FISCAL IMPACT REPORT

	ORIGINAL DATE	2/6/2020	
SPONSOR Ruiloba	**LAST UPDATED**		**HB** 241
SHORT TITLE At-risk & Differential Program Units		**SB**	
		ANALYST	Liu

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	**FY21**		
	$57,000.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	**FY21**	**FY22**	**3 Year Total Cost**	**Recurring or Nonrecurring**	**Fund Affected**
Total			$18,344.6	$18,344.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB59
Relates to HB62, HB135, HB153, SB13
Relates to Appropriation in HAFC Substitute for HB2 and 3
Duplicates SB171

SOURCES OF INFORMATION
LFC Files
Legislative Education Study Committee (LESC) Files

Responses Received From
Office of the Attorney General (NMAG)
Public Schools Insurance Authority (PSIA)
Educational Retirement Board (ERB)
Indian Affairs Department (IAD)
Higher Education Department (HED)
New Mexico School for the Blind and Visually Impaired (NMSBVI)

No Response Received
Public Education Department (PED)

SUMMARY

  Synopsis of Bill

This bill increases the distribution of public school funding for at-risk students and creates a formula factor to shift formula funding to public schools with full-time teachers mentoring new teachers and full-time teachers instructing students in special education, bilingual multicultural education, and language development programs. The bill is aligned to the FY21 LFC budget recommendation for public school program cost and endorsed by LFC.

The bill appropriates $57 million from the general fund to increase the at-risk index factor from 0.25 to 0.27 and establishes new factors to provide the following cost differentials in FY21:
  - 0.75 program units for full-time teachers instructing special education students;
  - 0.75 program units for full-time teachers instructing English language learners (ELL), students in a bilingual multicultural education program (BMEP), or Native American language and culture class; and
  - 0.50 program units for full-time teachers mentoring one or more beginning teachers.

In FY22, the bill increases these differentials to 1.1, 1.1, and 0.75, respectively.

FISCAL IMPLICATIONS

The appropriation of $57 million contained in this bill is a recurring expense to the general fund allocated through the state equalization guarantee (SEG) distribution for public schools. Provisions of this bill will increase the weight of the aforementioned teacher responsibility differentials in FY22, resulting in an $18.3 million estimated additional operating budget impact. However, much of the FY22 operating budget impact will depend on the number of program units generated by teachers. This fiscal analysis assumes additional growth in program participation for FY21, and shows the potential fiscal impact of diluting the unit value in FY22 without a subsequent appropriation. The following charts detail the formula changes, estimated additional costs of each provision, and potential pay impacts to teachers:

Formula Changes and Estimated Additional Costs

Formula Component	FY20 Formula	FY21 Formula Change	FY21 Estimated Additional Cost	FY22 Formula Change	FY22 Estimated Additional Cost
At-risk Index	$0.25(p+e+m)S$	$0.27(p+e+m)S$	$20,228.9	N/A	N/A
Special Education Teacher	N/A	$0.75\,T_S$	$16,425.2	$1.10\,T_S$	$8,086.7
Bilingual/ELL Teacher	N/A	$0.75\,T_B$	$13,498.0	$1.10\,T_B$	$6,645.5
Mentor Teacher	N/A	$0.50\,T_M$	$6,848.1	$0.75\,T_M$	$3,612.4
TOTAL			$57,000.2		$18,344.6

Where $(p+e+m)$ is the 3-year average rate of students identified for federal Title I allocations, identified as English language learners, and considered mobile; S is student membership; and T_S, T_B, and T_M are the number of teachers serving students in special education, students in bilingual multicultural education programs, or new teachers in mentorship programs, respectively. Note: Estimated additional costs are shown in thousands of dollars.

