

teachers, to improve the performance of qualified schools. The bill defines “qualified schools” as public elementary schools that were rated as D or F schools with at least 85 percent ethnic minority students. The bill defines “native New Mexican teacher” as a level 3-A teacher with a valid New Mexico birth certificate. The bill appropriates \$2 million from the general fund to add \$3,000 to the annual income of each native New Mexican teacher hired from FY20 through FY29.

Teachers eligible for the incentive would be required to:

- 1) Possess a master’s degree plus eight hours of additional academic credit or certification through the National Board of Professional Teaching Standards, and
- 2) Have a valid New Mexico birth certificate, and
- 3) Be rated as an “exemplary” or a “highly effective” teacher, and
- 4) Sign a contract to teach in a “qualified school”.

Teachers would have to repay the incentive if they left the job before the end of the year. The teacher would be eligible for renewal of the incentive if they maintained a teacher evaluation of “exemplary” or “highly effective” and the school in which they worked was evaluated at least one letter grade above the previous year. The teacher could elect to move to a different qualified school without losing the incentive pay.

FISCAL IMPLICATIONS

The bill creates a “native New Mexican teacher incentive fund” in the state treasury that would receive a recurring appropriation of \$2 million from the general fund for expenditure in FY20 and subsequent fiscal years through FY29. Any unexpended or unencumbered balance remaining at the end of FY30 would revert to the general fund.

It is unclear how many teachers are native New Mexicans; however, in 2018, approximately 34 percent of all teachers were rated “highly effective” or better and 312 schools received a D or F school grade. The average school has 26 teachers, so the number of highly-effective teachers in low-performing schools could be as high as 2,758 teachers. At this time, data on the demographics of students in each school and the birthplace of each teacher is limited, preventing additional adjustments to the estimate; however, this initial estimate of 2,758 teachers places a ceiling for the cost to provide \$3,000 stipends at \$8.3 million.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

PED would be required to administer the program and personnel time to do so would be needed. Costs for one additional full-time employee to perform this function would be approximately \$75 thousand each year.

SIGNIFICANT ISSUES

ERB notes the bill may be challenged under the equal protection clauses of the federal and New Mexico constitutions because it treats similarly situated individuals differently based solely on the person’s place of birth. The standards for a violation of the equal protection clauses of the U.S. and New Mexico constitutions are the same. *Garcia v. Albuquerque Public Schools Bd. of*

Educ., 1980-NMCA-081. The equal protection clause doesn't prohibit different classifications, however the classification may not be arbitrary or unreasonable. The classification must be founded upon pertinent and real differences as distinguished from artificial ones. Mere difference, of itself is not sufficient. *State v. Sunset Ditch Co., 48 N.M. 17; Vandolsen v. Constructors, Inc., 101 N.M. 109.*

Courts apply a different level of review depending on the type of classification at issue. ERB notes the bill would likely be subject to “rational basis” review because it does not appear to involve classification based on a suspect class (race, national origin) or quasi-suspect class (gender). To pass this level of review, the classification must be reasonably related to a rational purpose of the government. The purpose of the program is to hire native New Mexican teachers to fill teaching vacancies at qualified schools to help those schools raise their school grade at least one letter grade each year until the school achieves and maintains an A letter grade. Although improving school performance would likely be considered a legitimate and rational interest of the state, ERB notes the bill does not articulate any reasons why hiring native New Mexican teachers and paying incentive pay to native New Mexican teachers furthers the state's interest in improving school performance.

Senate Memorial 145 from the 2017 legislative session requested a study of the state's school grading system by LESC and a workgroup of stakeholders. The LESC workgroup proposed changes to the state's school grading system during the 2018 legislative interim which, if enacted, would conflict with the criteria for qualified schools outlined in this bill.

Executive Order 2019-002 directed PED to revise the state's current teacher evaluation system, which may change the number of teachers rated highly effective or exemplary.

ADMINISTRATIVE IMPLICATIONS

PED would be responsible for promulgating rules for the program, administering the program, and for evaluating the program. PED would also be responsible for reporting its findings and recommendations regarding the program to LFC and LESC.

ERB anticipates the possibility of incentive pay being returned by a teacher under certain circumstances and notes any member or employer contributions made to ERB based on that incentive pay amount would also have to be returned to the employer once it is determined that a teacher must pay back the incentive pay.

CONFLICT, RELATIONSHIP

The bill conflicts with House Bill 42, which provides a teacher pay incentive but does not limit teacher incentive awards to teachers with a valid New Mexico birth certificate, and defines a “qualified school” as a public elementary school rated a D or F school, in the last school rating pursuant to the A-B-C-D-F Schools Rating Act, in which at least 90 percent of students qualify for free or reduced price lunch.

The bill relates to House Bill 212, Senate Bill 229, and Senate Bill 247 which make changes to either the current teacher evaluation system or the existing A-B-C-D-F school grading system.

OTHER SUBSTANTIVE ISSUES

PED notes about 50 percent of teachers in New Mexico come via interstate reciprocity, and provisions of this bill may reduce the pool of candidates incentivized to serve in high-need schools.

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