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FISCAL IMPACT REPORT

SPONSOR HEC ORIGINAL DATE 02/22/21
LAST UPDATED _____ HB 135/HECS
SHORT TITLE School Opportunity & Equity Index SB _____
ANALYST Liu

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$100.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB17

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

The House Education Committee Substitute for House Bill 135 appropriates \$100 thousand from the general fund to PED for the purpose of developing a new at-risk index in the public school funding formula that uses student demographic and performance data based on subgroups in the *Martinez-Yazzie* education lawsuit.

FISCAL IMPLICATIONS

The appropriation of \$100 thousand contained in this bill is a nonrecurring expense to the general fund for a study. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund. Proposed changes to the at-risk index formula may create future operating budget expenditures if adopted.

SIGNIFICANT ISSUES

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits,

and found that New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English language learners, Native American students, and special education students. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

The current at-risk index is based on the three-year average of three indicators: the percentage of student membership used to calculate a school district's Title I allocation, the percentage of students that are English learners, and student mobility. These indicators are added together and multiplied by a cost differential factor to calculate program units. The index cost differential factor has increase significantly in recent years, from 0.0915 in FY14 to 0.3 in FY21. The court ruling in the *Yazzie* and *Martinez* case did not consider the state's efforts to increase to the at-risk index, but noted an at-risk index factor between 0.25 and 0.5 would be reasonable.

The at-risk index allows school districts and charter schools to generate additional program units if they provide services to assist at-risk students in reaching their full academic potential. School districts and charter schools have significant flexibility to allocate at-risk funding for services that meet the individual needs of their schools, teachers, and students. Programs can include, but are not limited to: counseling, mental health, social work, and other wraparound services; services for English learners; class size reduction programs; programs that provide teachers and other staff with additional compensation to serve at-risk students; and programs designed to combat habitual truancy and other factors that place students at-risk of academic failure.

Though it may be a desirable policy approach to link funding to racial achievement gaps, traditionally state aid formulas have not had characteristics that consider classification into a racial subgroup. This is because the U.S. Supreme Court has established a doctrine of strict scrutiny around the use of race in state laws. To meet strict scrutiny, the state must demonstrate the use of race is narrowly tailored and the state has a compelling interest to consider race. As such, New Mexico would need to show a compelling state interest in linking funding to racial achievement gaps so narrowly tailored that it cannot be construed as having racial animus.

Generally, strict scrutiny also requires the state to show there is not efficacy in other race neutral proposals (i.e. that racial performance classification is a necessary addition and would significantly impact outputs of the model) and demonstrate the policy has a relationship to the numerical goals of the population (i.e. there is some relationship between a racial subgroup of students' performance and funding). PED notes the strict scrutiny requirements may present legal challenges. The U.S. Supreme Court has only recognized policies that explicitly seek to remedy past discrimination as meeting the strict scrutiny standard, such as diversity policies in higher education. As such, many state aid formulas have relied on poverty indicators and economically disadvantaged status to address racial inequities as the two variables are strongly

correlated.

ADMINISTRATIVE IMPLICATIONS

Provisions of this bill require PED to work with outside experts to develop a new at-risk index. The department would need to identify experts with knowledge of inferential statistics to develop the index.

RELATIONSHIP

This bill relates to Senate Bill 17, which creates a family income index - a measure of each school's poverty level that can be used for resource prioritization by PED.

SL/al