LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **HB 173** **52nd Legislature, 1st Session, 2015**

Tracking Number: **.197974.2**

Short Title: **Additional Funding Formula Units**

Sponsor(s): **Representative Luciano "Lucky" Varela, Senator John M. Sapien, and Others**

Analyst: **Ian Kleats** **Date:** **February 11, 2015**

FOR THE LEGISLATIVE FINANCE COMMITTEE

Bill Summary:

Effective July 1, 2015 (see "Technical Issues," below), HB 173 amends the *Public School Finance Act* to increase the factor used in calculation of a school district's at-risk index from 0.106 in FY 16 to 0.114 beginning in FY 17.

Fiscal Impact:

HB 173 does not contain an appropriation.

Fiscal Issues:

In accordance with Laws 2014, Chapter 55, the at-risk factor will increase from 0.0914 to 0.106 beginning in FY 16. Based on Public Education Department (PED) 2014-2015 at-risk index data and PED's FY 15 preliminary funded run, the combination of Laws 2014, Chapter 55 and HB 173 would create:

- for FY 16, approximately 3,419.309 new at-risk units in FY 16 in the state equalization guarantee (SEG); and
- for FY 17, an additional 1,899.335 at-risk program units in the SEG, resulting in a total increase of 5,318.644 at-risk program units in the SEG over the course of two years.

Based on the FY 15 preliminary unit value of $4,005.75, those new at-risk program units would generate approximately:

- $13.7 million through the SEG in FY 16;
- $7.6 million through the SEG in FY 17; and
- $21.3 million through the SEG after both increases are phased in.

The **Attachment**, *New At-Risk Units and Funding*, illustrates potential new at-risk program units and funding generated by school districts and charter schools from those units for FY 17 above anticipated FY 16 levels. Unless otherwise specified in the *Public School Finance Act*, funds generated through the SEG are discretionary to local school boards and governing bodies of charter schools, and there is no guarantee that funding generated with these units will be used specifically for services directed to at-risk students. Also, if not fully funded, the addition of new units to the public school funding formula may dilute the unit value, potentially impairing the ability of school districts and charter schools to meet their local obligations.

The FY 16 budget recommendations from both the Legislative Finance Committee (LFC) and the executive branch include $15.2 million for additional at-risk program units from Laws 2014, Chapter 55. However:

- these requests were made under the assumption that new revenue available for recurring state budgeting in FY 16 would be approximately $141 million, which was revised down to approximately $83 million in a February 2015 forecast update to the House Appropriations and Finance Committee; and
- because the LFC budget recommendation includes reductions to the SEG from other areas, it is unclear how much of the $15.2 million is new money.

If HB 173 were to be enacted, the Legislature would have to consider funding for new program units for FY 17 during the 2016 legislative session.

For context, an increase of the at-risk factor to 0.114 relative to an at-risk factor of 0.106 in FY 16 would result in:

- 68 school districts and 67 charter schools receiving a smaller share of SEG funding than they would have with no change to current law;
- 21 school districts and 30 charter schools receiving a larger share of SEG funding than they would have with no change to current law;
- the largest positive percentage change of 0.19 percent going to Gadsden Independent Schools; and
- the largest negative percentage change of -0.27 percent from Roy Municipal Schools, which has budgeted emergency supplemental funding for FY 15.

Based on PED's FY 15 preliminary funded run, at-risk units represent 3.4 percent of statewide program cost. HB 173 would increase this to 3.9 percent of statewide program cost in FY 16 and 4.2 percent of statewide program cost in FY 17.

Technical Issues:

HB 173, with an effective date of July 1, amends a section of statute for which there is an amendment that will not become effective until July 1, 2015. It is unclear whether this process raises a compilation conflict between the two amendments. In order to preempt this potential conflict, the sponsors may wish to consider:

- an amendment on page 1, lines 17-18, changing "Laws 1997, Chapter 40, Section 7, as amended" to "Laws 2014, Chapter 55, Section 1;" or
- a committee substitute that repeals Laws 2014, Chapter 55, and amends the currently compiled statute to reflect the changes made by Laws 2014, Chapter 55, and proposed by HB 173.

Substantive Issues:

As explained in detail below, the substantive issues can be summarized as follows:

- at-risk students in most school districts would benefit more from a proportionately higher unit value rather than a change to the at-risk factor;
- research used to support an increase to the at-risk factor may be flawed with respect to its accuracy on New Mexico public school finance and providing adequate context for a multi-state comparison;
- the proposed SEG changes could negatively affect the solvency of rural school districts receiving emergency supplemental funding;
- the addition of new units to the SEG potentially dilutes the public school funding formula's ability to allocate funding for special education sufficient to meet federal grant requirements; and
- the provisions of HB 173 do not appear to be data-driven, as the most recent increase to the at-risk factor has not yet gone into effect.

