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August 25, 2014 (revised August 29, 2014)

MEMORANDUM

TO: Legislative Education Study Committee
Legislative Finance Committee

FR: David T. Craig *DTC*

**RE: STAFF BRIEF: REVIEW OF CLASS SIZE AND TEACHING LOAD WAIVERS
AND IMPLEMENTATION OF HB 280, RETURN TO STATUTORY SCHOOL
CLASS LOADS**

INTRODUCTION

In 2014, legislation was enacted that added a new section of the *School Personnel Act* to require:

- the phase-in of statutory class and teaching loads over a three-year period; and
- during school year 2014-2015, school districts to develop and submit a plan to the Public Education Department (PED) for complying with these statutory requirements.

The legislation also acknowledged that the new section would not affect the ability of a school district to apply for, and be granted, a waiver by PED pursuant to Section 22-10A-20 NMSA1978, *Staffing patterns; class load; teaching load (2013)*, paragraph G (see Attachment).

To support the implementation of the class and teaching load requirements, the *General Appropriation Act of 2015* (Laws 2014, Chapter 63) includes a \$6.0 million appropriation in FY 15.

This staff report outlines the:

- Legislative Education Study Committee (LESC) staff cost estimate included in House Bill 3, *Education Appropriation Act*;
- class size and teaching load provisions;
- class load waiver provisions; and
- temporary waiver provisions for school year 2009-2010 through 2013-2014.

LESC STAFF COST ESTIMATE INCLUDED IN HOUSE BILL 3, *EDUCATION APPROPRIATION ACT*

As introduced during the 2014 legislative session, House Bill 3 included a \$20.0 million appropriation to the State Equalization Guarantee (SEG) to implement statutory class and teaching loads in one year (FY 15).

Unavailable statewide data required LESC staff to review an analysis conducted by the Albuquerque Public Schools (APS) that was based on class overload reports. For FY 15, the district's data revealed a shortfall of 100 to 120 teachers, or approximately 2.5 percent of the teachers in the district.

Based on an average teacher salary of \$45,000 with 35 percent benefits, APS staff determined a cost of:

- approximately \$6.0 million based on 100 teachers; and
- approximately \$7.0 million based on 120 teachers.

As APS students represent approximately one-third of the state's public school students, an estimated cost of approximately \$21.0 million was extrapolated for all students statewide.

For FY 15, the *General Appropriation Act of 2015* includes a \$6.0 million appropriation to the SEG to support the first year implementation of statutory class and teaching loads in school districts statewide.

CLASS SIZE AND TEACHING LOAD PROVISIONS

While there are exceptions for students receiving special education services, band and music classes, and athletic electives, Section 22-10A-20 NMSA 1978 of the *School Personnel Act* (the Act) limits on the size of individual classes and the average class load or daily teaching load of teachers in grades K through 12 as follows:

- 20 students per kindergarten teacher; provided that a class load of 15 to 20 students entitles the teacher to the assistance of an educational assistant;
- 22 students per teacher, when averaged among grades 1, 2, and 3; provided that any teacher in grade 1 with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant;
- an average of 24 students per teacher in grades 4 through 6;

- a daily teaching load of 160 students per teacher in grades 7-12; and
- for teachers of required English courses:
 - a maximum of 27 students per class and a daily teaching load of 135 student per teacher in grades 7 and 8; and
 - a maximum of 30 students per class and a daily teaching load of 150 students per teacher in grades 9-12.

CLASS LOAD WAIVER PROVISIONS

Other provisions of Section 22-10A-20 NMSA 1978 of the *School Personnel Act* allow the Secretary to waive the individual school class load requirements for up to two years if a school demonstrates that:

- no portable classrooms are available;
- no other available sources of funding exist to meet its need for additional classrooms; and
- the school district is planning alternatives to increase building capacity for implementation within one year; and the parents of all children affected by the waiver have been notified in writing:
 - of the statutory class load requirements;
 - that the school district has made a decision to deviate from these class load requirements; and
 - of the school district's plan to achieve compliance with the class load requirements.

The secretary may also waive the individual class load and teaching load requirements upon a demonstration of a viable alternative curricular plan and a finding that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. Annual reports shall be made to the LESC.

However, the Act requires that if a waiver is granted to an individual school, the average class load for elementary school teachers at that school is not to exceed 20 students in grade 1 and not to exceed 25 students when averaged among grades 2 through 6.

An additional waiver provision in 22-2-2.1 NMSA 1978 requires the Secretary to approve all reasonable requests to waive statutory individual class load requirements for all schools that "exceed educational standards" as determined by the PED. Waivers under this section begin in the school year following the school year in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

Finally, charter schools are exempted from this provision because the *1999 Charter Schools Act* waives the requirements for individual class loads and teaching loads for charter schools.

