

LFC Requester:	Sunny Liu
-----------------------	------------------

**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** 02/16/19
Original **Amendment** _____ **Bill No:** HB455
Correction **Substitute** _____

Sponsor: Rep. Rodolpho "Rudy" S. Martinez, Rep. Linda M. Trujillo et al **Agency Code:** 924

Person Writing Analysis: Daniel Manzano

Short Title: SCHOOL PROGRAM UNIT CHANGES **Phone:** 505-670-3820 **Email:** Daniel.Manzano@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$452,502.2	Recurring	General Fund (SEG)
	\$10,000.0	Nonrecurring	General Fund (Related Recurring to PED)

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

	\$35,066.5	\$35,066.5	Recurring (BMEP)	General Fund (SEG)
	\$224,096.5	\$224,096.5	Recurring (At-risk)	General Fund (SEG)
	\$5,108.6	\$5,108.6	Recurring (Sparsity)	General Fund (SEG)

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		264271.6	264271.6	\$528543.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 455 amends multiple provisions of the Public School Finance Act. Changes to provisions in law include: increasing the Bilingual Multicultural Education Program (BMEP) unit cost differential to 1.0; revises and creates a section of size adjustment units for sparsely populated schools (amends the sparsity factor); changes the at-risk index factor calculation to move from Title I data to free and reduced lunch program data; increases the at-risk index multiplier to .366; creates a new section for supplemental distributions to school districts with MEM fewer than 200; creates a save harmless provision and requires the PED to calculate save harmless amounts.

FISCAL IMPLICATIONS

PED estimates doubling the BMEP unit cost differential from 0.5 to 1.0 would require an estimate \$35.0 million to keep program cost flat. This is calculated by taking the increase over final FY19 units of 8,367.455 times the final unit value of \$4,190.85.

PED estimates increasing the at-risk index multiplier from 0.130 to 0.366 would require an estimate \$224.0 million to keep program cost flat. This is calculated by taking the increase over final FY19 units of 53,472.794 times the final unit value of \$4,190.85.

It is unknown how much more the provisions related to the new sparsity factor will cost as PED lacks access to GIS systems necessary to complete the analysis. Based upon data from an analysis of a prior year, PED estimates that creating a new sparsity factor for schools 25 miles or more from the administration office would require an estimated \$5.1 million to keep program

cost flat. This was calculated in partnership with LESC identified, impacted schools having MEM of 6,095 times the new cost differential of 0.2 times the final funded unit value of \$4,190.85. According to LESC staff, schools in the following school districts would have schools that qualify: Artesia, Bernalillo, Central Consolidated, Deming, Espanola, Gallup-McKinley County, Grants, Jemez Mountain, Las Cruces, Quemado, Santa Rosa and Silver City school districts would all generate additional units. Historically only Gallup-McKinley County Schools generated these units.

SIGNIFICANT ISSUES

In the past, the at-risk index plan review has been operationalized by review of NMDASH plans, and its predecessor, the Educational Plan for Student Success (WebEPSS). The PED has always monitored the use of state dollars to target at-risk populations. The new language on page 7, lines 7 through 9 would most likely be operated through the current NMDASH plan and any successor.

The provisions of HB 455 indicate that a school district with at least one public school that is 25 or more *driving miles* from the school district's administrative offices is eligible for additional size adjustment units. Past bills of a similar nature did not differentiate between map and driving miles, and PED deferred to map miles as only Gallup-McKinley County schools would qualify – which is in keeping with past practice regarding sparsity. Under HB 455, other schools would qualify increasing funding for those other school districts.

If the intent of increasing the Bilingual Multicultural Education Program (BMEP) unit multiplier is to direct more funding to existing BMEPs at school districts and charter schools, HB 455 will achieve this goal. If instead the intent is to create new BMEPs at school districts and charter schools, it is unknown if HB 455 will achieve these goals in the first year of implementation. Currently BMEPs require teachers and/or instructors that meet certain endorsement or certificate requirements to ensure a quality program (bilingual, TESOL, MCNL, NALC, etc.). Finding teachers or instructors with these endorsements (or getting teachers already serving our students to attain these endorsements) will take a concerted effort by school districts and charter schools wishing to implement or expand current BMEPs. Anecdotal input from school districts indicates the labor market for teachers to administer current BMEPs is competitive. Similarly, the BMEPs must meet certain standards of quality under the Bilingual Multicultural Education Act (22-23 NMSA) and department regulation (6.32.2 NMAC) to attain this funding and applications must reflect a statutory program. However, over time, increasing the BMEP units in the public school funding formula may provide sufficient incentive for school districts to pursue this programming. If creating new BMEPs is a policy goal, the sponsors may consider additional policies that enable targeted professional development for newly endorsed Bilingual teachers.