At-risk Index. The bill increases the at-risk index factor from 0.25 to 0.27 in FY21, effectively generating more program units (a weighted student count) and funding for public schools based

on the rate of low-income students, ELLs, and transient students enrolled at each school district. According to PED's preliminary data, the public school funding formula is generating 55.4 thousand at-risk program units for FY20, or $252.9 million. Assuming no change in the at-risk student population and an at-risk index factor increase to 0.27, the formula would generate 4,431 new at-risk program units. At the current unit value of $4,565.41, this would create an operating budget impact of $20.2 million.

Teacher Responsibility Pay Differentials

License Level	Minimum Salary	FY21 SPED, BMEP/ELL	%	Mentor	%	FY22 SPED, BMEP/ELL	%	Mentor	%
1	$41,000	$3,424	8.4%			$5,022	12.2%		
2	$50,000	$3,424	6.8%	$2,283	4.6%	$5,022	10.0%	$3,424	6.8%
3	$60,000	$3,424	5.7%	$2,283	3.8%	$5,022	8.4%	$3,424	5.7%

Note: Pay differentials displayed here are based on the current unit value of $4,565.41.

Special Education Teacher Differential. The bill creates a new factor in the formula to generate 0.75 program units ($3,424.06) for each full-time teacher with special education endorsement who is teaching special education students in FY21. PED's FY19 licensure data includes 4,646 teacher licenses with special education endorsements. In FY19, NMSU reported 151 special education teacher vacancies statewide. Assuming there are 4,797 special education teacher positions statewide, the estimated cost of providing the special education teacher differential at the current unit value would be $16.4 million (or 3,598 units). The bill increases the factor weight from 0.75 in FY21 to 1.10 in FY22. Assuming the same workforce level and a 5.5 percent increase in the current unit value, the estimated additional cost in FY22 could be up to $8.1 million.

The maintenance of effort (MOE) provision of part B of the federal Individuals with Disabilities Education Act (IDEA-B) requires states to maintain state-level financial support of special education as a condition of continued receipt of federal IDEA-B funds and effectively prohibits states from supplanting state revenues appropriated for special education students with federal IDEA-B dollars. Providing a pay differential for special education teachers would increase the MOE requirement each year. NMSBVI notes the school will be obligated to provide the same raises but does not receive funding from the public school funding formula.

Bilingual/English Language Learner Teachers. The bill creates a new factor in the formula to generate 0.75 program units ($3,424.06) for each full-time teacher with a bilingual endorsement, Teachers of English to Speakers of Other Languages (TESOL) endorsement, or Native American language and culture certification who is teaching English language learners (ELL) or students enrolled in a bilingual multicultural education program (BMEP) or Native American language and culture class in FY21. In FY19, over 6,000 teacher licenses had bilingual or TESOL endorsements.

In FY18, nearly 48.5 thousand students participated in 546 BMEPs statewide. Additionally, approximately 28.8 thousand ELLs did not participate in BMEPs. Preliminary data shows the number of students in BMEPs dropped to 46.8 thousand students in FY19. Assuming a 20:1 student-to-teacher ratio and approximately 78.8 thousand students participating in BMEPs or not participating in BMEPs and classified as ELLs, the formula would generate funding for 3,942 teachers. At the current unit value, the estimated cost for this differential would be $13.5 million (or 2,957 units). The bill increases the factor weight from 0.75 in FY21 to 1.10 in FY22. Assuming the same workforce level and a 5.5 percent increase in the current unit value, the

estimated additional cost in FY22 could be up to $6.6 million.

Mentor Teachers. The bill creates a new factor in the formula to generate 0.50 program units ($2,282.71) for each full-time level 2 or level 3 teacher who is mentoring one or more beginning teachers in FY21. The bill allows schools to assign more than one teacher to mentor each new teacher, however, only one mentor can generate units for each new teacher. Between FY09 and FY15, the number of new teachers fluctuated between 1,834 FTE and 2,800 FTE. Assuming 3,000 new teachers are hired each year, the estimated cost of providing the mentor teacher differential at the current unit value could be up to $6.8 million (or 1,500 units). The bill increases the factor weight from 0.50 in FY21 to 0.75 in FY22. Assuming the same number of new teachers and a 5.5 percent increase in the current unit value, the estimated additional cost in FY22 could be up to $3.6 million.

