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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/2008
 LAST UPDATED 2/11/2008 HB 241/aHEC/aHAFC

SPONSOR Stewart

SHORT TITLE Public School Funding Formula Changes SB _____

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	None See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJR8, HJR10, HB229, HB51, HB311, HB398, HB414
 Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	(\$1,000.0)		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Health (DOH)

Public Education Department (PED)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 241 as amended removes references to funding sufficiency in legislative findings, removes inflationary factors in determining funding, provides for a set aside account for funds dedicated to funding the new formula and changes the effective dates for implementation of provisions of various sections.

SIGNIFICANT ISSUES (HAFC Amendment)

Provisions contained in the amendment set up a separate account within the Public School Fund to hold revenues received for the purpose of implementing the funding formula until such time as sufficient funding to implement the funding formula is accrued. The amendment further provides that these funds shall not be counted as part of the state reserve for bonding or any other purposes other than to implement the funding formula.

The amendment removes references to inflation factors leaving only legislative appropriation as the annual adjustment to the base student cost. The calculator provided by the contractor includes an inflation factor that will no longer apply. It appears that this portion of the calculator should be removed as it provides a comparison between legislative appropriation and a calculated sufficiency cost which will no longer exist with the removal of inflation language in the amendment.

HB-241/aHEC/aHAFC provides that the funding formula will not be implemented until approximately \$322 million is available to fund the formula. The amount set aside in the public school fund combined with appropriations to SEG excluding “legislatively determined inflation and salaries”, akin to opening the door costs, will count toward this amount. If a sufficient amount is not available by the beginning of FY12, the funding formula will not be implemented.

According to LFC projections, available new recurring funding is projected to decline significantly beginning in FY10 considerably affecting the Legislature’s ability to meet opening the door costs, providing salary increases and setting aside funds to implement the formula. The baseline expenditure scenario does not explicitly provide for compensation increases or new initiatives. In order to meet these needs it may be necessary to cut spending elsewhere or raise taxes. (See Table below)

Establishing a hard to meet spending target for implementation of the new formula may place the legislature in the hard position of either under funding core programs like Medicaid, raising taxes significantly or inviting litigation.

Expenditures:	Prelim	Op. Bud.	LFC Rec.	Baseline Forecast		
	FY07	FY08	FY09	FY10	FY11	FY12
Legislative	17.3	18.8	19.9	20.3	20.7	21.0
Judicial	180.8	205.8	212.1	218.6	225.2	231.9
General Control*	165.9	197.7	222.6	226.8	231.0	235.2
Commerce and Industry	51.6	58.4	60.0	61.1	62.2	63.3
Ag, Energy & Nat. Resources	75.4	86.6	91.8	93.6	95.3	97.0
Health and Human Services	1,234.1	1,393.4	1,513.3	1,599.0	1,689.6	1,786.2
Medicaid	629.0	707.0	790.0	853.2	921.5	995.2
Other Health and Human Services	605.0	686.4	723.3	745.8	768.1	791.0
Public Safety	333.3	383.3	408.2	424.5	441.1	459.7
Corrections	240.7	277.4	294.7	307.5	320.6	335.6
Other Public Safety	92.5	105.9	113.5	117.0	120.5	124.1
Higher Education	763.9	846.3	882.8	910.3	937.5	965.5
Public Education	2,293.5	2,484.7	2,608.8	2,668.6	2,728.9	2,792.4
Total	5,115.7	5,674.9	6,019.5	6,222.7	6,431.4	6,652.2
Spending Increase	408.3	559.2	344.6	203.2	208.7	220.9
Spending Growth Rate	8.7%	10.9%	6.1%	3.4%	3.4%	3.4%
*In FY09, General Control includes \$20.9 million for compensation.						
Notes						
1) Medicaid spending grows according to CBO projections of federal medicaid spending.						
2) Corrections spending grows at inflation plus projected corrections population growth rate						
3) Public schools grow at inflation plus projected age 5-19 population growth rate.						
4) All other agencies grow at the expected rate of inflation.						
5) Sources for economic growth, inflation, and demographics include Global Insight, UNM, and JFA Associates.						

ALTERNATIVES (HAFC Amendment)

It may be desirable to provide a method to implement the formula with phased-in funding increases.

