

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** \*CS/HB 628

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .194226.2

**Short Title:** Special Education Funding

**Sponsor(s):** Representative W. Ken Martinez

**Analyst:** Ian Kleats

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**HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 628**

**Bill Summary:**

CS/HB 628 makes operating reserve appropriations to the Public Education Department (PED) to provide for the required level of state-level maintenance of effort (MOE) special education funding required for FY 13 and FY 14 by the federal Part B *Individuals with Disabilities Education Act* (IDEA) in the event that:

- the appropriations in the *General Appropriation Act* of 2012 and 2013 are insufficient; or
- the state transfers dollars from the State Equalization Guarantee (SEG) Distribution to meet the MOE requirements but the US Department of Education (USDE) rejects the transfer.

\*The bill contains an emergency clause.

**Fiscal Impact:**

***In the event that the appropriations in the General Appropriation Act of 2012 and 2013 are insufficient, the bill:***

- appropriates from the operating reserve to the Public Education Department: \$20.0 million for FY 13; and \$16.0 million for FY 14;
- requires PED to:
  - certify to the State Board of Finance (SBF) that:
    - ✓ all means and efforts to make sufficient funding available to meet special education MOE requirements in FY 13 and FY 14 have been taken; and
    - ✓ the appropriations in the *General Appropriation Act* of 2012 and 2013 are insufficient;
  - review the SBF certification with the Legislative Education Study Committee (LESC) and the Legislative Finance Committee (LFC); and
  - distribute the required amounts to each school district and charter school in the same manner and on the same basis as the SEG Distribution.

***In the event that the USDE rejects the transfer of dollars from the SEG to meet MOE requirements, the bill:***

- appropriates from the operating reserve to the SEG: \$20.0 million for FY 13 and \$16.0 million for FY 14; and
- requires the Secretary of Public Education to:
  - distribute the amounts to each school district and charter school through the SEG Distribution; and
  - reset the FY 13 and FY 14 unit values accordingly.

**Fiscal Issues:**

In early January 2013, the New Mexico Legislature was informed that the state is at risk of a reduction to its federal allocation of IDEA funding for failing to maintain the required level of state support for special education for FY 10 and FY 11. To avoid possible shortfalls in 2013 and 2014, CS/HB 2, et al., the *General Appropriation Act of 2013*, includes appropriation language relating to the MOE requirements that:

- for FY 13:
  - appropriates a total of \$20.0 million in a Special Appropriation (Section 5) to PED consisting of \$15.4 million from the “lockbox” and \$4.6 million in other state funds (revenues from driver’s license fees); and
  - transfers up to \$20.0 million in a Supplemental and Deficiency Appropriation (Section 6) from the SEG to PED if the program cost in the SEG and the Special Appropriation are insufficient; and
- for FY 14 (both in Section 4):
  - appropriates \$10.0 million to PED for the Supplemental Special Education Maintenance of Effort Distribution;
  - transfers up to \$16.0 million from the SEG to the Special Education Maintenance of Effort Distribution if the program cost in the SEG and the appropriation for the MOE distribution are insufficient.

For both fiscal years, the appropriation language requires PED to:

- certify that the appropriations in CS/HB 2, et al., are insufficient;
- review the certification with the LESC and LFC;
- obtain SBF approval to transfer and distribute funds;
- distribute the amounts through the SEG; and
- reset the unit values accordingly.

**Substantive Issues:**

The federal *Individuals with Disabilities Education Act* Part-B (IDEA-B) funds received by the state are subject to maintenance of effort (MOE) requirements for total state-level financial support provided to special education in each fiscal year. One issue arising from the MOE requirement is the difficulty in separating state-level financial support for special education out

from the current, total SEG appropriation. Changes in the number of special education program units and the final unit value allow for decreases in special education financial support even when the SEG appropriation has increased year-over-year.

## **Background:**

### **Federal Grant Requirements**

Federal IDEA-B grants are provided to states to supplement state funding for special education. IDEA-B funds received by the state are subject to MOE requirements that the state maintain a total state level of financial support to special education in each fiscal year. Specifically, federal law states:

“A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.”

If a state does not meet the requirement for financial support, federal law requires that the USDE Secretary reduce:

“the allocation of funds under Section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement... by the same amount by which the State fails to meet the requirement.”

Further, the impact of a reduction in a state’s IDEA-B award amount appears to have a recurring negative effect on future IDEA-B funding because the formula that USDE uses to determine IDEA-B grant amounts places significant weight on the state’s grant amount in the prior fiscal year. Therefore, a reduction in the grant award amount in one year has a continuing effect on future funding as well.

### ***IDEA MOE Waiver***

The USDE Secretary may grant a state a waiver from MOE requirements for the following reasons:

- “due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State,” or
- “if the State meets the standard for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.”

When a full waiver is granted or a state fails to meet MOE requirements:

- “the financial support required of the State in future years... shall be the amount that would have been required in the absence of that failure and not the reduced level of the State’s support.”

## **Committee Referrals:**

HAFC

**Related Bills:**

HJM 49 *Special Education Funding Task Force*

HB 459a *Special Education Equalization Guarantee*