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HOUSE BILL 158

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Patricia A. Lundstrom

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL FINANCE ACT TO REQUIRE PERFORMANCE-BASED BUDGETS FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS, TO ESTABLISH AND IMPLEMENT AN EFFECTIVE TEACHER INDEX, TO CLARIFY CLASSIFICATION OF SPECIAL EDUCATION STUDENTS AND ANCILLARY STAFF AND TO MODIFY AND UPDATE THE AT-RISK FACTOR IN THE FUNDING FORMULA; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1999; MAKING AN APPROPRIATION.

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

SECTION 1. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended by Laws 1999, Chapter 281, Section 21 and by Laws 1999, Chapter 291, Section 2) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

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1 A. Prior to April 15 of each year, each local
2 school board shall submit to the department an operating budget
3 for the school district and any charter ~~[schools]~~ school in the
4 school district for the ensuing fiscal year. Upon written
5 approval of the ~~[state superintendent]~~ secretary, the date for
6 the submission of the operating budget as required by this
7 section may be extended to a later date fixed by the ~~[state~~
8 ~~superintendent]~~ secretary.

9 B. The operating budget required by this section
10 may include:

11 (1) estimates of the cost of insurance
12 policies for periods up to five years if a lower rate may be
13 obtained by purchasing insurance for the longer term; or

14 (2) estimates of the cost of contracts for the
15 transportation of students for terms extending up to four
16 years.

17 C. The operating budget required by this section
18 shall include a budget for each charter school of the
19 membership projected for each charter school, the total program
20 units generated at that charter school and approximate
21 anticipated disbursements and expenditures at each charter
22 school.

23 D. If a local school board fails to submit a budget
24 pursuant to this section, the department shall prepare the
25 operating budget for the school district for the ensuing fiscal

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1 year. A local school board shall be considered as failing to
2 submit a budget pursuant to this section if the budget
3 submitted exceeds the total projected resources of the school
4 district or if the budget submitted does not comply with the
5 law or with rules and procedures of the department.

6 E. Beginning with the 2014-2015 school year, all
7 school districts shall submit performance-based budgets that
8 comply with the requirements of the Accountability in
9 Government Act and shall be in a form specified by the
10 department."

11 SECTION 2. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
12 Chapter 227, Section 8, as amended) is amended to read:

13 "22-8-6.1. CHARTER SCHOOL BUDGETS.--

14 A. Each state-chartered charter school shall submit
15 to the charter schools division of the department a school-
16 based budget. For the first year of operation, the budget of
17 every state-chartered charter school shall be based on the
18 projected number of program units generated by that charter
19 school and its students, using the at-risk index and the
20 instructional staff training and experience index for the 2013-
21 2014 school year and, thereafter, by the effective teacher
22 index of the school district in which it is geographically
23 located. For second and subsequent fiscal years of operation,
24 the budgets of state-chartered charter schools shall be based
25 on the number of program units generated using the average of

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1 the MEM on the second and third reporting dates of the prior
2 year and its own [~~instructional staff training and experience~~]
3 effective teacher index and the at-risk index of the school
4 district in which the state-chartered charter school is
5 geographically located. The budget shall be submitted to the
6 division for approval or amendment pursuant to the Public
7 School Finance Act and the Charter Schools Act.

8 B. Beginning with the 2014-2015 school year, all
9 state-chartered charter schools shall submit performance-based
10 budgets that comply with the requirements of the Accountability
11 in Government Act and shall be in a form specified by the
12 department.