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. Provisions of this bill provide funding to address issues mentioned in the court ruling, including a low at-risk index, low teacher salaries, and limited PED oversight of special education and ELL programs.

The bill would make several changes to the public school funding formula that would allocate a larger share of formula funding to schools with at-risk students, special education teachers, BMEPs, and new teachers. Unlike most components of the funding formula, which are highly dependent on student membership counts, the teacher pay differentials are dependent on the number of full-time teachers with specific responsibilities. As such, schools will have an increased incentive to hire, retain, and grow the number of teachers instructing special education students, BMEP students, and ELLs. Additionally, schools will receive funding to provide teachers additional pay for mentoring new teachers.

At-risk Index. The court ruling in the *Yazzie* and *Martinez* 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

three-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.

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.

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. As a result, fewer at-risk program units may be generated, potentially resulting in a unit value increase for FY21 based on the current appropriation level.

Teacher Differentials. Provisions of the bill require teachers to receive a pay differential equal to or greater than the funding generated by the formula factors. Because the factors operate similarly to the National Board certified factor in the formula, the pay differential will change in accordance with changes to the unit value.

In FY20, the Legislature increased the minimum salary levels for level 1, 2, and 3-A teachers to $41 thousand, $50 thousand, and $60 thousand, respectively. Additionally, the Legislature appropriated funds to provide a 6 percent raise to all school personnel, although most public schools budgeted higher raises than the mandate. As such, the statewide average FY20 teacher salary is approximately $54.8 thousand. At the current unit value, teachers generating the special education or BMEP/ELL differential will receive an average 6.2 percent pay increase, and teachers generating the mentorship differential will receive an average 4.2 percent pay increase in FY21.

Between 2014 and 2018, about 25 percent of New Mexico teachers left their school district each year. This teacher turnover rate was compounded by declining enrollment in New Mexico's traditional educator preparation programs (EPP). Between FY10 and FY18, in-state EPP enrollment decreased by 5,078 students, or 74 percent. With a shrinking pool of candidates nationally, public schools will have additional difficulties filling teaching positions each year.

PED has not published an educator accountability report to track teacher supply trends as required by statute since 2015. In response, New Mexico State University's Southwest Outreach Academic Research (SOAR) Lab began publishing reports on statewide teacher vacancy rates. According to SOAR's 2019 report, there were 1,054 school personnel vacancies in New Mexico school districts as of September 23, 2019, including 644 teacher vacancies. The report noted a 13 percent decline in teacher vacancies (given 740 vacancies in 2018) and indicated the largest vacancy areas included elementary (173), special education (151), and bilingual (66) teachers. SOAR's report also noted 1,094 students enrolled and 746 students completed EPPs in FY19, a decrease of 47 enrollees and 97 completers from the prior year, suggesting the pool of in-state teacher candidates has not improved from the current trend.

PERFORMANCE IMPLICATIONS

Provisions of this bill may increase the number of teachers with BMEP endorsements and dual language immersion programs. Dual language immersion (DLI) programs offer academic instruction in two languages and enroll roughly equal proportions of native speakers of two languages. A 2017 RAND Corporation study found DLI programs had a positive effect on reading test scores and ELL English proficiency rates. Students randomly assigned to DLI outperformed peers on state reading tests by 0.13 standard deviations in fifth grade and 0.22 standard deviation in eighth grade (roughly seven additional months of learning in fifth grade and nine additional months in eighth grade). ELLs randomly assigned to DLI were 3 percentage points more likely to reach English proficiency by sixth grade. The findings were consistent with other research suggesting DLI helps ELLs become proficient in English at higher rates.

According to the National Conference of State Legislature's *No Time to Lose: How to Build a World-Class Education System State by State* report, most high-performing countries allocate a greater share of teacher's time working with other teachers to develop their own teaching skills and developing the skills of new and struggling teachers. Providing training on best practices for mentorship and strategically pairing quality mentors with new teachers could reduce turnover among new teachers and improve teaching practices and skills.

