

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2021 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:
Original **Amendment**
Correction **Substitute**

Date 1/28/2021
Bill No: HB135

Sponsor: Rebecca Dow
Short Title: SCHOOL OPPORTUNITY & EQUITY INDEX

Agency Name and Code PED-924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$100.00	Non-recurring	State General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	State General Fund -SEG

(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:

House Bill 135 (HB135) modifies sections of the Public School Finance Act related to At-risk Program Units and an associated at-risk index and replaces them with a new Opportunity and Equity Index (OEI). House Bill 135 defines the calculation of at-risk units as being based upon a three-year average OEI times membership (MEM). The OEI is calculated using a PED-determined measure of economically disadvantaged, the percentage of English learners, the percentage of student mobility and the percentage of students classified as students with disabilities, and the combined percentages of those demographic subgroups classified as minorities (including Native American, Hispanic, African Americans and Pacific Islander or any other similar subgroup) whose end of year summative test performance indicates significantly lower proficiency than Caucasian and Asian students.

FISCAL IMPLICATIONS

HB135 carries a one-time, non-recurring appropriation of \$100 thousand to the Public Education Department. It is likely this appropriation would be used on statistical consulting and most likely be used for needed database collection modifications. HB135 does not make an ongoing recurring appropriation to the agency to hire statistically trained staff or provide current staff needed professional development (see “administrative implications”) below.

On page 4, lines 3-5 HB135 indicates that the sum of the OEI times MEM shall equal the total at-risk funding available for distribution in any given year. However, the public school funding formula does not generally cap participation or indices calculations based upon a maximum amount of dollars. A recent exception is the first year of operation of the new K-5+ and Extended Learning Time Programs units, and these SEG caps placed into law have proven administratively burdensome. Additionally this language limits the ability for the state to argue or develop other at-risk interventions that may supplement the provisions of HB 135.

Recent changes to the funding formula in response to the Martinez/Yazzie lawsuit adjusted funding for the at-risk index and increased the weight it had in the overall state aid formula. In FY20, the at-risk index was adjusted up to a weight of .25 and had \$113.2 million appropriated to the state equalization guarantee (SEG) base. In FY21, the weight was increased again to .30 and another \$50.1 million dollars was appropriated to the SEG base. If HB135 were enacted, the current calculations and relative weight these recent appropriations have in the overall funding

formula would be reallocated according to the new required OEI calculation.

SIGNIFICANT ISSUES

Calculation

Finance and Operations staff could not easily locate the information necessary to attempt to reproduce the OEI canonical correlation to determine fiscal impacts. Staff could not easily locate disaggregated racial subgroup performance percentages or overall performance percentages. This data may very well exist within the Accountability Bureau, but was not readily available. And most other elements were only readily available at the school district and not local education agency level (special education, economically disadvantaged, English learner status) or not available at the school or student level at all (student mobility). School level data for special education service data, economically disadvantaged or English learner status exists in the current membership database, but would require some additional new structured queries to obtain. To operationalize HB135, the PED would be left to determine what measure of economically disadvantaged it wishes to use (most often free and reduced lunch status or Title I eligibility) and would have to develop new measures or implement existing measures for student mobility to the school site.

Racial Characteristics in Education Finance and Strict Scrutiny

On page 5, lines 4 through 9, HB135 seeks to base a portion of the new OEI on racial characteristics of minorities (here defined as Native American, Hispanic, African Americans and Pacific Islanders) as compared to white or Asian students. Though this may be a desirable policy approach to linking funding to racial achievement gaps, traditionally state aid formulas have not had characteristics that consider classification into a racial subgroup. This is because the U.S. Supreme Court has established a doctrine of strict scrutiny around the use of race in state laws. To meet strict scrutiny, the state must demonstrate that the use of race is narrowly tailored and the state has a compelling interest to consider race. This means generally the State of New Mexico would need to argue that there is a compelling state interest in linking funding to racial achievement gaps and that it is so narrowly tailored that it cannot be construed as having racial animus.

