

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HJM 49

51st Legislature, 1st Session, 2013

Tracking Number: .194154.1

Short Title: Special Education Funding Task Force

Sponsor(s): Representatives Rick Miera, Luciano “Lucky” Varela, W. Ken Martinez, Mimi Stewart, Edward C. Sandoval, and Other

Analyst: Mark Murphy

Date: March 14, 2013

Bill Summary:

HJM 49 resolves that the Legislative Council appoint an *Individuals with Disabilities Education Act* (IDEA) Maintenance of Effort (MOE) task force to:

- study issues related to special education and MOE requirements, including an understanding of shortfall amounts if any;
- identify sources of funding to replace the reduction of federal funds if no MOE waiver is forthcoming; and
- explore other methods of showing availability of funds by the state.

The memorial specifies that the task force will include members from:

- the finance and education committees;
- local district administrative personnel;
- the Secretary of Public Education or the Secretary’s designee; and
- other persons knowledgeable in school finance.

Further, HJM 49 calls for the task force to be staffed by the Legislative Council Service, with assistance from the Legislative Education Study Committee (LESC) and the Legislative Finance Committee (LFC). Staff from the Public Education Department (PED) are also to be invited to participate and assist in the work of the task force.

Finally, HJM 49 resolves that the task force:

- prepare its findings and recommendations no later than November 15, 2013; and
- submit its report to the Legislative Council, LFC, LESL, and PED.

Fiscal Impact:

Legislative memorials do not carry appropriations.

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 2a, 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 2a, et al., are insufficient;
- review the certification with the LESC and LFC;
- obtain State Board of Finance approval to transfer and distribute funds;
- distribute the amounts through the SEG; and
- reset the unit values accordingly.

Substantive Issues:

The federal IDEA-B funds received by the state are subject to MOE requirements for total state-level financial support provided to special education in each fiscal year. HJM 49 highlights numerous complexities involved with the federal MOE requirements, such as:

- how state-level failure to meet MOE requirements affects the ability of districts to meet local-level MOE requirements;
- the importance of understanding what may be included in MOE funding and what the possible shortfall amounts may be; and
- the importance of being prepared to replace the reduction of federal funding if the waivers for FY 10 and FY 11 the PED has requested are not granted, (see “Background,” below).

The task force that would be created in accordance with this memorial would study those and other complexities.

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 US Department of Education (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:

HEC

Related Bills:

HB 459a *Special Education Equalization Guarantee*

*CS/HB 628 *Public Peace, Health, Safety and Welfare: Special Education Funding*