TECHNICAL ISSUES (HAFC Amendment)

HAFC amendments #2 and #4 to HB-241 provides that revenue dedicated to funding the marginal or incremental cost of the new funding formula shall be credited to a separate account in the Public School Fund. This fund receives revenues from a number of sources. An alternative to avoid a general fund income loss would be to deposit these funds in the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004 (the lockbox). By definition, this fund is part of the general fund which would receive interest income from account proceeds.

HAFC amendment #4 to HB-241 refers to “\$322 million in recurring revenue”. To be clear, this should read “recurring general fund revenue”.

To clean-up language to HAFC amendment #4, the following is recommended:

- strike “increases in recurring general revenue over the prior year” and replace with “and appropriations to the state equalization guarantee above the prior year, excluding legislatively determined inflation and salaries.”

The amendment does not assign the duty to any agency to calculate the “legislatively determined” costs or appropriations that count toward meeting the \$322 million but are not deposited as provided in the new Section “O”. This could become problematic if the different entities making recommendations do not agree on how to book funding.

Amendment two inserts a new section “D” providing for a separate account in the Public School Fund and that all revenue dedicated to public school purposes by a law that is enacted or constitutional amendment that is approved after January 1, 2008 shall be credited to the account. It appears this could include the current and future House Bill 2 which contains \$2.3 billion for public school purposes. The Legislature may wish to add “other than a general appropriations act” after the word “law”.

Page 35, line 5 provides for the public school fund to become a non-reverting fund. This results in an earmarked fund to receive funds from a number of revenue bills as well as transfers from the common school fund and from the federal Minerals Land Leasing Act which account annually for amounts well over the \$322 million threshold.

OTHER SUBSTANTIVE ISSUES (HAFC Amendment)

The \$322 million marginal cost of implementation noted in the HAFC amendment takes into consideration \$22 million contained in the General Appropriation Act for one additional instructional day and second year funding for elementary physical education. To further reduce this amount without adversely affecting the educational program contained in the formula, the legislature may wish to consider reducing the expansion of professional development days contained in the bill and funding them in the future as funds become available. This could reduce the amount needed for implementation by as much as \$40 million.

The LESC in October reported that over \$45 million would be spent on educator professional development in FY08 alone. The LESC notes this amount is most likely underestimated since significant amounts of federal funds, state operational and other funds spent for professional development through contractual services could not be easily identified because the chart of accounts does not specifically track professional development.

According to LESC, the National Commission on Teaching and America's Future issued a report in 1996 which reported that traditionally organized professional development – either in the form of reimbursement for courses that may not be directly related to school needs or classroom responsibilities, or district-determined “hit-and-run” workshops – is not often well suited to helping teachers with the most pressing challenges they face in strengthening their subject matter knowledge, responding to the diversity of student learning needs, or teaching more effectively. More effectively implementing existing professional development days with considerable existing funding should be considered.

Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 241 makes a number of significant changes to the bill as well as a number of technical changes.

The HEC amendment changes the requirement for the secretary to appoint a hearing officer to an “impartial person” to recommend to the secretary whether an original budget, a modified budget submitted by a district or a revised budget prepared by the department should be accepted when an original budget is not approved. The secretary will have the final decision.

The amendment changes the date PED will have a budget approved from June 30th to July 1st of each year.

The amendment changes the date for PED to submit the public school support budget from November 30th to November 20th of each year.

Provisions contained in the original bill for districts with identified special education rates above 16 percent to reevaluate its special education population to determine if ethnic or racial considerations played a part in the identification as well as whether the most appropriate education and related services are being provided.

The amendment provides for bilingual endorsement training to be provided by districts.

The amendment provides that physical education classes must be taught by properly endorsed teachers.

The HEC amendment expands membership in the Funding Formula and Accountability Assistance Committee to include the chair of the IDEA advisory committee, and a representative of a statewide parent organization.

SIGNIFICANT ISSUES

Previously, the Attorney General's Office noted that it was unclear if the formula met the test for disparity. Although not part of the amendment, PED in testimony to the House Education Committee noted that it is unknown whether the new funding formula will meet the federal test for disparity until such time as an enacted bill is provided to the U.S. Department of Education for evaluation. This has implications to the credits taken against federal impact aid funds.

Changes in the appointment of an impartial person in place of a hearing officer may be problematic in that most people do not have a basic understanding of the EPSS process or public school finance. Accurate determinations may be difficult.

