

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: *HB 10

49th Legislature, 1st Special Session, 2009

Short Title: School District Solvency

Sponsor(s): Representative Rick Miera and Others

Analysts: Eilani Gerstner, David Harrell, and Pamela Herman Date: October 19, 2009

HB 10, with the emergency clause, amends the *Public School Code* in a variety of ways “as part of the state’s fiscal solvency efforts.” As indicated in the summary that follows, some of the amendments are temporary, and others are permanent. The permanent amendments are summarized first. Immediately following the summary of each section is a brief discussion of that section’s potential fiscal impact, a reference to provisions in current law, and other issues as appropriate.

PERMANENT AMENDMENTS

Size Adjustment Program Units (Section 2, p. 4)

As a permanent change, HB 10 amends the *Public School Finance Act* to:

- change the requirements for the size adjustment factor in the public school funding formula for a school with a MEM of less than 400 to require that the school must also be a “rural isolated” public school; and
- define a “rural isolated public school” as a public school that is located in a community with a population of fewer than 3,000 and that is at least five miles from another public school offering a similar education program.

Fiscal Impact: According to the Public Education Department (PED) bill analysis, the enactment of HB 10 would result in approximately \$20.8 million being available for redistribution in the State Equalization Guarantee. The estimate, however, is based on the availability of 5,397.5 program units (based on 2007-2008 data) multiplied by the FY 10 unit value of \$3,862.79.

Current Law: The *Public School Finance Act* affords eligibility for additional program units to any approved school with a MEM of less than 400, “including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs” – regardless of the location of the school or its proximity to any other schools.

Issues: Because HB 10 does not define the term “community,” using that term as part of the eligibility requirements for size adjustment program units is problematic. In general usage, a community could be anything from an unincorporated village in a remote area of the state to a neighborhood in one of the state’s larger cities. The five-mile limit may also be problematic in that schools within that proximity of each other may be in different districts. This requirement may also require a survey, or at least a detailed mapping, of public schools throughout the state.

Supplemental Distributions (Section 4, p. 8)

As another permanent change, HB 10 prohibits PED from distributing emergency supplemental funding to:

- a school district or state-chartered charter school that has not adopted cost-saving measures, including measures such as combining single- and multiple-grade level classes within an elementary, middle or junior high, or senior high school, to achieve maximum efficiency as determined by the Secretary of Public Education; or
- a school district, state-chartered charter school, area vocational school, or state-supported school that has one or more outstanding audits. Distributions for out-of-state tuition for students are excluded from this prohibition.

Also permanent is the amendment to prohibit emergency supplemental distributions from being used for capital-related expenditures associated with new buildings or for costs eligible for payment through the public school capital outlay funding process, unless approved by the Secretary of Public Education.

Fiscal Impact: The Legislative Finance Committee (LFC) has estimated that changing the eligibility criteria for emergency supplemental distributions may not result in any cost-saving at the district level, but it may result in more efficient distributions to those districts with the greatest need.

Current Law: Current law allows the department to make supplemental distributions only for the following purposes:

- to pay the out-of-state tuition of students subject to the *Compulsory School Attendance Law* who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;
- to make emergency distributions to school districts or state-chartered charter schools in financial need; but no money shall be distributed to any school district or state-chartered charter school having cash, invested reserves or other resources or combination thereof equaling 5.0 percent or more of the school district's or state-chartered charter school's operating budget;
- to make program enrichment distributions in the amount of actual program expense to school districts and state-chartered charter schools for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;
- to reimburse area vocational schools or state-supported schools with department-approved vocational programs for the cost of vocational education programs for those students subject to the *Compulsory School Attendance Law* who are enrolled in such programs; and
- to make emergency capital outlay distributions to school districts or state-chartered charter schools that have experienced an unexpected capital outlay emergency demanding immediate attention.

Issues:

- Of the 13 school districts that currently have outstanding audits for 2008¹, five have requested and budgeted emergency supplemental funding for school year 2009-2010, as shown in Table 1.

Table 1
School Districts with Outstanding 2008 Audits
That Have Requested Emergency Supplemental Funding
for School Year 2009-2010

(A) DISTRICT	(B) Emergency Supplemental Requested	(C) TOTAL AMOUNT BUDGETED	(D) Amount Paid YTD	(E) Amount Not Yet Budgeted (B – C)
CORONA	\$739,000	\$600,000	\$103,000	\$139,000
DES MOINES	\$700,000	\$600,000		\$100,000
GADSDEN	\$5,000,000	\$2,000,000		\$3,000,000
ROY	\$721,000	\$600,000		\$121,000
VAUGHN	\$647,000	\$420,000		\$227,000
TOTAL	\$7,807,000	\$4,220,000	\$103,000	\$3,587,000

SOURCE PED

- One question raised by the emergency clause in HB 10 is whether enactment of the bill would affect the emergency supplemental funds illustrated in this table. If it would, then would these five districts have their entire emergency supplemental funding withheld (column B) – including that already budgeted (column C) but not that already paid (column D) – or would only the amount not yet budgeted (column E) be withheld?

