HOUSE BILL 84

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CREATING THE NATIVE LANGUAGE EDUCATION PROGRAM UNIT; ALLOWING TRIBAL EDUCATION DEPARTMENTS TO RECEIVE DISTRIBUTIONS GENERATED BY THE NATIVE LANGUAGE EDUCATION PROGRAM UNIT; DEFINING "TRIBAL EDUCATION DEPARTMENT"; ALLOWING TRIBAL EDUCATION DEPARTMENTS TO RECEIVE DISTRIBUTIONS FROM THE PUBLIC SCHOOL FUND; ALLOWING THE PUBLIC EDUCATION DEPARTMENT TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH TRIBES ABOUT PROGRAM COSTS AND FUNDING DISTRIBUTIONS; CHANGING THE AT-RISK PROGRAM COST CALCULATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Finance Act is enacted to read:

"[NEW MATERIAL] NATIVE LANGUAGE EDUCATION PROGRAM UNITS.--

A. The number of native language education program
units is determined by multiplying the full-time equivalent MEM in native language education programs, whether the programs are school-based, community-based or tribal government-based, implemented in accordance with the provisions of the Indian Education Act and the Bilingual Multicultural Education Act by the cost differential factor 0.5.

B. Tribal education departments shall be eligible to receive distributions generated by native language education program units."

SECTION 2. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended by Laws 2019, Chapter 206, Section 6 and by Laws 2019, Chapter 207, Section 6) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is
required to intervene with and keep in an educational setting
as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means
the MEM of qualified students but excludes the full-time-
equivalent MEM in early childhood education and three- and
four-year-old students receiving special education services;

D. "cost differential factor" is the numerical
expression of the ratio of the cost of a particular segment of
the school program to the cost of the basic program in grades
four through six;

E. "department" or "division" means the public
education department;

F. "early childhood education ADM" or "early
childhood education MEM" means the full-time-equivalent MEM of
students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time-
equivalent MEM" is that membership calculated by applying to
the MEM in an approved public school program the ratio of the
number of hours per school day devoted to the program to six
hours or the number of hours per school week devoted to the
program to thirty hours;

H. "operating budget" means the annual financial
plan and educational plan required to be submitted by a local
school board or governing body of a state-chartered charter
school;
I. "performance measure" means a quantitative indicator used to assess the output or outcome of an approved program;

J. "performance target" means the expected level of performance of a program's performance measure;

K. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

L. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including MEM, full-time-equivalent MEM, teacher, classroom or public school;

M. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

N. "public money" or "public funds" means all money from public or private sources received by a school district, [or] state-chartered charter school or tribal education department or officer or employee of a school district, [or] state-chartered charter school or tribal education department for public use;

O. "qualified student" means a public school student who:

(1) has not graduated from high school;
(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(3) in terms of age and other criteria:

(a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;

(b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department;

(c) except as provided in Subparagraph (d) of this paragraph, has not reached the student's twenty-second birthday on the first day of the school year; or

(d) has reached the student's twenty-second birthday on the first day of the 2019-2020 school year, is counted in a school district's or charter school's MEM on the third reporting date of the 2018-2019 school year, has been continuously enrolled in the same public school since that reporting date and is still enrolled in that school;

P. "rural population rate" means that proportion of the total population within a school district's geographic boundaries that lives in a rural area and not in an urban area as defined by the United States census bureau;

Q. "staffing cost multiplier" means:

(1) for fiscal year 2019, the instructional staff training and experience index;
(2) for fiscal year 2020, the weighted average of the instructional staff training and experience index at seventy-five percent and the teacher cost index at twenty-five percent;

(3) for fiscal year 2021, the weighted average of the instructional staff training and experience index at fifty percent and the teacher cost index at fifty percent;

(4) for fiscal year 2022, the weighted average of the instructional staff training and experience index at twenty-five percent and the teacher cost index at seventy-five percent; and

(5) for fiscal year 2023 and subsequent fiscal years, the teacher cost index; [and]

R. "state superintendent" means the secretary of public education or the secretary's designee; and

S. "tribal education department" means a tribal government unit within a federally recognized tribe, as cited in Subsection H of Section 22-23A-2 NMSA 1978 and Section 22-23A-4.1 NMSA 1978."

