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FISCAL IMPACT REPORT

SPONSOR Stapleton/Papen ORIGINAL DATE 1/30/2020
LAST UPDATED 2/11/2020 HB 59/aHAFC
SHORT TITLE At-Risk Program Units & Index Calc. Change SB _____
ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$50,980.6		\$50,980.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB241, SB171
Relates to HB53, HB281, SB96, SB132
Companion to HAFC Substitute for HB2 and 3

SOURCES OF INFORMATION

LFC Files
Legislative Education Study Committee (LESC) Files

Responses Received From

Public Education Department (PED)
Albuquerque Public Schools (APS)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 59 strikes the \$50.5 million appropriation.

Synopsis of Original Bill

House Bill 59 appropriates \$50.5 million from the general fund to the state equalization guarantee (SEG) distribution for the purpose of increasing the at-risk index factor from 0.25 to 0.30 in the public school funding formula.

FISCAL IMPLICATIONS

The appropriation of \$50.5 million in this bill is a recurring expense to the general fund. **The HAFC amendment strikes this appropriation; however, the HAFC Substitute for House**

Bills 2 and 3 includes \$50.2 million in the state equalization guarantee (SEG) appropriation, contingent on enactment of a bill increasing the at-risk index factor to 0.30.

Any unexpended or unencumbered balance remaining at the end of FY21 reverts to the general fund.

The bill increases the at-risk index factor from 0.25 to 0.30 in FY21, effectively generating more program units (a weighted student count) and funding for public schools based on the rate of low-income students, English language learners (ELL), and transient students enrolled at each school district. Preliminary FY20 data shows the public school funding formula is currently generating 55.4 thousand at-risk program units, or \$252.9 million. Assuming no change in the at-risk student population and an at-risk index factor increase to 0.30, the formula would generate 11.1 thousand new at-risk program units. At the current unit value of \$4,602.27, this would create an operating budget impact of \$51 million.

Using FY20 student counts and demographics, increasing the at-risk index factor to 0.30 would generate 66.5 thousand program units. At the preliminary unit value, these additional units would effectively shift the equivalent of \$51 million in formula funds to schools with more at-risk students. The \$50.5 million appropriation in this bill would offset the majority of budget impacts from this redistribution of formula funding; however, this would also depend on the total number of students counted in the 2019-2020 school year.

According to PED first reporting date (40th day) student membership counts, statewide enrollment declined from 325.5 thousand students in 2018 to 323 thousand students in 2019, a decrease of 2,480 students or 0.76 percent. Because the funding formula is based on prior year student membership and 40th day counts are highly predictive of the second (80th) and third (120th) reporting date counts, total student membership will likely decrease at a similar rate for the FY21 funding formula and place downward pressure on at-risk program unit generation. A 0.76 percent decline in student membership would reduce the budget impact by \$357 thousand.

Additionally, changes to the FY21 unit value will impact the costs of raising the at-risk index. Language in the HAFC substitute requires the PED secretary to establish a final FY21 unit value on January 31, 2021. Increases to the unit value place upward pressure on the costs of increasing the at-risk index factor. PED notes cost modeling on prior year data results in estimates that are conservatively low. PED's estimates indicate a potential \$3.2 million additional fiscal impact for FY20 and FY21 from changes in the unit value; however, the amount is relatively immaterial in proportion to the overall \$3 billion budget for SEG.

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, ELL, Native American, 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

districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students.

On October 30, 2019, the *Yazzie* plaintiffs filed a motion claiming the state failed to comply with the injunction and requested a statewide plan to reach compliance. The *Martinez* plaintiffs filed a motion requesting the court to grant post-judgment discovery to assess whether the state had complied with the injunction.

The court ruling in the *Martinez* and *Yazzie* case did not consider the state's efforts to increase the at-risk index in FY19 or FY20, but noted an at-risk index factor between 0.25 and 0.50 would be reasonable. Between FY18 and FY20, the funding for at-risk students more than doubled, from \$101.6 million to \$252.9 million, in the formula. The at-risk index allows school districts and charter schools to generate additional program units based on the 3-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.

School districts and charter schools have significant flexibility to allocate at-risk funding for research-based or evidence-based social, emotional or academic interventions, such as:

- case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;
- culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;
- additional compensation strategies for high-need schools;
- whole school interventions, including school-based health centers and community schools;
- educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions; and
- services to engage and support parents and families in the education of students.