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.

Establishing new pay differentials for teachers with specific responsibilities will require new accounting codes and potentially additional regulations to clarify eligibility for additional funding. PED may need to promulgate new rules on how schools will report information on teacher responsibilities and how this information will be verified and determined.

CONFLICT, DUPLICATION, RELATIONSHIP

This bill is a duplicate of Senate Bill 171 and relates to the state equalization guarantee (SEG) appropriation in the HAFC substitute for House Bills 2 and 3. This bill also relates to House Bill 62, which creates a new teacher mentorship program and fund; House Bill 135, which creates a formula factor for Native American language and culture teachers; House Bill 153, which increases the weight of the BMEP factor; and Senate Bill 13, which increases minimum salaries for special education teachers by 15 percent.

This bill conflicts with House Bill 59, which increases the at-risk index factor to 0.30.

OTHER SUBSTANTIVE ISSUES

Bilingual Multicultural Education Programs. The public school funding formula currently generates funding for districts operating BMEPs by accounting for the number of students enrolled in the program and the hours they participate. BMEPs generate 0.5 program units in the funding formula for each student receiving BMEP instruction, dependent on the intensity of the program (i.e. number of BMEP instructional hours). Provisions of this bill would create a separate pay factor for teachers teaching students in a BMEP.

The Legislature has not changed the 0.5 factor for BMEPs in the funding formula since 1994. A 2004 LFC evaluation on BMEPs found minimal oversight of BMEPs by PED and insufficient reporting of BMEP expenditure data by school districts, suggesting little is known about the actual costs of programming and programming quality has remained inconsistent in the last 25 years. Between FY08 and FY14, school districts reported state BMEP operational expenditures exceeded revenues generated in the formula. However, this self-reported data does not consistently account for BMEP teacher salaries in a way that allows for meaningful comparison.

In FY18, 484 New Mexico schools, or 56 percent, operated a BMEP – a 7.5 percent decrease from the 523 schools in FY13. Similarly, the total number of students in BMEPs fell from 58 thousand in FY13 to 50 thousand in FY18. Hispanic students (38,147) represent the largest ethnic group participating in BMEPs, followed by Native American students (7,394) and other students (3,786). Of the 48 thousand ELLs identified statewide in FY18, only 43 percent participated in BMEPs.

All BMEPs must provide one hour of home or heritage language arts instruction and another hour of English language development instruction for ELLs taught by a teacher endorsed in bilingual education or Teaching English to Speakers of Other Languages (TESOL).

Approximately 20 percent of New Mexico teachers have a TESOL certification, 4 percent have a bilingual certification, and 7 percent have both certifications. PED notes many of these teachers may not be participating in BMEPs, and court findings in the education sufficiency lawsuit case indicate BMEP quality is generally inconsistent statewide and often not aligned to best practices.

IAD notes Native American students have fallen behind in relation to their non-Native peers, despite the objectives of the New Mexico Indian Education Act. The act requires the state to ensure equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for American Indian students enrolled in public schools. Additionally, the act requires PED to partner with tribes, nations, and pueblos to further support tribal self-determination in education.

Mentorship. Provisions of Section 22-10A-9 NMSA 1978 require all first-year teachers to receive mentorships services by level 2 or level 3 mentors for at least one full school year. The statute calls for school districts to provide mentorship plans and PED to provide mentorship funding and an annual report on mentorship services. To date, PED has not provided information on mentorship plans or how schools are mentoring new teachers.

ALTERNATIVES

Alternatively, the Legislature could consider creating a set of responsibility factors tied to minimum salary levels, similar to the factors used for principal minimum salary levels, for the teacher differentials in this bill. Attaching the formulaic weights to a minimum salary level would set a specific pay differential that would only change if minimum salary levels were adjusted. This bill designs the teacher pay differential like the National Board certification factor, which changes based on the current unit value.

SL/sb/al