does not include indirect backfill of \$1.9 million that is within this request. Preliminary findings from the planning work with A&M, indicate that ELD may need additional positions to stand up the new agency that are not included in this request. Future policy discussions concerning the start date of DELC would impact needed budget adjustments along with any additional position planning be conducted by ELD with A&M. The timing of the transfer of child care assistance programs from the Oregon Department of Human Services may also impact the planning efforts of ELD. While much work remains to be done, there is a known need to bring staff on to start the new agency. Approval of this request allows that work to commence. Given the current challenges in the overall labor market that is impacting state and

local governments and the private sector, human capital risks will remain one of the biggest challenges to successfully establishing the Department of Early Learning and Care.

**Legal References:**

- Allocation of \$5,130,265 from the special purpose appropriation made to the Emergency Board by Chapter 669, Section 169, Oregon Laws 2021, to supplement the appropriation made by Chapter 603 Oregon Laws 2021, Section 1(1) for the Department of Education, Operations for the 2021-23 biennium.
- Appropriate \$650,618 from the General Fund to supplement the appropriation made by Chapter 603, section 1(1), Oregon Laws 2021, for the Oregon Department of Education, Operations for the 2021-23 biennium.



December 10, 2021

Senator Elizabeth Steiner Hayward, Co-Chair  
Representative Dan Rayfield, Co-Chair  
Interim Joint Committee on Ways and Means  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301

Dear Co-Chairpersons:

**Nature of the Request**

The Department of Education, Early Learning Division (ELD) respectfully requests access to the Special Purpose Appropriation for HB 3073 (2021) to transition ELD to the Department of Early Learning and Care (DELIC).

**Agency Action**

**HB 3073: Department of Early Learning and Care SPA**

The Early Learning Division was asked to provide an estimated Fiscal Impact Statement (FIS) in June 2021 for the costs associated with the positions needed to support the new agency per HB 3073. This did not include any positions that would be moving from the Oregon Department of Human Services (ODHS) to support the Employment Related Day Care (ERDC) or other child care assistance programs that would move over to DELIC on July 1, 2023.

In the development of the fiscal impact for HB 3073, the Legislature approved 14 positions/12.92 FTE to be hired before the February 2022 session as well as funding for reclassifications of existing ELD positions for a total General Fund cost of \$3.5 million. In addition, the Legislature also approved a special purpose appropriation which contained a total of 34 positions/10.54 FTE, funding for services and supplies as well as funds for ODE for estimated lost indirect revenue. The total General Fund for the SPA is \$5.1 million dollars. The represents a total of 48 positions/23.46 FTE.

Below is an update on the hiring of the 14 positions/12.92 FTE approved by the Legislature. The table includes the current status of those positions.

Legislatively Approved Position Classification	Status
PEM F - Communications & Outreach Director	In Recruitment
Accountant 4 (Lead Accountant)	Recruitment 2/2022
PEM F - Chief Information Officer	Filled
ISS8 - Software Engineer/System Development	In Recruitment
OPA 4 - COO analyst	Recruitment 1/2022
OPA 3 – Child Care Subsidy Policy Analyst	Recruitment 2/2022
Executive Assistant to EL System Director	Recruitment 2022
PEM G - Chief of Staff	Filled
OPA 4 – Child Care Subsidy Policy Analyst	Filled

Human Resource Specialist 2	Filled
Procurement Contract Specialist	Recruitment 1/2022
ISS6 /PM3 - IT Project Manager	Recruitment 2/2022
OPA 2 – Grants Team	Filled
ISS6 - CRRIS Support	Recruitment 2/2022

Reasoning for hiring status/reclasses of the approved 14 positions:

Recruitment for the 14 positions received to support HB 3073 in 2021 has been slow-moving. ELD has hired some key leadership positions, prioritizing our Chief Information Officer and Chief of Staff and posting the Communications & Outreach Director, with goals to fill that position by February 2022. The HR Specialist 2 was just hired on 11/29/21 to focus on recruitment dedicated to the Early Learning Division and building capacity in the ODE team to keep these recruitments moving.

ELD hired an OPA 4 Subsidy Analyst to work alongside our contractors, Alvarez & Marsal (A&M) to ensure that the DELC agency design project continued to move forward on schedule. ELD held on hiring the OPA 3 Subsidy Analyst because of the work and expertise A&M was able to offer, instead prioritizing moving the accountant 4, ISS 8, and OPA 4 COO Analyst through the DAS classification and compensation review process.

Special Purpose Appropriation Request

The ELD contracted with Alvarez & Marsal (A&M) to support the planning process for the new Department of Early Learning and Care agency design. Of the 22 new SPA positions, the ELD is recommending 4 position changes.