Provisions of HB 455 related to necessarily small school districts serve to codify into statute existing practice at the PED. This section would serve to further justify the current practice of Supplemental Emergency awards as currently they serve the dual purpose of funding both “emergencies” and “supplemental” funding. Currently, PED relies on language in subsection 2 related to financial need (page 9, lines 4 through 10) to make supplemental awards. The majority of these awards are to districts that have under 200 MEM and request average between \$4.5 and \$5.0 million in any given year. HB 455's language would remove the restriction related to cash balances, and recognize that some financial supplemental funding is recurring.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

On page 8, lines 6 through 9, PED is to calculate a school-level at risk index using free and reduced lunch program (FRLP) enrollment data. There are challenges to transitioning to a different data source. FRLP membership is a voluntary program based on participation and the percentage of membership used to determine Title I allocations is census tract data. FRLP's accuracy as poverty metric is debatable as the provisions of FRLP allow for school wide programs, skewing the percentage memberships. Additionally transitioning the poverty metric in the at-risk index calculation will result in year-over-year swings in funding among school districts and charter schools and create winners and losers because there are large differences between the two poverty metrics in school districts and charter schools will have a separate calculation for the first time.

The new sparsity factor indicated on pages 5 to 6 will be difficult to administer by PED alone. The provisions of HB 455 would require PED to calculate eligibility for rural isolation units on the basis of location of high schools on a map. PED partnered with PSFA and LESC to perform a cost estimate. Absent any additional funding for PED to develop geographic information systems (GIS) capabilities, PED would likely request to enter into a memorandum of understanding with the Public Schools Facilities Authority (PSFA) to provide the data necessary from their GIS application. PED would also need to run a separate data pull from STARS for any impacted school district to receive membership by school site, which is not currently a routine procedure for every school in every district. Developing a GIS capability for school funding in PED without an MOU with PSFA is likely to have some modest upfront costs, estimated at \$10,000 per year. These costs are attributable to software licenses, contracts for GIS and employee training. There would be additional burdens in terms of staff time and labor.

Though existing law, there are major hurdles to implementing the temporary provision of program cost reductions for last year's HB 188 on pages 10-12. The first issue PED identifies is that it is extremely difficult to isolate the impacts of program cost changes given that program cost has many and varied reasons for changes in any given year. For example, if HB 455 passes it will restructure completely how units are generated under the formula and obscure any negative impact from the staffing cost index multiplier last year. In other words, you cannot isolate impacts of one piece of funding formula legislation in one fiscal year from the impacts of another piece of funding formula legislation taking place in the same year – it is all the same program cost. Arguments that you can isolate elements of the funding formula from other changes do not account for 40th day adjustments, T&E changes or fluctuations in membership and existing save harmless provisions. The second issue PED identifies with this current section of law is that, when program costs are rising all over the state, you could have reductions applicable to the act passed last year, that are being covered with current year funding for proposed funding formula changes. This means that reductions that were not fully planned for in a previous year are paid for with current dollars which decreases the offset for current year funding formula changes. Lastly, the timing of the impacts to be reported by PED to the Legislature from the provisions of last year's HB 188 could be problematic. The PED will not know the impacts of the staffing cost multiplier legislation from last year (2018's HB 188) until well after the February 1st deadline.

Since it is likely that there will be no program cost reductions in FY20 for anyone under both the Executive and Legislative budget requests, and out years will no longer be able to have impacts

of the staffing cost index multiplier isolated after the passage of FY20, PED recommends striking this whole section of law (section 6 on pages 10 lines 14 – 245 and page 11 lines 1 through 25 and page 12, lines 1 through 8). PED asks for consultation in the future development of save harmless provisions for funding formula changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The PED requires any modification to the public school funding formula give a fiscal year prior to implementation in order to modify the existing data collection systems and worksheets before they can be fully implemented. However, the provisions of HB 455 are much easier to implement than other proposed funding formula bills under consideration this legislative session.