13 [~~B.~~] C. Each locally chartered charter school shall
14 submit to the local school board a school-based budget. For
15 the first year of operation, the budget of every locally
16 chartered charter school shall be based on the projected number
17 of program units generated by the charter school and its
18 students, using the at-risk index and the instructional staff
19 training and experience index for the 2013-2014 school year
20 and, thereafter, by the effective teacher index of the school
21 district in which it is geographically located. For second and
22 subsequent fiscal years of operation, the budgets of locally
23 chartered charter schools shall be based on the number of
24 program units generated using the average of the MEM on the
25 second and third reporting dates of the prior year and its own

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1 ~~[instructional staff training and experience]~~ effective teacher
2 index and the at-risk index of the school district in which the
3 locally chartered charter school is geographically located.
4 The budget shall be submitted to the local school board for
5 approval or amendment. The approval or amendment authority of
6 the local school board relative to the charter school budget is
7 limited to ensuring that sound fiscal practices are followed in
8 the development of the budget and that the charter school
9 budget is within the allotted resources. The local school
10 board shall have no veto authority over individual line items
11 within the charter school's proposed budget, but shall approve
12 or disapprove the budget in its entirety. Upon final approval
13 of the local budget by the local school board, the individual
14 charter school budget shall be included separately in the
15 budget submission to the department required pursuant to the
16 Public School Finance Act and the Charter Schools Act.

17 D. Beginning with the 2014-2015 school year, all
18 locally chartered charter schools shall submit performance-
19 based budgets that comply with the requirements of the
20 Accountability in Government Act and shall be in a form
21 specified by the department.

22 ~~[G.]~~ E. For the first year of operation after a
23 locally chartered charter school converts to a state-chartered
24 charter school or a state-chartered charter school converts to
25 a locally chartered charter school, the charter school's budget

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1 shall be based on the number of program units generated using
2 the average of the MEM on the second and third reporting dates
3 of the prior year and the instructional staff training and
4 experience index for the 2013-2014 school year and, thereafter,
5 by the effective teacher index and the at-risk index of the
6 school district in which it is geographically located. For
7 second and subsequent fiscal years of operation, the charter
8 school shall follow the provisions of Subsection A or [B] C of
9 this section, as applicable.

10 ~~[D. Notwithstanding the provisions of Subsections A~~
11 ~~through C of this section, each charter school that was in~~
12 ~~existence in fiscal year 2009 shall be held harmless in the~~
13 ~~calculation of its instructional staff training and experience~~
14 ~~index for two fiscal years. For fiscal years 2010 and 2011,~~
15 ~~the department shall use the greater of the charter school's~~
16 ~~2008-2009 funded instructional staff training and experience~~
17 ~~index or the charter school's own instructional staff training~~
18 ~~and experience index. Beginning in fiscal year 2012, each~~
19 ~~charter school shall use its own instructional staff training~~
20 ~~and experience index.]"~~

21 SECTION 3. Section 22-8-7 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 61, as amended) is amended to read:

23 "22-8-7. BUDGETS--FORM.--Beginning with the 2014-2015
24 school year, budgets submitted to the department by a school
25 district or state-chartered charter school, or budgets

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1 submitted by a locally chartered charter school to its
2 chartering school district, shall be performance-based budgets
3 that comply with requirements of the Accountability in
4 Government Act and shall be in a form specified by the
5 department."

6 SECTION 4. Section 22-8-18 NMSA 1978 (being Laws 1974,
7 Chapter 8, Section 8, as amended) is amended to read:

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

10 A. The total program units for the purpose of
11 computing the program cost shall be calculated by multiplying
12 the sum of the program units itemized as Paragraphs (1)
13 [~~through (6)~~] and (2) in this subsection by the instructional
14 staff training and experience index for the 2013-2014 school
15 year and, thereafter, by the effective teacher index and adding
16 the program units itemized as Paragraphs [~~(7)~~] (3) through (13)
17 in this subsection. The itemized program units are as follows:

- 18 (1) early childhood education;
19 (2) basic education;
20 (3) special education, adjusted by subtracting
21 the units derived from membership in class D special education
22 programs in private, nonsectarian, nonprofit training centers;
23 (4) bilingual multicultural education;
24 (5) fine arts education;
25 (6) elementary physical education;

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- 1 (7) size adjustment;
2 (8) at-risk program;
3 (9) enrollment growth or new district
4 adjustment;

5 (10) special education units derived from
6 membership in class D special education programs in private,
7 nonsectarian, nonprofit training centers;

8 (11) national board for professional teaching
9 standards certification;

10 (12) home school student activities; and

11 (13) charter school student activities.