New Position Requests

#	SPA Position	Position Change	Reasoning
1	PEM F - Procurement Director (DPO)		
2	PEM F - Chief Human Resource Officer	PEM E – Human Resource Director	DAS did not approve the Chief Human Resource Officer at a PEM F classification based on the size of the agency. The position, which will report directly to the Early Learning System Director, with day-to-day supervision under the Chief Operating Officer, is approved as a PEM E Human Resource Director.
3	PEM E - Budget Director		
4	Human Resource Assistant	Human Resource Analyst 1	The ODE HR team recommended the Human Resource Assistant be reclassified to an HR Analyst 1 based on existing and projected workload for the agency.
5	ISS2 - Help Desk Support		
6	ISS4 - Web Administrator	ISS 4 – Data Analyst	Finally, the ISS 4 and ISS 8 positions are proposed as Data Analyst and Data & Integration Manager positions, reflecting the anticipated scope of current and on-going IT data systems development/ administration, data analytics capability, and internal/external data integration.
7	ISS 8 - Network Admin	ISS 8 – Data & Integration Manager	

8	Research Analyst 2 - Subsidy Data Specialist (ERDC)	RA 3	The ELD recommends reclassing the RA 2 Subsidy Data Specialist based on the increased need for research and data coordination across the agency. This position will be repurposed as a Child Care Policy Specialist to support the research and child care assistance teams.
9	Accountant 3 - Grant Accountant		
10	Accountant 3 - Grant Accountant		
11	Accountant 3		
12	Accountant 2		
13	Fiscal Analyst 2		
14	Fiscal Analyst 1 - Assistant Budget Analyst		
15	Admin Specialist 2 - Facility/Safety Coordinator		
16	Procurement Assistant		
17	Electronic Publish & Design Specialist 2		
18	OPA 3 -Rules Position		
19	OPA 1 - Translations Coordinator (under Equity office)		
20	OPA4 - Civil Rights Officer		
21	OPA 4 - Consumer Education		
22	PEM E – Accounting Manager		

The remaining 12 positions in the SPA are to request permanent funding for Limited Duration positions.

*Limited Duration to Permanent Position Requests*

Position Classification	Modified Position Classification	Position Status	Date Filled	Date Vacated
Operations & Policy Analyst 2		Currently filled	5/14/2021	
Program Analyst 4		Vacant as of 12/4/21	10/16/2020 (now vacant)	12/4/2021
Research Analyst 4		Vacant	4/6/2020	3/1/2021
Principal Executive/Manager E	Reclass to PEM F – Professional Learning Director	Currently filled	10/8/2020	
Program Analyst 4		Currently filled	1/14/2021	
Operations & Policy Analyst 3		Currently filled	8/5/2021	
Operations & Policy Analyst 4		Currently filled	6/18/2021	
Operations & Policy Analyst 4		Vacant*		
Operations & Policy Analyst 4		Currently filled	10/8/2020	
Operations & Policy Analyst 1		Vacant	8/27/2020	7/28/2021

Program Analyst 4		Vacant	7/27/2020	2/25/2021**
Operations & Policy Analyst 4		Currently filled	3/1/2021	

\*Utilizing funding for a rotation, unfilled.

\*\*Recruitment posted 3/5/2021, position ended 6/30/2021 and was a failed recruitment. Currently in recruitment, closing 12/12/21.

Below is a summary of total General Fund, positions and FTE count described above:

Description	Positions	FTE	General Fund
HB 3073 SPA Positions	34.0	10.54	2,323,200
HB 3073 SPA Position S&S			255,000
HB 3073 SPA S&S DELC			650,000
HB 3073 SPA ODE/DELC Indirect Backfill			1,902,065
<b>Total HB 3073 SPA</b>	<b>34.0</b>	<b>10.54</b>	<b>5,130,265</b>
<b>New General Fund Position and S&amp;S Costs</b>			
HB 3073 SPA Position Additional Cost	0.0	1.84	412,618
HB 3073 SPA Position S&S Additional Cost			238,000
<b>Total New General Fund</b>	<b>0.0</b>	<b>1.84</b>	<b>650,618</b>
<b>Total ODE/DELC General Fund Request</b>	<b>34.0</b>	<b>12.38</b>	<b>5,780,883</b>

**Action Requested**

The Department of Education, Early Learning Division, requests access to the Special Purpose Appropriation for HB 3073 (2021) to transition ELD to the Department of Early Learning and Care, and additional General Fund appropriation in the amount of \$650,618.

**Legislation Affected**

Allocation of \$5,130,265 from the special purpose appropriation made to the Emergency Board by Chapter 669, Section 169, Oregon Laws 2021, to supplement the appropriation made by Chapter 603 Oregon Laws 2021, Section 1(1) for the Department of Education and the establishment of the Department of Early Learning and Care.

Increase General Fund appropriation from Chapter 603 Oregon Laws 2021, Section 1(1), by an additional \$650,618 General Fund to the Department of Education for additional costs identified in the establishment of the Department of Early Learning and Care.

Thank you for considering approval of this request.

Sincerely,



Alyssa Chatterjee  
Early Learning System Director



Colt Gill  
Agency Director