TEMPORARY AMENDMENTS

Assessment System (Section 1, p. 1)

HB 10 temporarily delays, until school year 2011-2012, the requirement that in the fall of grade 11, all students take one or more of the following assessments at no cost to the student:

- a college placement assessment;
- a work force readiness assessment; or
- an alternative demonstration of competency using standards-based indicators.

¹ According to the State Auditor's website, the 13 districts are Corona, Cuba, Des Moines, Española, Floyd, Gadsden, Jemez Valley, Lovington, Mountainair, Quemado, Roy, Santa Rosa, and Vaughn.

Fiscal Impact:

- The LFC has estimated that delaying the implementation of the eleventh-grade college readiness assessment and work force readiness assessment may save between \$700,000 and \$1.0 million.
- PED has suggested that delayed implementation of 11th grade college/workplace readiness assessments will result in the following savings to school districts:
 - \$693,200 in annual savings in FY 10 and FY 11 to school districts statewide, based on PED’s July 29 estimate of school district costs for these assessments; and
 - unknown additional annual savings in FY 10 and FY 11 to school districts in staff time that would have been required to create rubrics for and grade portfolios of standards-based indicators for an unknown potential number of 11th grade students who might have selected this option.

Current Law: School districts in New Mexico administer standards-based assessments for accountability purposes. The assessments required by state law, federal law, and PED procedure all differ, as shown in Table 2, below.

Table 2
Accountability Assessment Requirements in New Mexico

Subject	Federal requirement	State requirement	PED requirement
Reading/Language Arts	Grades 3-8 and once in high school	Grades 3-8 and 11	Grades 3-8 and 11
Math	Grades 3-8 and once in high school	Grades 3-8 and 11	Grades 3-8 and 11
Science	Once in grades 3-5, grades 6-8, and high school	Once in grades 3-5, grades 6-8 and grade 11	Grades 3-8 and 11
Social Studies		Once in grades 3-5, grades 6-8 and grade 11	Grade 11
Writing		Grades 3-8	Grade 3-8 and 11

SOURCE: LESC

Transportation Distribution (Section 3, p. 6)

For FY 10 and FY 11, HB 10 allows a school district or state-chartered charter school to use excess balances from its transportation allocation to purchase instructional materials and to pay operational expenses, excluding salaries and benefits.

Fiscal Impact:

- The LFC has estimated that allowing year-end transportation carryover to be used for textbooks and operational costs may save between \$700,000 and \$1.0 million, depending upon how efficiently districts expend their transportation funds.

- According to PED, the transportation carryover at the end of FY 09 was \$633,783 (unaudited).

Current Law: Current law does not allow the uses of excess balances of transportation funds permitted in HB 10.

Staffing Patterns (Section 5, p. 11)

Effective in FY 10 and FY 11, HB 10 also adds a new subsection to the section of the *School Personnel Act* governing staffing patterns – that is, class loads and teaching loads. More specifically, the bill:

- allows school districts to exceed the class and teaching loads and to decrease the number of required educational assistants otherwise required in law without requesting a waiver from the Secretary of Public Education;
- requires PED to monitor changes in staffing patterns in school districts;
- allows the Secretary of Public Education to adjust a district’s staffing pattern if the district exceeds class and teaching loads or decreases the number of educational assistants to the point that student learning is adversely affected; and
- requires PED to make regular periodic reports to the LESC on (1) the use that school districts have made of the flexibility that the bill provides; and (2) the findings of the department’s monitoring efforts “to ensure that student learning has not been adversely affected.”

Fiscal Impact: Because districts’ staffing patterns are already set for school year 2009-2010, the LFC estimates that removing the requirements for class loads and teaching loads is likely to have little, if any, effect during the current school year; however, the impact on school year 2010-2011 could be significant in that the bill may encourage districts to leave certain vacancies unfilled, to reassign personnel, and to delay hiring certain personnel as they adjust class loads and teaching loads as permitted under HB 10. A dollar amount resulting from these adjustments is difficult to predict.