12 B. The total program cost calculated as prescribed
13 in Subsection A of this section includes the cost of early
14 childhood, special, bilingual multicultural, fine arts and
15 vocational education and other remedial or enrichment programs.
16 It is the responsibility of the local school board or governing
17 body of a charter school to determine its priorities in terms
18 of the needs of the community served by that board. Except as
19 otherwise provided in this section, funds generated under the
20 Public School Finance Act are discretionary to local school
21 boards and governing bodies of charter schools; provided that
22 the special program needs as enumerated in this section are
23 met; and provided [~~however~~] further that if a public school has
24 been rated D or F for two consecutive years, the department
25 shall ensure that the local school board or governing body of a

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1 charter school is prioritizing resources for the public school
2 toward proven programs and methods linked to improved student
3 achievement until the public school earns a C or better for two
4 consecutive years."

5 SECTION 5. Section 22-8-21 NMSA 1978 (being Laws 1974,
6 Chapter 8, Section 11, as amended) is amended to read:

7 "22-8-21. SPECIAL EDUCATION PROGRAM UNITS.--

8 A. For the purpose of the Public School Finance
9 Act, special education programs for exceptional children are
10 those approved by the department and classified as follows:

11 (1) class A programs, in which department-
12 certified individuals provide services to children whose
13 individualized education programs require a minimal amount of
14 special education and in which the ratio of students to
15 professionals is regulated by the [~~state board~~] department;

16 (2) class B programs, in which department-
17 certified individuals provide services to children whose
18 individualized education programs require a moderate amount of
19 special education and in which the ratio of students to
20 professionals is regulated by the [~~state board~~] department;

21 (3) class C programs, in which department-
22 certified individuals provide services to children whose
23 individualized education programs require an extensive amount
24 of special education and in which the ratio of students to
25 professionals is regulated by the [~~state board~~] department;

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1 (4) class D programs, in which department-
2 certified individuals provide services to children whose
3 individualized education programs require a maximum amount of
4 special education and in which the ratio of students to
5 professionals is regulated by the ~~[state board]~~ department.
6 Students in class D programs may be enrolled in private,
7 nonsectarian, nonprofit educational training centers in
8 accordance with the provisions of Section 22-13-8 NMSA 1978;
9 ~~[and]~~

10 (5) programs for developmentally disabled
11 three- and four-year-old children meeting standards approved by
12 the ~~[state board]~~ department; and

13 (6) programs for developmentally delayed
14 three- and four-year-old children meeting standards approved by
15 the department.

16 B. By October 31, 2013, the department shall adopt
17 rules to define minimal, moderate, extensive and maximum
18 eligibility requirements for students classified as exceptional
19 children in Paragraphs (1) through (6) of Subsection A of this
20 section and to generate the program units calculated in
21 Subsection D of this section.

22 ~~[B-]~~ C. All students assigned to the programs for
23 exceptional children classified in Subsection A of this section
24 shall have been so assigned as a result of diagnosis and
25 evaluation performed in accordance with the standards of the

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1 department before the students may be counted in the
2 determination of special education program units as provided in
3 Subsection ~~[G]~~ D of this section.

4 ~~[G-]~~ D. The number of special education program
5 units is the sum of the following:

6 (1) the MEM in approved class A, ~~[and]~~ B and
7 developmentally delayed programs as defined in Subsection A of
8 this section multiplied by the cost differential factor .7;

9 (2) the MEM in approved class C programs as
10 defined in Subsection A of this section multiplied by the cost
11 differential factor 1.0;

12 (3) the MEM in approved class D programs as
13 defined in Subsection A of this section multiplied by the cost
14 differential factor 2.0;

15 (4) the MEM for developmentally disabled
16 three- and four-year-old children as defined in Subsection A of
17 this section multiplied by the cost differential factor 2.0;
18 provided that no developmentally disabled three- or four-year-
19 old student shall be counted for additional ancillary service
20 units; and

21 (5) for related services ancillary to
22 providing special education, the number of full-time-equivalent
23 certified or licensed ancillary service and diagnostic service
24 personnel serving students classified as exceptional in
25 Subsection A of this section multiplied by the cost

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1 differential factor 25.0.