SECTION 3. Section 22-8-14 NMSA 1978 (being Laws 1967, Chapter 16, Section 69, as amended) is amended to read:

"22-8-14. PUBLIC SCHOOL FUND.--

A. The "public school fund" is created.

B. The public school fund shall be distributed to school districts and state-chartered charter schools in the
following parts:

(1) state equalization guarantee distribution;
(2) transportation distribution; and
(3) supplemental distributions:
   (a) out-of-state tuition to school districts;
   (b) emergency; and
   (c) program enrichment.

C. Tribal education departments shall be eligible to receive distributions generated by at-risk program units, early childhood education program units and native language education program units in accordance with the provisions of the Public School Finance Act; provided that nothing in that act shall be construed to waive or restrict the sovereign immunity of a tribe.

D. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

SECTION 4. Section 22-8-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 70, as amended) is amended to read:

"22-8-15. ALLOCATION LIMITATION.--

A. The department shall determine the allocations to each school district, [and] charter school and tribal
education department from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with locally chartered charter schools shall allocate the appropriate distributions of the public school fund to individual locally chartered charter schools pursuant to each locally chartered charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the locally chartered charter school within five days after the school district's receipt of the state equalization guarantee for that month.

C. The department shall allocate the appropriate distributions of the public school fund to each tribal education department pursuant to intergovernmental agreements."

SECTION 5. Section 22-8-17 NMSA 1978 (being Laws 1974, Chapter 8, Section 7, as amended) is amended to read:

"22-8-17. PROGRAM COST DETERMINATION--REQUIRED INFORMATION.--

A. The program cost for each school district, charter school and tribal education department shall be determined by the department in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information
necessary to make an accurate determination of the district's or charter school's program cost.

C. The department is authorized to enter into intergovernmental agreements with each tribe for the purposes of agreeing upon a tribal education department's program cost."

SECTION 6. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2019, Chapter 206, Section 13 and by Laws 2019, Chapter 207, Section 13) is amended to read:

"22-8-18. PROGRAM COST CALCULATION--LOCAL RESPONSIBILITY.--

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) and (2) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (3) through (16) in this subsection. The itemized program units are as follows:

(1) early childhood education;
(2) basic education;
(3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
(4) bilingual multicultural education;
(5) native language education;
B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, native language, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board, or governing body of a charter school or tribal education department to determine its priorities in terms of the needs of the community served by that body. Except as otherwise provided in this section, funds generated under .218799.3
the Public School Finance Act are discretionary to local school boards, [and] governing bodies of charter schools and tribal education departments; provided that the special program needs as enumerated in this section are met; [and] provided further that the department shall ensure that the local school board or governing body of a charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement; and provided further that the department shall ensure that resources linked to native students are used for school-based, community-based or tribal government-based programs that meet native student needs, improve their achievement, including oral native language acquisition, and adhere to culturally appropriate methods determined by each tribe."

SECTION 7. Section 22-8-23.3 NMSA 1978 (being Laws 1997, Chapter 40, Section 7, as amended) is amended to read:

"22-8-23.3. AT-RISK PROGRAM UNITS.--

A. A school district or tribal education department is eligible for additional program units if it establishes within its department-approved educational plan identified services to assist students to reach their full academic potential. A school district may contract with tribal education departments for the provision of identified services, including programs, services and activities pursuant to Section 22-23A-11 NMSA 1978. A school district receiving additional .218799.3
at-risk program units shall include a report of specified services implemented to improve the academic success of at-risk students. The report shall identify the ways in which the school district and individual public schools use funding generated through the at-risk index and the intended outcomes. For purposes of this section, "at-risk student" means a student who meets the criteria to be included in the calculation of the three-year average total rate in Subsection B of this section. The number of additional units to which a school district is entitled under this section is computed in the following manner:

\[
\text{At-Risk Index} \times \text{MEM} = \text{Units}
\]

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index is calculated in the following manner:

\[
\text{Three-Year Average Total Rate} \times 0.30 = \text{At-Risk Index}.
\]

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title I allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the office for civil rights of the United States department of education, [and] a three-year
average of the percentage of student mobility and a three-year average of the percentage of Native American students. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year.

D. For purposes of this section, "services" means research-based, evidence-based or community-based, culturally appropriate social, emotional or academic interventions, such as:

(1) case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;

(2) culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;

(3) additional compensation strategies for high-need schools;

(4) whole school interventions, including school-based health centers and community schools;

(5) educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical
education, guidance counseling services and coordination with
post-secondary institutions; [and]

(6) services to engage and support parents and
families in the education of students; and

(7) tribal community-based programming, such
as after-school extended learning and summer school."

SECTION 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2021.

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