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FISCAL IMPACT REPORT

SPONSOR	Nava	ORIGINAL DATE	02/05/11	HB
		LAST UPDATED	03/18/11	
SHORT TITLE	Limit Certain Special Education Program Units	SB	142/aSEC/aSFC/ aSFL#1/aHEC	
		ANALYST	Gudgel	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$3.0M	\$3.0M			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB2 - The appropriation contained in HB2 for the state equalization guarantee includes reductions of \$3.0 million to account for LESC's estimated fiscal effect of SB142.

Senate Bill 142 is committee sponsored legislation for the Legislative Education Study Committee.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of HEC Amendment

HEC Amendment eliminates the advisory group the Secretary must consult with in considering waiver requires that was established in the SFC Amendment. PED did not support the requirement to consult with the advisory group and was concerned that it would be overly burdensome to do with every waiver request.

Synopsis of SFL Amendment #1

Senate Floor Amendment Number 1 adds a new section requiring PED to verify that any increases in ancillary service and diagnostic service FTE over the previous year are warranted and prudent and the number of special education students is reasonable and valid. This provision has been added to ensure districts that are currently not at or near the 1.5 cost differential cap do not increase their ancillary FTE to the cap to generate additional formula funding.

Synopsis of SFC Amendment

Senate Finance Committee Amendment to Senate Bill 42 eliminates the 2 year phase-out plan for school districts and charter schools unable to meet the 1.5 cost differential cap included in the SEC amendment and requires the Secretary of PED to consult with an advisory group composed of two charter school administrators, two public school administrators, two representatives from an ancillary services association and one district special education director when considering a waiver request.

Synopsis of SEC Amendment

Senate Education Committee Amendment to Senate Bill 142 includes a waiver provision, allowing the Secretary of PED to waive the program unit generation limitations on licensed ancillary service and diagnostic personnel included in the bill if a district or charter school can demonstrate a need for the additional FTE. The district or charter school will be responsible to provide data to PED on their special education students, including their ages and their disabilities and levels of disabilities, individualized education program (IEP) data, recent employment, termination and discharge of and contracts with ancillary staff, and any other information PED requests to validate the reasons the school must exceed the established guidelines. School districts and charter schools that don't meet the 1.5 cost differential cap will be required to develop a 2 year phase-out plan.

Synopsis of Original Bill

Senate Bill 142 amends the Public School Code to limit program units generated by licensed special education ancillary service and diagnostic personnel to 1.5 times the Public Education Department established caseload maximums.

FISCAL IMPLICATIONS

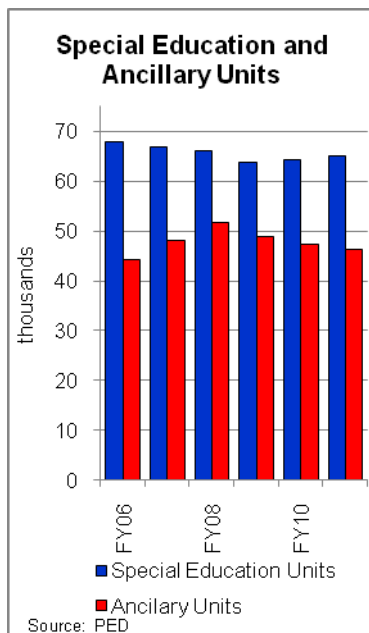
The maximum amount of full-time-equivalent licensed ancillary service and diagnostic service personnel that will be allowed to be considered for state equalization guarantee (SEG) funding will be limited to 1.5 times the sum of 2.9 percent of the A and B program MEM, 6.7 percent of the C program MEM, and 12.5 percent of the D program MEM. If applied to all school districts and charter schools currently over the 1.5 cap, program units will be decreased by little more than 800 units, resulting in decreased funding distributed to school districts and charter schools for ancillary service providers by approximately \$3.1 million.

The SEC amendment intends to allow an automatic 2 year waiver to any districts that are currently over the caps provided in this bill, and discretionary waivers granted by the Secretary for districts that can prove a need for additional ancillary FTE. This will result in no decrease or

very little decrease in funding distributed to school districts and charter schools for ancillary FTE until FY14.

House Bill 2 has accounted for \$3.0 million in reductions of funding for ancillary services FTE. Because the amendment to HB 142 delays implementation of the bill for two years, and because House Bill 2 reduces the SEG distribution by \$3.0 million to account for changes in this legislation, school districts will be required to absorb this reduction during the first two years.

SIGNIFICANT ISSUES



Ancillary services, also called related services, are provided to special education students, in addition to a special education program to aid the student’s success. Licensed and certified ancillary service and diagnostic service FTE can be considered for related services funding at 25 units per FTE. PED rules defining ancillary service providers include a number of positions not generally considered to be ancillary staff eligible for related services funding.

The STARS manual defines “related service providers” as anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, interpreter for the deaf, and diagnostician.

Neither statute nor regulation specifies how an individual employee’s related service FTE is calculated, allowing districts and charters to claim ancillary service FTE funding for an unlimited number of FTE. Over time, the number of special education students has decreased while the number of ancillary service providers has increased, indicating a need for a clear definition of those ancillary service providers necessary and eligible for funding through the funding formula, clear FTE calculation criteria.

Senate Bill 142 provides a clearer definition of ancillary service providers that are eligible for funding through the funding formula by eliminating certified staff and only allowing licensed ancillary service and diagnostic service personnel to generate additional funding. The bill further establishes a cap on caseload maximums that will be funded. The bill does not prohibit a district from hiring excess ancillary service providers, but rather caps FTE that will generate additional funding through the funding formula.

The bill will have the effect of eliminating some unit value dilution that results from overfunding ancillary service FTE through the funding formula.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department will be required to update rules and internal documents to reflect only licensed ancillary service and diagnostic service personnel FTE count for funding purposes. Subsection D will require the PED to develop an extensive waiver process, and the

department will be responsible for approval or denial of waivers. The department will also likely be required to validate ancillary-support service provider units claimed for funding to ensure districts are complying with the changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB2. HB2 includes a reduction of \$3.0 million related to the passage of Senate Bill 142.

OTHER SUBSTANTIVE ISSUES

The Public Education Department indicates that IDEA funds must not be used to reduce the level of expenditures for the education of children with disabilities made by the school district or charter schools the school districts and charter schools from state and local funds below the level if 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 have to 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.

Neither the Individual with Disability Education Act (IDEA) nor state statute requires school districts to link student individualized education programs (IEP) with ancillary service and diagnostic service provider FTE. An IEP team develops an education plan for the child and determines the type and frequency of special education and ancillary services a child should receive. If a district is unable or unwilling to tie student IEP requirements to the number of ancillary service and diagnostic service providers, the number of FTE claimed may result in overstaffing or under staffing of FTE delaying appropriate services for children or over funding for un-needed FTE.

See October 6, 2007, LFC Program Evaluation: Review of Selected Operations of Albuquerque Public Schools for further discussion, at:

http://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/APS%20Oct%2007%20_Usha_.pdf

ALTERNATIVES

Remove ancillary staff FTE from the T&E multiplier. This would result in \$17 million less generated by ancillary FTE in the funding formula, and would have the effect of eliminating some unit value dilution.

RSG/mew:svb:bym