TEMPORARY WAIVER PROVISIONS FOR SCHOOL YEAR 2009-2010 THROUGH 2013-2014

Section 22-1-10 NMSA 1978, *Waiver of requirements; temporary provision*, allowed the Secretary to waive class load and teaching load requirements so as to allow school districts to meet fiscal solvency requirements. This waiver provision was allowed for school year 2009-2010 through school year 2013-2014, and excluded state-chartered charter schools.

Regarding the years in which the temporary waiver provision (see the bolded paragraphs in the annotations of Section 22-1-10 in the attachment) was in place:

- Legislation from the 2010 regular session allowed the temporary provision for school years 2009-2010 through 2011-2012;
- Legislation from the 2012 regular session extended the provision to school year 2012-2013; and
- Legislation from the 2014 regular session extended the provision to school year 2013-2014.

PROVISIONS IN LAW RELATING TO STATUTORY CLASS LOADS

22-1-10. Waiver of requirements; temporary provision. (2013)

Statute text

The legislature finds that funding constraints require school districts to have financial flexibility to meet increased state educational requirements. For the 2013-2014 school year, the secretary may waive requirements of the Public School Code and rules promulgated in accordance with that code pertaining to individual class load, teaching load, length of school day, staffing patterns, subject areas and purchases of instructional materials. The department shall monitor such waivers, and the secretary shall report to the legislative education study committee and the legislative finance committee on any issues or actions of a school district that appear to adversely affect student learning.

Annotations

2013 Multiple Amendments. — Laws 2013, ch. 187, § 1 and Laws 2013, ch. 203, § 1, both effective June 14, 2013, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 203, § 1, which was last signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 187, § 1 and Laws 2013, ch. 203, § 1 are described below. Laws 2013, ch. 203, § 1 made findings that funding constraints require school districts to meet increased state educational requirements, and Laws 2013, ch. 203, § 1 did not. To view the session laws in their entirety, see the 2013 session laws on NMONESOURCE.COM.

Laws 2013, ch. 203, § 1, effective June 14, 2013, provided flexibility to school districts to meet state fiscal solvency requirements; in the second sentence, after "2012-2013", added "2013-2014".

Laws 2013, ch. 187, § 1, effective June 14, 2013, in the first sentence, after "legislature finds that", added "funding constraints require", after "school districts", deleted "need" and added "to have financial", before "state", added "increased" and after "state", deleted "fiscal solvency" added "educational"; and in the second sentence, changed "2012-2013" to "2013-2014 and 2014-2015".

The 2012 amendment, effective May 16, 2012, permitted the secretary to waive statutory and regulatory requirements for the school year 2012-2013; and in the second sentence, after "For the", deleted "2009-2010 through 2011-2012" and added "2012-2013"; and after "school", deleted "years" and added "year".

22-1-11. Educational data system. (2010)

22-2-2.1. Additional department duties; waiver of certain requirements. (2004)

Statute text

A. The department shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the department:

- (1) accreditation review requirements as provided in Section 22-2-2 NMSA 1978;
- (2) the length of the school day requirement as provided in Section 22-2-8.1 NMSA 1978;
- (3) the individual class load requirement as provided in Section 22-10A-20 NMSA 1978;
- (4) the subject area requirement as provided in Section 22-13-1 NMSA 1978; and

(5) purchase of instructional material from the department-approved multiple list requirement as provided in Section 22-15-8 NMSA 1978.

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the department may waive:

(1) the graduation requirement as provided in Section 22-13-1.1 NMSA 1978;

(2) evaluation standards for school personnel; and

(3) other requirements of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

C. Waivers granted pursuant to this section shall begin in the school year following that in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

D. The department shall only waive requirements that do not conflict with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act.

22-10A-20. Staffing patterns; class load; teaching load. (2003)

Statute text

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent [secretary] may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall

not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

- (1) no portable classrooms are available;
- (2) no other available sources of funding exist to meet its need for additional classrooms;
- (3) the school district is planning alternatives to increase building capacity for implementation within one year; and
- (4) the parents of all children affected by the waiver have been notified in writing:
 - (a) of the statutory class load requirements;
 - (b) that the school district has made a decision to deviate from these class load requirements; and
 - (c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent [secretary].

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board [department] may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board [department]. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty.

22-10A-20.1. Individual class load and teaching load; three-year phase-in. (2014)

Statute text

Now that the emergency economic need to grant fiscal solvency waivers for mandatory individual class loads and teaching loads established in Section 22-10A-20 NMSA 1978 and waived pursuant to Section 22-1-10 NMSA 1978 has lessened, these requirements shall be reinstated. The return to statutory mandatory individual class loads and teaching loads shall be phased in over a three-year period. During the 2014-2015 school year, each school district shall develop a plan for implementing the requirements of this section and Section 22-10A-20 NMSA 1978, including the cost of complying with Section 22-10A-20 NMSA 1978. This section does not affect the ability of a school district to apply for and the department to grant a waiver pursuant to Section 22-10A-20 NMSA 1978.