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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/14/13

SPONSOR HAFC LAST UPDATED \_\_\_\_\_ HB 628/HAFCS

SHORT TITLE Public Peace, Health, Safety & Welfare –  
Special Education Funding SB \_\_\_\_\_

ANALYST Gudgel/Walker-Moran

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
\$0.0 to \$20,000.0	\$0.0 to \$16,000.0	Nonrecurring	Operating Reserves

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The House Appropriations and Finance Committee substitute for House Bill 628 addresses potential federal Individuals with Disabilities Education Act (IDEA) special education maintenance of effort (MOE) shortfalls for FY13 and FY14, if the proposed solutions currently included in HB 2 fail by appropriating up to \$36 million from operating reserves.

The bill makes appropriations of up to \$20 million in FY13 and up to \$16.0 million in FY14 to the Public Education Department (PED) if amounts included in the 2012 and 2013 general appropriation acts are insufficient to meet the maintenance of effort requirements of IDEA. This will require Board of Finance approval and review by the Legislative Finance Committee (LFC) and the Legislative Education Study Committee (LESC) prior to release of any funds. Only the amount of funds that are necessary to meet the MOE requirements will be distributed to school districts and charter schools through the funding formula.

The bill also contains a provision to allow the amount of state equalization guarantee distribution transferred to be replaced with operating reserve if the U.S. Department of Education rejects the transferred state equalization guarantee distribution, and allows the Secretary of Public Education to reset the final unit value accordingly.

## FISCAL IMPLICATIONS

The appropriation of up to \$36 million contained in this bill is a nonrecurring expense to the operating reserve fund. If sufficient funds are not made available in FY13 or FY14 pursuant to the provisions included in the general appropriations acts of 2012 and 2013, the bill appropriates up to \$36 million to cover the shortfall - \$20 million in FY13 and \$16 million in FY14. The appropriation is contingent on the PED certifying that funding made available to meet the maintenance of effort (MOE) requirements of the federal Individuals with Disabilities Education Act is insufficient to meet the MOE requirements for each fiscal year after reviewing this information with the LFC and the LESC.

Additionally, even if the amounts included in the general appropriations acts of 2012 and 2013 are sufficient to cover the maintenance of effort requirements, the bill appropriates up to \$20 million in FY 13 and \$16 million in FY14 to the state equalization guarantee if the U.S. Department of Education does not agree with the transfer methodology included in HB 2 and does not count the SEG transfer as part of what the state makes available in FY13 or FY14. In order to transfer the funds from the SEG to cover an MOE shortfall, the PED has to certify the need to Board of Finance and consult with the LFC and the LESC.

HB2 appropriations in FY13 and FY14 leave reserve levels at \$574 million or 10.1 percent in FY13 and \$580 million of 9.8 percent in FY14. New Mexico relies heavily on oil and gas revenues. Volatility of this revenue source commands a higher reserve margin than other states. Also, for years the state has not reconciled the DFA financial summary with cash and other assets held by the State Treasurer. DFA booked \$70 million in FY12 for this liability but further liabilities are expected in FY13 which will further decrease the reserves. The appropriation in this bill will reduce the reserves to 9.8 percent in FY13 and 9.2 percent in FY14, leaving reserves below the recommended 10 percent threshold.

## SIGNIFICANT ISSUES

The Maintenance of Effort (MOE) requirements under the federal Individuals with Disabilities Education Act (IDEA-B), 34 CFR §300.163(a), states "a state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year."

### Fiscal Year 2013 Estimated MOE Shortfall and HB 2 as Amended by SFC

Current estimates by the PED indicate a total shortfall in FY13 of \$34.4 million. The PED reports it is appropriate to reduce the MOE requirements for FY13 for workload declines (fewer special education units being generated because of reduced ancillary FTE and reclassifying special education students at lower levels of special education pursuant to their individualized education programs (IEP)) and for the retirement swap. This is consistent with the PED's request for waivers for FY10 and FY11. The decreased workload and retirement swap accounts for almost \$20 million of the \$34.4 million shortfall.

House Bill 2 currently includes a \$20 million Section 5 nonrecurring special appropriation to the PED to ensure the state makes sufficient funds available in FY13 to meet FY13 MOE requirements. This \$20 million appropriation covers the shortfall after adjusting for decreased workload. HB 2 also includes language in Section 6 allowing the PED to transfer an amount up

to \$20 million from the state equalization guarantee to the Department to distribute to school districts and charter schools to meet MOE requirements if the \$20 million special appropriation is insufficient. The appropriation and the transferred funds will be distributed to school districts and charter schools through the funding formula. In order to access funds, the PED must get board of finance approval and consult with the LFC and the LESC.

Fiscal Year 2014 Estimated MOE Shortfall and HB 2 as Amended by SFC

The PED has not estimated a shortfall for FY14; however, the LFC staff estimates a shortfall for FY14 of approximately \$24.1 million. The PED reports it is appropriate to reduce the MOE requirements for FY14 for workload declines (fewer special education units being generated because of reduced ancillary FTE and reclassifying special education students at lower levels of special education pursuant to their individualized education programs (IEP)). This is consistent with the PED's request for waivers for FY10 and FY11. The executive appears to agree with the LFC estimate given proposed Senate Finance Amendments. Of the

HB 2 currently includes a categorical appropriation of \$10 million to the supplemental special education maintenance of effort (MOE) distribution and language allowing the PED to transfer up to \$16 million from the state equalization guarantee to the supplemental special education (MOE) distribution if the \$10 million categorical appropriation is insufficient to meet FY14 MOE requirements. Both the appropriation of \$10 million and the \$16 million transfer are to be distributed to school districts and charter schools through the funding formula.

The transfer language included in HB 2 for FY13 and FY14 is clear that the transferred SEG is made to ensure sufficient funds are made available to meet the MOE requirements. Language in HB 2 does not limit or restrict how school districts and charter schools are able to spend the transferred SEG distribution, and the PED generally agrees with this interpretation.

The exact level of level of support New Mexico must maintain and how to calculate that level of support remain unknown. Policy makers will not have answers to these questions until the U.S. Department of Education renders a decision on the state's requests for waivers for FY10 and FY11, making it difficult to craft a solution that doesn't increase MOE requirements in the future or place the state in jeopardy of having not met MOE. The solution included in HB 2 attempts to strike a balance between increasing funding for special education MOE purposes without increasing it too much to increase MOE levels for future years and without drawing on reserves.

Legislators requested preparation of an appropriation bill that appropriates revenue from the operating reserve to make up MOE shortfalls, given the uncertainty of the solutions currently included in HB 2. This committee substitute contemplates that either the estimated amount needed to meet MOE for FY13 and FY14 will be insufficient to meet MOE or the federal government does not agree with the transfer methodology included in HB 2 and does not count the SEG transfer as part of what the state makes available in FY13 or FY14. The committee substitute continues to distribute any funding appropriated for MOE through the funding formula.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The committee substitute relates to appropriations in Section 4, 5 and 6 of the General Appropriation Act.