2 ~~[D-]~~ E. For the purpose of calculating membership
3 in class C and class D programs, students shall be counted in
4 actual grade placement or according to chronological age if not
5 in actual grade placement.

6 F. For purposes of calculating related services
7 units in Paragraph (5) of Subsection D of this section, the
8 department shall establish by rule the minimum ratios of full-
9 time-equivalent licensed ancillary service personnel to special
10 education full-time-equivalent students that shall be used to
11 calculate related services units beginning with the 2014-2015
12 school year."

13 **SECTION 6.** Section 22-8-23.3 NMSA 1978 (being Laws 1997,
14 Chapter 40, Section 7, as amended) is amended to read:

15 "22-8-23.3. AT-RISK PROGRAM UNITS.--

16 A. A school district is eligible for additional
17 program units if it establishes within its ~~[state board]~~
18 department-approved educational plan identified services to
19 assist students to reach their full academic potential. A
20 school district receiving additional at-risk program units
21 shall include a report of specified services ~~[in its annual~~
22 accountability report pursuant to Section 22-1-6 NMSA 1978],
23 including reading coaches, additional instructional time,
24 tutoring and school- and student-level interventions to improve
25 academic proficiency, and intended outcomes as a supplement to

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1 its performance-based budget in a form specified by the
2 department. The number of additional units to which a school
3 district is entitled under this section is computed in the
4 following manner:

$$5 \quad [\text{At-Risk Index} \times \text{MEM} = \text{Units}]$$

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

$$10 \quad \text{Three-Year Average Total Rate} \times 0.0915 = \text{At-Risk Index.}$$

11 B. To calculate the three-year average total rate,
12 the department shall compute a three-year average of the school
13 district's percentage of membership used to determine its Title
14 I allocation, a three-year average of the percentage of
15 membership classified as English language learners using
16 criteria established by the federal office of civil rights and
17 a three-year average of the percentage of student mobility.
18 The department shall then add the three-year average rates.
19 The number obtained from this calculation is the three-year
20 average total rate.

21 C. The department shall recalculate the at-risk
22 index for each school district every year. For the 2002-2003,
23 2003-2004 and 2004-2005 school years, a school district shall
24 not receive less than ninety percent of the at-risk funding
25 generated in fiscal year 2001.]

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1 (1) the MEM enrolled in the federal school
2 lunch program as defined in Subsection B of this section
3 multiplied by a cost differential factor of 0.15 for the 2013-
4 2014 school year, 0.30 for the 2014-2015 school year and 0.40
5 for the 2015-2016 school year and thereafter; plus

6 (2) the MEM identified as English language
7 learners using criteria established by the federal office for
8 civil rights by the cost differential factor 0.1 beginning in
9 the 2013-2014 school year.

10 B. For the purpose of calculating MEM in Paragraph
11 (1) of Subsection A of this section, a student must be enrolled
12 in either free or reduced-priced meals in the federal school
13 lunch program. For the 2013-2014 school year, state-chartered
14 or locally chartered charter schools may use the Title I
15 percentage of the district in which the charter school is
16 geographically located for calculating the MEM in Paragraph (1)
17 of Subsection A of this section. Beginning with the 2014-2015
18 school year, each charter school shall demonstrate that a
19 student qualifying under this section meets eligibility
20 requirements in Paragraphs (1) and (2) of Subsection A of this
21 section.

22 C. The department shall audit the MEM counts in
23 this section not less than every three years and more often if
24 required by the secretary."