As mentioned above, school districts and charter schools for which the distributional effect is negative would benefit more from a proportionately higher unit value rather than a change to the at-risk factor. At-risk students at those school districts and charter schools would effectively have a reduced share of SEG funding directed to them. In other words, even if those schools are generating new at-risk program units, they would not be generating as many at-risk program units relative to other school districts or charter schools.

With respect to at-risk funding generated by locally and state-chartered charter schools:

- under current law, all charter schools inherit the at-risk index of the school district in which they are geographically located;
- an increase to the at-risk factor might not fully benefit a charter school serving higher proportions of at-risk students that happens to be located in a school district with a smaller-than-average at-risk student population; and
- 67 charter schools, including Robert F. Kennedy Charter School in Albuquerque, which serves a relatively large percentage of at-risk students, would benefit more from a proportionately higher unit value rather than a change to the at-risk factor.

Issues with Academic Research on At-Risk Funding

The LFC Fiscal Impact Report (FIR) cites 2009 research from authors Deborah A. Verstegen and Teresa S. Jordan, which included percentages of state funding per pupil beyond the base for low-income or at-risk students. Several statements made by Ms. Verstegen in a 2014 update of this 50-state survey call into question the validity of that research. To illustrate:

- Ms. Verstegen stated that New Mexico's special education funding is census-based; however, special education is actually funded in New Mexico through the SEG based on the actual number of students receiving special education students and a cost differential associated with the level of disability.
- Ms. Verstegen characterized New Mexico's school transportation formula as an allowable reimbursement model; however, the New Mexico school transportation allocations are actually a mixture of a density formula and an equalized reimbursement system.

In addition to these inconsistencies, Ms. Verstegen's research does not provide context for the percentages of state funding for low-income or at-risk students across public school finance structures. For states that provide very little state aid relative to local support for schools, even modest support for low-income students might constitute a very large percentage of state aid. Because the author does not provide a comparable metric, such as level (rather than percentage) of funding per pupil, the ranking of New Mexico shown in the LFC FIR might not actually be a meaningful representation of the state's at-risk funding.

Financial Solvency of Rural School Districts

In FY 15, 18 rural school districts received units for having fewer than 200 students, which are intended to reduce dependence on emergency supplemental funding for those districts. Of those districts, PED is budgeting approximately $1.86 million in operational emergency supplemental funding for FY 15 according to PED data. All 18 of those districts would receive less funding through the SEG with HB 173 relative to the SEG without a change to at-risk units. As a result, the provisions of HB 173 might increase the need for future emergency supplemental funding relative to current law.

Special Education Maintenance of Effort

A possible secondary effect of HB 173 relates with meeting federal requirements for special education maintenance of effort (MOE) under the federal *Individuals with Disabilities Education Act*. Dollars used to purchase new units will not flow through the SEG to increase the unit value. As such, when new dollars placed in the SEG are used to pay for new units, they are dollars that cannot be counted toward meeting the MOE target. Preliminary projections by LESC staff indicate that, for FY 15, the state may be at risk of not meeting FY 09 funding levels for special education.

Data-Driven Policy

In addition to increasing the at-risk factor to 0.106 in FY 16, Laws 2014, Chapter 55 requires school districts to identify, in a report to PED, the uses of funding generated through at-risk program units and intended outcomes for at-risk students.

The provisions of Laws 2014, Chapter 55 will become effective on July 1, 2015. Therefore, no data are available yet to demonstrate the impact of either the increased generation of at-risk program units or the reports of school districts and charter schools to the PED. Without this evidence, it is unclear whether a further increase to the at-risk factor is justified.

Background:

Current Law

For FY 15, the public school funding formula calculates at-risk program units as follows:

(At-Risk Rate) x 0.0915 x MEM = At-Risk Program Units

Effective July 1, 2015, Laws 2014, Chapter 55 amends this calculation to:

(At-Risk Rate) x 0.106 x MEM = At-Risk Program Units

PED determines each district's at-risk rate based on a three-year average of the percentage of:

- Title I-eligible students;
- English language learners; and
- the district's mobility rate.

Proposed Modifications by HB 173

Beginning in FY 17, HB 173 would maintain the same calculation for at-risk program units but increase the at-risk factor to 0.114 as follows:

$$(\text{At-Risk Rate}) \times 0.114 \times \text{MEM} = \text{At-Risk Program Units}$$

Committee Referrals:

HEC/HWMC

Related Bills:

None as of February 11, 2015.