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FISCAL IMPACT REPORT

SPONSOR Soules ORIGINAL DATE 1/23/18
 LAST UPDATED _____ HB _____

SHORT TITLE Public School Funding Sufficiency SB 36

ANALYST Liu

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
	\$374,900.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 33

Relates to State Equalization Guarantee Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

No Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 36 appropriates \$374.9 million from the general fund to PED to distribute through the state equalization guarantee (SEG) for expenditure in FY18. The amount is based on the funding increase recommended in the 2008 American Institutes for Research (AIR) study of the New Mexico public school funding formula, adjusted for inflation.

FISCAL IMPLICATIONS

The appropriation of \$374.9 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY19 shall revert to the general fund. New Mexico remains under a sufficiency lawsuit asserting that poor and disparate student performance is associated with insufficient funding for public education as noted in the 2008 AIR study. In FY17, PED's legal costs for discovery coordination, expert coordination, litigation services, and legal representation in the sufficiency lawsuits reached \$2.2 million. For FY18, PED was appropriated \$2 million for legal fees. The agency estimates legal costs for the sufficiency lawsuit will be \$1.2 million for FY19.

SIGNIFICANT ISSUES

In 2008, AIR released a report in which a significant increase to school funding was recommended. However, the study also pointed to questions with the current funding formula, especially in reference to at-risk students, stating that funding was not being properly allocated to those most in need, and recommended significant changes to the funding formula itself to correct inequities in the formula, including at-risk students, charter schools, and special education. For example, the study identified a wide range of special education funding rates across districts and recommended more equity in funding distribution. An appropriation without accompanying changes to the funding formula may continue to fail to allocate resources where they are most needed.

According to previous LFC analysis during the 2009 legislative session, the 2008 AIR study of the public education funding formula was developed using a “costing-out” study focusing on the cost differences between current expenditures and a “model school” determined by a Professional Judgment Panel (PJP). AIR relied on the work of PJPs to determine what resources are needed to meet educational sufficiency. Although each PJP received instructions to keep costs in mind when making recommendations, it appears some of the recommendations amounted to wish lists given unlimited resources. Using this information, AIR initially estimated a sufficiency cost of \$850 million. Recognizing this number was too large, the professional advisory panel (PAP) convened to review the data and make changes as needed to bring resource allocation to a more reasonable level. These changes focused on resources for both the base program and the four focus areas. The result of this work was the final recommendation of approximately \$340 million, which has been adjusted for FY18 to \$368.5 million. Depending on the scope of changes or the views of different panels, this amount could be much higher or much lower. As a result, there is skepticism as to whether the estimate arrived at is accurate.

PED notes in a testimony before LESC, as the AIR study was wrapping up, the principal investigator noted that it would require more than \$900 million to implement the provisions of the study. In response to the backlash from legislators, members of the taskforce modified various components of the proposed funding formula in order to bring the amount to a more acceptable level. The more than \$320 million recommended by the study was the amount determined to be acceptable and was used as the starting point in seeking additional funding without asking for additional school days, longer school years or more accountability from educational staff.

In 2017, First Judicial District Court Judge Sarah Singleton heard oral arguments from the New Mexico Center on Law and Poverty and the Mexican American Legal Defense and Education Fund on whether the state was failing to offer an equal education to low-income, English learner, and Native American students. The plaintiffs cited low test scores for these at-risk groups as evidence of a constitutional violation of sufficient education and noted previous studies that called for \$334.7 million in additional education funding and changes to how the funding formula distributes education dollars. The defense questioned whether students’ low achievement was directly caused by the state’s negligence in regards to education and noted that positive educational outcomes could not be guaranteed even with a significant financial investment in the state’s education system. After oral arguments closed in August, Judge Singleton indicated she might make a decision near the end of FY18. Plaintiffs in New Mexico’s current sufficiency lawsuit have sought an additional \$350 million to \$600 million for public schools.

ADMINISTRATIVE IMPLICATIONS

This bill directs the appropriation to PED, which would distribute the additional funds. In 2017 PED noted the administrative impacts would be minimal.

RELATIONSHIP

This bill relates to the state equalization guarantee appropriation in the General Appropriation Act. Additionally, the bill relates to Senate Bill 33, which allocates 25 percent of the charter school 2 percent set-aside for the Public Education Commission.

OTHER SUBSTANTIVE ISSUES

State supreme courts in Kansas and Washington have recently struck down their states' public school funding formulas, ordering lawmakers to revise the formulas to increase funding and more equitably distribute education dollars to schools with low-income and at-risk students. Other states, like Iowa and Delaware, could make changes because of already-filed or threatened lawsuits. In 2016, the Texas Supreme Court ruled in favor of the state's current funding system, noting the way schools are funded is not ideal but constitution. In 2018, the Connecticut Supreme Court struck down a lower court ruling that deemed the state's school spending formula unconstitutional. In the ruling, the court said it was not the court's place to dictate how the legislature spends its money on schools.

Eric Hanushek, senior fellow at the Hoover Institution of Stanford University in *Science Violated: Spending Projections and the "Costing Out" of an Adequate Education*, (2006), notes that "costing out studies" should be interpreted as political documents, not as scientific studies, and are generally used by parties interested in increasing spending for education. He further notes these studies provide spending projections that incorporate, and in general lock in, current inefficient uses of school funds.

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