Current Law:

- For charter schools, the *Charter Schools Act* requires PED to “waive requirements or rules and provisions of the *Public School Code* . . . pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education.”
- The *School Personnel Act* provides these limits on class loads and teaching loads for traditional public schools:
 - for kindergarten classes, no more than 20 students, with an educational assistant in classes of 15 to 20 students;

- for grades 1, 2, and 3, an average class load of no more than 22 students, with a full-time educational assistant for any first-grade teacher with a class load of 21 or more students;
 - for grades 4, 5, and 6, an average class load of no more than 24 students; and
 - for grades 7 through 12, no more than 160 students per teacher per day, with these exceptions for teachers of required English courses:
 - for grades 7 and 8, no more than 135 students per day and no more than 27 students per class; and
 - for grades 9 through 12, no more than 150 students per day and no more than 30 students per class.
- The *School Personnel Act* also includes two provisions for waivers granted by the Secretary of Public Education.
 - Under the first, which is the waiver process obviated by HB 10, the secretary may waive the individual class load requirements on an annual basis (for no more than two consecutive years):
 - as long as the district demonstrates certain conditions;
 - as long as the average class load for first-grade teachers does not exceed 20 students; and
 - as long as the average class load for teachers in grades 2 through 6 does not exceed 25 students.
 - Under the second, the secretary may waive the individual class load and teaching load requirements “upon a demonstration of a viable alternative curricular plan and a finding by the secretary that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff.” The department must also evaluate the alternative curricular plan each year and make annual reports to the LESC.

Issues:

- PED reports that, since July 1, 2009, four school districts – Albuquerque Public Schools (APS), Loving Municipal Schools, Santa Fe Public Schools, and Truth or Consequences Municipal Schools – have submitted a total of 61 requests for class load waivers. Five of them have been approved, and the other 56 – all of them from APS – are under review. PED further reports that the waiver requests include the requirement for an educational assistant. Altogether, these waiver requests represent fewer than 10 percent of the public schools in New Mexico.
- Although HB 10 requires PED to monitor the adjustments allowed in terms of class size, teaching load, and the number of educational assistants “to ensure that student learning has not been adversely affected,” the bill provides no guidance on the basis or mechanism

of the monitoring; nor does it provide any standards regarding adverse effects on student learning. One might argue that PED is in a better position than the Legislature to make such determinations; but it should be noted that the choice of monitoring instrument – whether state standards-based assessments, short-cycle exams, teacher-prepared tests, or teacher or educational assistant observations, among other possibilities – will affect not only the kind and degree of effect on student learning that is reported but also the time period in which such an effect might appear. Therefore, the outcome of the required monitoring seems uncertain at best.

Assessments Required for Graduation (Section 6, p. 15)

HB 10 temporarily delays, until school year 2011-2012, the requirement that, in order to graduate, a student demonstrate competence in the area of social studies, including a section on the constitutions of the United States and of New Mexico, on a standards-based assessment or assessments or on a portfolio of standards-based indicators.

Fiscal Impact: According to PED estimates, delaying the social studies component of the graduation test will result in the following savings to school districts:

- no savings in FY 10;
- approximately \$150,000 in savings in FY 11 to school districts statewide for students scheduled to graduate in school year 2011-2012;
- approximately \$75,000 in savings in FY 12 to school districts statewide for students scheduled to graduate in school year 2011-2012 who retake the graduation test²; and
- because, beginning in spring 2011, the 11th grade standards-based assessment and the state graduation test will be the same test, delaying the social studies component of the graduation test for a year will not result in cost savings (except for students retesting in subsequent years) unless the *Assessment and Accountability Act* is also amended to suspend the social studies component of the 11th grade standards-based assessment for accountability purposes.

Current Law:

- Current law requires that, beginning with school year 2010-2011, a student may not graduate without demonstrating competency in required subjects on a standards-based assessment or portfolio of standards-based indicators.
- PED has designated the existing 11th grade standards-based assessment used for school accountability purposes also to serve as the new graduation assessment, as the law permits.
- PED has interpreted current law to mean that students who are in the 11th grade in school year 2010-2011, scheduled to graduate in 2012-2013, must take and pass the new assessment.

² However, the 11th grade standards-based assessment/graduation test administered to students in spring 2012 who are scheduled to graduate in school year 2012-2013 would include the social studies component.

- Assessment in social studies is not required for federal school accountability under NCLB; however, it is required under the state *Assessment and Accountability Act* in grades 3-8 and grade 11.

OTHER PROVISIONS

Public Hearing (Section 7, p. 23)

HB 10 also adds a new section to the *Public School Code* to require each local school board to hold at least one public hearing and to encourage comments from school personnel, parents, the business community, and other interested parties before implementing any solvency measures to address necessary reductions in appropriations in FY 10 and FY 11. The bill further requires each local board to provide a synopsis of the public hearing to PED and to the LESC, including the solvency measures that the district will implement.

Emergency Clause (Section 8, p. 24)

Finally, as noted above, HB 10 contains an emergency clause.

Related Bill:

*SB 13 *School District Budget Flexibility*