With the change in the approval date, it appears that a school district could begin the fiscal year on July 1st without an approved budget in place.

At present, PED is required to submit the Public School Support request to DFA no later than November 30 of each year. This allows little time for analysis of the request before recommendations to the LFC are presented. Moving this date up provides the additional time necessary.

With regard to special education rates above 16 percent, reevaluation of students can be very expensive; however it will be important for districts to examine their student evaluations carefully to make sure that students are being identified properly and that proper early interventions are taking place prior to identification.

It is unclear if it is necessary for the secretary to recommend a representative of a parent group to the Legislative Council. The Council is knowledgeable for the various parental organizations.

Other changes made in the amendment appear to be technical in nature to clean up the bill.

TECHNICAL ISSUES

The Legislature may wish to consider the following change:

Strike HEC Amendment #1 and replace therein with On Page 18, line 9, strike “a hearing officer” and insert in lieu thereof “an impartial person with knowledge of educational programming and public school finance”

Strike HEC Amendment #2 and replace therein with On Page 18, line 5, strike “a hearing officer” and insert in lieu thereof “an impartial person with knowledge of educational programming and public school finance.

Synopsis of Original Bill

House Bill 241 provides for a new public school funding formula and the maintenance and periodic recalibration of the formula. The bill provides for a longer school year for students, a longer work year for teachers, and codifies the Educational Plan for Student Success (EPSS) as the accountability instrument to be used to verify appropriate programs of instruction are provided. HB 241 also provides for a census-based special education identification rate, clarifies financial responsibility for special education, changes reporting times to specific dates, creates the Department of Health (DOH) Education Fund in the state treasury, and makes technical changes to statute.

FISCAL IMPLICATIONS

While the bill does not provide an appropriation, the funding formula contractor has identified a need of approximately \$350 million to meet full sufficiency. With the three year phase-in proposed in the bill and with annual inflation considered, the total cost is projected to be approximately \$575 million. Funding issues are not considered in this bill but are addressed in a number of revenue bills that have been introduced in the 2008 session.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Provisions contained in the bill to increment the base sufficiency cost tied to legislative appropriations including inflation for compensation and using the Consumer Price Index for the remainder of costs would obligate future legislatures to specific annual appropriations and weakens the Legislature's power of appropriation.

The Attorney General's Office notes it is unclear as to the effect this bill would have on New Mexico's designation by the United States Secretary of Education as an "equalized" state, thereby allowing the New Mexico State Department of Education to "take credit" or reduce operational state funding to an impacted district by the amount of the Federal Impact Aid subsidy. That designation has been the subject of litigation against the United States Secretary of Education, which was ultimately decided by the United States Supreme Court on April 17, 2007 in favor of the Secretary, resulting in the continuation of New Mexico's status as an "equalized" state. *Zuni Public School District No. 89 v. Department of Education*, No. 05-1508.

PED notes that based on different analyses run by the contractor in conjunction with PED staff, this new formula does not appear to meet the disparity test (revenue per student between the highest and lowest LEA) in order to be classified as an equalized state by the United States Department of Education. To attain an equalized state classification, all of the special cost differentials allowed by the federal impact aid office need to be excluded in the calculation of revenue per student. The equalized classification is important because it allows the state to take credit for the basic Impact Aid payments in determining a district's state equalization guarantee distribution. If the state is precluded from taking these credits, the cost to the state would be approximately \$42 to \$46 million annually.

Because of the identified equalization issue, the Legislative Council Service is working with a law firm to research the state's ability to exclude all of the special cost differentials when calculating the revenue per student so that the disparity test can be met. If only some of the special cost factors are excluded, whether the state can meet the disparity test will depend on how the revenues are distributed among the various districts throughout the state in any given year. The amount of the credit at stake for the basic Impact Aid payment is approximately \$42-\$46 million per year. In addition, if the state is unable to meet the test and take credit, it may place the state in a vulnerable position for districts to sue the state and force the state not to take credit for their local taxes.

SIGNIFICANT ISSUES

The bill aligns the definition of special education to the federal Individuals with Disabilities Education Act (IDEA) and includes three and four-year-old developmentally disabled children enrolled in public schools.

Instructional days are increased from 180 to 185 for students and one professional development day for instructional staff is included.

District demographic reporting dates are changed from the traditional 40th, 80th, and 120th day membership counts, which varies widely between districts and charter schools, to the second

Wednesday in October, December and February.