The bill relates to the State Equalization Guarantee (SEG) appropriation contained in the General Appropriations Act.

TECHNICAL ISSUES

The sponsor may wish to clarify if alternative or charter schools should be counted as “approved regular high schools” on page 4 lines 14 through 15. The PED fiscal analysis does not include alternative schools or locally-chartered charter schools in the calculation of additional units because of the limitation of availability in the GIS analysis. However, these schools would have to be considered in any calculation of units based upon their location. This would create a situation where an alternative school qualifies for size units under the rural isolation calculation but does not qualify for small school size adjustment. Similarly, the proposed change to the sparsity calculation would allow locally chartered charter schools to generate units for a school district with no requirement for the school district to pass revenues through to the locally chartered charter school.

OTHER SUBSTANTIVE ISSUES

The rural isolation factor was added as a size adjustment factor in the public school funding formula in 1976 and in 1979, the multiplier in the formula used to calculate the number of rural isolation units to which a district is entitled was increased. Historically, only GMCS qualified for rural isolation units and the changing program delivery of the school district resulted in GCMS no longer being eligible for the rural isolation units. GCMS requested a waiver from the impacts of the decline in rural isolation units in 2010, but PED had no legal recourse to waive provisions of the Public School Finance Act. PED is interested in revisiting the sparsity factor in a manner that awards additional units to GMCS again. This is much preferred as a way to target Operational resources for sparse districts that do not jeopardize equalized funding in a manner such as reducing or removing Impact Aid credits.

Past testimony regarding the GMCS funding under rural isolation and high school size adjustment units that discussed the following points:

- rural isolation units are sometimes referred to as the “sparsity” factor;
- the rural isolation factor was added as a size adjustment factor in the public school funding formula in 1976;
- in 1979, the multiplier in the formula used to calculate the number of rural isolation units to which a district is entitled was increased from 0.2 to 0.5;
- historically, only GMCS has qualified for rural isolation units;

- the changing structure of the school district in recent years has resulted in a reduction in the rural isolation units;
- GMCS contacted the Public Education Department (PED) in letters dated April 20, 2010 and May 3, 2010 to request that the district be “held harmless” from the reduction in units and the resulting reduction in funding; and
- in a letter dated May 20, 2010, Secretary of Public Education Veronica C. García denied the district’s request for a waiver because “[t]he Secretary of Education only has authority to issue those waivers that are permitted by state law.” The Secretary further explained that she denied the district’s request because “there is no statutory provision available to waive a district’s eligibility for the size adjustment calculation for rural isolation units[.]”

ALTERNATIVES

The sponsors may consider revisiting a sparsity factor that allows Gallup-McKinley County schools to generate additional units for the sparse school sites that does not rely on GIS data and instead uses membership, bus route data, or other data already collected by PED.

The sponsors may consider creating a non-reverting fund for the supplemental distributions to necessarily small school districts as this allows, and promotes, more prudent PED award of state funds. Awarding \$10 million dollars to school districts with MEM less than 200 in one year could result in capacity issues related to spending and create a situation where non-recurring funds are used on recurring expenses.

With increasing frequency, PED has had to make emergency supplemental distributions to school districts for issues related to student wellness and school safety. More difficult is that PED has to determine whether or not it can financially assist in instances of life, health and safety given the five percent cash balance restriction. If a school district has an active shooter tragedy, or is in need of school counselors for an emergency, and has over five percent cash balance, there is little recourse to award funds to help aid in the emergency. The sponsors may wish to consider amending provisions of this Act to allow PED’s SBFAB to be responsive to these newer issues in education, or otherwise reduce instance of school safety emergencies.

For at least the last eight years, the PED has not awarded Emergency Supplemental funding to state-chartered charter schools. PED takes the position that, as schools of choice that operate under a charter, an emergency would not exist if a charter school closed because the students would still be afforded an education that meets the minimum requirements under the law at the local school district. Charter schools are expected to meet minimum financial performance requirements as part of their contracts, and remaining in a positive position so as to be a going concern is reflected in those requirements. If a state-chartered charter school were to be in such financial difficulty that it would request emergency supplemental funding, PED would not award Emergency Supplemental and instead forward the request to the Charter Schools Division as evidence of financial mismanagement. The sponsors may consider removing “or state-chartered charter schools” from page 9 line 5.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS