

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/08

SPONSOR Garcia, M.H. LAST UPDATED \_\_\_\_\_ HB 401

SHORT TITLE Elementary School Intervention Response SB \_\_\_\_\_

ANALYST Escudero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$27,130.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$ NFI	\$ 119.4	\$ 116.8	\$ 236.3	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates To: HB341

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

Department of Finance (DFA)

### SUMMARY

#### Synopsis of Bill

House Bill 401 appropriates \$27.13 million to the Public Education Department for the hiring of reading and mathematics specialists and other school personnel in elementary schools to comply with federal Individuals with Disability Education Act (IDEA) requirements.

### FISCAL IMPLICATIONS

The appropriation of \$27,130.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY09 shall revert to the general fund.

According to PED:

- The funding appropriated by this bill may be supplemented with 15% of a district's Individuals with Disabilities Education Act (IDEA), Part B funding for the implementation of scientific, research-based interventions (e.g. RTI). IDEA allows school districts to use up to 15% of IDEA, Part B funding for EIS for kindergarten through grade 12 students who are at risk of being referred to special education and need additional academic and behavioral support to succeed in a general education environment (34 CFR § 300.226).
- IDEA does not require states to provide additional funds for Early Intervening Services or making special education eligibility determinations for students with specific learning disabilities, and it does not prohibit states from providing additional funds.
- The bill does not appropriate funding to the PED for additional administrative responsibilities to provide leadership, professional development, and technical assistance to implement RTI in the elementary schools.
- It is anticipated that the PED will need to employ 1.5 FTEs as Education Administrators – Advanced to manage the responsibilities of implementing RTI statewide and administering the funding appropriation to the school districts.
  - The addition of 1.5 employees ( $\$25.50 \times 3,120 + 30\%$  benefits = \$103.4), rental of office space (\$8.0), office furnishings (\$3.0), 2 computers (\$3.0), and supplies (\$2.0) will require funding in the amount of \$119.5 in FY09.
  - The addition of 1.5 employees, rental of office space, and supplies with a 3% inflation rate will require funding in the amount of \$116.8 in FY10.

## **SIGNIFICANT ISSUES**

According to PED, the bill appropriates \$27,130.0 to the Public Education Department from the general fund in FY09 to implement the Response to Intervention process (RTI) in New Mexico elementary schools in order to comply with federal requirements regarding RTI set forth in the Individuals with Disabilities Act of 2004 (IDEA; Public Law 108-446). Specifically, the proposed funding is for hiring reading and mathematics specialists and other school personnel to put RTI methods into practice.

- RTI Interventions and Monitoring
  - RTI is a systematic process for identifying and meeting the instructional needs of all students that are at risk of failing in core subject areas or are not making significant gains to achieve proficiency in the New Mexico content standards. The RTI model applies research-based procedures to identify at-risk students, determine factors contributing to failure, select high-quality, evidence-based instructional and behavioral interventions (called Early Intervention Services), and continuously measure academic growth using standardized methods. More intensive interventions and assessments are gradually applied until the student's instructional needs are met, and it is evident that the student is growing academically.

New Mexico's three-tiered conceptual model for RTI was developed in 2006 by a

statewide panel of educators, diagnosticians, school administrators, and PED staff members. The model is published in the guidance document, Response to Intervention: A Systematic Process to Increase Learning Outcomes for All Students, available on the PED website at

<http://www.ped.state.nm.us/parents.students/dl08/RTIManualFinalCombo2006%2012-06.pdf>

- In Tier I, all students receive appropriate, standards-based instruction and monitoring using short-cycle and curriculum-based assessments, and the New Mexico Standards-Based Assessments. Students that are not reaching performance targets are referred to the school's Student Assistance Team (SAT) to be evaluated for an individual intervention plan. IDEA Part B funds cannot be used for Tier I interventions.
  - The intervention plan will prescribe more intensive Tier 2 interventions including targeted individual or small group instruction, increased duration of instruction, and increased attendance. Students that continue to struggle academically under Tier 2 interventions might be referred to the district evaluation team, and a comprehensive assessment of all suspected areas of disability is conducted. IDEA Part B funds can be used to implement Tier II interventions for students at risk.
  - If the student meets well-defined eligibility criteria for special education services, an individualized educational plan (IEP) is developed and the student is referred to special education services in Tier 3.
- RTI at the National Level
    - RTI is a national initiative that is supported by the US Department of Education, Office of Special Education Programs (OSEP), the Office of Elementary and Secondary Education (ESE), the Office of English Language Acquisition (OELA), and the Institute of Education Sciences (IES).