25 SECTION 7. Section 22-8-24 NMSA 1978 (being Laws 1974,

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1 Chapter 8, Section 15, as amended by Laws 1993, Chapter 91,
2 Section 1 and by Laws 1993, Chapter 237, Section 3) is repealed
3 and a new Section 22-8-24 NMSA 1978 is enacted to read:

4 "22-8-24. [NEW MATERIAL] EFFECTIVE TEACHER INDEX--
5 DEFINITIONS--FACTORS--CALCULATIONS.--

6 A. For the purposes of calculating the effective
7 teacher index, the following definitions and limitations shall
8 apply:

9 (1) "teaching staff" means a licensed teacher
10 who is assigned classroom teaching responsibilities;

11 (2) the number of teaching staff to be counted
12 in calculating the effective teacher index is the actual number
13 of full-time-equivalent teaching staff on the October payroll
14 beginning with October 2013 and each October thereafter;

15 (3) the number of years of experience to be
16 used in calculating the effective teacher index is that number
17 of years of experience as determined by department rule; and

18 (4) the teaching license level as described in
19 the School Personnel Act.

20 B. The factors for each classification of license
21 level by years of experience are provided in the following
22 table:

	License Level			
23				
24	Years of Experience	1	2	3
25	0-12	0.75	1.00	1.18

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1 13 and above 1.08 1.25.

2 C. The effective teacher index for each school
3 district or charter school shall be calculated in accordance
4 with instructions issued by the department. The following
5 calculations shall be computed:

6 (1) multiply the number of full-time-
7 equivalent teaching staff in each license level by the
8 numerical factor in the appropriate years of experience row in
9 Subsection B of this section;

10 (2) add the products calculated in Paragraph
11 (1) of this subsection; and

12 (3) divide the total obtained in Paragraph (2)
13 of this subsection by the total number of full-time-equivalent
14 teaching staff.

15 D. In the event that the result of the calculation
16 of the effective teacher index is 1.0 or less, the school
17 district's or charter school's factor shall be no less than
18 1.0.

19 E. In the event that a new school district or
20 charter school is created, the effective teacher index for that
21 school district or charter school is 1.0."

22 SECTION 8. TEMPORARY PROVISION--SCHOOL DISTRICT
23 PROTECTION FROM PROGRAM UNIT CALCULATION REDUCTIONS.--

24 A. Using funds appropriated by the legislature, the
25 public education department shall implement a program to

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1 maintain school districts' and charter schools' respective
2 program unit calculations in cases of reductions that result
3 only from implementation of the provisions of this act and:

4 (1) for the 2013-2014 school year, the
5 department shall maintain school districts' and charter
6 schools' respective program unit calculations at one hundred
7 percent of the 2012-2013 school year's program unit
8 calculations only from implementation of the provisions of this
9 act;

10 (2) for the 2014-2015 school year, the
11 department shall maintain school districts' and charter
12 schools' respective program unit calculations at a minimum of
13 seventy-five percent of the 2013-2014 school year's program
14 unit calculations only from implementation of the provisions of
15 this act; and

16 (3) for the 2015-2016 school year, the
17 department shall maintain school districts' and charter
18 schools' respective program unit calculations at a minimum of
19 fifty percent of the 2014-2015 school year's program unit
20 calculations only from implementation of the provisions of this
21 act.

22 B. The public education department shall provide
23 the legislative education study committee and the legislative
24 finance committee with a report on school districts' and
25 charter schools' respective program unit calculations

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1 implemented only as a result of the provisions of this act
2 before the 2014, 2015, 2016 and 2017 legislative sessions.

3 SECTION 9. APPROPRIATION.--Five million seven hundred
4 thousand dollars (\$5,700,000) is appropriated from the separate
5 account of the appropriation contingency fund that represented
6 a distribution from the permanent school fund pursuant to
7 Paragraph (1) of Subsection G of Section 7 of Article 12 of the
8 constitution of New Mexico that was created in Laws 2004,
9 Chapter 114, Section 12 to the public education department for
10 expenditure in fiscal year 2014 to carry out the purposes of
11 Section 8 of this act.

12 SECTION 10. EFFECTIVE DATE.--The effective date of the
13 provisions of Section 7 of this act is July 1, 2014.