HB-241 provides for an Educational Plan for Student Success (EPSS) to be developed that implements and assesses a student centered long-range strategic plan to improve student achievement. The EPSS must be specific, reasonable, attainable and must include input from all stakeholders in the district to include parents, staff, business persons, higher education, tribal governments and any interested citizen. Districts must identify those areas that must be addressed to ensure students are meeting educational benchmarks and align their budgets accordingly.

Should a school district choose not to submit or approve a revised EPSS, the secretary must appoint a hearing officer to hold a public hearing within 20 days after the revised educational plan was due. The hearing officer must make a recommendation to the Secretary within 10 days of the public hearing. The final decision is the Secretary's to either accept the district's original plan, the revised plan or a department-developed educational plan.

Provisions are included in the bill for the department to verify, monitor and evaluate educational plans during the budget approval process and throughout the year. It appears this is the method by which PED will insure districts spend increasing dollars in an effective way to meet the needs identified by the districts to improve student success and achievement.

The EPSS must implement the PED's standards for excellence. Educational programming for the EPSS must include bilingual and multicultural education, physical education, career-technical education, visual and performing arts, gifted education, advanced placement and honors programs. Special education and distance education programs must also be included. Provisions in the bill give authority to the secretary of public education to disapprove educational plans if they do not meet the requirements set forth in the bill.

The bill lays out the foundation for a new formula projecting the sufficient per-student cost calculation for school districts and charters schools. It contains definitions and cost factors consisting of: poverty, English language learners, special education, mobility, percent of district enrollment by set grades and the weighted index of staff qualifications. It identifies the sufficient per-student cost multiplier and guidance about how to complete the sufficient per-student cost calculation. Methodologies are identified for factoring in growth; new school demographics; special education; implementation of intervention strategies related to lowering special education identification rates; annual updates of cost factors; and annual adjustment of the base per-student cost based on appropriations. By using a simplified method, the formula is intended to minimize "formula chasing" by some districts. The LFC notes the since FY07 the unit value has been diluted by as much as \$30 million as a result of a rapid increase in related services units being generated at a limited number of districts.

As noted above, the bill provides for PED to determine, prior to approving a district or charter school budget, that the budget is aligned with the EPSS. How this is to be accomplished is unclear as the department's budget staff does not assess educational programs as a part of the budget approval process. The bill also eliminates provisions requiring school districts to include charter school budgets within their total operating budget, and enacts a new section placing that responsibility with the charter school board.

The bill provides for the Public School Fund to become a non-reverting fund. The LFC has concerns with including continuing appropriations in the statutory provisions for funds which reduces the ability of the legislature to establish spending priorities.

A significant consideration in the bill is the use of a census based special education (SpEd) percentage to determine special education funding. Currently the statewide average SpEd population is approximately 14 percent. Some districts are at 9 percent while others are as high as 34 percent. The bill provides for a census average of 16 percent for all districts. Those districts above 16 percent in FY09 will be required to reassess their special education students to determine whether the high identification rate is due to ethnic or racial background and whether these students are receiving the most appropriate education and related services.

Charter schools because of their unique populations will use actual SpEd percentages in determining their program cost. PED is tasked in the bill to assist school districts to implement response to intervention strategies to lower their SpEd identification rates.

The bill provides for a reassessment of the formula every 10 years or sooner if the secretary or Legislature determines a need.

Provisions that a sufficient per-student cost is based on a comprehensive instructional program that includes the cost of core academic programs, career-technical education, gifted programs, bilingual programs, arts and music, health and physical education and special education and appropriate staff. Within this description, local boards are expected to determine priorities that best serve the needs of the community.

Provisions contained in the bill require the Legislature and the department to use the new funding formula as the method for determining the appropriation for and the distribution of the state equalization guarantee. The LFC is concerned with the use of language requiring the legislature to use the funding formula to determine appropriations. The Legislature reserves the right to determine spending priorities and to make appropriations as it determines appropriate. The bill limits the phase-in period to three years and provides for implementation of the formula to be delayed if the FY10 appropriation is less than one-third of the difference between the projected program cost for FY10 and the actual program cost for FY09 inflated to FY10. Again, LFC is concerned that this requires the Legislature to make specific appropriations.