Generally, strict scrutiny also requires the state to show that there is not efficacy in other race neutral proposals (i.e. that the racial performance classification is a necessary addition to the model and would significantly impact outputs of the model), and that the policy has a relationship to the numerical goals of the population (i.e. there is some relationship between a racial subgroup of students' performance and funding, when currently many debates are being had on whether there even is a strong relationship between funding levels and any student outcomes). The strict scrutiny requirements may present a legal challenge with HB135 that may or may not be met. It is worth noting that some education finance researchers¹ have been arguing for years that a race conscious state funding policy could pass strict scrutiny, but it may require the State of New Mexico to meet or argue the test. However, the U.S. Supreme Court has only recognized policies that explicitly seek to remedy past discrimination as meeting the strict scrutiny standard, specifically diversity policies in Higher Education. For this reason, many state aid formulas have relied on poverty indicators and economically disadvantaged status to address racial inequities as the two variables are strongly correlated.

PERFORMANCE IMPLICATIONS

¹ See generally literature by Bruce Baker, Preston Green, C. Kirabo Jackson

ADMINISTRATIVE IMPLICATIONS

Statistical Analyses

Canonical correlation analysis is a form of statistical analyses that seeks to measure the degree of association between two sets of multiple variables. It is similar to analysis of covariance or multiple regression analysis in its measures of association, but differs in that you generally have a matrix of both multiple inputs and multiple outputs that you are seeking to examine relationships between. For example, if a social science researcher is interested in measuring variables related to mental health and poverty and how that may or may not correlate to college course final exam grades by student birth region, one tool they may use is canonical correlation to determine to what degree mental health and poverty are associated student performance as influenced by region of birth. It appears that the provisions on page 6 lines 4-16 requires the dimensional measures of association to be linearly scaled to reduce dimensionality to one comparable aggregate input vector and it may be that statistical modeling techniques such as regression analysis would be more appropriate when dimensionality is not a concern. If the sponsor does not want multiple interrelated outcome variables, and only one aggregated outcome variable is desired or the measure of interconnectedness is not to be used, it is unclear why canonical correlation is appropriate.

In any instance, should HB135 become law, the PED would require specific human resources staff trained in these statistical models to administer the distribution of SEG funding, and be able to explain, in simple terms, to other stakeholders who may not have post-secondary statistical experience, how fluctuations in input variables impacts funding in any given year. This is already a challenge with other, less complicated indices and models within the funding formula like the three-year rolling average employed in the at-risk index and the staffing cost multiplier which is an aggregate of two indices based on an array, and other funding models dependent on statistical models like the transportation funding formula that are based on regression analyses are not easily understood by many people in the state. Currently access to this type of staff may be very limited to some psychometricians in Assessment and Accountability, and some limited staff in Finance and Operations and competition for these staff within the state personnel classifications is challenging for the agency.

School-level Calculations

HB135 would require that each public school is eligible for additional at-risk program units. There is only one other component of the public school funding formula, the elementary/junior high and high school portions of the size adjustment statutes (colloquially the “small school size” adjustments), that is calculated at the school level; and that is set to be eliminated after fiscal year 2023. Creating school level calculations for public school funding requires major modifications to the membership reporting system (Student Teacher Accountability Reporting System, or STARS) that generates reports to inform funding formula calculations. Creating a new school level report in STARS that has dependent hierarchal data linked to economically disadvantaged status, an individual student mobility calculation (currently only calculated at the LEA level and not school or student level), status of degree of service for special education, and racial identifications that may require data links to other systems in Student Nutrition, Assessment and Accountability or other agency databases is a significant administrative barrier to development. Indeed the current at-risk index is required to be calculated outside of STARS, by hand, due to current complexity. Though it carries a one-time, non-recurring appropriation to the PED, HB 135 proposes to increase the at-risk calculation with the new OEI statistical model but does not provide recurring appropriations to the agency to implement.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

In many places within HB135, the term English Language Learner has been used, and the most recent term of art used in the ESEA for this subgroup of students is “English Learner”.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

HB135 could amend the current at-risk calculation to better target money to schools via the education plans in law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PED will continue administration of the at-risk index using the three-year rolling average of Title I eligibility, student mobility, and English Learner status at the district level.

AMENDMENTS

None as of 1/26/2021.