A National RTI Center was recently established to provide technical assistance and disseminate information about proven and promising models for RTI and Early Intervening Services to state and local educators, families, and other stakeholders. The RTI Center's

- activities and resources can be viewed at its website, go to <http://www.RTI4success.org/>.
- Federal Requirements Regarding RTI
    - IDEA sets requirements in two areas regarding scientific research-based interventions (e.g. RTI): (1) use of IDEA, Part B funding for Early Intervening Services (EIS) and (2) making special education eligibility determinations for students with specific learning disabilities (SLD). School districts must declare their intent to use 15% of Part B funds for EIS on the IDEA funding application. The districts are also required to submit an EIS plan to the PED Special Education Bureau.

- IDEA allows school districts to use up to 15% of IDEA Part B funding for EIS for kindergarten through grade 12 students who are at risk of being referred to special education and need additional academic and behavioral support to succeed in a general education environment (34 CFR § 300.226). The use of these funds for EIS services is discretionary, except where the state identifies a school district that disproportionately disciplines or places children with disabilities in separated educational settings by race and ethnicity. The funding appropriated by this bill may be supplemented with 15% of a district's IDEA, Part B funding for the implementation of RTI.

IDEA requires that states allow school districts to use information on a student's response to scientific research-based interventions (e.g. RTI) as *part* of a comprehensive SLD evaluation and determination for special education and related services (34 CFR § 300.307). New Mexico Administrative Code §6.32.2.10 provides school districts the option of using RTI information in SLD determinations, and requires its use starting on July 1, 2009.

### **PERFORMANCE IMPLICATIONS**

According to PED, the bill impacts the following Public School Support performance measures:

Percent of elementary school students who achieve the No Child Left Behind Act annual measurable objective for proficiency or above on standards-based assessments in reading and language arts.

Percent of elementary school students who achieve the No Child Left Behind Act annual measurable objective for proficiency or above on standards-based assessments in mathematics.

### **ADMINISTRATIVE IMPLICATIONS**

PED will need to determine appropriate uses of this funding and establish criteria for determining disbursement amounts and awarding these funds to the school districts. In addition, the PED must ensure that IDEA Part B EIS funds are used to supplement, not supplant, the state's funding. This will place additional responsibilities on PED program staff to manage budget adjustment requests for these funds

The PED will need to identify strategies and goals, material and human resources, and prepare

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

As stated by PED, the bill appropriates funding that will support the monitoring of RTI by PED in the school districts, as requested by SJM009. Part of this funding might be used for the purchase of vendor-produced short-cycle assessments needed by 29 of the school districts not now using these assessments, in addition to implementing the academic and behavior interventions for all students.

**OTHER SUBSTANTIATIVE ISSUES**

According to PED, the bill appropriates funds to implement RTI only in the elementary schools. RTI is a K-12 process that will require funding in the middle schools and high schools for a comprehensive implementation in New Mexico.

The bill emphasizes the application of RTI to reading and mathematics, the only two content areas now used to evaluate the adequate yearly progress (AYP) of schools and school districts. Other content areas will need to be included to align with the RTI model.

The bill appropriates funding for FY09 only. Because funding will not be available to districts until after July 1, 2008, staff will not be hired and effectively working on implementing RTI until after the beginning of the school year. Further, recruitment of staff after July 1, 2008, will be very limited because most highly qualified teachers will be committed to a position by that date. It is recommended that the language of the bill be amended to extend funding into FY10 to address these difficulties

PME/mt