In FY20, PED distributed a budget questionnaire asking school districts and charter schools about their use of at-risk funds. According to LESC, the categories presented in the accounting portion of the questionnaire included examples – such as student information systems or security personnel – that were not well aligned with the newly enacted statutory requirements, alongside interventions that were clearly aligned with statute – such as tutoring, after school programs, and support services, including guidance or health services. School districts' and charter schools' responses varied, with some school districts and charter schools providing little information, while others included detailed accounting, including services provided with federal or other sources of funding. In general, most school districts reported spending less than their proportional funding formula allocation for at-risk students on the aforementioned interventions.

APS generated \$32 million in at-risk funding from the statewide at-risk factor of 0.13 in FY19 and \$64 million from a factor of 0.25 in FY20. APS notes current statute provides examples of the types of programs and resources that districts might fund specifically for at-risk students, but there is otherwise, no legal requirement to direct or report these funds in any particular manner.

If the At-Risk rate had been 0.3 for FY20 APS would have received an additional \$12.6M.

According to a 2016 Education Commission of the States (ECS) report, 24 states include at-risk funding within their public school funding formula, while other states provide this funding on a categorical basis. The at-risk formula weights in other states vary in magnitude and definition, and cost differentials can range anywhere between 3 percent and 65 percent. However, the percentage of total revenue sources attributable to state general formula assistance also varies, suggesting that high at-risk weights in other states might be marginal due to a low percentage of revenue attributable to the state funding formula.

PERFORMANCE IMPLICATIONS

While studies suggest the costs of educating at-risk students are typically higher than non-at-risk students, it remains unclear if a specific at-risk funding differential optimally improves student achievement, as many states continue to see achievement gaps between at-risk student groups despite using different formula weights.

ADMINISTRATIVE IMPLICATIONS

PED's current oversight of spending for at-risk students is limited. The department is developing accounting codes to track school-level spending on items related to at-risk students for future budget oversight functions. Current statute requires school districts and charter schools to report specific services implemented to improve the academic success of at-risk students. In FY20, most school districts and charter schools provided a report on at-risk expenditures but few provided any substantive details on at-risk programs or intended student outcomes.

CONFLICT, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with House Bill 241 and Senate Bill 171, which increase the at-risk index factor from 0.25 to 0.27. This bill is a companion to the HAFC Substitute for House Bills 2 and 3, which include sufficient funding in the SEG appropriation to increase that at-risk index to 0.30. The bill also relates to House Bill 53, which requires schools to develop annual plans for providing nursing, school counseling, and behavioral health services; House Bill 281, which requires schools to provide evidence-based ELL programs and supports; Senate Bill 96, which requires schools to report on at-risk expenditures; and Senate Bill 132, which appropriates \$5 million to employ and place nurses in public schools.

OTHER SUBSTANTIVE ISSUES

The court also suggested changing the at-risk index poverty component from federal Title I counts to a component based on student eligibility for free or reduced price lunch (FRL) under the National School Lunch Program (NSLP). Switching the at-risk index poverty component from Title I to FRL eligibility in would allow charter schools to generate individual at-risk indices (rather than using the at-risk index of a school district).

The validity of FRL data as a measure of student socioeconomic status is questionable. NSLP thresholds may obscure important variation in household resources at both the top and bottom of the income distribution. Recent changes to the legislation governing NSLP may limit the accuracy of the FRL measure. A series of provisions authorized by the U.S. Department of Agriculture in 2002 make it possible for schools in which many students are enrolled in the free lunch program to renew students' program registration for up to 4 years without updating information on students' household incomes.

Further, the Healthy, Hunger-Free Kids Act of 2010's Community Eligibility Provision (CEP),

implemented nationwide in FY15, aims to allow schools or districts in which 40 percent or more of students are directly certified for enrollment in NSLP, based on their participation in other federal nutrition programs targeted at low-income families, to offer free lunch and breakfast to all students without collecting data on other students' household income. In 2016, more than 15 percent of U.S. students attended a school or district that participated in CEP. Increasing participation in CEP will likely create new challenges with using school-reported NSLP participation rates as a proxy for economic disadvantage.

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