

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 142aaaa

50th Legislature, 1st Session, 2011

Tracking Number: .183622.2

Short Title: Limit Certain Special Education Program Units

Sponsor(s): Senators Cynthia Nava and Mary Jane M. García

Analyst: Craig J. Johnson

Date: April 27, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The House Education Committee amendment removes language in Senate Finance Committee amendment 2 which required the Secretary to consult with an advisory group when evaluating waivers.

The Senate Floor amendment requires the Public Education Department (PED) to verify that, for any school district increasing the number of ancillary staff full-time equivalents (FTEs) from the previous year, the increase is warranted and reasonable.

The Senate Finance Committee amendments:

- strike the Senate Education Committee amendment waiver language;
- allow the Secretary of Public Education to provide a waiver to a school district or charter school that exceeds the cap if the school district or charter school can provide data or other information that the number of:
 - ancillary staff is warranted and prudent; and
 - special education students is reasonable and valid; and
- add a requirement that, when considering a waiver request, the Secretary consult with an advisory group consisting of:
 - two charter school administrators;
 - two public school administrators;
 - two representatives from an ancillary services association; and
 - one district special education director.

The Senate Education Committee amendments:

- allow the Secretary of Public Education to provide a waiver to a school district or charter school that exceeds the cap if the school district or charter school can provide data or other information that the number of:

- **ancillary staff is warranted and prudent; and**
- **special education students is reasonable and valid.**

The amendments also require school districts and charter schools that do not meet the 1.5 cap to submit a two-year phase-out plan to PED.

Original Bill Summary:

SB 142 amends the *Public School Finance Act* to limit the amount of funding that a school district or charter school can generate through funding formula adjustments for staff that provide special education related services, known as ancillary staff.

SB 142 caps the number of ancillary staff who generate program units to 1.5 times the PED guidelines on caseload maximums (see Attachment 1).

Original Fiscal Impact:

An analysis by the Legislative Education Study Committee estimates the savings generated by SB 142 to be just over \$3.0 million (see Attachment 2). Using school year 2009-2010 data, SB 142 would impact nine charter schools and 16 districts. The bulk of the savings generated come from one district, Cobre Consolidated Schools, which would lose about \$1.4 million in formula funding.

HB 3 includes a reduction contingent on passage of SB 142 or related legislation as described by the following language, “The general fund appropriation to the state equalization guarantee (SEG) distribution includes a reduction that is contingent on the passage of legislation that caps the number of ancillary service FTEs based on the public education department’s guidelines.”

Fiscal Issues:

- SB 142 uses guidelines developed by PED to establish a ceiling on the number of ancillary staff that generate units and therefore funding.
- Under the provisions of SB 142, the number of ancillary staff that generate units for a district or charter must be less than or equal to the following calculation: 1.5 multiplied by the sum of (1) the number of class A/B students multiplied by 0.029; (2) the number of class C students multiplied by 0.067; and (3) the number of class D students multiplied by 0.0125. This will decrease the total units generated and result in decreased funding for those school districts and charters that exceed the cap.
- Statewide, special education students generate more funding than special education staff. However, several districts generate more funding from special education staff than they do from special education students.
- Currently, districts and charters are allowed to claim ancillary service FTEs funding for an unlimited number of FTEs. SB 142 does not prohibit a district from hiring excess ancillary service providers, but rather caps FTEs that will generate additional funding through the funding formula.

Substantive Issues:

- Over time, the number of special education students has decreased while the number of ancillary service providers has increased. Statewide the special education enrollment per ancillary staff FTEs has declined from 36 in FY 06 to 33 in FY 11.
- As the fiscal impact report from the Legislative Finance Committee says, “Neither statute nor regulation specifies how an individual employees related service FTE is calculated, allowing districts and charters to claim ancillary service FTE funding for an unlimited number of FTE.”
- Among its provisions, SB 142 also provides a more precise definition of ancillary service providers that are eligible for funding through the funding formula by eliminating certified staff and allowing only licensed ancillary service and diagnostic service personnel to generate additional funding.
- The *Public School Finance Act* gives PED the authority to regulate the ratio of special education students to staff.
- PED indicates that the *Individuals with Disabilities Education Act* (IDEA) funds must not be used to reduce the level of expenditures for the education of children with disabilities made by the school districts and charter schools from state and local funds below the level of those expenditures the preceding fiscal year. Even if a district or charter school’s SEG allocation is reduced, the school district or charter school is still required to maintain the same level of expenditures, or Maintenance of Effort (MOE), from state and/or local sources for special education services. While districts and charters must meet MOE requirements, nothing in this bill will preclude a district or charter from allocating funding not generated by ancillary staff to special education students. Districts also receive SEG funding for special education students based on student membership multiplied by a weighted factor.

Technical Issues:

To clarify that the cap proposed in SB 142 applies to the number of FTEs licensed ancillary service and diagnostic service personnel as opposed to the number of FTEs licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor, the sponsor might consider the following amendment:

On page 4, line 3 add “to be” between the words ‘personnel’ and ‘multiplied’

Background:

Ancillary services are provided to special education students to support student success.

SB 142 does not change the funding formula adjustment factor of 25 to ancillary staff, which is the highest of any adjustment in the formula. The next highest adjustment factor, for D-level special education students, is 2. Given the weight of the ancillary staff adjustment, legislators have been concerned that districts and charters may hire more ancillary staff than necessary to generate additional units and boost funding.

Related Bills:

*HB 3a *Education Appropriation Act*