To account increased costs related to higher levels of experience and training of instructional staff, the formula implements an Index of Staff Qualifications (ISQ) aligned to the three-tier licensure structure for teachers. Two matrices are provided, one for teachers and a second for instructional support providers who are not on a tiered licensure structure. As with the current T& E index districts are held harmless to an ISQ of 1.0 if they fall short. In addition to the ISQ, provisions are included to continue the national board certification stipend at current levels and adjusting it every year by the same percentage as salary increases.

Cash balance limits are removed for districts and cash can be used for programs aligned with the EPSS or can be used for meeting the districts share of standards based capital outlay projects. Districts are precluded from budgeting current year cash balances without prior approval of the secretary.

The bill creates the Special Education Catastrophic Aid fund to assist districts with costs associated with ultra-high needs students. In general these students may require a respirator, a full time assistant, a nurse, or other item of this nature. A fund currently is available at PED funded with federal funds but is relatively small and would not go very far. Again the LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The bill continues to account for the credit taken against federal impact aid, local 0.5 mill levy and forest reserve. It is unclear at this time whether the new formula meets the disparity test. Department attorneys are looking into this and are expected to have an answer from the U.S. Department of Education soon.

The bill clarifies and aligns state special education law with current federal law. Gifted education is specifically addressed in current statute and these provisions are left intact. The bill also addresses responsibility for providing special education services to students enrolled in state institutions. The bill provides that a state institution in which a school-age person is detained or enrolled is responsible for providing educational services. The amendment also provides that a school-age person who is a client as defined in the Mental Health and Developmental Disabilities Code in a state institution under the authority of the Secretary of Health has the right to attend public school in the school district in which the state institution is located if recommended for placement by the school district's educational appraisal and review committee or as a result of the appeal process.

The institutions remain responsible for educating their students; however provisions are in place to allow students to attend school in the district where the institution is located under certain circumstances. The bill also addresses the issue of "resident" school district for students attending private training or residential treatment centers if residency is based solely on a student enrolled at the facility that would otherwise not be considered a resident of the state. Other clarification is offered for students attending treatment centers when placed by a school district, parents or other agencies. The bill also provides for districts to contract for educational services for student placed in treatment centers and details district responsibilities and contract requirements.

The funding formula implementation assistance taskforce is created to advise and assist school districts and PED in the implementation of the funding formula and other provisions in the bill. The committee is comprised of the funding formula taskforce and other educators and representatives of concerned associations. Staff is to be provided by LFC, LESC, LCS, the Office of Educational Accountability and PED.

The bill also makes technical changes to statute to align other sections of statute with the new formula.

The bill provides for PED to continue to use the current funding formula if the State Legislature does not appropriate a sufficient amount to begin using the new funding formula.

PERFORMANCE IMPLICATIONS

The bill does not include provisions for actions if a school or district does not achieve goals and targets identified in the EPSS. What are the implications of not meeting these targets?

TECHNICAL ISSUES

The Legislature may wish to consider the following amendments:

Page 42 Line 7 & 8 strike “determining the appropriation for and”

Page 31 Line11 strike “30” and replace with “20” This would allow more time for the LFC to analyze the public school support request before making recommendations.

PED suggest the following for consideration by the Legislature:

Section 12, Page 29, Line 23 to Page 30, Line 1. Strike because this could lead to an incorrect interpretation of statute in which a district would argue for additional resources beyond its state equalization guarantee to meet EPSS requirements.

OTHER SUBSTANTIVE ISSUES

The Department of Health notes the fund created in HB 241 would only affect Sequoyah Adolescent Treatment Center (SATC) and New Mexico Behavioral Health Institute (NMBHI). They are the only two DOH facilities that serve school-age persons and qualified students. From the new fund, these facilities would receive funding for educational services, such as the internal school program operated by SATC.

Each facility would be required to submit a yearly estimate for education services that will be provided by October 15. This estimate is done through a formula determined by HB 241. The facilities would forward this information to the Department Secretary for their review and approval. The Department Secretary would than forward the overall departmental estimate to the Department of Finance and Administration for approval. Each fiscal year the department would distribute funds from the General Fund to the facilities for the services provided

PED notes a number of technical and language concerns with HB-241. The department is expected to work with LCS to address these issues.

PED is recommending alternative language for the implementation assistance taskforce and is requesting an appropriation of \$250 thousand to pay for the expenses of the taskforce.

PA/mt